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SUMMARY OF DECISIONS OF THE

INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS

IRMCT STATUTE, RULES OF PROCEDURE AND EVIDENCE,
DIRECTIVE ON ASSIGNMENT OF DEFENCE COUNSEL, AND
CODE OF CONDUCT FOR DEFENCE COUNSEL
ANNOTATED

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PREFACE

The decisions of the International Residual Mechanism for Criminal Tribunals started being handed down in 2012 when it took over the functions of the ICTR in completed cases. The decisions became slightly more numerous when the Mechanism took over the functions of the ICTY in completed cases in 2013.

It will be useful when researching the jurisprudence of the *ad hoc* Tribunals to determine if the Mechanism has pronounced itself on any of the same issues. To assist in that research, you might find it useful to consult the conversion table after the Table of Contents. It gives the corresponding IRMCT Rule for each ICTY and ICTR Rule of Procedure and Evidence.

As with my other annotated digests, the summaries are not verbatim quotations from the decisions and are intended only to assist in locating the relevant precedent. They are guides to, but not substitutes for, reading the decisions themselves.

Judgments of the IRMCT Appeals Chamber are included, except for issues relating to the crimes and modes of liability. For those topics, the summaries are included in the ICTR or ICTY Summaries of Decisions, as the IRMCT Statute does not include crimes or modes of liability.

Peter Robinson

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Statute of the Mechanism

Article 1—competence of the Mechanism

1. The Mechanism shall continue the material, territorial, temporal and personal jurisdiction of the ICTY and the ICTR as set out in Articles 1 to 8 of the ICTY Statute and Articles 1 to 7 of the ICTR Statute,1 as well as the rights and obligations, of the ICTY and the ICTR, subject to the provisions of the present Statute.
2. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute, the persons indicted by the ICTY or the ICTR who are among the most senior leaders suspected of being most responsible for the crimes covered by paragraph 1 of this Article, considering the gravity of the crimes charged and the level of responsibility of the accused.
3. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute, the persons indicted by the ICTY or the ICTR who are not among the most senior leaders covered by paragraph 2 of this Article, provided that the Mechanism may only, in accordance with the provisions of the present Statute, proceed to try such persons itself after it has exhausted all reasonable efforts to refer the case as provided in Article 6 of the present Statute.
4. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute,
(a) any person who knowingly and wilfully interferes or has interfered with the administration of justice by the Mechanism or the Tribunals, and to hold such person in contempt; or
(b) a witness who knowingly and wilfully gives or has given false testimony before the Mechanism or the Tribunals.
Before proceeding to try such persons, the Mechanism shall consider referring the case to the authorities of a State in accordance with Article 6 of the present Statute, taking into account the interests of justice and expediency.
5. The Mechanism shall not have the power to issue any new indictments against persons other than those covered by this Article.

The Mechanism is bound to interpret its Statute and Rules in a manner consistent with the ICTY and ICTR jurisprudence.[1]

appeals

The Mechanism has jurisdiction over a motion for assignment of counsel filed prior to the commencement of appeal proceedings.[2]

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[1] *Munyarugarama v Prosecutor*, No. MICT-12-09-AR14, *Decision on Appeal Against the Referral of Phineas Munyarugarama's Case to Rwanda…*(5 October 2012) at para. 6; *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 6
[2] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Review of Decision on Assignment of Counsel on Appeal* (4 February 2016) at para. 12

compensation

The Mechanism has jurisdiction to determine whether an acquitted person may obtain compensation because of his ICTR prosecution.[3]

However, unless the final judgement awarded compensation as a remedy for a violation of the accused's rights or referred the issue of remedy for a separate proceeding, the IRMCT has no jurisdiction to provide compensation for a violation of rights at the ICTR.[4]

contempt

ICTR and ICTY judges did not have power to indict accused for contempt after 1 July 2012-13. Such power rests exclusively with the Mechanism.[5]

However, an ICTY or ICTR Trial Chamber hearing the underlying case, has the authority to decide whether there is reason to believe that contempt has occurred, leaving it to the Mechanism to then conduct and complete the contempt proceedings.[6]

If the ICTY Trial Chamber declined to decide of "reason to believe", the Mechanism would have the power to make such a determination.[7]

IRMCT Judge referred issue of alleged contempt by UN Detention Unit medical officer prior to judgement to the ICTY Trial Chamber, due to its organic familiarity with the proceedings, to make threshold determination as to whether there are reasons to believe that the officer may have committed contempt of the ICTY.[8]

IRMCT has power to prosecute contempt arising from conduct at the ICTY prior to 2013 where case was not adjudicated before ICTY closed.[9]

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[3] *Prosecutor v Nzuwonemeye*, No. MICT-13-43, *Decision on Request to Exceed the Word Limits…and Invitation to make Further Submissions* (19 May 2015) at para. 11
[4] *Prosecutor v Nzuwonemeye*, No. MICT-13-43, *Decision on Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye* (4 August 2015) at para. 17
[5] *In Re Sebureze & Turinabo*, No. MICT-13-40-R90, *Decision on Deogratias Sebureze and Maximilien Turinabo's Motions on the Legal Effect of the Contempt Decision and Order Issued by the ICTR Trial Chamber* (20 February 2013) at para. 13; *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Decision on Jurisdiction Following the Assignment of a Specially Appointed Chamber* (18 October 2013); *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Decision on Accused's Motion for Appointment of Amicus Curiae Prosecutor to Investigate Officials of the United States of America* (16 January 2014)
[6] *Prosecutor v Karadzic*, No.MICT-13-55-R90.3, *Decision to Invite the ICTY Trial Chamber in the Karadzic case to Determine Whether there is Reason to Believe that Contempt has been Committed by Members of the Office of the Prosecutor* (21 July 2014) at para. 12
[7] *Prosecutor v Karadzic*, No.MICT-13-55-R90.3, *Decision to Invite the ICTY Trial Chamber in the Karadzic case to Determine Whether there is Reason to Believe that Contempt has been Committed by Members of the Office of the Prosecutor* (21 July 2014) at para. 23
[8] *Prosecutor v Mladic*, No. MICT-13-56, *Decision on Motion for Contempt Proceedings and Related Orders* (20 November 2017)
[9] *Prosecutor v Jokic & Radeta*, No. MICT-17-111-R90, *Decision on Jurisdiction* (18 January 2018)

access to confidential material

Confidential material accumulated by prosecution, including the identity of protected witnesses, should be provided to national authorities following the referral of contempt proceedings accompanied by instructions to the national authorities that they must respect the existing protective measures and apply for modification to the Mechanism if necessary.[10]

referral to national jurisdiction

Where IRMCT assumed jurisdiction over ICTY contempt case, a Single Judge must first consider possibility of referral to national jurisdiction.[11]

The requirement to first consider transfer of a contempt case to a national jurisdiction is mandatory, and the inclusion of this provision in the Statute indicates a strong preference for referral if all relevant conditions are met.[12]

The Statute indicates an intention for contempt matters to be, by default, primarily dealt with by domestic jurisdictions.[13]

The Mechanism may only exercise jurisdiction after it has considered whether the case can be transferred to a national jurisdiction for trial.[14]

Trying a contempt case before the Mechanism shall be a measure of last resort after all efforts in identifying a State that meets the requirements of Article 6(2) of the Statute have been expended.[15]

The decision on whether or not to refer the case to the authorities of a State is within the discretion of the Single Judge.[16]

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[10] *Prosecutor v Seselj et al*, No. MICT-23-129-Misc.1, *Decision on Prosecution Request Concerning Protected Witnesses and on Access to Case Records* (23 January 2025) at p. 5
[11] *Prosecutor v Jokic & Radeta*, No. MICT-17-111-R90, *Decision on Jurisdiction* (18 January 2018)
[12] *Prosecutor v Seselj et al*, No. MICT-23-129-I, *Decision on Referral of the Case to the Republic of Serbia* (29 February 2024) at para. 9; *In the matter of Francois Ngirabatware*, No. MICT 24-131-I, *Decision on the Suitability of the Referral of the Case* (17 September 2024) at pp. 3-4; *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 10
[13] *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 16
[14] *Prosecutor v Jokic & Radeta*, No. MICT-17-111-R90, *Decision on Amicus Curiae's Appeal against the Order Referring a Case to the Republic of Serbia* (12 December 2018) at para. 11; *Prosecutor v Seselj et al*, No. MICT-23-129-I, *Decision on Referral of the Case to the Republic of Serbia* (29 February 2024) at para. 9; *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 10
[15] *In the Matter of Peter Robinson*, No. MICT 25-135-AR14.1, *Decision on Appeal of a Decision on the Suitability of Referral of a Case* (24 August 2026) at para. 23
[16] *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 11

In the determination of whether a case should be referred to a State, the Single Judge is not required to invite all States, which satisfy the criteria identified in Article 6(2), to make submissions on their jurisdiction, willingness, preparedness to accept the case.[17]

The central issue in the consideration of a referral in contempt of court related matters is whether the domestic process sufficiently vindicates the interests of the Mechanism.[18]

To refer a case to the authorities of a State, a Single Judge shall be satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.[19]

After confirmation of contempt indictment, a Single Judge should be assigned to determine whether the case should be transferred to the authorities of a State.[20]

The Single Judge is to consider whether the case should be referred to the authorities of a State: (1) in whose territory the crime was committed; or (2) in which the accused was arrested; or (3) having jurisdiction and being willing and adequately prepared to accept the case and try it.[21]

The State of nationality or residence of the accused is an equally relevant factor where the accused has not been arrested.[22]

The impact of the alleged conduct will always be on proceedings that took place in The Hague or Arusha. If that impact is to be determinative, the Mechanism would be precluded from transferring any such case to another State for trial. Therefore, Single Judge did not err in giving that little weight.[23]

An accused's nationality and place of residence are factors that have been taken

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[17] *In the Matter of Peter Robinson,* No. MICT-25-135, *Invitation for Submissions* (13 May 2025) at p. 2
[18] *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 13
[19] *Prosecutor v Seselj et al*, No. MICT-23-129-I, *Decision on Referral of the Case to the Republic of Serbia* (29 February 2024) at para. 10; *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 11
[20] *Prosecutor v Seselj et al*, No. MICT-23-129-I, *Decision on Prosecution Request to Unseal Public Redacted Version of Indictment and Other Matters* (5 October 2023) at p. 2; *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 43
[21] *Prosecutor v Jokic & Radeta*, No. MICT-17-111-R90, *Decision on Amicus Curiae's Appeal against the Order Referring a Case to the Republic of Serbia* (12 December 2018) at para. 12; *Prosecutor v Seselj et al*, No. MICT-23-129-I, *Decision on Referral of the Case to the Republic of Serbia* (29 February 2024) at para. 10; *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 11
[22] *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 11
[23] *Prosecutor v Jokic & Radeta*, No. MICT-17-111-R90, *Decision on Amicus Curiae's Appeal against the Order Referring a Case to the Republic of Serbia* (12 December 2018) at para. 14

into account for the purpose of inviting a State to provide written submissions on its jurisdiction, willingness, and preparedness to accept a case for trial.[24]

The national authorities need not necessarily proceed under their laws against each act or crime mentioned in the Indictment in the same manner that the Prosecution would before the Mechanism. Nevertheless, the judge should be satisfied that, if the case were to be referred, an adequate legal framework exists criminalizing most, if not all, of the accused's conduct alleged in the indictment and providing for an adequate penalty structure.[25]

Neither the Statute nor Rules mandate that a referred contempt case proceed as a criminal trial.[26]

Criminalization of the alleged conduct is necessary for referral in relation to allegations of contempt. [27]

It is within the Judge's discretion to refer a matter for disciplinary proceedings, provided that such referral vindicates the Mechanism's interests, taking into account the interests of justice and expediency.[28]

Disciplinary proceedings in the referral State would adequately vindicate the Mechanism's interest where the accused would face possible disbarment from the practice of law. [29]

Where Serbia indicated that it was prepared to conduct criminal proceedings against the Accused and that the Accused, who reside in Serbia, were willing to be tried there, it was reasonable for the Single Judge to find that the interests of justice were best served by referring the case to Serbia because there appeared to be a far greater likelihood that the case would be brought to trial in Serbia than at the Mechanism.[30]

There are important differences between the ICTY Statute and that of the Mechanism. The Mechanism's Statute explicitly provides for the referral of contempt cases and requires States to comply with any order for the surrender or the transfer to the

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[24] *In the Matter of Peter Robinson,* No. MICT-25-135, *Invitation for Submissions* (13 May 2025) at p. 2
[25] *Prosecutor v Seselj et al*, No. MICT-23-129-I, *Decision on Referral of the Case to the Republic of Serbia* (29 February 2024) at para. 12
[26] *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 11
[27] *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 14
[28] *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 15
[29] *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at para. 16
[30] *Prosecutor v Jokic & Radeta*, No. MICT-17-111-R90, *Decision on Amicus Curiae's Appeal against the Order Referring a Case to the Republic of Serbia* (12 December 2018) at para. 19

Mechanism of any person accused of contempt, whereas the ICTY Statute did not.[31]

Given the importance to the trial process of ensuring that witnesses will appear to give evidence when called and of facilitating the attendance of witnesses through the provision of appropriate protective measures, these are important factors that should be. considered in the determination of whether it is in the interests of justice to refer this case to Serbia for trial. Single Judge ordered to consider further submissions on this issue from the Amicus, Serbia, and if necessary the Witness Support and Protection Unit.[32]

Where the crimes alleged in the indictment were committed in the territory of Serbia and the accused, who reside in Serbia, are willing to be tried there and have confirmed that they will appear when summoned by the Serbian authorities, referring the case to Serbia is in the interests of expediency.[33]

Although Serbia's cooperation in relation to this case has not been consistent, the weight to be given to this consideration should not be assessed in isolation, but in the context of the Mechanism's referral framework and the related guarantees provided in the Statute and the Rules.[34]

Prosecution request that accused be detained in national jurisdiction until a determination is made as to whether the contempt case would be referred to that jurisdiction rejected by the judge confirming the indictment. The rules require an accused to be promptly transferred to the seat of the Mechanism.[35]

Referral of contempt case to national jurisdiction declined where trial before the Mechanism could be more expeditious for detained accused and due to close connection between contempt case and ongoing review proceedings before the Mechanism.[36]

Where defendant was a national and resident of Belgium and where his crime involved forging documents relating to Belgian bank accounts, the Single Judge solicited submissions from Belgium as to whether it was willing and able to prosecute the defendant in its national courts.[37]

While the charge against the Accused concerns the submission of fraudulent documents in proceedings before the Mechanism, the institution of proceedings in

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[31] *Prosecutor v Jokic & Radeta*, No. MICT-17-111-R90, *Decision on Amicus Curiae's Appeal against the Order Referring a Case to the Republic of Serbia* (12 December 2018) at para. 21
[32] *Prosecutor v Jokic & Radeta*, No. MICT-17-111-R90, *Decision on Amicus Curiae's Appeal against the Order Referring a Case to the Republic of Serbia* (12 December 2018) at para. 23
[33] *Prosecutor v Seselj et al*, No. MICT-23-129-I, *Decision on Referral of the Case to the Republic of Serbia* (29 February 2024) at para. 17
[34] *Prosecutor v Seselj et al*, No. MICT-23-129-I, *Decision on Referral of the Case to the Republic of Serbia* (29 February 2024) at para. 17
[35] *Prosecutor v Turinabo et al,* No. MICT-18-116, *Warrant of Arrest, Order for Search and Seizure, and Order for Detention and Transfer of Maximilien Turinabo* (24 August 2018) at fn. 3
[36] *Prosecutor v Turinabo et al,* No. MICT-18-116, *Decision on Suitability of Referral of the Case* (7 December 2018) at pp. 4-5
[37] *In Re Francois Ngirabatware*, No. MICT-24-131-I, *Order for Submissions* (25 July 2024) at p.3

Belgium against the Accused for forgery and the use of forged documents may vindicate the Mechanism's interests in remedying the alleged interference with its administration of justice.[38]

Belgium's intention to reopen the investigation does not necessarily preclude the referral of the case to Belgium at this stage and that providing Belgium access to all material supporting the Order in Lieu of Indictment may assist Belgium in its investigation and serve the interest of expediency.[39]

Cases, including contempt cases, may only be referred to the authorities of a State for criminal trial before an appropriate national court. The Statute does not vest discretion to refer a contempt case to a State that has no criminal jurisdiction over the alleged conduct.[40]

Appeals Chamber remanded the matter to the Referral Judge with an instruction to re-examine whether contempt case can be referred to the authorities of the United States for criminal prosecution and, if not, to determine whether the case can be referred to the authorities of another State for trial.[41]

jurisprudence

In the interests of legal certainty and predictability, the IRMCT should follow previous decisions of the ICTR or the ICTY Appeals Chambers and depart from them only for cogent reasons in the interests of justice.[42]

The Appeals Chamber is bound to interpret the Mechanism's Statute and Rules in a manner consistent with the jurisprudence of the ICTR and ICTY, which developed for over a decade prior to the establishment of the Mechanism.[43]

senior leaders

Commander of Special Operations Unit of Serbian Security Service was among the category of senior leaders whose trial was appropriate before the Mechanism and was not appropriate for referral to national authorities.[44]

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[38] *In the matter of Francois Ngirabatware*, No. MICT 24-131-I, *Decision on the Suitability of the Referral of the Case* (17 September 2024) at p. 4
[39] *In the matter of Francois Ngirabatware*, No. MICT 24-131-I, *Decision on the Suitability of the Referral of the Case* (17 September 2024) at p. 4
[40] *In the Matter of Peter Robinson*, No. MICT 25-135-AR14.1, *Decision on Appeal of a Decision on the Suitability of Referral of a Case* (24 August 2026) at para. 20
[41] *In the Matter of Peter Robinson*, No. MICT 25-135-AR14.1, *Decision on Appeal of a Decision on the Suitability of Referral of a Case* (24 August 2026) at para. 24
[42] *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at para. 15; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 13
[43] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Radovan Karadzic's Notice of Sentencing Appeal and the Related Motion for Assignment of Counsel and Extension of Time* (2 April 2019) at p. 3
[44] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Simatovic's Preliminary Motion and Stanisic's Motion for Partial Stay* (18 April 2016) at para. 14

Article 2—functions of the Mechanism

The Mechanism shall continue the functions of the ICTY and of the ICTR, as set out in the present Statute ("residual functions"), during the period of its operation.

Article 3—structure and seats of the Mechanism

The Mechanism shall have two branches, one branch for the ICTY and one branch for the ICTR, respectively. The branch for the ICTY shall have its seat in The Hague. The branch for the ICTR shall have its seat in Arusha.

Article 4—organisation of the Mechanism

The Mechanism shall consist of the following organs:
(a) The Chambers, comprising a Trial Chamber for each branch of the Mechanism and an Appeals Chamber common to both branches of the Mechanism;
(b) The Prosecutor common to both branches of the Mechanism;
(c) The Registry, common to both branches of the Mechanism, to provide administrative services for the Mechanism, including the Chambers and the Prosecutor.

Article 5—concurrent jurisdiction

1. The Mechanism and national courts shall have concurrent jurisdiction to prosecute persons covered by Article 1 of this Statute.
2. The Mechanism shall have primacy over national courts in accordance with the present Statute. At any stage of the procedure involving a person covered by Article 1 paragraph 2 of this Statute, the Mechanism may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the Mechanism.

Article 6—referral of cases to national jurisdictions

1. The Mechanism shall have the power, and shall undertake every effort, to refer cases involving persons covered by paragraph 3 of Article 1 of this Statute to the authorities of a State in accordance with paragraphs 2 and 3 of this Article. The Mechanism shall have the power also to refer cases involving persons covered by paragraph 4 of Article 1 of this Statute.
2. After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Mechanism, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State:
(i) in whose territory the crime was committed; or
(ii) in which the accused was arrested; or
(iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate

court for trial within that State.
3. In determining whether to refer a case involving a person covered by paragraph 3 of Article 1 of this Statute in accordance with paragraph 2 above, the Trial Chamber shall, consistent with Security Council resolution 1534 (2004), consider the gravity of the crimes charged and the level of responsibility of the accused.
4. The Trial Chamber may order such referral proprio motu or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.
5. The Mechanism shall monitor cases referred to national courts by the ICTY, the ICTR, and those referred in accordance with this Article, with the assistance of international and regional organisations and bodies.
6. After an order referring a case has been issued by the ICTY, the ICTR or the Mechanism and before the accused is found guilty or acquitted by a national court, where it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice, the Trial Chamber may, at the request of the Prosecutor or proprio motu and upon having given to the State authorities concerned the opportunity to be heard, revoke the order and make a formal request for deferral.

Referral to Rwanda would not be denied on grounds that judges in Rwanda were biased because of having lived through the genocide.[45]

As professional judges, members of the national judiciary benefit from the presumption of impartiality.[46]

Request for revocation of referral due to inadequacies in defence funding or use of language of the accused denied as premature where the matters were still being negotiated with the government of Rwanda.[47]

While communications between President and monitors would not be routinely disclosed to the Prosecution, in the interests of transparency, the monitors should include the information requested by the President in their monthly reports and specify that the President had requested it.[48]

Case of contempt referred to Serbia where (i) the crimes charged in the Indictment allegedly took place there; (ii) Serbia was willing and adequately prepared to

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[45] *Munyarugarama v Prosecutor*, No. MICT-12-09-AR14, *Decision on Appeal Against the Referral of Phineas Munyarugarama's Case to Rwanda…*(5 October 2012) at para. 24
[46] *Munyarugarama v Prosecutor*, No. MICT-12-09-AR14, *Decision on Appeal Against the Referral of Phineas Munyarugarama's Case to Rwanda…*(5 October 2012) at para. 24
[47] *Prosecutor v Uwinkindi,* No. MICT-12-25, *Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda* (12 March 2014); *Prosecutor v Munyagishari,* No. MICT-12-20, *Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda* (13 March 2014)
[48] *Prosecutor v Uwinkindi,* No. MICT-12-25, *Decision on Prosecution Request for Access to Communications between the President's Office and the Monitor of Cases Referred to Rwanda for Trial* (3 November 2017) at p. 2

accept this case for trial, providing all procedural guarantees for a fair trial; and (iii) that the accused resided in Serbia and were willing to appear for trial before a court there.[49]

Article 7—*non bis in idem*

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the ICTY, the ICTR or the Mechanism.
2. A person covered by Article 1 of this Statute who has been tried before a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the Mechanism only if:
(a) The act for which he or she was tried was characterized as an ordinary crime; or
(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.
3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Mechanism shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 8—roster of judges

1. The Mechanism shall have a roster of 25 independent judges ("judges of the Mechanism"), not more than two of whom may be nationals of the same State.
2. A person who for the purposes of membership of the roster could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.
3. The judges of the Mechanism shall only be present at the seats of the branches of the Mechanism as necessary at the request of the President to exercise the functions requiring their presence. In so far as possible, and as decided by the President, the functions may be exercised remotely, away from the seats of the branches of the Mechanism.
4. The judges of the Mechanism shall not receive any remuneration or other benefits for being on the roster. The terms and conditions of service of the judges for each day on which they exercise their functions for the Mechanism shall be those of the judges ad hoc of the International Court of Justice. The terms and conditions of service of the President of the Mechanism shall be those of the judges of the International Court of Justice.

Article 9—qualification of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. Particular account shall be taken of experience as

[49] *Prosecutor v Jojic & Radeta*, No. MICT-17-111-R90, *Order Referring a Case to the Republic of Serbia* (12 June 2018), p. 4

judges of the ICTY or the ICTR.
2. In the composition of the Trial and Appeals Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

Article 10—election of judges

1. The judges of the Mechanism shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:
(a) The Secretary-General shall invite nominations for judges, preferably from among persons with experience as judges of the ICTY or the ICTR, from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in Article 9 paragraph 1 of the Statute;
(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than 30 candidates, taking due account of the qualifications set out in Article 9 paragraph 1 and adequate representation of the principal legal systems of the world;
(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect 25 judges of the Mechanism. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should more than two candidates of the same nationality obtain the required majority vote, the two who received the highest number of votes shall be considered elected.
2. In the event of a vacancy in the roster, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of Article 9 paragraph 1 of the Statute, for the remainder of the term of office concerned.
3. The judges of the Mechanism shall be elected for a term of four years and shall be eligible for reappointment by the Secretary-General after consultation with the Presidents of the Security Council and of the General Assembly.
4. If there are no judges remaining on the roster or if no judge on the roster is available for appointment, and if it is not possible to assign a judge currently serving at the Mechanism, and all practical alternatives having been explored, the Secretary-General may, at the request of the President of the Mechanism and after consultation with the Presidents of the Security Council and of the General Assembly, appoint a person meeting the qualifications of Article 9 paragraph 1 of the Statute, to serve as a judge of the Mechanism.

Article 11—the President

1. After consultation with the President of the Security Council and the judges of the Mechanism, the Secretary-General shall appoint a full-time President from among the judges of the Mechanism.
2. The President shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.

Article 12—assignment of judges and composition of chambers

1. In the event of a trial of a case pursuant to paragraphs 2 and 3 of Article 1 of this Statute, or to consider the referral of such a case to a national jurisdiction, the President shall appoint three judges from the roster to compose a Trial Chamber and the Presiding Judge from amongst their number to oversee the work of that Trial Chamber. In all other circumstances, including trials pursuant to paragraph 4 of Article 1 of this Statute, the President shall appoint a Single Judge from the roster to deal with the matter.
2. The President may designate a duty judge from the roster for each branch of the Mechanism, who will be available at short notice, to serve as a Single Judge and to whom indictments, warrants, and other matters not assigned to a Trial Chamber, may be transmitted for decision.
3. The President of the Mechanism shall be a member of the Appeals Chamber, appoint the other members and preside over its proceedings. In the event of an appeal against a decision by a Single Judge, the Appeals Chamber shall be composed of three judges. In the event of an appeal against a decision by a Trial Chamber, the Appeals Chamber shall be composed of five judges.
4. In the event of an application for review in accordance with Article 24 of this Statute of a judgment rendered by a single Judge or by a Trial Chamber, the President shall appoint three judges to compose a Trial Chamber on review. In the event of an application for review of a judgment rendered by the Appeals Chamber, the Appeals Chamber on review shall be composed of five judges.
5. The President may appoint, from among the judges of the Mechanism, a reserve judge to be present at each stage of a trial and to replace a judge if that judge is unable to continue sitting.

Improper influences should be eschewed when determining the compositions of judicial benches.[50]

Replacing a judge who had been arrested in violation of his diplomatic immunity would impinge on the fundamental principle of judicial independence, as it would allow interference by a national authority in the conduct of a case and the exercise of judicial functions. As such, it would have a chilling effect on the administration of justice.[51]

[50] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 13
[51] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 13

Article 13—rules of procedure and evidence

1. The judges of the Mechanism shall adopt Rules of Procedure and Evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.
2. Amendments of the Rules of Procedure and Evidence may be decided remotely by the judges of the Mechanism by written procedure.
3. The Rules of Procedure and Evidence and any amendments thereto shall take effect upon adoption by the judges of the Mechanism unless the Security Council decides otherwise.
4. The Rules of Procedure and Evidence and amendments thereto shall be consistent with this Statute.

Article 14—the Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons covered by Article 1 of this Statute.
2. The Prosecutor shall act independently as a separate organ of the Mechanism. He or she shall not seek or receive instructions from any government or from any other source.
3. The Office of the Prosecutor shall be composed of a Prosecutor, an officer in charge at the seat of each branch of the Mechanism designated by the Prosecutor, and such other qualified staff as may be required, in accordance with paragraph 5 of this Article. The Prosecutor shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.
4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.
5. The Office of the Prosecutor shall retain a small number of staff commensurate with the reduced functions of the Mechanism, who shall serve at the seats of the branches of the Mechanism. The Office shall maintain a roster of qualified potential staff, preferably from among persons with experience at the ICTY or the ICTR, to enable it to recruit additional staff rapidly as may be required to perform its functions. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 15—the registry

1. The Registry shall be responsible for the administration and servicing of the branches of the Mechanism.
2. The Registry shall consist of a Registrar, an officer in charge at the seat of each branch of the Mechanism designated by the Registrar, and such other qualified

staff as may be required in accordance with paragraph 4 of this Article. The Registrar shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.
3. The Registrar shall be appointed by the Secretary-General for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.
4. The Registry shall retain a small number of staff commensurate with the reduced functions of the Mechanism, who shall serve at the seat of the respective branches of the Mechanism. The Registry shall maintain a roster of qualified potential staff, preferably from among persons with experience at the ICTY or the ICTR, to enable it to recruit additional staff rapidly as may be required to perform its functions. The Staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 16—investigation and preparation of indictment

1. The Prosecutor shall have the power to conduct investigations against persons covered by Article 1 of this Statute. The Prosecutor shall not have the power to prepare new indictments against persons other than those covered by Article 1 of this Statute.
2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.
3. If questioned, the suspect shall be entitled to be assisted by Counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as necessary translation into and from a language he or she speaks and understands.
4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to the duty judge or a Single Judge designated by the President.

Article 17—review of the indictment

1. The indictment shall be reviewed by the duty judge or a Single Judge designated by the President. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Where a retrial was ordered before the Mechanism after reversal of an acquittal, confirmation of the indictment by a judge of the Mechanism was not required.[52]

Once an indictment is confirmed, the confirming judge may issue an order of arrest and accompanying orders for the search and seizure of relevant material.[53]

Since the Tribunal does not have its own police force and must rely on national authorities to execute search warrants, an order for the national authorities to execute a search warrant on a defence investigator's computer and files implicitly varied the protective measures in all cases for which protected information might be found during the search.[54]

Given long-standing cooperation between Rwanda and the ICTR, and the fairness of judicial proceedings in Rwanda as found in the referral decisions, it could not be said that the Rwandan government's carrying out the order to search and seize computers and files of defence investigator which contained protected defence witness material, put any, protected witnesses at risk.[55]

Rwandan Government ordered to destroy any copies of material it seized from defence investigator and turned over to the Mechanism pursuant to search warrant issued by Mechanism. To the extent information gleaned from the seizure cannot be destroyed, Rwanda must maintain the confidentiality of such information.[56]

While no express provision exists in the Statute or the Rules for vacating or reconsidering a warrant of arrest, this power is inherent in the adjudicating authority's power to issue a warrant of arrest and in that same authority 's ability to reconsider its decisions or orders where it is necessary to, inter alia, prevent injustice. The Prosecution's position that Rule 68 of the Rules is the only means by which a detained accused may be released ignores these inherent powers.[57]

Article 18—commencement and conduct of trial

1. The Single Judge or Trial Chambers conducting a trial shall ensure that the trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused

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[52] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Simatovic's Preliminary Motion and Stanisic's Motion for Partial Stay* (18 April 2016) at para. 8
[53] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision in Relation to Material Seized from Dick Prudence Munyeshuli* (18 February 2019) at para. 10
[54] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision in Relation to Material Seized from Dick Prudence Munyeshuli* (18 February 2019) at para. 13
[55] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision in Relation to Material Seized from Dick Prudence Munyeshuli* (18 February 2019) at para. 14
[56] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision in Relation to Material Seized from Dick Prudence Munyeshuli* (18 February 2019) at para. 16
[57] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Order to Show Cause* (1 October 2019) at para. 10

and due regard for the protection of victims and witnesses.
2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the Mechanism, be taken into custody, immediately informed of the charges against him or her and transferred to the Mechanism.
3. The Single Judge or judge of the Trial Chamber designated by the President shall read the indictment, ensure that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Single Judge or Trial Chamber shall then set the date for trial.
4. The hearings shall be public unless the Single Judge or Trial Chamber decides to close the proceedings in accordance with its Rules of Procedure and Evidence.

The Trial Chamber has the duty to ensure that the trial is fair and expeditious, and conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.[58]

A necessary corollary of the Trial Chamber's obligation to ensure that the trial is fair and expeditious is the ability to review the appropriateness of any accused's preventative detention in this trial when it is necessary to ensure the fairness of the proceeding.[59]

Trial Chamber declined to extend 3 day per week, 3 hour per day trial schedule where the accused had medical problems that made it difficult for him to attend longer sessions.[60]

Article 19—rights of the accused

1. All persons shall be equal before the Mechanism.
2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to Article 20 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
(a) to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
(b) to have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
(c) to be tried without undue delay;
(d) to be tried in his or her presence, and to defend himself or herself in person or

[58] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion to Vary the Trial Modalities* (6 March 2018) at p. 2
[59] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Order to Show Cause* (1 October 2019) at para. 9
[60] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion to Vary the Trial Modalities* (6 March 2018) at p. 3

through legal assistance of his own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
(e) to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
(f) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Mechanism;
(g) not to be compelled to testify against himself or herself or to confess guilt

adequate time and facilities

defence team access

Registry ordered to allow video call between newly detained accused and his defence counsel in advance of initial appearance during the pandemic.[61]

Registry ordered to allow in person visit after initial appearance for defence to prepare for issues of disclosure and amendment of indictment.[62]

defence team funding

The Statute does not provide for assignment of counsel to convicted persons following issuance of final judgements against them.[63]

Registrar erred in underfunding defence team on appeal where Trial Chamber judgement was longest in history and where delay in providing additional funds disadvantaged the accused.[64]

Registrar erred in failing to consider complexity of the case when refusing to adjust the lump sum amount for the phase of the appeal from the filing of the last brief through the appeal judgement.[65]

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[61] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Urgent Motion for In-Person Visits between Felicien Kabuga and his Defence Counsel* (4 November 2020)
[62] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Further Decision on In-Person Visits between Felicien Kabuga and his Defence Counsel* (30 November 2020)
[63] *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on Ntawukulilyayo's Request for Legal Aid* (12 June 2018) at para. 8
[64] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Request for Review of Registrar's Remuneration Decision for Appeal Phase I* (15 June 2016) at para. 29
[65] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Request for Review of Registrar's Remuneration Decision for Appeal Phase I* (15 June 2016) at para. 30

Registrar erred in allowing only 3 days of DSA, rather than 10 days per month, for counsel on appeal where appellant represented himself on appeal and consultation with him was necessary.[66]

confrontation

A conviction cannot be based solely on evidence of a witness whom the accused has had no opportunity to examine or to have examined during the investigation or trial.[67]

counsel of choice

Regardless of whether the accused can fund his Defence or has counsel assigned at the expense of the Mechanism, the accused's choice of counsel may be overridden when the fairness of the trial is at stake.[68]

Trial Chamber correctly considered that the time needed for the new counsel to familiarize himself with the case, if counsel is withdrawn, would likely frustrate both the fair and expeditious continuation of the proceedings.[69]

Frozen assets of accused's family members would not be released for accused to retain counsel of choice. Instead, the Registrar would be given time to determine if those assets are attributable to the accused such that they can be used to repay costs of assigned counsel.[70]

Family members have no standing to make a claim on behalf of a defendant in any proceedings before the Mechanism.[71]

Next of kin have no standing to make a claim on behalf of a defendant in any proceedings before the Mechanism. Therefore, appeal of accused's children seeking to use frozen assets to pay for counsel of accused's choice would be denied.[72]

Where the Registry investigations as to the accused's means to pay for his representation have not concluded, the Trial Chamber would not consider that he had the ability to retain counsel by using assets frozen by the Mechanism.[73]

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[66] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Request for Review of Registrar's Remuneration Decision for Appeal Phase Three* (8 May 2018) at para. 27
[67] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of Witness Dragan Lukac pursuant to Rule 110* (12 October 2018) at p. 3
[68] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 21
[69] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 22
[70] *Prosecutor v Kabuga*, No, MICT-13-38-Misc.1,2&3, *Decision on Motions Filed by Felicien Kabuga's Family for Return of Frozen Assets and Seized Property* (14 October 2021) at p. 5-6
[71] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 24
[72] *Prosecutor v Kabuga*, No. MICT-13-38-Misc.2, *Decision on Appeal of Decision on Motion Concerning Frozen Assets* (10 January 2022) at para. 13

Should an accused be able to pay for his representation, this alone would not necessarily lead to allowing replacement of his assigned counsel.[74]

delay

Factors relevant to whether the right to be tried without undue delay has been breached include: the length of the delay, the complexity of the proceedings, the conduct of the parties, the conduct of the relevant authorities, and any prejudice to the accused.[75]

Trial chambers have a duty to be proactive in ensuring that the accused is tried without undue delay, regardless of whether the accused himself asserts that right.[76]

Suspensions ordered by the Trial Chamber as a remedy for disclosure violations did not unduly delay the proceedings or resulted in per se prejudice to the accused. Suspensions due to extensive disclosure during proceedings are precisely the remedy that may be necessary to ensure an accused's right to a fair trial.[77]

For purposes of an accused's right to be tried without undue delay, the period to be considered lasts until the accused is convicted or acquitted by a final judgement and, therefore, it continues to run if the case is sent for retrial.[78]

Twelve-year delay between arrest and trial judgement was not undue.[79]

equality of arms

The equality of arms principle does not require material equality between the parties in terms of financial or human resources.[80]

The principle of equality of arms does not require placing the Defence "in the same position as the Prosecution" but rather provides that each party must have a reasonable opportunity to defend its interests under conditions that do not place it at a substantial disadvantage vis-a-vis its opponent.[81]

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[73] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Second Decision on Matters related to Felicien Kabuga's Representation* (26 August 2022) at para. 27
[74] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Second Decision on Matters related to Felicien Kabuga's Representation* (26 August 2022) at para. 27
[75] *Prosecutor v Seselj*, No. MICT-16-99-A, *Judgement* (11 April 2018) at para. 41; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 89
[76] *Prosecutor v Seselj*, No. MICT-16-99-A, *Judgement* (11 April 2018) at para. 41; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 22
[77] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 90
[78] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Stanisic's Request for Stay of Proceedings* (2 February 2017) at para. 13
[79] *Prosecutor v Seselj*, No. MICT-16-99-A, *Judgement* (11 April 2018) at para. 43
[80] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 147
[81] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 201

Fact that Prosecution had funds to conduct medical examination of a potentially unavailable witness and defence did not infringe on equality of arms where the defence had a reasonable opportunity to defend its interests.[82]

fitness to participate in the proceedings

Fitness to participate in proceedings is related to Article 19(4)(b), which stipulates that an accused shall be entitled to, inter alia, communicate with counsel of his or her own choosing.[83]

appeal proceedings

The fitness requirement applies to appeal proceedings. It involves an appellant's fitness to exercise his or her right to consult with counsel concerning the preparation of appellate submissions.[84]

Since oral hearing on appeal was exclusively the province of counsel, medical examination would not be ordered to determine if appellant was fit to participate in his appeal hearing.[85]

appellate review

Prosecution failed to demonstrate that the Trial Chamber erred in law or abused its discretion in evaluating the evidence when determining that the accused was not fit to stand trial.[86]

burden of proof

An accused claiming to be unfit to participate in proceedings bears the burden of so proving by a preponderance of the evidence.[87]

Accused did not satisfy the burden of demonstrating that he was unfit to

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[82] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 201
[83] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings* (8 June 2018) at p. 2
[84] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings* (8 June 2018) at p. 3
[85] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Defence Submissions* (14 August 2020) at p. 4
[86] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 48
[87] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings* (8 June 2018) at p. 3; *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Felicien Kabuga's Fitness to Stand Trial and to be Transferred to and Detained in Arusha* (13 June 2022) at para. 43; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.1, *Decision on an Appeal of a Decision on Felicien Kabuga's Fitness to Stand Trial* (15 August 2022) at paras. 11,21

effectively participate in and understand the essentials of the appeal proceedings.[88]

Where experts disagreed as to whether the accused was fit to stand trial, and both experts' opinions were reasonable, the Trial Chamber concluded that the defense had failed to meet its burden by a preponderance of the evidence that the accused was unfit to stand trial. [89]

capacities needed

A non-exhaustive list of capacities to be evaluated in assessing an accused's fitness to stand trial includes the ability to: (i) plead; (ii) understand the nature of the charges; (iii) understand the course of the proceedings; (iv) understand the details of the evidence; (v) instruct counsel; (vi) understand the consequences of the proceedings; and (vii) testify.[90]

Participation in a complex proceeding, such as a trial, requires, at a minimum, a functioning memory, including the ability to retain information over a period of time, as well as the ability to process and express a view about that information.[91]

An accused represented by counsel cannot be expected to have the same understanding of the material related to his case as a qualified and experienced lawyer. Processing the wealth of complex information, inherent in international criminal proceedings, is the role of defence counsel to advise their clients. Indeed, the standard of fitness to stand trial indicates that "a defendant may sometimes require assistance to participate in the proceedings.[92]

An accused's capacities need not be at their notionally highest level, or at the highest level that he has ever enjoyed.[93]

dementia

A medical diagnosis, such as that of dementia, is not itself dispositive evidence of unfitness.[94]

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[88] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings* (8 June 2018) at p. 4
[89] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Felicien Kabuga's Fitness to Stand Trial and to be Transferred to and Detained in Arusha* (13 June 2022) at para. 56
[90] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Felicien Kabuga's Fitness to Stand Trial and to be Transferred to and Detained in Arusha* (13 June 2022) at para. 41; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.1, *Decision on an Appeal of a Decision on Felicien Kabuga's Fitness to Stand Trial* (15 August 2022) at para. 12; *Prosecutor v Kabuga*, No. MICT-13-38-T, *Further Decision on Felicien Kabuga's Fitness to Stand Trial* (6 June 2023) at para. 28; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 23
[91] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Further Decision on Felicien Kabuga's Fitness to Stand Trial* (6 June 2023) at para. 36
[92] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 24
[93] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Felicien Kabuga's Fitness to Stand Trial and to be Transferred to and Detained in Arusha* (13 June 2022) at para. 54

Accused suffering from severe dementia was no longer capable of meaningful participation in his trial.[95]

medical experts

Trial Chamber did not err in failing to appoint a neurologist to determine if the accused suffered from dementia. A precise medical diagnosis is not essential to the determination of fitness to stand trial. Medical diagnoses alone, no matter how numerous, do not suffice to assess an accused's competency to stand trial.[96]

Periodic reports from team of medical experts appointed to assess accused's fitness to stand trial were no longer necessary following decision that accused was not fit to stand trial and dementia condition was not likely to improve.[97]

standard

The standard of fitness is that of meaningful participation, allowing the accused to exercise his or her fair trial rights to such a degree as to be able to participate effectively in and understand the essentials of the proceedings.[98]

What is required for an accused to be deemed fit to, stand trial is a standard of overall capacity allowing for meaningful participation in trial, if he or she is duly represented by counsel.[99]

The accused's ability to participate is contingent upon whether he or she possesses the mental capacity to understand the proceedings and the mental and/or physical

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[94] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Further Decision on Felicien Kabuga's Fitness to Stand Trial* (6 June 2023) at para. 29

[95] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Further Decision on Felicien Kabuga's Fitness to Stand Trial* (6 June 2023) at para. 36

[96] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.1, *Decision on an Appeal of a Decision on Felicien Kabuga's Fitness to Stand Trial* (15 August 2022) at para. 20

[97] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Further Order Amending the Medical Reporting Regime* (23 January 2026) at p. 3

[98] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings* (8 June 2018) at pp. 2-3; *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Felicien Kabuga's Fitness to Stand Trial and to be Transferred to and Detained in Arusha* (13 June 2022) at para. 40; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.1, *Decision on an Appeal of a Decision on Felicien Kabuga's Fitness to Stand Trial* (15 August 2022) at para. 11; *Prosecutor v Kabuga*, No. MICT-13-38-T, *Further Decision on Felicien Kabuga's Fitness to Stand Trial* (6 June 2023) at para. 28; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 23

[99] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Felicien Kabuga's Fitness to Stand Trial and to be Transferred to and Detained in Arusha* (13 June 2022) at para. 42; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.1, *Decision on an Appeal of a Decision on Felicien Kabuga's Fitness to Stand Trial* (15 August 2022) at para. 12; *Prosecutor v Kabuga*, No. MICT-13-38-T, *Further Decision on Felicien Kabuga's Fitness to Stand Trial* (6 June 2023) at para. 28; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 23

capacity to communicate, and thus consult, with his or her counsel.[100]

An accused's fitness should tum on whether his or her capacities, viewed overall and in a reasonable and common-sense manner, are at such a level that it is possible for him or her to participate in the proceedings (in some cases with assistance) and sufficiently exercise the identified rights.[101]

stay of proceedings

Stay of proceedings was not warranted where defence had not substantiated its claim that accused was unfit to stand trial as medical examinations were ongoing.[102]

when accused found unfit

Although the unprecedented nature of a procedure, which is neither expressly allowed for nor specifically prohibited in the Statute or the Rules, does not *per se* indicate that such procedure falls outside a trial chamber's discretionary power,[103] neither the Statute nor the jurisprudence of the Mechanism and its predecessor tribunals allow for the conduct of an "alternative finding procedure", in lieu of a trial when an accused is found unfit to stand trial.[104]

Where the accused was not fit to stand trial and unlikely to regain fitness in the future, the most appropriate way to proceed is to remand the matter to the Trial Chamber with an instruction to impose an indefinite stay of proceedings.[105]

While identifying a State that will accept the accused on its territory may present obstacles, such a consideration may not be the basis for the accused's continuous detention on remand.[106]

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[100] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings* (8 June 2018) at p. 2, fn. 14; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 28
[101] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings* (8 June 2018) at pp. 2-3; *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Felicien Kabuga's Fitness to Stand Trial and to be Transferred to and Detained in Arusha* (13 June 2022) at para. 40; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 29
[102] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Motion Seeking a Stay of Proceedings or Alternatively Provisional Release* (1 June 2021) at p. 3
[103] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 58
[104] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 68
[105] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 74
[106] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.3 *Decision on Appeals of Further Decision on Felicien Kabuga's Fitness to Stand Trial* (7 August 2023) at para. 76

Medical expert evidence demonstrates that flying to Rwanda would pose a clear and substantial risk to the accused's life. Therefore, ordering his release to Rwanda after he was found unfit to stand trial is incompatible with the Mechanism's duty of care to him, at least in the absence of his consent.[107]

Trial Chamber's conclusion that that flying to Rwanda would pose a clear and substantial risk to the accused's life encompassed the alternative of flying by air ambulance and was consistent with the duty of care owed by the Mechanism to its defendants.[108]

independent judiciary

It is self-evidence that justice and the Rule of Law begin with an independent judiciary. The right to be tried before an independent and impartial Tribunal is an integral component of the right to a fair trial enshrined in Article 19.[109]

Judges of the Mechanism must be independent of all external authority and influence, including from their own States of nationality or residence.[110]

notice issues

in general

The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment to provide notice to accused, so that he or she may prepare his or her defence.[111]

In determining whether an accused was adequately put on notice of the nature and cause of the charges against him, the indictment must be considered as a whole.[112]

An accused has the right to be informed promptly and in detail of the nature and cause of the charges against him. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment to provide notice to the accused.[113]

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[107] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Felicien Kabuga's Fitness to Travel to Rwanda* (14 November 2025) at para. 30
[108] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.4, *Decision on Prosecution Appeal or Motion for Reconsideration Concerning Felicien Kabuga's Release* (28 April 2026) at paras. 23,25
[109] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 11; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 352
[110] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 11
[111] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at para. 5
[112] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Reconsideration and Further Submission* (11 February 2019) at para. 10
[113] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 32; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Further*

The Prosecution is expected to know its case before proceeding to trial and cannot omit material facts of its main allegations in the indictment with the aim of moulding the case against the accused during the trial depending on how the evidence unfolds.[114]

An indictment which fails to set forth material facts in sufficient detail is defective.[115]

Whether particular facts are "material" depends on the nature of the Prosecution's case.[116]

The Prosecution is obligated to state the material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven.[117]

Decisive factors in determining the degree of specificity with which the Prosecution must plead the material facts of its case are the Prosecution's characterization of the alleged criminal conduct and the proximity of the accused to the underlying offence.[118]

If the Prosecution alleges that an accused personally committed the criminal acts in question, the indictment should include details which explain this allegation, such as the identity of the victim, the time and place of the events, and how the offence was committed.[119]

While it may be impracticable' to require a high degree of specificity due to the scale of the alleged crimes, the indictment must particularize the material facts in such a

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Particularisation of the Prosecution's Case (2 May 2018) at para. 11; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 3

[114] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 32; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Further Particularisation of the Prosecution's Case* (2 May 2018) at para. 11; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at para. 6; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 5

[115] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 33

[116] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at para. 5; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 3

[117] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 62

[118] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Further Particularisation of the Prosecution's Case* (2 May 2018) at para. 11; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at para. 6; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 4

[119] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at para. 6; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at fn. 58; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 4

way that the accused can prepare his defence.[120]

Even where it is impracticable to provide full details of a material fact, and barring special circumstances, the Prosecution must indicate its best understanding of the case against the accused.[121]

A clear distinction must be drawn between vagueness in an indictment and an indictment omitting certain charges altogether. While it is possible to remedy the vagueness of an indictment, omitted charges can be incorporated into the indictment only by a formal amendment pursuant to Rule 50 of the Rules.[122]

aiding or abetting

Where it is alleged that the accused instigated or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.[123]

“and/or”

Use of the term and/or did not render the indictment defective for lack of notice.[124]

burden of persuasion

If an appellant raises a defect in the indictment for the first time on appeal, he bears the burden of showing that his ability to prepare his defence was materially impaired. Where an accused had already raised the issue of lack of notice before the trial chamber, the burden rests on the Prosecution to demonstrate on appeal that the accused's ability to prepare a defence was not materially impaired.[125]

circumstances of crime

Indictment which alleged the accused addressed youths who were present at the roadblock was not defective to support finding that address was made to 150 to 250

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[120] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic’s Motion for Further Particularisation of the Prosecution’s Case* (2 May 2018) at para. 12
[121] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli’s Motion Alleging Defects in the Indictment* (12 March 2019) at para. 6; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 5
[122] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 116
[123] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 115; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic’s Motion for Further Particularisation of the Prosecution’s Case* (2 May 2018) at para. 12
[124] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo’s, Anselme Nzabonimpa’s and Marie Rose Fatuma’s Motions Challenging the Form of the Indictment* (12 March 2019) at fn. 60
[125] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 33

people assembled there.[126]

Indictment should clarify whether accused's conduct in attempting to persuade protected witness to testify for defence was directly with the protected witness or through a third party.[127]

contempt

Allegation that accused disclosed protected witness information to a named individual on a specified date was sufficiently precise. Issues as to whether the person to whom the information was disclosed was entitled to know or already knew of the identity of the protected witness were matters for trial and did not render the indictment deficient.[128]

The Prosecution is not required to plead whether the bribe was accepted as this is neither an element of the offence nor a material fact necessary to prepare the defence.[129]

contextual paragraphs

Paragraphs of the indictment that are purely contextual cannot be the subject of challenge for lack of notice since they do not allege material facts.[130]

curing defect

The defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charges.[131]

dates

Allegation that the crime was committed "towards the end of February" was not vague or overly broad. In addition, the Prosecution's pre-trial submissions indicating that the crime was committed between 22 and 28 February 1994, provided the accused with sufficient notice as to the timing of the commission of the crime.[132]

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[126] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 42
[127] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at para. 25
[128] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at para. 10
[129] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at fn. 89
[130] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at para. 7
[131] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 33
[132] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 34

Two-year date range for repeated conduct alleged to have constituted contempt was insufficiently precise.[133]

Two-month date range for repeated conduct alleged to have constituted contempt was sufficiently precise [134]

Three-month date range for commission of crimes for which the accused was charged as a remote perpetrator was sufficiently precise.[135]

Minor differences between an indictment and the evidence presented at trial do not prevent a consideration of the indictment considering the evidence. In assessing whether the differences are indeed minor, the chamber must satisfy itself that no prejudice shall, as a result, be caused to the accused. The question to be determined is whether the accused was reasonably able to identify the crime and criminal conduct alleged in the particular paragraph of the indictment.[136]

Allegation that defendant violated protective measures by having indirect conduct with specified protected witnesses over a six-week period was sufficiently specific where indictment also specified the individual through which the indirect contact occurred.[137]

The fact that the alleged conduct is repeated and protracted does not relieve the Prosecution of the burden to provide dates or more specific time frames when such information is in its possession.[138]

deportation

In view of the scale of the crimes and the accused's remoteness from them, as well as the established practice allowing cumulative charging, the Prosecution was not required to distinguish in the indictment those events that resulted in deportation as opposed to forcible transfer.[139]

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[133] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at para. 23

[134] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at para. 30; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Nzabonimpa and Ndagijimana Defence Challenges to the Form of the Third Amended Indictment* (30 January 2020) at para. 15

[135] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 10

[136] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 38

[137] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at para. 14

[138] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at fn. 56

[139] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 56

extermination

Accused's ability to defend himself was not materially impaired by indictment's failure to specify which murders were also charged as extermination.[140]

forcible transfer

Indictment that charged forcible transfer of people from their homes also included those who were transferred from places of detention, as the interim detention of some victims of forcible transfer before their expulsion was not a material fact that had to be pleaded in the indictment.[141]

hostage-taking

Indictment that alleged that Bosnian Serb forces threatened UN personnel that it had detained provided sufficient specificity and it was not error to fail to require the specific threats to be enumerated.[142]

"including"

Use of the term "including" was impermissible when describing the acts for which the accused bore criminal responsibility.[143]

joint criminal enterprise

In cases where the Prosecution alleges liability pursuant to a joint criminal enterprise, the following material facts must be pleaded in the indictment: the nature and purpose of the enterprise, the period over which the enterprise is said to have existed, the identity of the participants in the enterprise, and the nature of the accused's participation in the enterprise. The indictment should also clearly indicate which form of joint criminal enterprise is being alleged.[144]

Acts of accused that constituted his contribution to the joint criminal enterprise were sufficiently pled.[145]

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[140] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 50
[141] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 442
[142] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 62
[143] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at para. 21
[144] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 248; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Further Particularisation of the Prosecution's Case* (2 May 2018) at para. 12; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 23
[145] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Further Particularisation of the Prosecution's Case* (2 May 2018) at para. 20

location

Inconsistencies as to the roadblock's precise location were minor and do not show that the accused lacked sufficient notice of the location where the crime was allegedly committed or that he suffered any prejudice as a result. [146]

The reference to Nyamyumba Commune in the Indictment is exceedingly broad and does not alone provide adequate notice of his presence at the Bruxelles and the Gitsimbi/Cotagirwa roadblocks. However, the Prosecution Pre-Trial Brief provided the necessary specifics.[147]

Allegation that accused trained militia in training camps in Bosnia and Croatia would be interpreted as also including two training camps in Serbia near the border, where the camps were used to train people to fight in Bosnia and Croatia and where the prosecution had consistently proceeded as if these locations were included, both at the original trial and re-trial.[148]

Location where the accused is alleged to have engaged in the conduct of persuading a protected witness to testify for the defence must be specified when in the possession of the Prosecution.[149]

Where alleged conduct involved telephone or text messages, the location need not be specified, but the means of communication should be set forth in the indictment.[150]

Reference to payment of bribes by telecommunication and/or meetings in Gisenyi was sufficiently precise to provide adequate notice of the location of the crimes.[151]

manner of commission

Prosecution ordered to specify the way the accused had indirect contact with protected witnesses through a specified co-accused.[152]

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[146] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 40; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 24

[147] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 127

[148] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Reconsideration and Further Submission* (11 February 2019) at para. 15

[149] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at para. 25; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at para. 28

[150] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at fn. 57

[151] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Nzabonimpa and Ndagijimana Defence Challenges to the Form of the Third Amended Indictment* (30 January 2020) at para. 12

[152] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion Alleging Defects in the Indictment* (12 March 2019) at para. 15

Prosecution ordered to specify means employed by the accused to influence protected witnesses.[153]

Fact that two defendants were charged as having induced the same witness was not a defect in the indictment where pre-trial brief specified which one of them was alleged to have paid money to the witness.[154]

Prosecution description of means of corruptly influencing witnesses as "pressure and/or inducement" was specific enough to provide notice to the defence.[155]

Connection of accused to alleged radio broadcasts and support for Interahamwe was sufficiently set forth in indictment given the nature of the accused's remote participation in the crimes.[156]

mens rea

An indictment may either plead the state of mind of the accused, in which case the facts by which the matter is to be established are matters of evidence and need not be pleaded; or the evidentiary facts from which the state mind is to be inferred.[157]

An indictment charging that the accused "knowingly and wilfully" committed contempt adequately alleged the requisite mens rea.[158]

Allegations that the accused intended the commission of the crimes charged in the Indictment or was aware of the substantial likelihood that such crimes would be committed in the execution of the plan or the order, and that he had the required knowledge when providing practical assistance, encouragement or moral support to the physical perpetrators was sufficient.[159]

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[153] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at para. 28

[154] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Nzabonimpa and Ndagijimana Defence Challenges to the Form of the Third Amended Indictment* (30 January 2020) at paras. 22,40,43,55

[155] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Nzabonimpa and Ndagijimana Defence Challenges to the Form of the Third Amended Indictment* (30 January 2020) at para. 15

[156] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at paras. 14-16

[157] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at para. 12; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 19

[158] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at para. 13

[159] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Further Particularisation of the Prosecution's Case* (2 May 2018) at para. 20

perpetrators

It may also be sufficient to identify perpetrators by category.[160]

Indictment sufficiently identified the physical perpetrators of the crimes by reference to the groups to which they belonged.[161]

Indictment which specified units involved in crimes and named individuals who were members of the JCE was sufficient and it was not necessary to name other individual perpetrators or unit's size or structure given the remoteness of the accused to the crimes.[162]

scale of crimes

As the proximity of the accused person to the events becomes more distant, less precision is required in relation to those particular details, and greater emphasis is placed upon the conduct of the accused person himself upon which the Prosecution relies to establish his responsibility as an accessory or a superior to the persons who personally committed the acts giving rise to the charges against him.[163]

In cases concerning extensive and continuous criminality, specificity with respect to the timing, victims, and location of representative incidents of criminality may satisfy the obligation of providing sufficient notice of the nature of the case the accused is required to meet to effectively prepare his defence.[164]

unscheduled incidents

Trial Chamber properly relied upon unscheduled incidents as evidence. The Scheduled Incidents were not a comprehensive list of all the underlying criminal conduct that may be relied upon in support of a particular count charged in the Indictment but were illustrative.[165]

variance with proof

The fact that the prosecution's theory of the scope of the distributions was broader in the indictment than that ultimately proven at trial does not mean that the notice in

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[160] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 140; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Preliminary Motion* (14 May 2021) at para. 20
[161] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Further Particularisation of the Prosecution's Case* (2 May 2018) at para. 19
[162] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Further Particularisation of the Prosecution's Case* (2 May 2018) at para. 16
[163] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 36
[164] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 36
[165] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 34

relation to the date of the alleged incidents was deficient.[166]

victims

In certain circumstances, the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates of the commission of the crimes.[167]

The Prosecution was not required to provide exhaustive lists of all the names of towns and villages attacked or details and exact number of victims of deportation or forcible transfer.[168]

Whether certain facts, such as the identity of the victims, are material, necessarily depends upon the type of responsibility alleged by the Prosecution.[169]

obtaining witnesses

Defence's failure to make its own motion for assignment of counsel to witness after witness' motion for assignment of counsel was denied waived its right to appeal issue of denial of counsel for witness who feared self-incrimination.[170]

presence

The accused has a fundamental right to be tried in his presence.[171]

The right to be present at one's trial is not absolute, however, and may be subject to limitations.[172]

Any limitation on the right of the accused to be tried in his presence must serve a sufficiently important aim that is compatible with the Statute and must not impair the right more than necessary to accomplish such aim.[173]

site visit

The Trial Chamber's decision to conduct site visits without the accused being present did not violate his right to be present at his trial as it served the sufficiently important aim of ensuring its ability to perform its functions considering the security concerns that would have accompanied his presence and did not impair his right to be

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[166] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 120
[167] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 140
[168] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Further Particularisation of the Prosecution's Case* (2 May 2018) at para. 24
[169] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 140
[170] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 298
[171] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 35
[172] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 35
[173] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 37

present more than necessary to accomplish that aim.[174]

Although the Trial Chamber indicated that the purpose of the site visits was not to gather evidence or hear submissions but to enable the Trial Chamber to familiarize itself with the locations referred to in the Indictment, the conduct during the visits did not comply with the limitations imposed by the Trial Chamber. Consequently, the site visits formed part of the trial proceedings, and, considering the conduct during them, the site visits violated the accused's right to be tried in his presence.[175]

The accused's absence from the site visits did not materially prejudice him, where he was represented at the site visits by his legal advisor and allowed to make submissions as to the sites visited and their importance to his case, and to raise any concerns as to the fairness of the procedure followed. Moreover, the Trial Chamber restricted its use of any observations made during the site visits to facilitating its understanding of the topography of the various locations.[176]

video conference

The right to be present at trial implies physical presence in the courtroom, and an accused's remote participation via video-conference link does not satisfy the guarantees of the right.[177]

The Trial Chamber's obligation to ensure an accused's right to be present extends only to ensuring meaningful physical presence in the courtroom. Once that right has been voluntarily and unequivocally waived, no additional responsibility exists on the part of the Trial Chamber to facilitate remote participation via video-conference link.[178]

An accused has the right to be physically present in the courtroom. Authorizing participation via video-conference link from the UNDU is not a substitute for presence, but merely for the convenience of the accused.[179]

Due to logistical difficulties, Trial Chamber declined to facilitate video-link for accused to follow trial proceedings in Belgrade.[180]

The right to be present at one’s trial is not satisfied by the defendant’s observation of the trial via video link from the detention unit during the coronavirus pandemic and he

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[174] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 37
[175] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 39
[176] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 40
[177] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Modalities for Trial* (13 April 2017) at para. 16
[178] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Modalities for Trial* (13 April 2017) at para. 17
[179] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion to Vary the Trial Modalities* (6 March 2018) at p. 3
[180] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Modalities for Trial* (13 April 2017) at para. 19

has a right to be physically present in the courtroom.[181]

The right to be present at one's trial would not be violated by proceeding with the trial with the accused following from the UN detention unit via video link where the accused was not physically fit enough to attend the trial in person.[182]

waiver

For an accused's waiver of the right to be present at trial to be valid, the accused must be physically and mentally fit to be present for trial.[183]

remedies

Any violation of the right to a fair trial of an accused requires a remedy.[184]

The nature and form of the effective remedy should be proportional to the gravity of the harm suffered.[185]

Recognition of the violation of the accused's right to be present during the site visits constituted an effective remedy.[186]

search and seizure

Reasonable grounds for suspecting that detainee may have been in possession of communication devices which were used or could have been used in the commission of crimes of interference with the administration of justice existed where What's App messages had been found from a person using Tanzanian mobile telephone numbers with apparent intimate knowledge of case related details - that only the detainee, his counsel, or someone acting on their behalf would know.[187]

Search and seizure of detainees' computers was disproportionate and unlawful where there was no evidence they had engaged in internet communications and the computers contained materials subject to attorney client privilege.[188]

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[181] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Order Scheduling the Resumption of In-Court Hearings* (5 August 2020), p. 3
[182] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on the Conduct of Trial Proceedings* (13 February 2023) at para. 21
[183] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Provisional Release* (19 July 2017) at para. 21
[184] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 41
[185] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 41
[186] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 41
[187] *Prosecutor v Turinabo et al,* No. MICT-18-116-PT, *Decision on the 7 February 2019 Search at the United Nations Detention Facility* (5 July 2019) at paras. 23-24
[188] *Prosecutor v Turinabo et al,* No. MICT-18-116-PT, *Decision on the 7 February 2019 Search at the United Nations Detention Facility* (5 July 2019) at paras. 25,27

self-representation

The right of an accused to represent himself, which is guaranteed by the ICTY Statute and has been held to be an "indispensable cornerstone of justice", is nonetheless not absolute and may be subject to certain limitations.[189]

Any limitation on the right of self-representation must be guided by the proportionality principle, that is, it must serve a sufficiently important aim that is compatible with the Statute and not impair the right more than necessary to accomplish such aim.[190]

The decision requiring a self-represented accused to be questioned by his legal advisor during his testimony did not violate his right to self-representation or the right to testify. It did not impact his ability to control the preparation and execution of his examination-in-chief, including the organization and substance of the questions to, be asked by his legal advisor and the evidence elicited.[191]

An accused or appellant who is represented by counsel is not entitled to self-representation. However, it was in the interest of justice to allow an appellant who had represented himself at trial to participate in the appeal hearing, notwithstanding that he was represented by counsel on appeal.[192]

self-incrimination

Where an accused has freely and voluntarily made statements, he cannot later choose to invoke his right against self-incrimination retroactively to shield those statements from being introduced into evidence, provided he was informed about his right to remain silent before giving this statement.[193]

translations

An accused is entitled to receive in a language he understands decisions and orders as well as all evidentiary material which relates to the determination of charges against him.[194]

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[189] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 27
[190] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 27
[191] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 29
[192] *Prosecutor v Karadzic,* No. MICT-13-55-A, *Decision on Karadzic's Request to Participate in the Appeal Hearing* (27 February 2018)
[193] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Submission on Exhibits Marked for Identification* (11 February 2019) at p. 4
[194] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Motion for Temporary Stay of Proceedings and Orders Concerning Defence Preparation* (6 May 2019) at fn. 10; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Marie-Rose Fatuma's Motion for Translations into Kinyarwanda* (15 May 2019) at p. 2

An accused is not entitled, as such, to receive in his language, materials which, though subject to disclosure, would not be presented at trial.[195]

It is the responsibility of counsel to ensure that the accused understands documents not required to be translated by the Registry.[196]

Order to Prosecution to disclose translations denied where, although the Prosecution bears the responsibility for making timely requests for mandatory translations, the availability of translations is the responsibility of the Registry.[197]

Article 20—protection of victims and witnesses

The Mechanism shall provide in its Rules of Procedure and Evidence for the protection of victims and witnesses in relation to the ICTY, the ICTR, and the Mechanism. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 21—judgements

1. The Single Judge or Trial Chamber shall pronounce judgements and impose sentences and penalties on persons covered by Article 1 of this Statute who are convicted by the Mechanism.
2. All judgements shall be delivered in public and shall be accompanied by a reasoned opinion in writing. Judgements by a Chamber shall be rendered by a majority of the judges, to which separate or dissenting opinions may be appended.

A reasoned opinion in the trial judgement is essential to ensuring that adjudications are fair; it, inter alia, allows for a meaningful exercise of the right of appeal by the parties, and enables the Appeals Chamber to understand and review the findings.[198]

A trial chamber is required to provide a reasoned opinion. Consequently, a trial chamber should set out in a clear and articulate manner the factual and legal findings based on which it reached the decision to convict or acquit an accused. A trial chamber is required to provide clear, reasoned findings of fact as to each element of the crime charged.[199]

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[195] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Motion for Temporary Stay of Proceedings and Orders Concerning Defence Preparation* (6 May 2019) at fn. 10; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Marie-Rose Fatuma's Motion for Translations into Kinyarwanda* (15 May 2019) at p. 2
[196] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Marie-Rose Fatuma's Motion for Translations into Kinyarwanda* (15 May 2019) at p. 2
[197] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Motion for an Order of Disclosure of Translations* (23 October 2019) at p. 2
[198] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 437
[199] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 700; *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 437

While, in practice, trial chambers usually state the law that they intend to apply, the duty to provide a reasoned opinion does not necessarily entail a formal requirement to set out the applicable law.[200]

There is no legal requirement that a trial chamber's analysis as to an accused's mens rea and actus reus be done separately. To the contrary, trial chambers are free to organize their judgements as they see fit so long as they fulfil their obligation to provide a reasoned opinion.[201]

Nothing prevents a trial chamber from relying on the same evidence when making findings as to an accused's actus reus and mens rea.[202]

A trial chamber may infer the existence of a particular fact upon which the guilt of the accused depends on circumstantial evidence if it is the only reasonable conclusion that could be drawn from the evidence presented.[203]

If there is another conclusion which is also reasonably open from the evidence, and which is consistent with the non-existence of that fact, the conclusion of guilt beyond reasonable doubt cannot be drawn.[204]

nullum crimen sine lege

The principle of nullum crimen sine lege requires that a person may only be found guilty of a crime in respect of acts which constituted a violation of a norm which existed at the time of their commission.[205]

The criminal liability in question must have been sufficiently foreseeable and the law providing for such liability must have been sufficiently accessible at the relevant time.[206]

This principle does not, however, prevent a court from interpreting and clarifying the elements of a particular crime, nor does it preclude the progressive development of the law by the court.[207]

Article 22—penalties

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[200] *Prosecutor v Seselj*, No. MICT-16-99-A, *Judgement* (11 April 2018) at para. 57
[201] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 243
[202] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 247
[203] *Prosecutor v Seselj*, No. MICT-16-99-A, *Judgement* (11 April 2018) at para. 63; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 599; *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 252
[204] *Prosecutor v Seselj*, No. MICT-16-99-A, *Judgement* (11 April 2018) at para. 118
[205] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 290
[206] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 290
[207] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 290

1. The penalty imposed on persons covered by paragraphs 2 and 3 of Article 1 of this Statute shall be limited to imprisonment. The penalty imposed on persons covered by paragraph 4 of Article 1 of this Statute shall be a term of imprisonment not exceeding seven years, or a fine of an amount to be determined in the Rules of Procedure and Evidence, or both.
2. In determining the terms of imprisonment, the Single Judge or Trial Chamber shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia and in those of Rwanda, respectively.
3. In imposing the sentences, the Single Judge or Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
4. In addition to imprisonment, the Single Judge or Trial Chamber may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

By sentencing Fatuma to "time served", the Single Judge did not impose a permissible sentence. It was incumbent on the Single Judge, when electing to impose a sentence of imprisonment, to first determine the term of imprisonment and then award credit for time served against that term.[208]

"Time served" is not an appropriate sentence.[209]

Article 23—appellate proceedings

1. The Appeals Chamber shall hear appeals from convicted persons or from the Prosecutor on the following grounds:
(a) an error on a question of law invalidating the decision; or
(b) an error of fact which has occasioned a miscarriage of justice.
2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Single Judge or Trial Chamber.

acquittal

Where the Prosecution appeals an error of fact, the Prosecution must show that, when account is taken of the errors of fact committed by the trial chamber, all reasonable doubt of guilt has been eliminated.[210]

acquitted persons

Appeals Chamber had jurisdiction to hear appeal by acquitted person of decision declining State of arrest to take him back after his acquittal where appeal implicated a

[208] *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 65
[209] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 114
[210] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 18

clearly defined right to family life and raised questions relating to the scope of the Mechanism's power to order cooperation of states.[211]

Although neither the Statute nor the Rules provide for an appeal as of right against a decision of a single judge related to the proper interpretation of Article 28 of the Statute and Rule 8(A) of the Rules, the Appeals Chamber may exercise jurisdiction over issues that concern the proper functioning of the Mechanism and the Mechanism's duty to ensure the welfare of acquitted or released persons pending their relocation.[212]

Appeal from denial of motion to transfer acquitted person to The Netherlands for medical reasons would be entertained as it concerns the Mechanism's duty to ensure the welfare of acquitted persons after their relocation.[213]

appeal from conviction entered on appeal

The Appeals Chamber may enter new convictions when issuing its final judgement. A person convicted on appeal does not have the right to a second appeal. Rather, he must use the mechanism of "review" to challenge such convictions, if he can show a miscarriage of justice.[214]

President declined to appoint an appeal bench where convicted person did not have the right to appeal a conviction entered for the first time on appeal.[215]

appeal from increased sentence entered on appeal

Neither the Statute nor the Rules provide a legal framework for the appeal of an appeal judgement.[216]

Neither the Statute nor the Rules provide for the assignment of a new Appeals Bench to adjudicate an appeal from an appeal judgement.[217]

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[211] *Prosecutor v Nzuwonemeye,* No. MICT-13-43, *Decision on the Appeal of the Single Judge's Decision of 22 October 2018* (17 April 2019) at para. 7
[212] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 14
[213] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Appeal of Decision Denying Motion for Emergency Medical Evacuation and Motion for Oral Hearing* (18 July 2024) at para. 6
[214] *Prosecutor v Seselj*, No. MICT-16-99, *Decision on Request to be Allowed to Exercise the Right to Appeal and have a Deadline set for the Notice of Appeal* (27 November 2018) at paras. 7-9
[215] *Prosecutor v Seselj*, No. MICT-16-99, *Decision on Vojislav Seselj's Appeal Against the Decision Denying Request to Appeal the Appeal Judgement* (5 February 2019) at p. 2
[216] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Radovan Karadzic's Notice of Sentencing Appeal and the Related Motion for Assignment of Counsel and Extension of Time* (2 April 2019) at p. 2
[217] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Radovan Karadzic's Notice of Sentencing Appeal and the Related Motion for Assignment of Counsel and Extension of Time* (2 April 2019) at p. 2; *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Radovan Karadzic's Motion for Disqualification and Reconsideration of Dismissal of Notice of Sentencing Appeal* (14 July 2020), at p. 3

Since the Statute, the Rules, and the case law of the Mechanism do not allow for an appeal of a conviction entered for the first time on appeal, they also do not allow for an appeal from an increased sentence imposed on appeal.[218]

The fact that the Statute and Rules provide specifically for review of a conviction, but do not allow for review of a sentence, does not make any difference as far as the right to appeal a life sentence imposed for the first time on appeal.[219]

assignment of counsel

Appeals Chamber would exercise its discretion to hear appeal from refusal to assign counsel to persons detained in Niger following their relocation by the Mechanism, as the matter concerns the proper functioning of the Mechanism.[220]

binding nature of decisions

A decision of the President on disqualification is not binding authority in relation to any future disqualification application.[221]

The adoption of the Rome Statute treaty does not necessarily prove that states consider the content of that statute to express customary international law. The Rome Statute is not binding on the Appeals Chamber. The Appeals Chamber will rely on the jurisprudence of the ICTY and ICTR, rather than the Rome Statute.[222]

departing from precedent

The Mechanism's Statute reflects normative continuity with the Statutes of the ICTY and ICTR and the Appeals Chamber is bound to interpret the Statute in a manner consistent with the jurisprudence of its successor institutions.[223]

While not formally bound by the jurisprudence of the ICTR or the ICTY, the Appeals Chamber is guided by the principle that, in the interests of legal certainty and predictability, it should follow previous decisions of the ICTR and ICTY Appeals Chambers and depart from them only for cogent reasons in the interest of justice, that is, where a previous decision has been decided on the basis of a wrong legal principle or has

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[218] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Radovan Karadzic's Notice of Sentencing Appeal and the Related Motion for Assignment of Counsel and Extension of Time* (2 April 2019) at p. 2
[219] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Radovan Karadzic's Notice of Sentencing Appeal and the Related Motion for Assignment of Counsel and Extension of Time* (2 April 2019) at p. 2
[220] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision on Assignment of Counsel* (27 May 2022) at p. 3
[221] *Prosecutor v Mladic,* No. MICT-13-56-A, *Decision on Prosecution's Appeal of the Acting President's Decision of 13 September 2018* (4 December 2018) at para. 17
[222] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 270
[223] *Prosecutor v Nzuwonemeye,* No. MICT-13-43, *Decision on the Appeal of the Single Judge's Decision of 22 October 2018* (17 April 2019) at para. 15

been "wrongly decided, usually because the judge or judges were ill-informed about the applicable law.[224]

The party submitting that the Appeals Chamber should depart from ICTY or ICTR jurisprudence bears the burden of demonstrating that there are cogent reasons in the interest of justice that justify such departure.[225]

Cogent reasons in the interest of justice exists where a previous decision has been decided based on a wrong legal principle or has been wrongly decided, usually because the judge or judges were ill-informed about the applicable law.[226]

discretion

The fact that the Appeals Chamber held that exceptional circumstances existed to assign counsel to the appeal did not mean that the Single Judge abused his discretion when declining to assign counsel for a motion raising the same issue.[227]

evaluation of evidence

The fact that certain evidence has not been explicitly referred to does not necessarily mean that it was not considered in the Trial Chamber's assessment.[228]

The task of hearing, assessing, and weighing the evidence presented at trial is left primarily to the trial chamber and that the assessment of the demeanour of witnesses in considering their credibility is one of the fundamental functions of a trial chamber to which the Appeals Chamber must accord considerable deference.[229]

general importance of the issue

The Appeals Chamber may assert jurisdiction over matters raising issues related to the proper functioning of the Mechanism or that are of general significance to its jurisprudence.[230]

Exercising appellate jurisdiction where it concerns issues of general significance to the Mechanism's jurisprudence is to be done in exceptional circumstances.[231]

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[224] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 269
[225] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 13
[226] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 13
[227] *Prosecutor v Nzuwonemeye,* No. MICT-13-43, *Decision on the Appeal of the Single Judge's Decision of 22 October 2018* (17 April 2019) at para. 25
[228] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 175
[229] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 231
[230] *Prosecutor v Mladic,* No. MICT-13-56-A, *Decision on Prosecution's Appeal of the Acting President's Decision of 13 September 2018* (4 December 2018) at para. 12
[231] *Prosecutor v Mladic,* No. MICT-13-56-A, *Decision on Prosecution's Appeal of the Acting President's Decision of 13 September 2018* (4 December 2018) at para. 16

Generally, jurisdiction has been exercised based on "general significance" alone when interpretation of the law was required to address issues of fundamental fairness and due process with broad and foreseeable impacts on cases before the ad hoc Tribunals.[232]

That the issue presented for appellate consideration may involve a question of law that may have general application to proceedings beyond the case in which it arises may not demonstrate that the issue is of sufficient significance to the Mechanism's jurisprudence to require appellate review.[233]

Appeals Chamber had jurisdiction to decide prosecution's motion to strike defence disqualification motions made before Senior Judge where the issue was closely related to the fairness of the appeal proceedings and was of general significance to the jurisprudence of the Mechanism.[234]

Appeals Chamber lacked jurisdiction to decide prosecution appeal of disqualification decision where the decision did not affect any rights of the prosecution and where the decision was of limited applicability and hence not of general significance to the jurisprudence. [235]

Where the Statute or the Rules do not expressly provide for – and/or in the absence of any provision limiting – the right of appeal, the Appeals Chamber may exceptionally assert jurisdiction over, *inter alia*, matters related to the proper functioning of the Mechanism.[236]

Defence counsel's challenge to decision to initiate contempt proceedings for alleged violation of court order did not raise issues related to the proper functioning of the Mechanism such as to warrant appellate review as of right.[237]

inherent jurisdiction

Where decision finding defendant unfit to travel to Rwanda was made on remand from Appeals Chamber which directed the Trial Chamber to supervise the release of the

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[232] *Prosecutor v Mladic,* No. MICT-13-56-A, *Decision on Prosecution's Appeal of the Acting President's Decision of 13 September 2018* (4 December 2018) at para. 16
[233] *Prosecutor v Mladic,* No. MICT-13-56-A, *Decision on Prosecution's Appeal of the Acting President's Decision of 13 September 2018* (4 December 2018) at fn. 44
[234] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Prosecution Motion to Strike Karadzic's Second Motion to Disqualify Judge Theodor Meron, Motion to Strike Judge William Sekule, and for Related Orders* (1 November 2018) at para. 10
[235] *Prosecutor v Mladic,* No. MICT-13-56-A, *Decision on Prosecution's Appeal of the Acting President's Decision of 13 September 2018* (4 December 2018) at paras. 15-16
[236] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-AR90.1, *Decision on Appeal of Decision on Allegations of Contempt and on Requests to Appear as Amici Curiae* (15 May 2025) at p. 3
[237] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-AR90.1, *Decision on Appeal of Decision on Allegations of Contempt and on Requests to Appear as Amici Curiae* (15 May 2025) at p. 3

defendant found unfit to stand trial, the Appeals Chamber had inherent jurisdiction to hear an appeal of the decision.[238]

interim orders

Requiring a convicted person to appeal an interim order before being able to demonstrate any prejudice resulting from that order would necessarily inhibit his ability to appeal the discretionary determination at issue and would result in a needless expenditure of judicial resources. Therefore, an appeal from a decision rendered after a witness declined to be interviewed by defence counsel was timely, even where the alleged error arose from the interim order.[239]

non bis in idem

Although not provided in the statute or the rules, there is an inherent right to appeal a decision that a subsequent State proceeding does not violate the principle of *non bis in idem* to give full effect to that principle.[240]

oral hearing

Oral hearing for relocated persons detained in Niger denied where Appeals Chamber considered it had adequate information upon which to reach a decision.[241]

Oral hearing on interlocutory appeal for the purpose of ending the acquitted person's unlawful detention in Niger denied as an oral hearing should not be used as a mechanism to circumvent proper procedures.[242]

post-conviction

An applicant is entitled to appeal a decision on witness protective measures which was rendered after the close of the trial and appeal proceedings.[243]

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[238] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.4, *Decision on Prosecution Appeal or Motion for Reconsideration Concerning Felicien Kabuga's Release* (28 April 2026) at para. 11
[239] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on an Appeal of a Decision Rendered by a Single Judge* (6 October 2017) at para. 11
[240] *Prosecutor v Oric*, No. MICT-14-79, *Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015* (17 February 2016) at para. 6
[241] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 16; *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Appeal of Decision Denying Motion for Emergency Medical Evacuation and Motion for Oral Hearing* (18 July 2024) at para. 8
[242] *Prosecutor v Nzuwonemeye*, No. 13-43, *Decision on Motion for Reconsideration* (15 November 2022) at p. 2; *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Appeal of Decision Denying Motion for Emergency Medical Evacuation and Motion for Oral Hearing* (18 July 2024) at para. 8
[243] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness* (14 November 2016) at para. 6; *Prosecutor v Tolimir*, No.

Considering the importance of the protection of victims and witnesses to the proper functioning of the Mechanism, the Appeals Chamber exercised its jurisdiction over an appeal of a decision about protective measures for deceased witnesses.[244]

Neither the Statute nor the Rules expressly provides for an appeal as of right against a decision issued by a Single Judge on a matter concerning financial assistance to a convicted person released pending his relocation. Nonetheless, where the issue relates to the Mechanism's duty to ensure the welfare of released persons pending their relocation, the Appeals Chamber will consider the appeal.[245]

President's decisions

The Appeals Chamber has inherent jurisdiction to review decisions of the President that are closely related to the fairness of proceedings on appeal.[246]

President decision on disqualification did not impact the fairness of the appeal where the decision was made before briefing was completed and the substitution of judges did not delay the appeal.[247]

Prosecution appeal

The Prosecution must show that, when account is taken of errors of fact committed by the trial chamber, all reasonable doubt of guilt has been eliminated.[248]

reasoned decision

The duty to provide a reasoned opinion does not require the articulation of every step of reasoning. The Appeals Chamber has an inherent discretion to select submissions which merit a detailed discussion in writing.[249]

Trial chambers are required to provide a reasoned opinion to ensure that adjudications are fair, allow for a meaningful exercise of the right of appeal by the

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MICT-12-85, *Decision on Request for Access to Confidential Material in the Prosecutor v Zdravko Tolimir case Presented by Vujadin Popovic* (17 May 2017) at para. 12

[244] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness* (14 November 2016) at para. 6

[245] *In the matter of Ferdinand Nahimana*, No. MICT-23-127, *Decision on an Appeal of a Decision on Request for Temporary Humanitarian Aid* (2 August 2023) at para. 7; *In the matter of Emmanuel Rukundo*, MICT-23-128, *Decision on an Appeal of a Decision on Request for Temporary Humanitarian Aid* (15 August 2023) at para. 9

[246] *Prosecutor v Mladic,* No. MICT-13-56-A, *Decision on Prosecution's Appeal of the Acting President's Decision of 13 September 2018* (4 December 2018) at para. 12

[247] *Prosecutor v Mladic,* No. MICT-13-56-A, *Decision on Prosecution's Appeal of the Acting President's Decision of 13 September 2018* (4 December 2018) at para. 13

[248] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 698

[249] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Reconsider the Decision on Motions for Hospitalisation* (28 August 2020) at p. 2

parties, and enable the Appeals Chamber to understand and review the findings. Nevertheless, a trial chamber need not articulate every step of its reasoning.[250]

reconsideration

The Mechanism' s mandate is to continue the jurisdiction, rights and obligations, and essential functions of the ICTR and the ICTY. In doing so. it is bound to consider the relevant precedents of the ad hoc tribunals. However, while decisions of the lCTR Appeals Chamber, retain their validity before the Mechanism, applicants are not barred from seeking reconsideration of such decisions before the Mechanism, where appropriate.[251]

The Appeals Chamber has inherent discretionary power to reconsider a previous non-final decision if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice.[252]

The Appeals Chamber does not reconsider final decisions terminating the proceedings in a case, such as final judgements and decisions denying requests for review.[253]

There is no legal basis for appealing an order or a decision of the Appeals Chamber. The only remedy against an Appeals Chamber interlocutory decision is a motion for reconsideration.[254]

The ICTR Appeals Chamber's decision concerning investigation for contempt is a decision that may be subject to reconsideration before the Mechanism.[255]

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[250] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 312
[251] *Prosecutor v Kamuhanda*, No. MICT-13-33-AR90/018.1, *Decision on Kamuhanda's Appeal of Decision on Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK* (8 December 2015) at para. 15
[252] *Prosecutor v Kamuhanda*, No. MICT-13-33-AR90/018.1, *Decision on Kamuhanda's Appeal of Decision on Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK* (8 December 2015) at para. 16; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Motion for Partial Reconsideration of Decision on Stanisic's Request for Stay of Proceedings* (7 April 2017) at para. 7; ; *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion for Reconsideration and Certification to Appeal Decision on a Motion to Vacate the Trial Judgement and Stay the Proceedings* (26 June 2018) at p. 2
[253] *Prosecutor v Kamuhanda*, No. MICT-13-33-AR90/018.1, *Decision on Kamuhanda's Appeal of Decision on Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK* (8 December 2015) at para. 16; *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Augustin Ngirabatware's Motion for Reconsideration of Review Judgement…*(10 January 2019) at p. 3
[254] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion for Reconsideration and Certification to Appeal Decision on a Request for Provisional Release* (8 June 2018) at pp. 2-3; *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion for Reconsideration and Certification to Appeal Decision on a Motion to Vacate the Trial Judgement and Stay the Proceedings* (26 June 2018) at p. 2
[255] *Prosecutor v Kamuhanda*, No. MICT-13-33-AR90/018.1, *Decision on Kamuhanda's Appeal of Decision on Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK* (8 December 2015) at para. 16

A request for reconsideration, by definition, must be made before the chamber that rendered the impugned decision. The proper forum for a request for reconsideration of a decision rendered by the ICTR Appeals Chamber is the Appeals Chamber of the Mechanism.[256]

The principle of finality dictates that the discretionary power to reconsider previous decisions should be exercised sparingly and a party must therefore meet a high threshold in its request for reconsideration.[257]

Appeals Chamber, considering that it was in the interests of judicial economy and efficient management of the proceedings to exercise its discretion to rule directly on the matter before it, not only granted prosecution's motion to strike disqualification motion filed before Senior Judge, but declared that the decision issued by the Senior Judge in the interim had no legal effect.[258]

remote participation

Remote participation by counsel or judges in oral hearing during coronavirus pandemic does not violate rights of accused and does not warrant postponement of appeals hearing or require consent or accused.[259]

res judicata

Where motion sought redacted decisions, rather than a list of witnesses affected by *ex parte* protective measures decisions, the motion was different in scope and legal basis and therefore the earlier decision was not binding under principles of *res judicata*.[260]

sentence

Mechanism was bound to follow jurisprudence of ICTR and ICTY that permitted imposition of a higher sentence on appeal.[261]

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[256] *Prosecutor v Kamuhanda*, No. MICT-13-33-AR90/018.1, *Decision on Kamuhanda's Appeal of Decision on Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK* (8 December 2015) at para. 17

[257] *Prosecutor v Kamuhanda*, No. MICT-13-33-AR90/018.1, *Decision on Kamuhanda's Appeal of Decision on Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK* (8 December 2015) at para. 16; *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution's Motions related to Augustin Ngirabatware's Laptops* (20 December 2019) at para. 10

[258] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Prosecution Motion to Strike Karadzic's Second Motion to Disqualify Judge Theodor Meron, Motion to Strike Judge William Sekule, and for Related Orders* (1 November 2018) at para. 16

[259] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Defence Submissions* (14 August 2020) at p. 6

[260] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules* (18 July 2016) at p. 4

[261] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Radovan Karadzic's Notice of Sentencing Appeal and the Related Motion for Assignment of Counsel and Extension of Time* (2 April 2019) at p. 3

standard of review

The Appeals Chamber will only reverse a trial chamber's discretionary decision where it is found to be based on an incorrect interpretation of the governing law, based on a patently incorrect conclusion of fact, or where it is so unfair or unreasonable as to constitute an abuse of the trial chamber's discretion.[262]

The Appeals Chamber reviews only errors of law which have the potential to invalidate the decision of the trial chamber and errors of fact which have occasioned a miscarriage of justice.[263]

In determining whether a trial chamber's finding was reasonable, the Appeals Chamber will not lightly overturn findings of fact made by a trial chamber.[264]

The Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier, of fact could have made the impugned finding.[265]

The Appeals Chamber must give deference to the Trial Chamber which received the evidence at trial and substitute its own finding for that of the Trial Chamber only where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous.[266]

credibility

Trial chambers have broad discretion in weighing evidence and are best placed to assess the credibility of a witness and the reliability of the evidence adduced.[267]

The task of hearing, assessing, and weighing, the evidence presented at trial is left primarily to the Trial Chamber and that it will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding.[268]

disclosure issues

Decisions concerning disclosure as well as remedies for disclosure violations relate to the general conduct of trial proceedings and therefore fall within the discretion

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[262] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 85; *Prosecutor v Niyitegeka,* No. MICT-12-16-R, *Decision on Appeals of Decision Rendered by a Single Judge* (9 August 2017) at para. 14
[263] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 14
[264] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 17
[265] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 678
[266] *Prosecutor v Seselj*, No. MICT-16-99-A, *Judgement* (11 April 2018) at para. 118
[267] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at paras. 142,173
[268] *Prosecutor v Seselj*, No. MICT-16-99-A, *Judgement* (11 April 2018) at para. 103; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 17

of the trial chamber.[269]

Decisions related to witness protection and disclosure of evidence are discretionary decisions. To successfully challenge such a decision, the appellant must demonstrate a discernible error resulting in prejudice to him.[270]

failure to mention

A trial chamber is presumed to have evaluated all the evidence before it and that not referring to a specific portion of the evidence, as such, does not indicate that the Trial Chamber failed to consider it if there is no indication that it completely disregarded any particular piece of evidence.[271]

There may be an indication of disregard when evidence which is clearly relevant to the findings is not addressed by the trial chamber's reasoning.[272]

If a trial chamber did not refer to specific evidence it is to be presumed that the trial chamber assessed and weighed the evidence but found that the evidence did not prevent it from arriving at its actual finding.[273]

prejudice

Where a party alleges on appeal that its right to a fair trial has been infringed, it must prove that the violation caused prejudice that amounts to an error of law invalidating the judgement.[274]

An allegation of an error of law that has no chance of changing the outcome of a decision may be rejected on that ground alone.[275]

trial management issues

Trial chambers enjoy considerable discretion in relation to the management of the proceedings before them, including as to the modalities of the presentation of evidence.[276]

Two trial chambers may exercise their discretion differently in managing trial proceedings as the way such discretion is exercised should be determined in accordance with the case before it; what is reasonable in one trial is not automatically reasonable in

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[269] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 85
[270] *Prosecutor v Niyitegeka,* No. MICT-12-16-R, *Decision on Appeals of Decision Rendered by a Single Judge* (9 August 2017) at para. 14
[271] *Prosecutor v Seselj*, No. MICT-16-99-A, *Judgement* (11 April 2018) at para. 101; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at paras. 396, 563
[272] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 396
[273] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 396
[274] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 72
[275] *Prosecutor v Seselj*, No. MICT-16-99-A, *Judgement* (11 April 2018) at para. 49
[276] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 26

another.[277]

Trial Chamber's discretion to manage the proceedings, however, must ensure that trials are fair and conducted with full respect for the rights of the accused.[278]

standing

An interlocutory appeal from a non-party may be considered where, in the circumstances of the particular case, doing so would serve the interests of justice.[279]

Factors previously considered when deciding to allow a non-party to appeal include whether: (i) the interests of the non-party and. the accused align; (ii) the appeal would infringe the accused's interests; (iii) there was danger of unfairness to the Prosecution; and (iv) the Prosecution opposed consideration of the appeal.[280]

Appeal by third parties challenging freezing of their assets would be entertained to give full effect to Rule 63(D) provision that provisional measures to freeze assets of an accused shall be without prejudice to the rights of third parties.[281]

Appeals Chamber grants standing to clients of defence investigator whose computers were seized and ordered turned over to the Prosecution despite their claims of attorney-client privilege.[282]

Appeals Chamber grants standing to counsel of defendant's choice to appeal denial of motion to withdraw assigned counsel.[283]

Appeals Chamber grants standing to Serbia to appeal order revoking referral of contempt case.[284]

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[277] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at fn. 493
[278] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 72
[279] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019) at para. 30; *In the Case against Jojic & Radeta*, No. MICT-17-111-R90-AR14.1 (24 February 2020) at para. 8; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 13
[280] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019) at para. 30; *In the Case against Jojic & Radeta*, No. MICT-17-111-R90-AR14.1 (24 February 2020) at para. 8; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 13
[281] *Prosecutor v Kabuga*, No. MICT-13-38-Misc.2, *Decision on Appeal of Decision on Motion Concerning Frozen Assets* (10 January 2022) at para. 12
[282] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019) at para. 35
[283] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 14
[284] *In the Case against Jojic & Radeta*, No. MICT-17-111-R90-AR14.1 (24 February 2020) at para. 10

waiver

Absent special circumstances, a party cannot raise issues for the first time on appeal where it could have reasonably done so in the first instance.[285]

A party should not be permitted to refrain from objecting to a matter which was apparent during the trial, only to raise it in the event of an adverse finding.[286]

If a party raises no objection to a particular issue before the Trial Chamber when it could have reasonably done so, in the absence of special circumstances, the Appeals Chamber will find that the party has waived its right to adduce the issue as a valid ground of appeal.[287]

Article 24—review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Single Judge, Trial Chamber or the Appeals Chamber of the ICTY, the ICTR, or the Mechanism and which could have been a decisive factor in reaching the decision, the convicted person may submit to the Mechanism an application for review of the judgement. The Prosecutor may submit such an application within one year from the day that the final judgement was pronounced. The Chamber shall only review the judgement if after a preliminary examination a majority of judges of the Chamber agree that the new fact, if proved, could have been a decisive factor in reaching a decision.

Death of applicant requires dismissal of pending application for review of conviction.[288]

Article 25--enforcement of sentences

1. Imprisonment shall be served in a State designated by the Mechanism from a list of States with which the United Nations has agreements for this purpose. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Mechanism.
2. The Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States, and other agreements with international and regional organizations and other appropriate organisations and bodies.

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[285] *Prosecutor v Oric*, No. MICT-14-79, *Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015* (17 February 2016) at para. 14
[286] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 312
[287] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 312
[288] *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision Dismissing a Request* (13 April 2018)

President lacks power to allow convicted person to serve sentence in the former Yugoslavia as Security Council, in approving Secretary-General's Report, determined that sentences should not be served in the former Yugoslavia.[289]

Prosecution lacks standing to be heard on request for extradition of convicted person after completion of his sentence.[290]

Prosecution lacks standing to be heard on sentence enforcement matters other than when consulted on early release applications.[291]

IRMCT lacks jurisdiction to review extradition decisions of domestic courts that are unrelated to proceedings before the ICTY or the Mechanism.[292]

Any extradition of a person serving an ICTY sentence requires IRMCT approval.[293]

As far as the IRMCT is concerned, nothing precludes the convicted person from being extradited upon completion of his ICTY sentence unless his extradition would violate the *non bis in idem* principle.[294]

President of the IRMCT has no jurisdiction to rule on issue of whether convicted person should get credit for time served in Serbia prior to transfer to ICTY where the Trial Judgement specified the date from which the credit was to be applied and there was no appeal from that aspect of the judgement.[295]

Where Poland could not enforce a sentence of more than 15 years under its domestic law, convicted person was returned to United Nations Detention Unit for designation to another state.[296]

There is no legal basis for the President to issue an order to allow convicted persons under the supervision of the Mechanism to lecture at educational or other institutions against genocide, in an enforcement State or elsewhere.[297]

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[289] *Prosecutor v Nikolic,* No. MICT-15-85-ES.4, *Decision of the President on the Application for Early Release and Other Relief of Drago Nikolic* (13 October 2015) at para. 36
[290] *Prosecutor v Zigic*, No. MICT-14-81-ES.1, *Decision on Zoran Zigic's Request to Withhold Consent for the Execution of the Republic of Austria's Extradition Decision* (12 December 2014) at para. 10
[291] *Prosecutor v Lukic*, No. MICT-14-67-ES.4, *Decision on Sreten Lukic's Request for Determination by the President of Time Served* (29 May 2015) at p. 2
[292] *Prosecutor v Zigic*, No. MICT-14-81-ES.1, *Decision on Zoran Zigic's Request to Withhold Consent for the Execution of the Republic of Austria's Extradition Decision* (12 December 2014) at para. 11
[293] *Prosecutor v Zigic*, No. MICT-14-81-ES.1, *Decision on Zoran Zigic's Request to Withhold Consent for the Execution of the Republic of Austria's Extradition Decision* (12 December 2014) at para. 12
[294] *Prosecutor v Zigic*, No. MICT-14-81-ES.1, *Decision on Zoran Zigic's Request to Withhold Consent for the Execution of the Republic of Austria's Extradition Decision* (12 December 2014) at para. 13
[295] *Prosecutor v Lukic*, No. MICT-14-67-ES.4, *Decision on Sreten Lukic's Request for Determination by the President of Time Served* (29 May 2015) at p. 2
[296] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Order for the Transfer of Sreten Lukic to the United Nations Detention Unit on a Temporary Basis* (12 January 2021)

conditions of detention

The Standard Minimum Rules, the Mandela Rules, the Body of Principles, and the Basic Principles all provide that prisoners shall have access to health care services. According to the Mandela Rules, "prisoners should enjoy the same standards of health care that are available in the community."[298]

Ensuring access to appropriate medical care for the convicted persons serving their sentences under the supervision of the Mechanism is a matter of fundamental importance and forms an integral part of the Mechanism's supervisory responsibilities under Article 25(2).[299]

The President takes very seriously the adherence to international standards of conditions of imprisonment of persons serving their sentences under the supervision of the Mechanism.[300]

Although the material submitted by the defendant did not warrant judicial intervention at this time, the Registry should continue to monitor his medical condition with appropriate diligence, pursue without unnecessary delay any medical arrangements that may become necessary, and keep the President informed should circumstances arise requiring judicial intervention.[301]

Latest motion from prisoner serving sentence in Estonia failed to demonstrate any changed circumstances that would warrant transfer to another State to serve his sentence.[302]

transfer from enforcement state

When a convicted person has been transferred to an enforcement State, and there are subsequent allegations that the enforcement State is, in practice, violating that person's human rights, such a request should be considered by the President.[303]

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[297] *Prosecutor v Ngeze,* No. MICT-13-37-ES.2, *Decision on Hassan Ngeze's Motion filed on 24 September 2020* (19 April 2021)
[298] *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on Motions for Temporary Release and a Covid-19 Test* (23 April 2021) at p. 2; *Prosecutor v Akayesu*, No. MICT-13-30-ES, *Decision on Jean-Paul Akayesu's Urgent Request to the President* (6 July 2026) at p. 2
[299] *Prosecutor v Akayesu*, No. MICT-13-30-ES, *Decision on Jean-Paul Akayesu's Urgent Request to the President* (6 July 2026) at p. 2
[300] *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision on Milan Lukic's Request for Transfer* (13 March 2024) at p. 4
[301] *Prosecutor v Akayesu*, No. MICT-13-30-ES, *Decision on Jean-Paul Akayesu's Urgent Request to the President* (6 July 2026) at p. 3
[302] *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision on Milan Lukic's Request for Transfer* (13 March 2024) at p. 4
[303] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer* (20 June 2023) at p. 2; *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision on Milan Lukic's Request for Transfer* (13 March 2024) at p. 2

There is a very high threshold for granting a convicted person's request for transfer, and that a request for transfer will only be granted where allegations of basic human rights violations are made that are of the most serious nature, and where it has been found that there is a direct and continuing threat to the rights of the convicted person which cannot be cured through coordination with the relevant authorities.[304]

Transfer to UNDU for medical procedure was not warranted where sufficient facilities existed in the Benin prison system to treat the prisoner's illness.[305]

Article 26—pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the person convicted by the ICTY, the ICTR, or the Mechanism is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. There shall only be pardon or commutation of sentence if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law.

IRMCT lacks jurisdiction to entertain early release petition of person whose appeal is pending before ICTR.[306]

Article 27—management of the archives

1. Without prejudice to any prior conditions stipulated by, or arrangements with, the providers of information and documents, the archives of the ICTY, the ICTR and the Mechanism shall remain the property of the United Nations. These archives shall be inviolable wherever located pursuant to Section 4 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.
2. The Mechanism shall be responsible for the management, including preservation and access, of these archives. The archives of the ICTY and the ICTR shall be co-located with the respective branches of the Mechanism.
3. In managing access to these archives, the Mechanism shall ensure the continued protection of confidential information, including information concerning protected witnesses, and information provided on a confidential basis. For this purpose, the Mechanism shall implement an information security and access regime, including for the classification and declassification as appropriate of the archives.

Article 28—cooperation and judicial assistance

1. States shall cooperate with the Mechanism in the investigation and prosecution

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[304] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer* (20 June 2023) at pp. 2-3; *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision on Milan Lukic's Request for Transfer* (13 March 2024) at p. 3

[305] *Prosecutor v Musema,* No. MICT-12-15-ES.1, *Decision on Request for Transfer* (23 March 2026) at p. 3

[306] *Ndindiliyimana et al v Prosecutor*, No. MICT-13-23, *Decision on Innocent Sagahutu's Notice of Eligibility for Early Release and the Prosecution's Objection Thereto* (16 September 2013)

of persons covered by Article 1 of this Statute.
2. States shall comply without undue delay with any request for assistance or an order issued by a Single Judge or Trial Chamber in relation to cases involving persons covered by Article 1 of this Statute, including, but not limited to:
(a) the identification and location of persons;
(b) the taking of testimony and the production of evidence;
(c) the service of documents;
(d) the arrest or detention of persons;
(e) the surrender or the transfer of the accused to the Mechanism.
3. The Mechanism shall respond to requests for assistance from national authorities in relation to investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of former Yugoslavia and Rwanda, including, where appropriate, providing assistance in tracking fugitives whose cases have been referred to national authorities by the ICTY, the ICTR, or the Mechanism.

failure to cooperate

State officials cannot be prosecuted for contempt for failure to obey an order directed to the State.[307]

mandatory

All States are required to comply with orders of the Mechanism under Article 9 of UN Security Council Resolution 1966 which established the Mechanism.[308]

Pursuant to Article 28, States have a duty to cooperate with the Mechanism in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law, and to comply with any request for assistance or order issued to this end.[309]

necessity

Where Prosecution had obtained material from the State that defence had requested, and was willing to disclose that material, the State would not be ordered to produce the material to the defence.[310]

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[307] *Prosecutor v Ngirabatware,* No. 12-29-R*, Decision on Motion to Initiate Contempt Proceedings* (26 April 2017) at p. 3
[308] *Prosecutor v Ngirabatware,* No. 12-29-R*, Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 16; *Prosecutor v Nzuwonemeye et al*, No. MICT-22-124, *Further Order to the Government of Niger and to the Registrar* (14 January 2022) at para. 13
[309] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for a Binding Order pursuant to Article 28 and on Related Requests* (18 February 2019) at p. 4
[310] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Ngirabatware's Second Application for an Order to Rwanda* (21 May 2019) at p. 1

non-exhaustive

Article 28 of the Statute is not exhaustive in terms of the type of cooperation required from States in relation to cases involving persons tried by the Mechanism or its predecessor Tribunals.[311]

pre-requisites

An applicant must show that he took reasonable steps to secure the State's assistance prior to requesting a binding order under Article 28 and Rule 56. It is only after a State declines to lend the requested support that a party can request mandatory action as provided for under Article 28.[312]

Where United States Government definitively confirmed that it is not in possession of material responsive to the request, no binding order will be issued to require a sworn declaration or further searches.[313]

production of information

The power to direct sovereign states to produce documents is not one that the Mechanism should treat lightly.[314]

A party applying for an order to a State to produce documents or information shall: (i) identify as far as possible the documents or information to which the application relates; (ii) indicate how they are relevant to any matter in issue and necessary for a fair determination of that matter; and (iii) explain the steps that have been taken by the applicant to secure the State's assistance.[315]

Proposed order to Rwanda for copies of intercepts from its investigation of alleged witness tampering was overly broad and did not demonstrate with sufficient specificity how the wide range of material sought was necessary for a fair determination of the existence of the new fact for the review hearing.[316]

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[311] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Motions Regarding the Relocation Agreement with Niger and Order for the Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022) at para. 25

[312] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for a Binding Order pursuant to Article 28 and on Related Requests* (18 February 2019) at p. 4

[313] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for a Binding Order pursuant to Article 28 and on Related Requests* (18 February 2019) at pp. 4-5

[314] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Ngirabatware's Application for an Order pursuant to Rule 56* (17 April 2019) at p. 2; *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Ngirabatware's Second Application for an Order to Rwanda* (21 May 2019) at p. 1

[315] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Ngirabatware's Application for an Order pursuant to Rule 56* (17 April 2019) at p. 2

[316] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Ngirabatware's Application for an Order pursuant to Rule 56* (17 April 2019) at p. 2

provisional release

Article 28 does not empower a Trial Chamber to order a State to accept an accused onto its territory on provisional release over the State's refusal.[317]

The Mechanism must rely on the voluntary cooperation of Member States to find an acceptable solution and effectuate the provisional release of an accused found unfit to stand trial.[318]

relocation of acquitted persons

Article 28 does not apply to orders to a State to receive take back a person after his acquittal because the return of an acquittal person is not part of the "investigation or prosecution of a case".[319]

The Mechanism does not have jurisdiction to compel a State to take acquitted persons it has transferred to the ICTR back on its territory.[320] There are no cogent reasons to depart from the Appeals Chamber's jurisprudence on this issue.[321]

A State's obligation to cooperate with the Mechanism under Article 28 pertains to the investigation and prosecution of persons accused of serious violations of international humanitarian law, contempt, or false testimony, and does not extend to the relocation of acquitted persons and convicted persons who have completed serving their sentences.[322]

There is no duty under Article 28 of the Statute for States to cooperate in the relocation of acquitted persons and convicted persons who have completed serving their sentences.[323]

Since the Mechanism lacks the authority to compel the cooperation of Niger under Article 28 of the Statute to accept acquitted and released persons, it similarly lacks the authority to compel Niger to allow the Relocated Persons to remain on its territory.[324]

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[317] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Defence Request for an Article 28 Order for Provisional Release* (29 February 2024) at p. 5
[318] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Defence Request for an Article 28 Order for Provisional Release* (29 February 2024) at p. 6
[319] *Prosecutor v Nzuwonemeye,* No. MICT-13-43, *Decision on the Appeal of the Single Judge's Decision of 22 October 2018* (17 April 2019) at para. 13
[320] *Prosecutor v Nzuwonemeye*, No. 13-43, *Decision on Motion for Reconsideration* (15 November 2022) at p. 3
[321] *Prosecutor v Nzuwonemeye*, No. 13-43, *Decision on Motion for Reconsideration* (15 November 2022) at p. 3
[322] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 22
[323] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 22

Mechanism has the power under Article 28 to make orders that enforce terms of the agreement for the relocation of acquitted and released persons and remedy its breach.[325]

Where government of Niger appeared to be in breach of its agreement with the Mechanism by issuing an expulsion order against acquitted and released persons it had agreed to allow on its territory, a stay of the expulsion order would be ordered, and Niger invited to make submissions on why the expulsion order did not breach the agreement.[326]

Government of Niger ordered to ensure that relocated persons have their identification documents returned and enjoy freedom of movement on its territory, in accordance with the Relocation Agreement, until the dispute over enforcement of the agreement is resolved.[327]

Considering expulsion order and breach of relocation agreement by Niger, Registrar ordered to return the Relocated Persons from Niger to the Arusha branch, on a temporary basis until their transfer to another State, in line with Articles 23, 30,and 39 of the Headquarters Agreement.[328]

Tanzania's refusal to receive relocated persons from ICTR on its territory from Niger as ordered by the Single Judge could only be addressed by negotiation and arbitration under the Headquarters Agreement.[329]

All appropriate and available judicial relief has been extended to the acquitted and released ICTR persons detained in Niger and the solution to the issue of their relocation can only be pursued by diplomatic means.[330]

scope

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[324] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 22

[325] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Motions Regarding the Relocation Agreement with Niger and Order for the Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022) at para. 25

[326] *Prosecutor v Nzuwonemeye et al*, No. MICT-13-43, *Order to the Government of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions* (31 December 2021)

[327] *Prosecutor v Nzuwonemeye et al*, No. MICT-22-124, *Further Order to the Government of Niger and to the Registrar* (14 January 2022) at para. 17

[328] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Motions Regarding the Relocation Agreement with Niger and Order for the Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022) at para. 29

[329] *In the Matter of Nzuwonemeye et al*, No. MICT-22-124, *Further Decision regarding the Relocated Persons in Niger* (8 March 2022) at p. 4

[330] *In the Matter of Nzuwonemeye et al*, No. MICT-22-124, *Further Decision regarding the Relocated Persons in Niger* (8 March 2022) at p. 4

The limitations on the Mechanism's power to compel a State under Article 28 can only be amended or derogated by means of a resolution of the United Nations Security Council.[331]

The Mechanism has no jurisdiction to compel representatives of the Government of Rwanda to meet with ICTR-convicted persons serving their sentences in enforcement States.[332]

The Mechanism will not lightly intervene in a domestic jurisdiction. A narrow interpretation of the functions of the Mechanism is even more justified when it comes to such interventions.[333]

search and seizure

Where Rwandan authorities failed to release assets seized from person arrested for contempt at the Mechanism, Single Judge required the Registry to identify the Rwandan authority who was responsible for implementing the Mechanism's decision releasing the assets, have him acknowledge that there was no longer any reason to retain those assets on behalf of the Mechanism, and make a written submission on the results of the contact with the Rwandan authorities.[334]

Single Judge refused to order Rwanda to return seized passport to accused, instead encouraging him to apply for a new passport with the assistance of the Registry.[335]

Article 29—status, privileges, and immunities

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the Mechanism, the archives of the ICTY, the ICTR and the Mechanism, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.
2. The President, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law. The judges of the Mechanism shall enjoy the same privileges and immunities, exemptions and facilities when engaged on the business of the Mechanism.
3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and

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[331] *Prosecutor v Nzuwonemeye*, No. 13-43, *Decision on Motion for Reconsideration* (15 November 2022) at p. 3
[332] *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on Motion filed by Hassan Ngeze* (7 February 2019) at p. 2
[333] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion for an Article 28 Binding Order and Related Requests* (5 February 2020) at p. 2
[334] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Request for an Order for Compliance pursuant to Article 28 of the Statute* (20 September 2019) at p. 3
[335] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion for an Article 28 Binding Order and Related Requests* (5 February 2020) at p. 3

immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this Article.
4. Defence counsel, when holding a certificate that he or she has been admitted as counsel by the Mechanism and when performing their official functions, and after prior notification by the Mechanism to the receiving State of their mission, arrival and final departure, shall enjoy the same privileges and immunities as are accorded to experts on mission for the United Nations under Article VI, Section 22, paragraphs (a) to (c), and Section 23, of the Convention referred to in paragraph 1 of this Article. Without prejudice to their privileges and immunities, it is the duty of defence counsel enjoying such privileges and immunities to respect the laws and regulations of the receiving State.
5. Other persons, including the accused, required at the seats of the Mechanism, shall be accorded such treatment as is necessary for the proper functioning of the Mechanism.

Diplomatic immunity is a cornerstone of an independent international judiciary as envisioned by the United Nations.[336]

A guarantee for the independence of the Mechanism's judges is contained in Article 29 of the Statute, which provides for full diplomatic immunity for judges during their assignments, even while exercising their functions in their home country.[337]

There is clear authority to order a State to terminate proceedings against individuals based on the immunity they enjoyed because of their connection with the Mechanism.[338]

Government of Turkey ordered to immediately cease prosecution and release IRMCT Judge so that he could continue to exercise his judicial functions.[339]

The Secretary-General of the United Nations, and not the President of the Mechanism, has the authority to waive immunities allowing UNDU officials to be sued for inadequate medical treatment.[340]

Article 30—expenses of the Mechanism

The expenses of the Mechanism shall be expenses of the Organisation in accordance with Article 17 of the Charter of the United Nations.

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[336] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 11
[337] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 11
[338] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 16
[339] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 16
[340] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Defence Motion Seeking Waiver of Immunity as to Impugned Officials…*(5 July 2018) at p. 3

Article 31—working languages

The working languages of the Mechanism shall be English and French.

Article 32—reports

1. The President of the Mechanism shall submit an annual report of the Mechanism to the Security Council and to the General Assembly.
2. The President and Prosecutor shall submit six-monthly reports to the Security Council on the progress of the work of the Mechanism.

Annex B--Transitional Arrangements

Article 1 — Trial Proceedings
1. The ICTY and ICTR shall have competence to complete all trial or referral proceedings which are pending with them as of the commencement date of the respective branch of the Mechanism.
2. If a fugitive indicted by the ICTY or ICTR is arrested more than 12 months, or if a retrial is ordered by the Appeals Chamber more than 6 months prior to the commencement date of the respective branch of the Mechanism, the ICTY or ICTR, respectively, shall have competence over such person in accordance with their respective Statutes and Rules of Procedure and Evidence to conduct, and complete, the trial of such person, or to refer the case to the authorities of a State, as appropriate.
3. If a fugitive indicted by the ICTY or ICTR is arrested 12 months or less, or if a retrial is ordered 6 months or less prior to the commencement date of the respective branch of the Mechanism, the ICTY or ICTR, respectively, shall only have competence over such person in accordance with their respective Statutes and Rules of Procedure and Evidence to prepare the trial of such person, or to refer the case to the authorities of a State, as appropriate. As of the commencement date of the respective branch of the Mechanism, the Mechanism shall have competence over such person in accordance with Article 1 of its Statute, including trial of such person or referral of the case, as appropriate.
4. If a fugitive indicted by the ICTY or ICTR is arrested or if a retrial is ordered on or after the commencement date of the respective branch of the Mechanism, the Mechanism shall have competence over such person in accordance with Article 1 of its Statute.
Article 2 — Appeals Proceedings
1. The ICTY and ICTR shall have competence to conduct, and complete, all appellate proceedings for which the notice of appeal against the judgment or sentence is filed prior to the commencement date of the respective branch of the Mechanism.
2. The Mechanism shall have competence to conduct, and complete, all appellate proceedings for which the notice of appeal against the judgment or sentence is filed on or after the commencement date of the respective branch of the Mechanism.

Article 3 — Review Proceedings

1. The ICTY and ICTR shall have competence to conduct, and complete, all review proceedings for which the application for review of the judgment is filed prior to the commencement date of the respective branch of the Mechanism.

2. The Mechanism shall have competence to conduct, and complete, all review proceedings for which the application for review of the judgment is filed on or after the commencement date of the respective branch of the Mechanism.

Article 4 — Contempt of Court and False Testimony

1. The ICTY and ICTR shall have competence to conduct, and complete, all proceedings for contempt of court and false testimony for which the indictment is confirmed prior to the commencement date of the respective branch of the Mechanism.

2. The Mechanism shall have competence to conduct, and complete, all proceedings for contempt of court and false testimony for which the indictment is confirmed on or after the commencement date of the respective branch of the Mechanism.

Article 5 — Protection of Victims and Witnesses

1. The ICTY and ICTR shall provide for the protection of victims and witnesses, and carry out all related judicial or prosecutorial functions, in relation to all cases for which the ICTY or ICTR, respectively, has competence pursuant to Articles 1 to 4 of the present Annex.

2. The Mechanism shall provide for the protection of victims and witnesses, and carry out all related judicial or prosecutorial functions, in relation to all cases for which the Mechanism has competence pursuant to Articles 1 to 4 of the present Annex.

3. The Mechanism shall provide for the protection of victims and witnesses, and carry out all related judicial or prosecutorial functions, where a person is a victim or witness in relation to two or more cases for which the Mechanism and the ICTY or ICTR, respectively, have competence pursuant to Articles 1 to 4 of the present Annex.

4. The ICTY and ICTR, respectively, shall make the necessary arrangements to ensure as soon as possible a coordinated transition of the victims and witness protection function to the Mechanism in relation to all completed cases of the Tribunals. As of the commencement date of the respective branch of the Mechanism, the Mechanism shall carry out all related judicial or prosecutorial functions in relation to these cases.

Article 6 — Coordinated Transition of other Functions

The ICTY and ICTR, respectively, shall make the necessary arrangements to ensure, as soon as possible, a coordinated transition of the other functions of the Tribunals to the Mechanism, including the supervision of enforcement of sentences, assistance requests by national authorities, and the management of records and archives. As of the commencement date of the respective branch of the Mechanism, the Mechanism shall carry out all related judicial or prosecutorial functions.

Article 7 — Transitional Arrangements for the President, Judges, Prosecutor, Registrar and Staff

Notwithstanding the provisions of the Statutes of the Mechanism, the ICTY and

ICTR,
(a) the President, Judges, Prosecutor and Registrar of the Mechanism may also hold the office of President, Judge, Prosecutor and Registrar, respectively, of the ICTY or ICTR;
(b) the staff members of the Mechanism may also be staff members of the ICTY or ICTR.

Rules of Procedure and Evidence

Rule 1—entry into force

These Rules of Procedure and Evidence, adopted pursuant to Article 13 of the Statute of the Mechanism, shall take effect upon adoption by the Judges of the Mechanism unless the Security Council decides otherwise.

Rule 2—definitions

(A) In these Rules of Procedure and Evidence, unless the context otherwise requires, the following terms shall mean:
Accused: A person indicted by the ICTY, the ICTR, or the Mechanism in accordance with Article 1 of the Statute;
Arrest: The act of taking a suspect or an accused into custody pursuant to a warrant of arrest or under Rule 37;
Defence: The accused or the accused as represented by his Counsel;
Judge: A Judge elected or appointed pursuant to Article 10 of the Statute;
ICTR: The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Security Council resolution 955 of 8 November 1994;
ICTY: The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993;
Investigation: All activities undertaken under the Statute and these Rules for the collection of information and evidence in relation to persons within the competence of the Mechanism in accordance with Article 1 of the Statute;
Mechanism: The International Residual Mechanism for Criminal Tribunals, established by Security Council resolution 1966 of 22 December 2010;
Party: The Prosecutor or the Defence;
Plenary: A consultation of all Judges, either by convening a plenary meeting, or remotely by written procedure, as decided by the President;
President: The President of the Mechanism appointed pursuant to Article 11 of the Statute;
Prosecutor: The Prosecutor appointed pursuant to Article 14 of the Statute;

Registrar: The Registrar of the Mechanism appointed pursuant to Article 15 of the Statute;
Registry: The organ of the Mechanism responsible for the administration and servicing of the Mechanism pursuant to Article 15 of the Statute;
Regulations: The provisions issued by the Prosecutor pursuant to Rule 35(A) for the purpose of directing the functions of the Office of the Prosecutor;
Rules: The Rules of Procedure and Evidence referred to in Rule 1;
State: (i) a State Member or non-Member of the United Nations; (ii) an entity recognised by the constitution of Bosnia and Herzegovina, namely, the Federation of Bosnia and Herzegovina and the Republic Srpska; or
(iii) a self-proclaimed entity de facto exercising governmental functions, whether or not recognised as a State;
Statute: The Statute of the Mechanism, adopted by Security Council resolution 1966 of 22 December 2010;
Suspect: A person who the Mechanism has a reasonable basis to believe has committed a crime under Article 1, paragraph 4, of the Statute, over which the Mechanism has jurisdiction;
Victim: A person against whom a crime over which the Mechanism, the ICTY, or the ICTR has jurisdiction has allegedly been committed.
(B) In the Rules, the masculine shall include the feminine.
(C) In the Rules, Trial Chamber or Chamber shall include Single Judges in accordance with Article 12, paragraph 1, of the Statute, as appropriate.

Rule 3—languages

(A) The working languages of the Mechanism shall be English and French.
(B) An Accused shall have the right to use his own language.
(C) Counsel may apply to a Judge, or the President, as appropriate, for leave to use a language other than the two working ones or the language of the Accused. If such leave is granted, the expenses of interpretation and translation shall be borne by the Mechanism to the extent, if any, determined by the Judge, or the President, taking into account the rights of the Accused and the interests of justice.
(D) Other persons appearing before the Mechanism, other than as Counsel, who do not have sufficient knowledge of either of the two working languages, may use their own language.
(E) The Registrar shall make any necessary arrangements for interpretation and translation into and from the working languages.
(F) If:
(i) a Party is required to take any action within a specified time after the filing or service of a document by another Party; and
(ii) pursuant to the Rules, that document is filed in a language other than one of the working languages of the Mechanism,
time shall not run until the Party required to take action has received from the Registrar a translation of the document into one of the working languages of the Mechanism.
(G) The Registrar shall endeavour to ensure that translations are concluded in the

shortest possible time.

French translation of December 2011 Appeals Judgement by April 2016 rendered moot the request of the accused for translation, despite the language of Rule 3(G) that the translations be concluded in the shortest possible time.[341]

Rule 4—sitting away from the branch of the Mechanism

A Chamber may exercise its functions away from the seat of the relevant branch of the Mechanism, if so authorised by the President in the interests of justice.

Due to health reasons during the coronavirus pandemic, ICTR accused who was arrested in France would be transferred to The Hague for medical evaluation and initial proceedings before being sent to be tried in Arusha.[342]

Given precarious health of the accused, the trial would commence at The Hague branch where more medical services and continuing of care were available.[343]

Rule 5—non-compliance with rules

(A) Where an objection on the ground of non-compliance with the Rules or Regulations is raised by a Party at the earliest opportunity, the Chamber shall grant relief, if it finds that the alleged non-compliance is proved and that it has caused material prejudice to that Party.
(B) Where such an objection is raised otherwise than at the earliest opportunity, the Chamber may, in its discretion, grant relief, if it finds that the alleged noncompliance is proved and that it has caused material prejudice to the objecting Party.
(C) The relief granted by a Chamber under this Rule shall be such remedy as the Chamber considers appropriate to ensure consistency with the fundamental principles of fairness.

Counsel participating in proceedings before the Mechanism are expected to familiarise themselves with the relevant procedural requirements.[344]

Rule 6—amendment of the rules

(A) Proposals for amendment of the Rules may be made by a Judge, the Prosecutor, or the Registrar and shall be adopted:
(i) if circulated to all Judges and agreed to in writing by not less than thirteen

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[341] *Prosecutor v Bagosora*, No.MICT-12-26, *Decision on a Request for Translation* (29 March 2016) at p. 3
[342] *Prosecutor v Kabuga*, No. MICT-13-38-I, *Decision on Felicien Kabuga's Motion to Amend the Arrest Warrant and Order for Transfer* (21 October 2020) at para. 15
[343] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Felicien Kabuga's Fitness to Stand Trial and to be Transferred to and Detained in Arusha* (13 June 2022) at para. 61
[344] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Complaint filed by Marie Rose Fatuma pursuant to Rule 94 of the Rules of Detention* (20 June 2019) at p. 2

Judges; or
(ii) by a majority of the Judges present at a plenary meeting convened by the President.
(B) Any amendment of the Rules shall take effect upon adoption by the Judges pursuant to Article 13, paragraph 3, of the Statute, unless the Security Council decides otherwise, and shall be rendered public by the Registrar within seven days of adoption.
(C) An amendment shall not operate to prejudice the rights of the Accused or of a convicted or acquitted person in any pending case.

Rule 7—authentic texts

The English and French texts of the Rules shall be equally authentic. In case of discrepancy, the version that is more consonant with the spirit of the Statute and the Rules shall prevail.

Rule 8—non-compliance with obligations

(A) Except in cases to which Rules 13, 16, 61, or 63 apply, where the Trial Chamber is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute relating to any proceedings before that Trial Chamber, the Trial Chamber may request the President to report the matter to the Security Council, who shall notify the Security Council thereof.
(B) If the Prosecutor satisfies the President that a State has failed to comply with an obligation under Article 28 of the Statute in respect of a request by the Prosecutor under Rules 9, 36, or 37, the President shall notify the Security Council thereof.

Where President had proactively informed Security Council of Niger's refusal to honour its agreement to relocate acquitted and released persons from the ICTR, there was no need for an order from the Single Judge to request the President to report the matter to the Security Council.[345]

Rule 9—request for information

Where it appears to the Prosecutor that a crime within the jurisdiction of the Mechanism is or has been the subject of investigations or criminal proceedings instituted in the courts of any State, the Prosecutor may request the State to forward all relevant information in that respect, and the State shall transmit such information to the Prosecutor forthwith in accordance with Article 28 of the Statute.

As Rule 9 constitutes a permissive rather than a mandatory rule, the Prosecution

[345] *In the Matter of Nzuwonemeye et al*, No. MICT-22-124, *Further Decision regarding the Relocated Persons in Niger* (8 March 2022) at pp. 3-4

cannot be required to make such a request under this rule.[346]

Rule 10—information of the International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) shall not be obligated to disclose any information, including documents or other evidence, concerning the performance of its mandate pursuant to the four Geneva Conventions of 12 August 1949 or their Additional Protocols or concerning its functions under the Statutes of the International Red Cross and Red Crescent movements. Nor shall such information acquired by a third party on a confidential basis from the ICRC or by anyone while in the service of the ICRC be subject to disclosure or to witness testimony without the consent of the ICRC.

Rule 11—Prosecutor's application for deferral

Where it appears to the Prosecutor that crimes which are the subject of investigations or criminal proceedings instituted in the courts of any State and involve a person covered by Article 1, paragraph 2, of the Statute:
(A) are the subject of an investigation by the Prosecutor;
(B) should be the subject of an investigation by the Prosecutor considering, inter alia:
(i) the seriousness of the offences;
(ii) the status of the accused at the time of the alleged offences;
(iii) the general importance of the legal questions involved in the case; or
(C) are the subject of an indictment in the ICTY, the ICTR, or the Mechanism, the Prosecutor may apply to the Trial Chamber designated by the President to issue a formal request that such court defer to the competence of the Mechanism.

Rule 12—formal request for deferral

(A) If it appears to the Trial Chamber seised of a request for deferral by the Prosecutor under Rule 11 that, on any of the grounds specified in Rule 11, deferral is appropriate, the Trial Chamber may issue a formal request to the State concerned that its court defer to the competence of the Mechanism.
(B) A request for deferral shall include a request that the results of the investigation and a copy of the court's records and the judgement, if already delivered, be forwarded to the Mechanism.
(C) The State to which the formal request for deferral is addressed shall comply without undue delay in accordance with Article 28 of the Statute.
(D) Where deferral to the Mechanism has been requested by a Trial Chamber, any subsequent trial shall not be held before that Trial Chamber.

Rule 13—non-compliance with a request for deferral

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[346] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Joint Defence Motion for Issuance of an Order of Mandamus* (13 May 2019) at p. 3

If, within sixty days after a request for deferral has been notified by the Registrar to the State under whose jurisdiction the investigations or criminal proceedings have been instituted, the State fails to file a response that satisfies the Trial Chamber that the State has taken or is taking adequate steps to comply with the request, the Trial Chamber may request the President to report the matter to the Security Council, who shall notify the Security Council thereof.

Rule 14—referral of an indictment to another court

(A) Where an order of referral is issued pursuant to Article 6 of the Statute:
(i) the accused, if in the custody of the Mechanism, shall be handed over to the authorities of the State concerned;
(ii) the Trial Chamber that ordered referral of the case may order that protective measures for certain witnesses or victims remain in force;
(iii) the Prosecutor shall provide to the authorities of the State concerned all of the information relating to the case which the Prosecutor considers appropriate and, in particular, the material supporting the indictment;
(iv) the Mechanism shall take appropriate measures to monitor the case referred, including with the assistance of international and regional organisations and bodies; the Prosecutor may, and if the Trial Chamber so orders, the Registrar shall, send observers to monitor the proceedings in the State concerned; the observers shall report to the Prosecutor, if sent by him, or otherwise through the Registrar to the President.
(B) The Trial Chamber that ordered referral of the case may issue a warrant for the arrest of the accused, which shall specify the State to which he is to be transferred for trial.
(C) At any time after an order of referral has been issued by the ICTY, the ICTR, or the Mechanism pursuant to Article 6 of the Statute and before the accused is found guilty or acquitted by a court in the State concerned, the President may, proprio motu or at the request of the Prosecutor, assign a Trial Chamber that shall decide, pursuant to Article 6, paragraph 6, of the Statute, whether to revoke the order and make a formal request for deferral.
(D) Where an order of referral issued by the ICTY, the ICTR, or the Mechanism pursuant to Article 6 of the Statute is revoked by the Trial Chamber, the Trial Chamber may make a formal request to the State concerned to transfer the accused to the seat of the relevant branch of the Mechanism, and the State shall accede to such a request without delay in keeping with Article 28 of the Statute. The Trial Chamber may also issue a warrant for the arrest of the accused.
(E) An appeal by the accused or the Prosecutor shall lie as of right from a decision of the Trial Chamber whether or not to refer a case. Notice of appeal shall be filed within fifteen days of the decision unless the accused was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the accused is notified of the decision. The appellant shall file an appeal brief within fifteen days after filing the notice of appeal. The opposite Party shall file a response within ten days of the filing of the appeal brief, and the appellant may file a reply within four days of the filing of the response.

appeal

Rule 14(E) applies to an *amicus curiae* exercising prosecutorial function in contempt proceedings before the Mechanism and authorizes a direct appeal by the *amicus curiae* of a referral decision.[347]

death of accused

In circumstances where the Prosecution has presented sufficient information to establish that an accused whose case was referred to a national jurisdiction and has not yet been apprehended is deceased, a judicial order closing the case before the Mechanism is warranted.[348]

revoking referral

appeal

A decision denying the revocation of a referral may be appealed by an accused.[349]

Appeals from decisions on requests for revocation lie as of right and follow the same procedure as set out in Rule 14(E) for appeals from decisions on referral of cases to national jurisdictions.[350]

The notice of appeal is due 15 days after filing of the decision.[351]

Late-filed notice of appeal allowed where deadlines were not clear to counsel and consequences upon the accused were great.[352]

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[347] *In the Matter of Peter Robinson*, MICT-25-135-AR14.1, *Decision on Motion to Strike Notice of Appeal* (22 December 2025) at p. 2
[348] *Prosecutor v Munyarugarama,* No. MICT-12-09, *Decision on Motion to Terminate Proceedings* (16 December 2022) at p. 2; *Prosecutor v Ryandikayo*, No. MICT-12-22, *Decision on Motion to Terminate Proceedings* (13 May 2025); *Prosecutor v Sikubwabo*, No. MICT-12-13, *Decision on Motion to Terminate Proceedings* (13 May 2025)
[349] *Prosecutor v. Stankovic*, No. MICT-13-51-A, *Decision on Stankovic's Appeal Against the Decision Denying Revocation of Referral…*(21 May 2014) at para. 9
[350] *Prosecutor v Kayishema,* No. MICT-12-23-AR14.2, *Decision on Fulgence Kayishema's Appeal against Decisions on Defence Requests for Revocation of Referral and Assignment of Counsel* (24 March 2026) at para. 12
[351] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on Motions to Strike Notice of Appeal and Appeal Brief* (4 February 2016) at para. 6
[352] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on Motions to Strike Notice of Appeal and Appeal Brief* (4 February 2016) at para. 10

Standard of review of appeal of decision revoking referral is not whether the Appeals Chamber agrees with it, but whether in reaching that decision discretion was correctly exercised by the Single Judge or Trial Chamber.[353]

President declined to appoint Appeals Chamber bench where defence notice of appeal was premature, as Single Judge had retained jurisdiction on one issue related to request to revoke referral.[354]

additional evidence

The provisions of Rule 142 concerning the admission of additional evidence on appeal apply to appeals relating to referrals under Rule 14.[355]

The transferee bears the burden of identifying with precision the specific finding made by the Referral Chamber to which the proposed additional evidence pertains. A transferee who fails to do so runs the risk that the tendered material will be rejected without detailed consideration.[356]

Statements by former ICTR officials and employees concerning interference by Rwandan authorities with investigation into crash of President's plane was not relevant to transferee's right to a fair trial in Rwanda and would not be received as additional evidence.[357]

adequate funding

The principle of equality of arms goes to the heart of the fair trial guarantee and requires a judicial body to ensure that neither party is put at a disadvantage when presenting its case.[358]

The principle of equality of arms does not require material equality between the parties in terms of financial or human resources.[359]

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[353] *In the Case against Jojic & Radeta*, No. MICT-17-111-R90-AR14.1, *Decision on Republic of Serbia's Appeal against the Decision Re-Examining Referral of the Case* (24 February 2020) at para. 12; *Prosecutor v Kayishema,* No. MICT-12-23-AR14.2, *Decision on Fulgence Kayishema's Appeal against Decisions on Defence Requests for Revocation of Referral and Assignment of Counsel* (24 March 2026) at para. 13
[354] *Prosecutor v Kayishema*, No. MICT-12-23-AR14.1, *Decision in Relation to Defence Notice of Appeal against "Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel*" (25 November 2025) at p.3
[355] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on Requests for Admission of Additional Evidence on Appeal* (22 September 2016) at para. 5
[356] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.3, *Decision on Requests for Revocation of an Order Referring a Case to the Republic of Rwanda* (26 April 2017) at p. 5
[357] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.3, *Decision on Requests for Revocation of an Order Referring a Case to the Republic of Rwanda* (26 April 2017) at p. 5
[358] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 33
[359] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 33

The revocation of a referral is not concerned with an objective level of funding but that the accused be afforded equality of arms.[360]

Considering availability to obtain funding in the future, the accused failed to show that because of denial of funds for an investigator, the conditions for referral of the case are no longer met and that it is in the interests of justice to revoke the referral order.[361]

Where right to free legal assistance was observed, it was not within purview of ICTR Trial Chamber to scrutinize the Rwandan legal aid budget, inquire into its sufficiency or verify its administration and disbursement.[362]

assistance of counsel

Individuals lacking the means to remunerate counsel do not have an absolute right to a counsel of their own choosing.[363]

Avoiding interruptions or adjournments corresponds to an interest of justice which may well justify the appointment of counsel against the accused's wishes.[364]

While some weight is accorded to the accused' s preference for a particular counsel, such preference may be overridden if it is in the interests of justice to do so.[365]

Although an indigent accused is not entitled to be represented by counsel of his own choosing, measures must be taken to ensure that counsel, once assigned, provides effective representation in the interests of justice.[366]

The replacement of the accused's initial counsel for financial reasons did not prevent the possibility of a fair trial in national proceedings and necessitate the revocation of his case.[367]

An accused does not have the right to claim a breakdown in communication

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[360] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 34
[361] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 36
[362] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on an Appeal Concerning a Request for Revocation of a Referral* (4 October 2016) at para. 64
[363] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on an Appeal Concerning a Request for Revocation of a Referral* (4 October 2016) at para. 36
[364] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on an Appeal Concerning a Request for Revocation of a Referral* (4 October 2016) at para. 37
[365] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 24
[366] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 26
[367] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 25

through unilateral actions including refusals to meet with his counsel, in the hope that such actions will result in the withdrawal of his counsel, or, where transferred cases are concerned. in the revocation of the referral order.[368]

Trial Chamber erred in failing to consider report of Dutch prosecutor that outlined issues related to lack of effective assistance of counsel in accused's Rwandan proceedings. However, the error was not fatal the report was duplicative of other information considered by the Trial Chamber.[369]

Single Judge did not err in refusing to assign counsel to defendant seeking revocation of a decision to refer his case to Rwanda where extensive evidentiary review or prolonged investigations claimed by pro bono counsel were not warranted.[370]

bias

The right to be tried before an independent and impartial tribunal is an integral component of the right to a fair trial.[371]

As professional judges, members of the Rwandan judiciary benefit from a presumption of independence and impartiality.[372]

The accused failed to demonstrate that any possible violation of his right to be tried before an independent and impartial tribunal could not be addressed or appropriately remedied in subsequent appellate proceedings in the national jurisdiction.[373]

Allegations of bias by the Rwandan government by an accused awaiting transfer were speculative and unfounded and would be dismissed.[374]

contempt

If a court in Serbia determines that it does not have jurisdiction to prosecute. the Accused for contempt of the ICTY, a deferral may be sought in the interests of justice

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[368] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 27
[369] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on an Appeal Concerning a Request for Revocation of a Referral* (4 October 2016) at paras. 40-41, 54-55
[370] *Prosecutor v Kayishema,* No. MICT-12-23-AR14.2, *Decision on Fulgence Kayishema's Appeal against Decisions on Defence Requests for Revocation of Referral and Assignment of Counsel* (24 March 2026) at para. 22
[371] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 38
[372] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on an Appeal Concerning a Request for Revocation of a Referral* (4 October 2016) at para. 71
[373] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 40
[374] *Prosecutor v Kayishema*, No, MICT-12-23-R14.1, *Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel* (29 October 2025) at p. 7

and the referral to Serbia can be revoked. [375]

fair trial

The defendant failed to demonstrate the existence of an ongoing threat against him by the Government of Rwanda capable of showing that the conditions for referral of the case are no longer met.[376]

judges

A motion to revoke a referral may be considered by Judges of the same Chamber which granted the referral.[377]

non bis in idem

The ICTR's refusal to confirm the charge of complicity in genocide did not prohibit its inclusion in his indictment before the Rwandan High Court. The litigation before the ICTR concerning the inclusion of complicity in genocide in Uwinkindi's indictment did not result in a final determination and the Rwandan Prosecution was not a party to it. Therefore, principles of *res judicata* did not apply.[378]

President

Rule 14(C) grants the President of the Mechanism discretion to assign a Trial Chamber to decide, pursuant to Article 6(6) of the Statute, whether to revoke an order of referral and make a formal request for deferral.[379]

ripeness

Allegations that transferee's right to confidential communications with counsel and the IRMCT monitor were abridged, and other complaints concerning the conditions of detention were in the process of being considered by Rwandan authorities, or could be considered by the Rwandan courts, and were therefore not ripe for review by a Trial Chamber in a request to revoke the referral.[380]

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[375] *Prosecutor v Jokic & Radeta*, No. MICT-17-111-R90, *Decision on Amicus Curiae's Appeal against the Order Referring a Case to the Republic of Serbia* (12 December 2018) at para. 20
[376] *Prosecutor v Kayishema*, No, MICT-12-23-R14.1, *Further Decision on Fulgence Kayishema's Request for Revocation of Referral* (24 December 2025) at p. 6
[377] *Prosecutor v. Stankovic*, No. MICT-13-51-A, *Decision on Stankovic's Appeal Against the Decision Denying Revocation of Referral…*(21 May 2014) at para. 14
[378] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on an Appeal Concerning a Request for Revocation of a Referral* (4 October 2016) at para. 29
[379] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.3, *Decision on Requests for Revocation of an Order Referring a Case to the Republic of Rwanda* (26 April 2017) at p. 4
[380] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.3, *Decision on Requests for Revocation of an Order Referring a Case to the Republic of Rwanda* (26 April 2017) at pp. 4-5

standard

There is an indisputable preference for the referral of cases involving persons covered by Article 1(3) of the Statute to national jurisdictions.[381]

In determining whether to revoke a referral, the Mechanism' s role is not to act as an independent level of appellate review for the national proceedings, but rather to determine primarily whether the conditions for a fair trial in the domestic jurisdiction no longer exist.[382]

Revocation of a referral is a remedy of last resort constituting a safeguard and not a panacea.[383]

A determination concerning the conditions for a fair trial must necessarily take due consideration of the possibility and availability of remedies for any procedural irregularities at the trial and appeal stage of the national proceedings.[384]

A party should not wilfully obstruct national proceedings in a transferred case to have the case revoked by the Mechanism.[385]

standing

A motion to revoke a referral to national authorities may be made by an accused.[386]

Where matters relate to the fairness of the proceedings, trial chambers have inherent jurisdiction to consider direct requests from accused for revocation of their referred cases.[387]

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[381] *Prosecutor v Kayishema,* No. MICT-12-23-AR14.2, *Decision on Fulgence Kayishema's Appeal against Decisions on Defence Requests for Revocation of Referral and Assignment of Counsel* (24 March 2026) at para. 20

[382] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on an Appeal Concerning a Request for Revocation of a Referral* (4 October 2016) at para. 12; *Prosecutor v Kayishema*, No, MICT-12-23-R14.1, *Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel* (29 October 2025) at p. 6; *Prosecutor v Kayishema,* No. MICT-12-23-AR14.2, *Decision on Fulgence Kayishema's Appeal against Decisions on Defence Requests for Revocation of Referral and Assignment of Counsel* (24 March 2026) at para. 24

[383] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 9; *Prosecutor v Kayishema,* No. MICT-12-23-AR14.2, *Decision on Fulgence Kayishema's Appeal against Decisions on Defence Requests for Revocation of Referral and Assignment of Counsel* (24 March 2026) at para. 24

[384] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 9; *Prosecutor v Kayishema*, No, MICT-12-23-R14.1, *Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel* (29 October 2025) at p. 6

[385] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 9

[386] *Prosecutor v. Stankovic*, No. MICT-13-51-A, *Decision on Stankovic's Appeal Against the Decision Denying Revocation of Referral…*(21 May 2014) at para. 8

stay of national proceedings

The Mechanism has the power to order, in exceptional circumstances, a stay of national proceedings pending its decision on revocation of a referral.[388]

However, where revocation of the referral would likely be adjudicated prior to the completion of the national proceedings, there was no imminent threat of violation of the accused's rights that could not be remedied should the referral order be revoked.[389]

timing

A referral may not be revoked after the national proceedings have been completed.[390]

undue delay

The length of pre-trial detention is necessarily linked to the right to be tried without undue delay which. in turn, is an inseparable and constituent element of the right to a fair trial.[391]

Where violation of rights related to the length of pre-trial detention could be and had been addressed or appropriately remedied by the Rwandan High Court or in any subsequent appellate proceedings in Rwanda, revocation of the referral was unwarranted.[392]

Where the accused had not challenged the delay in the national proceedings and had not shown that the delay could not be remedied by the High Court or in subsequent appellate proceedings, the conditions for revoking the referral were not met.[393]

witness protection issues

The existence of a witness protection regime in a referral state and the existence of mechanisms for compulsory process and video-link are prima facie proof that a trial

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[387] *Prosecutor v Kayishema*, No, MICT-12-23-R14.1, *Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel* (29 October 2025) at p. 6
[388] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Motion for Stay of Proceedings before the High Court of Rwanda…*(1 October 2015) at paras. 22-23
[389] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Motion for Stay of Proceedings before the High Court of Rwanda…*(1 October 2015) at paras. 22-23
[390] *Prosecutor v. Stankovic*, No. MICT-13-51-A, *Decision on Stankovic's Appeal Against the Decision Denying Revocation of Referral…*(21 May 2014) at para. 17
[391] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 14
[392] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on an Appeal Concerning a Request for Revocation of a Referral* (4 October 2016) at para. 21
[393] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Revocation* (22 October 2015) at para. 14

can be conducted, in particular in the face of general arguments of the unwillingness of witnesses to testify.[394]

However, the mere existence of witness protection measures alone cannot assuage every concern raised by a party and that the viability of a fair trial may hang in the balance, especially where specific arguments and evidence are presented demonstrating that they are not sufficient to secure the attendance of key' witnesses.[395]

Where Serbia's witness protection provisions could not allay the serious concerns of crucial witnesses and where the measures available would not secure the witness' appearance before the Serbian judiciary so that the case against the Accused could proceed, the Single Judge did not abuse his discretion in revoking the referral.[396]

Where essential witnesses to contempt prosecution indicated that they would refuse to testify if the case were referred to Serbia due to lack of trust in Serbian authorities and fear for their safety, the referral to Serbia was revoked.[397] Where Serbia had not transferred the accused after the revocation of the referral, the Trial Chamber reaffirmed its obligation to do so.[398]

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Rule 15—determination of Courts of any state

Subject to Article 7, paragraph 2, of the Statute, determinations of courts of any State are not binding on the Mechanism.

Rule 16—*non bis in idem*

When the President receives reliable information to show that criminal proceedings have been instituted against a person before a court of any State for a crime for which that person has already been tried by the ICTY, the ICTR, or the Mechanism, a Trial Chamber designated by the President shall, following mutatis mutandis the procedure provided in Rule 12, issue a reasoned order requesting that court permanently to discontinue its proceedings. If that court fails to do so, the President may report the matter to the Security Council.

acquittals

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[394] *In the Case against Jojic & Radeta*, No. MICT-17-111-R90-AR14.1, *Decision on Republic of Serbia's Appeal against the Decision Re-Examining Referral of the Case* (24 February 2020) at para. 14
[395] *In the Case against Jojic & Radeta*, No. MICT-17-111-R90-AR14.1, *Decision on Republic of Serbia's Appeal against the Decision Re-Examining Referral of the Case* (24 February 2020) at para. 14
[396] *In the Case against Jojic & Radeta*, No. MICT-17-111-R90-AR14.1, *Decision on Republic of Serbia's Appeal against the Decision Re-Examining Referral of the Case* (24 February 2020) at para. 17
[397] *In the case against Jojic & Radeta,* No. MICT-17-111-R90, *Decision Re-Examining the Referral of a Case to the Republic of Serbia* (13 May 2019), p. 5
[398] *In the case against Jojic & Radeta,* No. MICT-17-111-R90, *Decision Concerning the Referral of a Case to the Republic of Serbia* (8 December 2020) at p. 4

The non bis in idem principle is applicable to charges for which the accused was acquitted at the close of the prosecution's case.[399]

An acquittal was not a final judgement where it was appealed by the prosecution and the principle of non bis in idem did not prevent a retrial on the entire indictment.[400]

extradition

The Mechanism had no jurisdiction to take any action on the convicted person's claim that he had been charged in Bosnia for crimes that he had not been extradited for when he completed his sentence in Austria.[401]

same offence

Where the accused was charged with murdering different victims at different times, the principle of *non bis in idem* did not apply.[402]

Although shelling of another location on the day before was mentioned in the indictment, introduced at the accused's trial, and referred to in the judgement, the accused was neither charged nor convicted of that shelling for *non bis in idem* purposes.[403]

The *non bis in idem* principle does not preclude prosecution for offenses which were simply part of the same alleged course of conduct or same military activities.[404]

The *non bis in idem* principle does not extend to events which were investigated by the ICTY prosecution, but only to the events upon which the accused was actually tried.[405]

Fact that offenses charged in national jurisdiction were included in the "Rules of the Road" submission received by ICTY did not trigger *non bis in idem* principle where the ICTY charges were already in place when the "Rules of the Road" materials were

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[399] *Prosecutor v Oric*, No. MICT-14-79, *Decision on Second Motion regarding a Breach of Non Bis in Idem* (10 December 2015), fn. 23
[400] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Simatovic's Preliminary Motion and Stanisic's Motion for Partial Stay* (18 April 2016) at para. 20
[401] *Prosecutor v Zigic*, MICT-14-81, *Decision on Zoran Zigic's Request for Assistance with Regard to Proceedings in Bosnia and Herzegovina* (26 June 2015)
[402] *Prosecutor v Oric*, No. MICT-14-79, *Decision on Second Motion regarding a Breach of Non Bis in Idem* (10 December 2015), para. 9
[403] *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on a Motion Alleging Breach of Non Bis in Idem* (12 October 2016) at para. 9
[404] *Prosecutor v Oric*, No. MICT-14-79, *Decision on Second Motion regarding a Breach of Non Bis in Idem* (10 December 2015), para. 9
[405] *Prosecutor v Oric*, No. MICT-14-79, *Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015* (17 February 2016) at para. 13; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on a Motion Alleging Breach of Non Bis in Idem* (12 October 2016) at para. 10

received, precluding an argument that there was an abuse of process in selecting the ICTY charges.[406]

There is no support for the proposition that prosecutions under different modes of liability of the same count give rise to severable and distinct causes of action, limiting the scope of a retrial even in the absence of an explicit restriction by the Appeals Chamber when reversing convictions.[407]

Acquittal for planning and ordering, not affected by appellate reversal, does not preclude including those modes of liability in re-trial.[408]

standing

ICTY prosecution lacks standing to oppose motion to order cessation of national prosecution on grounds that it is precluded by previous ICTY prosecution, as its interests are not affected by the motion.[409]

Rule 17—solemn declaration

(A) Before taking up duties, each Judge shall make the following solemn declaration:
"I solemnly declare that I will perform my duties and exercise my powers as a Judge of the International Residual Mechanism for Criminal Tribunals honourably, faithfully, impartially and conscientiously."
(B) The text of the declaration, signed by the Judge and witnessed by the Secretary-General of the United Nations or his representative, shall be kept in the records of the Mechanism.
(C) The Judges may make the solemn declaration remotely by video-conference link, as decided by the President.
(D) A Judge whose service continues without interruption after expiry of a previous period of service shall not make a new declaration.

Rule 18—disqualification of judges

(A) A Judge may not sit in any case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect his

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[406] *Prosecutor v Oric*, No. MICT-14-79, *Decision on Second Motion regarding a Breach of Non Bis in Idem* (10 December 2015), para. 10; affirmed *Prosecutor v Oric*, No. MICT-14-79, *Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015* (17 February 2016) at para. 12
[407] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Motion for Partial Reconsideration of Decision on Stanisic's Request for Stay of Proceedings* (7 April 2017) at para. 8
[408] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Motion for Partial Reconsideration of Decision on Stanisic's Request for Stay of Proceedings* (7 April 2017) at para. 10
[409] *Prosecutor v Oric*, No. MICT-14-79, *Decision on Second Motion regarding a Breach of Non Bis in Idem* (10 December 2015), para. 5

impartiality. The Judge shall in any such circumstance withdraw, and the President shall assign another Judge to the case.
(B) (i) Any Party may apply to the President for the disqualification and withdrawal of a Judge from a proceeding upon the above grounds. The President shall confer with the Judge in question.
(ii) The President shall appoint a three-Judge panel to decide the application. If the decision is to uphold the application, the President shall assign another Judge to sit in the place of the Judge in question.
(iii) The decision of the panel of three Judges shall not be subject to interlocutory appeal.
(iv) If the Judge in question is the President, the responsibility of the President in accordance with this paragraph shall be assumed by the Judge most senior who is able to act and who is not the object of the application, or a related application for disqualification or withdrawal.
(C) The ICTY or ICTR Judge who has reviewed an indictment against an accused, or the Single Judge who reviews an indictment, shall not be disqualified from sitting as a member of the Trial Chamber or as a Single Judge for the trial of that accused.
(D) No Judge shall sit on any appeal in a case in which that Judge sat in first instance.

ancillary motions

A pending motion for disqualification of the President or a Judge does not exclude the President or a Judge from deciding ancillary motions in the case to which his disqualification is sought.[410]

appeal

There is no right to appointment of a three-judge panel to review a disqualification decision of the President. Decisions on disqualification motions are without interlocutory appeal.[411]

burden of proof

It is for the party alleging bias to adduce reliable and sufficient evidence to rebut the presumption of impartiality attached to Judges.[412]

consequences of disqualification

Appeals Chamber deliberations would not be re-started after withdrawal of

[410] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Defence Motion Seeking Waiver of Immunity as to Impugned Officials…*(5 July 2018) at p. 2
[411] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on the Prosecution's Request for Appointment of a Panel of Three Judges to Determine Mladic's Disqualification Applications* (13 September 2018), p. 3
[412] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Reconsideration* (13 February 2019) at p. 5; *Prosecutor v Lukic,* No. MICT-13-52-R.1, *Decision on Request for Disqualification* (28 October 2020) at para. 11

Presiding Judge following motion for disqualification where no appearance of bias by the Presiding Judge had been found to exist.[413]

particular cases

The Panel finds no merit in the argument that a properly informed observer would reasonably apprehend bias on the part of Judge Meron.[414]

President

administrative duties

Where the President withdrew after the filing of a disqualification motion, he was entitled to appoint his replacement on the Appeals Chamber.[415]

The President can exercise his duties to coordinate the work of Chambers, including by assigning a Judge to replace himself on an Appeals Chamber bench, despite a request that he be disqualified from the case for appearance of bias.[416]

Since the President is responsible for coordinating the work of chambers, and assigns judges to matters based on objective criteria, including, inter alia, workload-distribution, a disqualification motion for appearance of bias does not disqualify him from exercising such duties.[417]

The President is not subject to disqualification under Rule 18 when performing his administrative duties.[418]

A President's administrative duties include appointing judges to a bench.[419]

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[413] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request to Restart Deliberations* (29 January 2019) at p. 2
[414] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Disqualification and Motion Challenging Jurisdiction* (28 October 2019) at para. 12
[415] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Prosecution Motion to Strike Karadzic's Second Motion to Disqualify Judge Theodor Meron, Motion to Strike Judge William Sekule, and for Related Orders* (1 November 2018) at para. 14; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision in Response to Order on Motion to Disqualify* (3 October 2018) at p. 2
[416] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Prosecution Motion to Strike Karadzic's Second Motion to Disqualify Judge Theodor Meron, Motion to Strike Judge William Sekule, and for Related Orders* (1 November 2018) at para. 13; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motion to Reconsider Order Replacing a Judge* (10 October 2018) at p. 2
[417] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motion to Reconsider Order Replacing a Judge* (10 October 2018) at p. 2
[418] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Disqualification and Motion Challenging Jurisdiction* (28 October 2019) at para. 10; *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Radovan Karadzic's Motion for Disqualification and Reconsideration of Dismissal of Notice of Sentencing Appeal* (14 July 2020), at p. 3
[419] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Disqualification and Motion Challenging Jurisdiction* (28 October 2019) at para. 11; *Prosecutor v Karadzic*, No. MICT-13-55, *Decision*

Although a President may not be disqualified from her administrative duties of appointing judges to a bench, the President exercised her prerogative to recuse herself from appointing the judges on an appeal of a decision in which she sat as a member of the Trial Chamber.[420]

A request to disqualify the President from administrative matters has no legal basis in the Rules.[421]

A President may decide to disqualify himself *proprio motu* from performing his administrative duties, but such a decision is within his sole discretion.[422]

A President's decision not to recuse himself or the propriety of any given administrative decision taken by the President is reviewable where it impacts on the. fairness of a proceeding.[423]

President who withdrew from Appeals Chamber bench following filing of motion for disqualification was entitled to continue to exercise all administrative duties in connection with that case.[424]

political duties

Any expression of the President before the UN Security Council supporting the conclusion of an agreement allowing for the relocation of the Acquitted and Released Persons did not warrant disqualification of the President on an appeal of the Registrar's decision withdrawing support for the one person who refused to be relocated. However, the President would recuse himself to avoid further delay.[425]

While statements of President before Security Council on transfer of defendant to Rwanda did not warrant disqualification of President on appeal of decision not to revoke transfer, President would recuse herself to avoid further delay. [426]

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on Radovan Karadzic's Motion for Disqualification and Reconsideration of Dismissal of Notice of Sentencing Appeal (14 July 2020), at p. 3

[420] *Prosecutor v Kabuga,* No. MICT-13-38-AR80.2, *Decision on Recusal and Referral of a Matter* (29 September 2022) at p. 1

[421] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion to Compel the Registrar to File a Motion* (3 September 2019), p. 3; *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Radovan Karadzic's Motion for Disqualification and Reconsideration of Dismissal of Notice of Sentencing Appeal* (14 July 2020), at p. 3

[422] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Disqualification and Motion Challenging Jurisdiction* (28 October 2019) at para. 11

[423] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Disqualification and Motion Challenging Jurisdiction* (28 October 2019) at para. 11

[424] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Prosecution Motion to Strike Karadzic's Second Motion to Disqualify Judge Theodor Meron, Motion to Strike Judge William Sekule, and for Related Orders* (1 November 2018) at para. 14

[425] *In the Matter of Jerome-Clement Bicamumpaka*, No. MICT-14-75, *Decision* (21 December 2021) at p. 1

[426] *Prosecutor v Kayishema*, No. MICT-12-23-AR14.2, *Decision on Withdrawal* (10 February 2026) at p. 2

who decides

A decision cannot impact the fairness of the proceedings where there is no Chamber currently seised of the proceedings and therefore a President's decision not to recuse himself is unreviewable in such a case.[427]

Should the President decide to disqualify himself, the Duty Judge in Arusha would assume his duties under Rule 24(B).[428]

It follows from the plain language of Rule 18(B)(iv) that the President cannot assign a three-Judge panel to decide an application for his own disqualification.[429]

Three-judge panel appointed by the President was without jurisdiction to decide on disqualification of President or Senior Judge.[430]

Registrar was correct in refusing to file Motion to Disqualify President before the most senior judge able to act because it is the President, as part of his administrative duties, who decides whether to assign a judge, even where his own disqualification is sought.[431]

Senior Judge lacked jurisdiction to appoint replacement judge for President who was not disqualified, but who withdrew after a disqualification motion was filed.[432]

Where President was among the judges whose disqualification from the Appeals Chamber hearing a motion for review of conviction, he assigned the most senior judge to appoint a three-judge bench to decide the motion for disqualification.[433]

presumption

A presumption of impartiality attaches to judges of the Tribunal which cannot be

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[427] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Radovan Karadzic's Request for Review of Decision concerning Motion for Disqualification* (21 August 2020) at p. 2
[428] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Disqualification and Motion Challenging Jurisdiction* (28 October 2019) at fn. 37
[429] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Disqualification and Motion Challenging Jurisdiction* (28 October 2019) at para. 12
[430] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Disqualification and Motion Challenging Jurisdiction* (28 October 2019) at para. 14
[431] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion to Compel the Registrar to File a Motion* (3 September 2019), p. 4
[432] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Prosecution Motion to Strike Karadzic's Second Motion to Disqualify Judge Theodor Meron, Motion to Strike Judge William Sekule, and for Related Orders* (1 November 2018) at para. 12
[433] *Prosecutor v Lukic,* No. MICT-13-52-R.1, *Decision on Milan Lukic's Motion for Disqualification of President and Three Judges of the Mechanism* (2 October 2020) at p. 1

easily rebutted.[434]

Where allegations of bias are raised on appeal, there is a high threshold to reach to rebut the presumption of impartiality and it is for the appealing party alleging bias to set forth substantiated and detailed arguments in support of demonstrating the alleged bias.[435]

In the absence of evidence to the contrary, it must be assumed that the Judges can disabuse their minds of any irrelevant personal beliefs or predispositions.[436]

prior decisions as a basis

Disagreement on a point of law or fact is insufficient to demonstrate the existence of an appearance of bias.[437]

An allegation of an appearance of bias because a Judge has ruled in a particular way is insufficient basis for disqualification.[438]

The fact that the judges served on the Appeals Chamber that confirmed the conviction or dismissed an earlier request for review does not warrant their disqualification from hearing a subsequent request for review. Judges are presumptively impartial and do not have a vested interest in upholding a prior decision if new information, which was not before them at the time of taking the decision, indicates that the decision is wrong.[439]

specificity

No Judge may be disqualified based on sweeping or abstract allegations that are neither substantiated nor detailed.[440]

standard

An unacceptable appearance of bias exists where the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.[441]

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[434] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 353; *Prosecutor v Lukic,* No. MICT-13-52-R.1, *Decision on Request for Disqualification* (28 October 2020) at para. 11
[435] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 353
[436] *Prosecutor v Kayishema*, No. MICT-12-23-AR14.2, *Decision on Withdrawal* (10 February 2026) at p. 2
[437] *Prosecutor v Lukic,* No. MICT-13-52-R.1, *Decision on Request for Disqualification* (28 October 2020) at para. 12
[438] *Prosecutor v Lukic,* No. MICT-13-52-R.1, *Decision on Request for Disqualification* (28 October 2020) at para. 13
[439] *Prosecutor v Lukic,* No. MICT-13-52-R.1, *Decision on Request for Disqualification* (28 October 2020) at para. 14
[440] *Prosecutor v Lukic,* No. MICT-13-52-R.1, *Decision on Request for Disqualification* (28 October 2020) at para. 11
[441] *Prosecutor v Lukic,* No. MICT-13-52-R.1, *Decision on Request for Disqualification* (28 October 2020) at para. 11

where filed

Request for disqualification of three Appeals Chamber judges that was filed before the Appeals Chamber was dismissed because such motions must be filed before the President.[442]

withdrawal of judge

Adjudication of motions by judge who withdrew after disqualification motion did not constitute an appearance of bias.[443]

De novo reconsideration of the applications adjudicated by judge who withdrew after disqualification motion was not required considering the circumstances in which judge withdrew, which did not establish the appearance of bias.[444]

Rule 19—absence of judge

(A) If:
(i) a Judge is, for illness or other urgent personal reasons, or for reasons of authorised Mechanism business, unable to continue sitting in a part-heard case for a period which is likely to be of short duration, and
(ii) the remaining Judges of the Chamber are satisfied that it is in the interests of justice to do so, those remaining Judges of the Chamber may order that the hearing of the case continue in the absence of that Judge for a period of not more than five working days.
(B) If:
(i) a Judge is, for illness or urgent personal reasons, or for reasons of authorised Mechanism business, unable to continue sitting in a part-heard case for a period which is likely to be of short duration, and
(ii) the remaining Judges of the Chamber are not satisfied that it is in the interests of justice to order that the hearing of the case continue in the absence of that Judge, then
(a) those remaining Judges of the Chamber may nevertheless conduct those matters which they are satisfied it is in the interests of justice to dispose of, notwithstanding the absence of that Judge; and
(b) the remaining Judges of the Chamber may adjourn the proceedings.
(C) If a Judge of a Trial Chamber is, for any reason, unable to continue sitting in a part-heard case for a period which is likely to be longer than of a short duration, the remaining Judges of the Chamber shall report to the President who may assign

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[442] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Three Motions to Disqualify Judges of the Appeals Chamber for Actual or Apparent Bias* (18 June 2018)
[443] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Reconsideration* (13 February 2019) at p. 5
[444] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Reconsideration* (13 February 2019) at p. 5

another Judge to the case and order either a rehearing or continuation of the proceedings from that point. However, after the opening statements provided for in Rule 100, or the beginning of the presentation of evidence pursuant to Rule 102, the continuation of the proceedings can only be ordered with the consent of the accused, except as provided for in paragraphs (D) and (G).
(D) If, in the circumstances mentioned in the last sentence of paragraph (C), the accused withholds his consent, the remaining Judges may nonetheless decide to continue the proceedings before a Trial Chamber with a substitute Judge if, taking all the circumstances into account, they determine unanimously that doing so would serve the interests of justice. This decision is subject to appeal as of right. If no appeal is taken from the decision to continue proceedings with a substitute Judge or the Appeals Chamber affirms that decision, the President shall assign to the existing bench a Judge, who, however, can join the bench only after he has certified that he has familiarised himself with the record of the proceedings. Only one substitution under this paragraph may be made.
(E) If, in a trial where a reserve Judge has been assigned in accordance with Rule 20, a Judge is unable to continue sitting, the trial shall continue with the reserve Judge replacing the Judge who is unable to continue sitting.
(F) In case of illness or an unfilled vacancy or in any other similar circumstances, the President may, if satisfied that it is in the interests of justice to do so, authorise a Chamber to conduct routine matters, such as the delivery of decisions, in the absence of one or more of its members.
(G) If a Single Judge is, for any reason, unable to continue sitting in a part-heard case for a period which is likely to be longer than of a short duration, the President may assign another Single Judge to the case and order either a rehearing or continuation of the proceedings from that point. However, after the opening statements provided for in Rule 100, or the beginning of the presentation of evidence pursuant to Rule 102, the continuation of the proceedings can only be ordered with the consent of the accused.

A substantive decision on the merits of a case cannot be taken in the absence of consideration of the views of all members of the bench, even if supported by a majority of the remaining members of the bench.[445]

To replace a judge who has been arrested in violation of diplomatic immunity, before other avenues have been exhausted, is to say that we do not value judicial independence, value justice, value what is right.[446]

Rule 20—reserve judge

(A) In accordance with Article 12, paragraph 5, of the Statute, the President may

[445] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 13
[446] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 13

appoint, from among the Judges of the Mechanism, a reserve Judge to be present at each stage of a trial and to replace a Judge if that Judge is unable to continue sitting.
(B) A reserve Judge may pose questions which are necessary to the reserve Judge's understanding of the trial.
(C) A reserve Judge shall be present, but shall not vote, during any deliberations in a trial.

Rule 21—resignation

A Judge who decides to resign shall communicate the resignation in writing to the President, who shall transmit it to the Secretary-General of the United Nations.

Rule 22—precedence

(A) All Judges are equal in the exercise of their judicial functions, regardless of dates of election, appointment, age, or period of service.
(B) The Judges shall take precedence according to the dates of their election or appointment as Judges, after the President. Judges elected or appointed on the same date shall take precedence according to age.
(C) In case of re-election, the total period of service as a Judge of the Mechanism shall be taken into account.

Rule 23—functions of the President

(A) The President appointed pursuant to Article 11 of the Statute shall preside at all Plenaries of the Mechanism. The President shall coordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on the President by the Statute and the Rules.
(B) The President may, in consultation with the Registrar and the Prosecutor, issue Practice Directions consistent with the Statute and the Rules addressing detailed aspects of the conduct of proceedings before the Mechanism.

Decisions of the President are not binding on Trial Chambers regarding the conduct of proceedings before it.[447]

The President may quash an administrative decision if the Registrar: (a) failed to comply with legal requirements or (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or (c) took into account irrelevant material or failed to take into account relevant material, or (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached.[448]

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[447] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Prosecution Motion to Strike Karadzic's Second Motion to Disqualify Judge Theodor Meron, Motion to Strike Judge William Sekule, and for Related Orders* (1 November 2018) at para. 16
[448] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 20

Unless unreasonableness has been established, there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled.[449]

The party challenging the administrative decision bears the burden of demonstrating that an error has occurred and that this error significantly affected the administrative decision to his detriment.[450]

Registrar's decision to enter into a relocation agreement with a State is not an administrative decision that can be the subject of review by the President.[451]

Challenge to Registrar's decision not to disqualify legal consultant to defence counsel was properly before the President, rather than the Appeals Chamber, as it did not relate to the fairness of the proceedings.[452]

The Registrar's role in leading efforts to solve the problem of the acquitted persons relocated and then detained in Niger requires a degree of deference from the President, especially when it comes to specific issues, such as whether, when, and what information related to his interactions with the authorities of Niger can be shared with counsel for the relocated persons.[453]

Rule 24—replacement

(A) If the President does not remain in office or is unable to carry out the functions of the President, these shall be assumed by the duty Judge in Arusha, until such time as the Secretary-General appoints a new President.
(B) If the President's incapacity or inability is temporary, the President's functions shall be assumed by the duty Judge in Arusha.
(C) If the President is unable to exercise the functions of Presiding Judge of the Appeals Chamber, that Chamber shall elect a Presiding Judge from among its members.

Rule 25—the Mechanism Coordinating Council

(A) The Mechanism Coordination Council shall be composed of the President, the Prosecutor, and the Registrar.

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[449] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 21
[450] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 21
[451] *In the matter of Francois-Xavier Nzuwonemeye et al*, No MICT-22-124, *Decision on Ntagerura's Motion for Judicial Review of Relocation Agreement* (22 September 2023) at p. 3
[452] *Prosecutor v Ntakirutimana*, No, MICT-12-17-R, *Decision on Prosecution's Motion for Review of Registrar's Decision Concerning Assignment of a Legal Consultant* (18 September 2024) at p. 3
[453] *In the Matter of Nzuwonemeye et al*, No. MICT-124, *Decision in Relation to the Request of Alphonse Nteziryayo for an Order for Additional Information* (30 May 2025) at p.2.

(B) In order to achieve the mission of the Mechanism, as defined in the Statute, the Mechanism Coordination Council ensures, having due regard for the responsibilities and the independence of any member, the coordination of the activities of the three organs of the Mechanism.
(C) The President may convene, on an ad hoc basis, a meeting of the Mechanism Coordination Council at his own initiative or upon request of any of its members. The President shall chair the meetings.
(D) The President may decide to hold Mechanism Coordination Council meetings remotely by video-conference link.

Rule 26—plenaries

(A) The Judges may decide in Plenary to:
(i) adopt and amend the Rules;
(ii) adopt the Annual Report provided for in Article 32 of the Statute;
(iii) decide upon matters relating to the internal functioning of the Mechanism;
(iv) determine the conditions of detention;
(v) exercise any other functions provided for in the Statute or in the Rules.

Rule 27—quorum and vote

(A) The quorum for the plenary meeting of the Mechanism shall be seventeen Judges.
(B) The decisions of the plenary meetings of the Mechanism shall be taken by the majority of the Judges present. In the event of an equality of votes, the President or the Judge acting in the place of the President shall have a casting vote.
(C) Decisions taken in Plenary remotely shall be adopted, if circulated to all Judges and agreed to in writing by not less than thirteen Judges, unless otherwise provided for in a Practice Direction issued by the President.

Rule 28—duty roster

In accordance with Article 12 of the Statute, the President may designate a duty Judge from the roster for each branch of the Mechanism, who will be available at short notice, to serve as a Single Judge and to whom indictments, warrants, and other matters not assigned to a Single Judge or Trial Chamber may be transmitted for decision.

Rule 29—deliberations

The deliberations of the Chambers shall take place in private and remain secret.

Rule 30—solemn declaration

(A) Before taking up duties, the Registrar appointed pursuant to Article 15, paragraph 3, of the Statute shall make the following declaration before the

President:
"I solemnly declare that I will perform the duties incumbent upon me as Registrar of the Mechanism in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the Statute and the Rules of Procedure and Evidence of the Mechanism".
(B) Every staff member of the Registry shall make a similar declaration before the Registrar.

Rule 31—functions of the Registrar

(A) The Registrar shall assist the Chambers, the Plenary of the Mechanism, the Judges, and the Prosecutor in the performance of their functions. Under the authority of the President, the Registrar shall be responsible for the administration and servicing of the Mechanism and shall serve as its channel of communication, and in particular shall:
(i) direct and administer the Chambers Legal Support Section; in conjunction with the administrative services of the Registry, the Registrar shall oversee the assignment of appropriate resources to the Chambers with a view to enabling them to accomplish their mission;
(ii) take all appropriate measures so that the decisions rendered by the Chambers and Judges are executed, especially sentences and penalties;
(iii) make recommendations regarding the missions of the Registry which affect the judicial activity of the Mechanism.
(B) The Registrar, in the execution of his functions, may make oral and written representations to the President or Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the Parties where necessary.
(C) The Registrar may, in consultation with the President, issue Practice Directions addressing particular aspects of the practice and procedure in the Registry and in respect of other matters within the powers of the Registrar.
(D) The Registrar shall report regularly on his activities to the Judges meeting in Plenary and to the Prosecutor.

The President of the Mechanism may quash an administrative decision of the Registrar if the Registrar (a) failed to comply with legal requirements; or (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or (c) considered irrelevant material or failed to consider relevant material, or (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached.[454]

The party challenging the administrative decision bears the burden of

[454] *Prosecutor v Ngirabatware*, No. MICT-12-29-A, *Decision on Motion to Quash Decision of Suspension and to Re-instate Defence Team Legal Assistant* (19 March 2013) at para. 8; *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Review of Decision on Assignment of Counsel on Appeal* (4 February 2016) at para. 16; *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Detention Complaint* (16 June 2020) at para. 10

demonstrating that an error of the nature enumerated above has occurred and that this error significantly affected the administrative decision to his or her detriment.[455]

Any decision of the Registrar limiting a detainee's right must necessarily follow the general provisions of proportionality.[456]

Complaints and related documentation submitted in an appeal of the Registrar's administrative decisions, in relation to active cases before the Mechanism, should be filed on the record.[457]

The President retains jurisdiction over a matter which he has remanded to the Registrar, where the question as to whether the Registrar complied with the President's instructions is at issue.[458]

communications of detainees

When assessing whether a detainee's request for access to the media can be accommodated pursuant to Rule 64bis of the Rules of Detention, the Registrar must respect the detainee's right to freedom of expression and balance it carefully against the interests of the prison authorities.[459]

Because free expression is one of the most fundamental personal liberties, any restrictions on speech - and especially any criminalization of speech - must be carefully circumscribed.[460]

Denying publication of a detainee's personal opinion of the conduct of his case was an unreasonable restriction on his right of freedom of expression.[461]

detention issues

computer access

Registrar did not fully explore specific possibilities for technical modifications of a laptop so that the safety and security interests of the UNDU could be duly maintained. His decision to refuse to allow a detainee to use a laptop with no Internet capability was

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[455] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Detention Complaint* (16 June 2020) at para. 11
[456] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Request for Review of Registrar's Decision* (17 May 2017) at p. 3
[457] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Request for Review of Registrar's Decision* (1 August 2017) at para. 20
[458] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Karadzic's Renewal of Appeal of Registrar's Decision on Skype* (4 February 2019) at p. 2
[459] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Request for Review of Registrar's Decision* (17 May 2017) at p. 2
[460] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Request for Review of Registrar's Decision* (17 May 2017) at p. 3
[461] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Request for Review of Registrar's Decision* (17 May 2017) at pp. 3-4

error.[462]

medical care

Detainee failed to demonstrate any error with respect to the medical care provided to him by the Registry.[463]

A detainee at the UNDU is expected to enjoy the same standard of healthcare as in the community of The Netherlands.[464]

A detainee shall have the right to access all information in his or her medical file upon request.[465]

A detainee is not obliged to accept medical treatment and his choices will be respected, even if they go against the recommendations of the Medical Officer, treating specialists, or the independent medical experts. Under such circumstances, he assumes all risks for disregarding such medical expert advice.[466]

Consulting with a detainee on the issue of "do not resuscitate" policy must be a priority and a detainee's wishes must be fully respected.[467]

mootness

Where Registrar lifted the restriction complained of after the filing of the request for review, the issue was moot.[468]

timeliness

Failure to file a request for review with the President within 14 days of Registrar's failure to decide on complaint concerning detention required that request for review be dismissed as inadmissible.[469]

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[462] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Request for Review of Registrar's Decision* (1 August 2017) at para. 22
[463] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Detention Complaint* (16 June 2020) at para. 33; *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on Request for Judicial Review of Registrar's Decision on Detention Complaint* (30 November 2023)
[464] *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on Request for Judicial Review of Registrar's Decision on Detention Complaint* (30 November 2023) at para. 39
[465] *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on Request for Judicial Review of Registrar's Decision on Detention Complaint* (30 November 2023) at para. 40
[466] *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on Request for Judicial Review of Registrar's Decision on Detention Complaint* (30 November 2023) at para. 34
[467] *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on Request for Judicial Review of Registrar's Decision on Detention Complaint* (30 November 2023) at para. 35
[468] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Complaint filed by Dick Prudence Munyeshuli…*(9 August 2019) at para. 27
[469] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Complaint filed by Marie Rose Fatuma pursuant to Rule 94 of the Rules of Detention* (20 June 2019) at p. 2

Where the Registrar failed to acknowledge receipt of request or issue a reasoned written decision within the time limits proscribed in the Rules of Detention and the Complaints Procedure, Registrar was reminded of the importance of complying with the relevant procedural requirements.[470]

Registrar violated Detention complaint procedure by failing to decide complaint within 14 days. Because this was the third time he had failed to observe the time limits for such a decision, the President warned the Registrar that further breaches of this provision could attract sanction in the future.[471]

Where the Registrar fails to decide a complaint within the prescribed time limit, the complainant can immediately seize the President of the issue.[472]

Registrar violated Detention complaint procedure by failing to acknowledge complaint within 72 hours and issue decision on complaint within 14 days.[473]

Registrar's failure to respond to complaint in timely manner did not operate as a waiver or concession.[474]

video calls

Registrar erred in denying prisoner's access to Skype. Necessary changes to the UNDU policy and regulatory frameworks should not be a barrier to the implementation of best practice in detention management and facilities, such as making VTC available to detainees under the authority of the Mechanism.[475]

Registrar urged to implement video calls at UNDU, but President would not set deadline for doing so.[476]

filing of documents

Article 10 of the Practice Direction on filings does not allow the Registrar to reject a filing because there is no existing case file or because the Judge designated by the

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[470] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Complaint filed by Marie Rose Fatuma pursuant to Rule 94 of the Rules of Detention* (20 June 2019) at p. 2
[471] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Detention Complaint* (16 June 2020) at para. 26
[472] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Detention Complaint* (16 June 2020) at para. 25
[473] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Complaint filed by Dick Prudence Munyeshuli…*(9 August 2019) at para. 20
[474] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Complaint filed by Dick Prudence Munyeshuli…*(9 August 2019) at para. 23
[475] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Request for Review of Registrar's Decision* (29 August 2017) at p. 4
[476] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Karadzic's Renewal of Appeal of Registrar's Decision on Skype* (4 February 2019) at p. 3

party has not been assigned to the case.[477]

judicial review

The Single Judge before whom a prosecution is pending will not intervene in administrative decisions of the Registrar unless they affect the fairness of the proceedings.[478]

Where no privileged materials were accessed during search of accused's property at UN Detention Unit, the fairness of the proceedings were not implicated, and the intervention of the Single Judge was not warranted.[479]

The Appeals Chamber only has jurisdiction to review the President's or Registrar's decision under the detention rules if the issue in question is closely related to the fairness of the proceedings on appeal.[480]

It is not for the Appeals Chamber to intervene in the defendant's medical treatment plan or the provision of medical documentation from the UNDU to the defendant's counsel.[481]

President's supervision

The President's supervisory role over the Registry did not give him the authority to authorise a search of a detainee's cell. An application for search related to possible contempt should have been submitted to the Single Judge overseeing the contempt case.[482]

Registrar's decision not to engage with purported representative of a State offering to relocate ICTR acquitted persons was subject to review by the President. The Registrar's contention that it was not an administrative decision because it fell under his delegated authority as a Representative of the United Nations Secretary-General was without merit.[483]

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[477] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion to Compel the Registrar to File a Motion* (3 September 2019), p. 3
[478] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Joint Defence Motion Seeking an Order Addressed to the Registrar concerning a Search and Seizure Operation Conducted on 1 May 2019 at the United Nations Detention Facility* (13 June 2019) at p. 2
[479] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Joint Defence Motion Seeking an Order Addressed to the Registrar concerning a Search and Seizure Operation Conducted on 1 May 2019 at the United Nations Detention Facility* (13 June 2019) at p. 2
[480] *Prosecutor v Mladic*, No. MICT-13-56-A, *Order on Defence Submissions on 25 and 27 March 2020* (31 March 2020) at p. 3
[481] *Prosecutor v Mladic*, No. MICT-13-56-A, *Order on Defence Submissions on 25 and 27 March 2020* (31 March 2020) at p. 3
[482] *Prosecutor v Turinabo et al,* No. MICT-18-116-PT, *Decision on the 7 February 2019 Search at the United Nations Detention Facility* (5 July 2019) at para. 21
[483] *In the matter of Nzuwonemeye et al*, No. IT-22-124, *Decision on Requests for Review of an Administrative Decision* (30 August 2024) at p. 3

Registry submissions

As the Registry is not a "party", its submissions filed under Rule 31(B) need not comply with the time limits of the Practice Direction on Requirements and Procedures for Appeals.[484]

response to Registry submissions

Neither the Rules nor the practice of the Mechanism provide a party with an automatic right to respond to a Registrar's submission filed pursuant to Rule 31(B).[485]

Rule 32—Witness Support and Protection Unit

(A) There shall be set up under the authority of the Registrar a Witness Support and Protection Unit consisting of qualified staff to:
(i) recommend protective measures for victims and witnesses in accordance with Article 20 of the Statute; and
(ii) provide counselling and support for them, in particular in cases of rape and sexual assault.
(B) A gender sensitive approach to victims and witnesses protective and support measures should be adopted.

Rule 33—minutes

Except where a full record is made under Rule 95, the Registrar, or Registry staff designated by him, shall take minutes of the plenary meetings of the Mechanism and of the sittings of the Chambers or a Judge, other than private deliberations.

Rule 34—record book

The Registrar shall keep a Record Book which shall list, subject to Rule 53, all the public particulars of each case brought before the Mechanism. The Record Book shall be open to the public.

Rule 35—functions of the Prosecutor

(A) The Prosecutor appointed pursuant to Article 14, paragraph 4, of the Statute shall perform all the functions provided by the Statute in accordance with the Rules and such Regulations, consistent with the Statute and the Rules, as may be issued by the Prosecutor. Any alleged inconsistency in the Regulations shall be brought to the

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[484] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion for Provisional Release on Humanitarian Grounds…*(8 June 2018) at para. 6
[485] *Prosecutor v Kabuga*, No. MICT-13-38-Misc.2, *Decision on Appeal of Decision on Motion Concerning Frozen Assets* (10 January 2022) at fn. 55

attention of the President, to whose opinion the Prosecutor shall defer.
(B) The Prosecutor's powers and duties under the Rules may be exercised by the officer-in-charge as provided for in Article 14, paragraph 3, of the Statute at the relevant branch of the Mechanism, or other staff members of the Office of the Prosecutor authorised by the Prosecutor, or by any person acting under the Prosecutor's direction.

Rule 36—conduct of investigation

(A) The Prosecutor may only investigate persons already indicted by the ICTY or the ICTR or persons covered by Article 1, paragraph 4, of the Statute.
(B) In the conduct of an investigation, the Prosecutor may:
(i) summon and question suspects, victims, and witnesses and record their statements, collect evidence, and conduct on-site investigations;
(ii) undertake such other matters as may appear necessary for completing the investigation and the preparation and conduct of the prosecution at the trial, including the taking of special measures to provide for the safety of potential witnesses and informants;
(iii) seek, to that end, the assistance of any State authority concerned, as well as of any relevant international body including the International Criminal Police Organization (INTERPOL); and
(iv) request such orders as may be necessary from a Trial Chamber.
(C) The provisions under (i), (ii), and (iv) of paragraph (B) shall apply mutatis mutandis to investigations carried out pursuant to Rules 90(C)(ii) and 108(B)(ii).

Rule 37—provisional measures

(A) In case of urgency, the Prosecutor may request any State:
(i) to arrest a suspect or an accused provisionally and place him in custody;
(ii) to seize physical evidence; or
(iii) to take all necessary measures to prevent injury to or intimidation of a victim or witness, or the destruction of evidence.
(B) The State concerned shall comply forthwith, in accordance with Article 28 of the Statute.
(C) Upon showing that a major impediment does not allow the State to keep the suspect in custody or to take all necessary measures to prevent his escape, the Prosecutor may apply to a Judge designated by the President for an order to transfer the suspect to the respective branch of the Mechanism or to such other place as the Judge may decide, and to detain him provisionally. After consultation with the Prosecutor and the Registrar, the transfer shall be arranged between the State authorities concerned, the authorities of the host country of the respective branch of the Mechanism, and the Registrar.
(D) In the cases referred to in paragraph (B), the suspect shall, from the moment of his transfer, enjoy all the rights provided for in Rule 40, and may apply for review to a Trial Chamber of the Mechanism. The Chamber, after hearing the Prosecutor, shall rule upon the application.

(E) The suspect shall be released if:
(i) The Chamber so rules; or
(ii) The Prosecutor fails to issue an indictment within twenty days of the transfer.

Rule 38—transfer and provisional detention of suspects

(A) In the conduct of an investigation, the Prosecutor may transmit to the Registrar, for an order by a Judge assigned pursuant to Rule 28, a request for the transfer to and provisional detention of a suspect in the premises of the detention unit of the respective branch of the Mechanism. This request shall indicate the grounds upon which the request is made and, unless the Prosecutor wishes only to question the suspect, shall include a provisional charge and a summary of the material upon which the Prosecutor relies.
(B) The Judge shall order the transfer and provisional detention of the suspect if the following conditions are met:
(i) the Prosecutor has requested a State to arrest the suspect provisionally, in accordance with Rule 37, or the suspect is otherwise detained by State authorities;
(ii) after hearing the Prosecutor, the Judge considers that there is a reliable and consistent body of material which tends to show that the suspect may have committed a crime over which the Mechanism has jurisdiction; and
(iii) the Judge considers provisional detention to be a necessary measure to prevent the escape of the suspect, injury to or intimidation of a victim or witness, or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation.
(C) The order for the transfer and provisional detention of the suspect shall be signed by the Judge and bear the seal of the Mechanism. The order shall set forth the basis of the application made by the Prosecutor under paragraph (A), including the provisional charge, and shall state the Judge's grounds for making the order, having regard to paragraph (B). The order shall also specify the initial time-limit for the provisional detention of the suspect, and be accompanied by a statement of the rights of a suspect, as specified in this Rule and in Rules 40 and 41.
(D) The provisional detention of a suspect shall be ordered for a period not exceeding the end of that period, at the Prosecutor's request, the Judge who made the order, or another Judge assigned by the President, may decide, subsequent to an inter partes hearing of the Prosecutor and the suspect assisted by Counsel, to extend the detention for a period not exceeding thirty days, if warranted by the needs of the investigation. At the end of that extension, at the Prosecutor's request, the Judge who made the order, or another Judge assigned by the President, may decide, subsequent to an inter partes hearing of the Prosecutor and the suspect assisted by Counsel, to extend the detention for a further period not exceeding thirty days, if warranted by special circumstances. The total period of detention shall in no case exceed ninety days, at the end of which, in the event the indictment has not been confirmed and an arrest warrant signed, the suspect shall be released or, if appropriate, be delivered to the authorities of the requested State.
(E) The provisions in Rule 57 shall apply mutatis mutandis to the execution of the transfer order and the provisional detention order relative to a suspect.

(F) After being transferred to the seat of the respective branch of the Mechanism, the suspect, assisted by Counsel, shall be brought, without delay, before the Judge who made the order, or another Judge assigned by the President, who shall ensure that the rights of the suspect are respected.
(G) During detention, the Prosecutor and the suspect or the suspect's Counsel may submit to the Judge who made the order, or another Judge assigned by the President, all applications relative to the propriety of provisional detention or to the suspect's release.
(H) Without prejudice to paragraph (D), the Rules relating to the detention on remand of accused persons shall apply mutatis mutandis to the provisional detention of persons under this Rule.

It is not the responsibility of the President of the Mechanism to ensure that international standards of detention are applied to a person awaiting transfer to the Mechanism. Complaints about detention are properly addressed to the courts of the national jurisdiction where the accused is detained.[486]

Rule 39—Preservation of Information

(A) Subject to Rule 95, the Prosecutor shall be responsible for the retention, storage, and security of information and physical material obtained in the course of the Prosecutor's investigations until formally tendered into evidence.
(B) The Prosecutor shall draw up an inventory of all materials seized from the suspect or accused, including documents, books, papers, and any other objects, and shall serve a copy thereof on the accused or suspect. Materials that are of no evidentiary value shall be returned without delay to the suspect or accused.

Prosecution would be required to review computers and phones seized from family of accused, return any non-evidentiary items, and copy or retrieve data of an evidentiary nature and return the devices within 60 days.[487]

Rule 40—rights of suspects during investigation

(A) A suspect who is to be questioned shall have the following rights, of which he shall be informed prior to questioning, in a language he understands:
(i) the right to be assisted by Counsel of the suspect's choice, subject to Rule 42, or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;
(ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and
(iii) the right to remain silent, and to be cautioned that any statement the suspect

[486] *Prosecutor v Kayishema*, No. MICT-12-23, *Decision on Request for a Status Conference* (29 October 2024) at p. 2
[487] *Prosecutor v Kabuga*, No, MICT-13-38-Misc.1,2&3, *Decision on Motions Filed by Felicien Kabuga's Family for Return of Frozen Assets and Seized Property* (14 October 2021) at p. 7

makes shall be recorded and may be used in evidence.
(B) Questioning of a suspect shall not proceed without the presence of Counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have Counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned Counsel.

Rule 41—recording questioning of suspects

Whenever a suspect is being questioned, the questioning shall be audiorecorded or video-recorded, in accordance with the following procedure:
(A) the suspect shall be informed in a language the suspect understands that the questioning is being audio-recorded or video-recorded;
(B) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;
(C) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;
(D) a copy of the recorded tape will be supplied to the suspect or, if multiple recording devices were used, one of the original recorded tapes;
(E) after a copy has been made, if necessary, of the recorded tape, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the person in charge of the questioning and the suspect; and
(F) the tape shall be transcribed if the suspect becomes an accused.

Rule 42—appointment, qualifications, and duties of counsel

(A) Defence Counsel engaged by a suspect or an accused shall file a power of attorney with the Registrar at the earliest opportunity. Subject to any determination by a Chamber disqualifying an individual as Defence Counsel pursuant to Rules 45, 47, or 90, a Counsel shall be considered qualified to represent a suspect or accused if the Counsel satisfies the Registrar that he:
(i) is admitted to the practice of law in a State, or is a university professor of law;
(ii) has written and oral proficiency in one of the two working languages of the Mechanism, unless the Registrar deems it in the interests of justice to waive this requirement, as provided for in paragraph (B);
(iii) is a member in good standing of an association of counsel practicing at the Mechanism recognised by the Registrar;
(iv) has not been found guilty or otherwise disciplined in relevant disciplinary proceedings against him in a national or international forum, including proceedings pursuant to the Code of Professional Conduct unless the Registrar deems that, in the circumstances, it would be disproportionate to exclude such Counsel;
(v) has not been found guilty in relevant criminal proceedings;

(vi) has not engaged in conduct whether in pursuit of his profession or otherwise that is dishonest or otherwise discreditable to a Counsel, prejudicial to the administration of justice, or likely to diminish public confidence in the Mechanism or the administration of justice, or otherwise bring the Mechanism into disrepute; and
(vii) has not provided false or misleading information in relation to his qualifications and fitness to practice or failed to provide relevant information.
(B) At the request of the suspect or accused and where the interests of justice so demand, the Registrar may admit a Defence Counsel who does not speak either of the two working languages of the Mechanism but who speaks the native language of the suspect or accused. The Registrar may impose such conditions as deemed appropriate, including the requirement that the Counsel or accused undertake to meet all translations and interpretation costs not usually met by the Mechanism, and Counsel undertakes not to request any extensions of time as a result of the fact that he does not speak one of the working languages. A suspect or accused may seek the President's review of the Registrar's decision. The President's decision on review is not subject to appeal.
(C) In the performance of their duties, Defence Counsel shall be subject to the relevant provisions of the Statute, the Rules, the Rules of Detention, any other rules or regulations adopted by the Mechanism, the Host Country Agreement, the Code of Professional Conduct for Counsel Appearing Before the Mechanism, the codes of practice and ethics governing their profession, and, if applicable, the Directive on the Assignment of Defence Counsel adopted by the Registrar and approved by the majority of Judges.
(D) An Advisory Panel shall be established to assist the President and the Registrar in matters relating to Defence Counsel. The Panel members shall be selected from representatives of professional associations and from Defence Counsel who have appeared before the ICTR, the ICTY, or the Mechanism. They shall have recognised professional legal experience. The composition of the Advisory Panel shall be representative of the different legal systems. A Directive of the Registrar shall set out the structure and areas of responsibility of the Advisory Panel.

Legal consultants granted right of audience during trial in the case of lead counsel's unavailability.[488]

Registrar did not err in declining to admit lawyer to the list of counsel where the Registrar's reason for doing so (which was redacted) was not unreasonable.[489]

Rule 43—assignment of defence counsel

(A) Whenever the interests of justice so demand, Defence Counsel shall be assigned to suspects or accused who lack the means to remunerate such Counsel.

[488] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Order on the Procedure for the Conduct of the Trial* (21 September 2020) at Annex, para. 9
[489] *In the Matter of Rasmus Soelberg,* No, MICT-24-132-Misc.1, *Decision on Motion for Review of an Administrative Decision concerning Admission to the List of Defence Counsel* (12 July 2024) at p. 2

Such assignments shall be treated in accordance with the procedure established in the Directive on Assignment of Defence Counsel adopted by the Registrar and approved by the majority of Judges.
(B) For this purpose, the Registrar shall maintain a list of Counsel who:
(i) fulfil all the requirements of Rule 42, although the language requirement of Rule 42(A)(ii) may be waived by the Registrar as provided for in the Directive;
(ii) possess established competence in criminal law and/or international criminal law and/or international humanitarian law and/or international human rights law;
(iii) possess at least seven years of relevant experience, whether as a judge, prosecutor, attorney, or in some other capacity in criminal proceedings; and
(iv) have indicated their availability and willingness to be assigned by the Mechanism to any person detained under the authority of the Mechanism lacking the means to remunerate Counsel, under the terms set out in the Directive.
(C) The Registrar shall maintain a separate list of Counsel who, in addition to fulfilling the qualification requirements set out in paragraph (B), are readily available as "Duty Counsel" for assignment to an accused for the purposes of the initial appearance, in accordance with Rule 64.
(i) Duty Counsel shall be situated within reasonable proximity to the detention facility of the relevant branch of the Mechanism.
(ii) The Registrar shall at all times ensure that Duty Counsel will be available to attend the detention facility of the relevant branch of the Mechanism in the event of being summoned.
(iii) If an accused or suspect is unrepresented at any time after being transferred to the Mechanism, the Registrar shall as soon as practicable summon Duty Counsel to represent the accused or suspect until Counsel is engaged by the accused or suspect, or assigned under this Rule.
(iv) In providing initial legal advice and assistance to an accused or suspect, Duty Counsel shall advise him of his rights including the rights under the Statute and the Rules.
(D) The Registrar shall, in consultation with the President, establish the criteria for the payment of fees to assigned Counsel.
(E) Where a person is assigned Counsel and is subsequently found not to be lacking the means to remunerate Counsel, the Chamber may, on application by the Registrar, make an order of contribution to recover the cost of providing Counsel.
(F) A suspect or an accused electing to conduct his own defence shall so notify the Registrar in writing at the first opportunity.
(G) Under exceptional circumstances, at the request of the suspect or accused or his Counsel, the Chamber may instruct the Registrar to replace an assigned Counsel, upon good cause being shown and after having been satisfied that the request is not designed to delay the proceedings.

choice of counsel

The right to legal assistance financed by the Mechanism does not confer the right to counsel of one's choosing.[490]

While some weight is accorded to the accused's preference, this may be overridden if it is in the interests of justice to do so.[491]

post-conviction

A convicted or an acquitted person whose case has reached finality is not entitled to legal assistance at the Mechanism's expense, and that legal aid may only be granted in exceptional circumstances and pursuant to a judicial order.[492]

referral proceedings

It would be premature to assign a Trial Chamber to determine a motion for assignment of counsel for the purpose of pursuing a revocation of referral to Rwanda where no motion to revoke the referral had been filed and the defendant remained in the custody of South Africa pending transfer to the Mechanism.[493]

The Registrar did not err in declining to assign counsel to an accused whose case had been ordered transferred to Rwanda, but who was in custody in South Africa awaiting transfer to the Mechanism for onward transfer to Rwanda.[494]

The Trial Chamber may instruct the Registrar to assign counsel to represent an accused if it decides that it is in the interests of justice, and that it has considerable discretion in determining on a case-by-case basis the existence of reasons warranting the assignment of counsel, including when an accused is not in the custody of the

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[490] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 34; *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Matters related to Felicien Kabuga's Representation* (1 April 2021) at para. 14; *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Second Decision on Matters related to Felicien Kabuga's Representation* (26 August 2022) at para. 26-27

[491] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 34; *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Matters related to Felicien Kabuga's Representation* (1 April 2021) at para. 14; *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Second Decision on Matters related to Felicien Kabuga's Representation* (26 August 2022) at para. 27

[492] *Prosecutor v Nzuwonemeye et al*, No. MICT-22-124, *Decision on Joint Request for Assignment of Counsel, Extension of Time for Filing an Appeal, and Scheduling a Status Conference* (15 March 2022) at p. 3; *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision on Assignment of Counsel* (27 May 2022) at p. 4; *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motion by Francois-Xavier Nzuwonemeye for Assignment of Counsel and Extension of Time to File an Appeal* (4 June 2024) at p. 2

[493] *Prosecutor v Kayishema*, No. MICT-12-23-R14.1, *Decision on Fulgence Kayishema's Motion for the Assignment of a Trial Chamber* (4 July 2025) at p. 3

[494] *Prosecutor v Kayishema*, No, MICT-12-23-PT, *Decision on Defence Request for Review of Decision on Assignment of Counsel* (16 December 2024) at p. 4

Mechanism.[495]

It would not be in the interests of justice to grant assignment of counsel for an accused awaiting transfer to the Tribunal while the court made inquiries of national authorities as to alleged threats made to the accused by the Rwandan government.[496]

relocated persons

It was not error to refuse to assign counsel to relocated persons detained in Niger because the duty judge had already ordered their relocation to Arusha.[497]

Counsel would not be assigned on appeal for acquitted persons detained in Niger because the matters to be raised on appeal, having been subject to extensive litigation before the Single Judge, were neither novel nor complex.[498]

The jurisprudence on the applicability of Article 28 of the Statute in relation to matters of relocation of acquitted persons and persons who have completed serving their sentences is well established. Given that this is the crux of the appeals, the matter was neither novel nor particularly complex.[499]

Counsel would not be assigned to appeal of acquitted person's motion for emergency medical evaluation where issues were neither novel nor complex.[500]

Counsel would not be assigned in connection with order to show cause why relocated persons cannot safely return to Rwanda where issues were not particularly complex and inquiry was at a preliminary stage.[501]

standard of review

A judge's decision on whether to remunerate counsel at the expense of the Mechanism in circumstances which are not provided in the Statute or Rules is a matter of discretion that will not be disturbed on appeal unless the applicant can demonstrate that

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[495] *Prosecutor v Kayishema*, No, MICT-12-23-R14.1, *Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel* (29 October 2025) at p. 6
[496] *Prosecutor v Kayishema*, No, MICT-12-23-R14.1, *Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel* (29 October 2025) at p. 6
[497] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision on Assignment of Counsel* (27 May 2022) at p. 5
[498] *Prosecutor v Nzuwonemeye et al*, No. MICT-22-124, *Decision on Joint Request for Assignment of Counsel, Extension of Time for Filing an Appeal, and Scheduling a Status Conference* (15 March 2022) at p. 3
[499] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 45
[500] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motion by Francois-Xavier Nzuwonemeye for Assignment of Counsel and Extension of Time to File an Appeal* (4 June 2024) at p. 2
[501] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Joint Motion for Assignment of Counsel and to Stay the Order to Show Cause* (6 August 2024) at pp. 3-4

the judge committed a discernible error based on an incorrect interpretation of governing law, a patently incorrect conclusion of fact, or because it was so unfair or unreasonable as to constitute an abuse of discretion.[502]

A trial chamber's decision regarding the assignment of counsel is discretionary.[503]

standing

A counsel who wishes to be assigned to represent an accused has no standing to appeal from the Registrar's denial of his assignment, but the denial would nevertheless be reviewed due to its implications on the fair trial rights of the accused.[504]

withdrawal

Withdrawal of defence counsel allowed in review proceedings based on regulations governing professional conduct of defence counsel related to discontinuation of representation and conflict of interest.[505]

The withdrawal of counsel is only granted in exceptional circumstances.[506]

Exceptional circumstances normally do not exist where the counsel acts in accordance with his or her professional and ethical responsibilities.[507]

Mere divergence of Defence strategy cannot justify a loss of trust in the counsel 's abilities or commitment to the case warranting withdrawa1.[508]

An accused's refusal to cooperate with counsel does not constitute an exceptional circumstance warranting the withdrawal of assigned counsel.[509]

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[502] *Prosecutor v Nzuwonemeye,* No. MICT-13-43, *Decision on the Appeal of the Single Judge's Decision of 22 October 2018* (17 April 2019) at para. 21
[503] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 16
[504] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 33
[505] *Prosecutor v Ngirabatware*, MICT-12-29-R, *Decision on Defence Counsel's Motion to Withdraw* (19 December 2017) at p. 2
[506] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 40
[507] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Matters related to Felicien Kabuga's Representation* (1 April 2021) at para. 11; *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Second Decision on Matters related to Felicien Kabuga's Representation* (26 August 2022) at para. 22
[508] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Matters related to Felicien Kabuga's Representation* (1 April 2021) at para. 11
[509] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 16

An accused does not have the right to unilaterally destroy the trust between himself and his counsel, or to claim a breakdown in communication through unilateral actions, in the hope that such actions will result in the withdrawal of his counsel.[510]

Breakdown between the accused and his counsel was unilateral where counsel refused to take instructions from the family and discuss strategy with them as requested by the accused, and therefore withdrawal would not be allowed.[511]

It was reasonably open to the Trial Chamber to find that the breakdown in communication between the accused and his counsel remained unilateral and that there was no objective evidence on the record of counsel failing in his obligations to his client.[512]

Withdrawal of counsel was not in the interests of justice despite breakdown in relationship with accused where counsel complied with his ethical obligations and the proceedings were at a complex and sensitive stage.[513]

Withdrawal of counsel would be denied, despite repeated requests by the accused, where there was no objective evidence on the record demonstrating that assigned counsel had not complied with his professional or ethical obligations towards the accused and the Mechanism.[514]

Rule 44—detained persons

Rules 42 and 43 shall apply to any person detained under the authority of the Mechanism.

Rule 45—availability of counsel

(A) Counsel and Co-Counsel, whether assigned by the Registrar or appointed by the client for the purposes of proceedings before the Mechanism, shall furnish the Registrar, upon the date of such assignment or appointment, a written undertaking that he will appear before the Mechanism within a reasonable time as specified by the Registrar.
(B) Failure by Counsel or Co-Counsel to appear before the Mechanism, as undertaken, shall be a ground for withdrawal by the Registrar of the assignment of

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[510] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Second Decision on Matters related to Felicien Kabuga's Representation* (26 August 2022) at para. 22; *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 17
[511] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Matters related to Felicien Kabuga's Representation* (1 April 2021) at para. 12
[512] *Prosecutor v Kabuga*, No. MICT-13-38-AR80.2, *Decision on an Appeal of a Decision relating to Felicien Kabuga's Representation* (4 November 2022) at para. 20
[513] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Matters related to Felicien Kabuga's Representation* (1 April 2021) at para. 14
[514] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Second Decision on Matters related to Felicien Kabuga's Representation* (26 August 2022) at para. 24

such Counsel or Co-Counsel or the refusal of audience by the Mechanism by the Chamber concerned.

Rule 46—assignment of counsel in the interests of justice

The Trial Chamber may, if it decides that it is in the interests of justice, instruct the Registrar to assign a Counsel to represent the interests of the accused.

Standby counsel would be assigned to represent the interests of self-represented accused at appeal hearing where accused refused to appear. However, the role of standby counsel would be limited to ensuring that the rights of the accused were respected and did not extend to making substantive submissions on the appeal.[515]

Rule 47—misconduct of counsel

(A) If a Chamber finds that the conduct of a Counsel is offensive, abusive, or otherwise obstructs the proper conduct of the proceedings, or that a Counsel is negligent or otherwise fails to meet the standard of professional competence and ethics in the performance of his duties, the Chamber may, after giving Counsel due warning and giving Counsel an opportunity to be heard:
(i) determine that Counsel is no longer eligible to represent a suspect or an accused before the Mechanism; or
(ii) refuse audience to that Counsel.
(B) Sanctions imposed pursuant to paragraph (A) shall be subject to appeal as of right.
(C) If a Counsel assigned pursuant to Rule 43 is sanctioned in accordance with paragraph (A)(i) by being refused audience, the Chamber may instruct the Registrar to replace the Counsel. Where an appeal against the decision imposing sanctions has been filed, the Registrar shall not replace Counsel before the Appeals Chamber determines the appeal.
(D) A Chamber may also, with the approval of the President, communicate any misconduct of Counsel to the professional body regulating the conduct of Counsel in the Counsel's State of admission or, if the Counsel is a university professor of law and not otherwise admitted to the profession, to a governing body of that Counsel's university.
(E) The Registrar shall publish and oversee the implementation of a Code of Professional Conduct for Defence Counsel who appear before the Mechanism, subject to approval by the President. Amendments to the Code shall be made in consultation with representatives of the Prosecutor and Advisory Panel, and be subject to approval by the President. If the Registrar has strong grounds for believing that Counsel appearing before the Mechanism has committed a serious violation of the Code of Professional Conduct, he may take appropriate action in accordance with the Code.

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[515] *Prosecutor v Seselj,* MICT-16-99-A, *Decision on the Assignment of Counsel for the Appeal Hearing* (11 October 2017)

Repeating requests for relief that the Appeals Chamber determined is not available, such as repeatedly requesting certification to appeal a decision of the Appeals Chamber, does not serve the interests of justice and may amount to an abuse of process.[516]

Counsel's practice of seeking to select the Judge to hear his client's motions does not meet the standards of professional conduct expected of defence counsel as set out in the Code of Conduct, and this behaviour has been augmented by his initiating contact with a particular Judge at the time of submitting the motion for filing. Therefore, the President issued a warning to counsel to desist from engaging in similar behaviour before the Mechanism in the future.[517]

Counsel warned not to continue to file requests for review of President's decision not to disqualify himself as repeated attempts to select the judge who will determine the motions in the case do not meet the standards of professional conduct.[518]

While submitting a declaration without personally verifying that the client had signed it constituted a professional lapse, it did not rise to the level of conduct which is offensive, abusive, or otherwise obstructs the proper conduct of the proceedings pursuant to Rule 47(A).[519]

Rule 48—submission of indictments by the Prosecutor

(A) An indictment, submitted in accordance with Article 1, paragraph 4, of the Statute and the following procedure, shall be reviewed by a duty Judge or Single Judge designated by the President.
(B) The Prosecutor, if satisfied in the course of an investigation that there is sufficient evidence to provide reasonable grounds for believing that a crime within Article 1, paragraph 4, of the Statute has been committed, shall prepare and forward to the Registrar an indictment together with supporting material, for confirmation by the Judge.
(C) The indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged.
(D) The Registrar shall forward the indictment and accompanying material to the Judge, who will inform the Prosecutor of the date fixed for review of the indictment.
(E) The Judge shall examine each of the counts in the indictment, and any supporting material the Prosecutor may provide, to determine whether a prima

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[516] *Prosecutor v Mladic*, No. MICT-13-56, *Decision on a Motion to Reconsider the Decision for Reconsideration and Certification to Appeal the Decision on a Request for Provisional Release* (16 July 2018) at p. 2
[517] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion to Compel the Registrar to File a Motion* (3 September 2019), p. 5
[518] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Radovan Karadzic's Request for Review of Decision concerning Motion for Disqualification* (21 August 2020) at p. 3
[519] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 38

facie case has been established against the suspect, as set forth in Article 17, paragraph 1, of the Statute.
(F) The Judge may:
(i) request the Prosecutor to present additional material in support of any or all counts;
(ii) confirm each count;
(iii) dismiss each count; or
(iv) adjourn the review so as to give the Prosecutor the opportunity to modify the indictment.
(G) The indictment as confirmed by the Judge shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Mechanism. If the accused does not understand either of the official languages of the Mechanism and if the language understood is known to the Registrar, a translation of the indictment in that language shall also be prepared, and shall be included as part of each certified copy of the indictment.
(H) Upon confirmation of any or all counts in the indictment:
(i) the Judge may issue an arrest warrant, in accordance with Rule 57(A), and any orders as provided in Article 17, paragraph 2, of the Statute; and
(ii) the suspect shall have the status of an accused.
(I) The dismissal of a count in an indictment shall not preclude the Prosecutor from subsequently bringing an amended indictment based on the acts underlying that count if supported by additional evidence

A trial chamber can only convict an accused of crimes that are charged in the indictment.[520]

Erroneous translation did not warrant reconsideration of decision to confirm indictment where other evidence before the confirming judge presented a prima facie case.[521]

Rule 49—joinder of crimes and trials

(A) Two or more crimes may be joined in one indictment if the series of acts committed together form the same transaction, and the said crimes were committed by the same accused.
(B) Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.
(C) A transaction for the purpose of this Rule is to be understood as a number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy, or plan.

The events constituting the same transaction need not take place at the same time

[520] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 441
[521] *Prosecutor v Turinabo et al*, MICT-18-116-T, *Decision on Dick Prudence Munyeshuli's Motion to Strike Portions of Indictment* (8 December 2020) at p. 2

or be committed together.[522]

Charges for person who incited others to commit contempt was part of the same transaction as the underlying contempt.[523]

Rule 50—amendment of indictment

(A) (i) The Prosecutor may amend an indictment prepared by the ICTY, the ICTR, or the Mechanism:
(a) at any time before its confirmation, without leave;
(b) between its confirmation and the assignment of the case to a Trial Chamber or to a Single Judge, with the leave of the duty Judge or Single Judge who confirmed the indictment, or a Single Judge assigned by the President;
and
(c) after the assignment of the case to a Trial Chamber or a Single Judge, with the leave of that Trial Chamber or the Single Judge, after having heard the Parties.
(ii) Leave to amend an indictment shall not be granted unless the Trial Chamber or the Single Judge is satisfied that the Prosecutor has established a prima facie case as set forth in Article 17, paragraph 1, of the Statute to support the proposed amendment;
(iii) Further confirmation is not required where an indictment is amended with leave;
(iv) Rules 48(G) and 54 apply mutatis mutandis to the amended indictment.
(B) If the amended indictment includes new charges and the accused has already appeared before a Trial Chamber or a Single Judge in accordance with Rule 64, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges.
(C) The accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 79 in respect of the new charges and, where necessary, the date for trial may be postponed to ensure adequate time for the preparation of the defence.

Under Rule 50, the Chamber lacked the power to modify the indictment by ordering reductions in the Indictment beyond those requested by the Prosecution.[524]

Three factors are weighed in determining whether to grant leave to amend the indictment: (i) the ameliorating effect of the changes on the clarity and precision of the case to be met; (ii) the diligence of the Prosecution in making the amendment in a timely manner that avoids creating an unfair tactical advantage; and (iii) the likely delay or other

[522] *Prosecutor v Turinabo et al*, MICT-18-116-PT, *Decision on Prosecution Motion for Joinder…*(10 December 2019) at para. 10
[523] *Prosecutor v Turinabo et al*, MICT-18-116-PT, *Decision on Prosecution Motion for Joinder…*(10 December 2019) at para. 11
[524] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 71

possible prejudice to the Defence, if any, caused by the amendment.[525]

An amendment to an indictment can have an ameliorating effect if it, inter alia, clarifies the charges against the accused, enables him or her to adequately prepare his or her defence, or helps ensure a full consideration of the relevant issues, even if it results in some prejudice to the accused.[526]

The possibility of delay in proceedings must be weighed against the benefits that the amendment may bring, such as the simplification of proceedings, a more complete understanding of the Prosecution's case, and the avoidance of possible challenges to the indictment or evidence presented at trial.[527]

Considering information discovered by the prosecution after the original indictment, allowing the amendments would ensure full consideration of the relevant issues that bear on the accused's' criminal liability.[528]

The fact that the application was brought while the case was still in its pre-trial phase weighed in favour of allowing the amendments.[529]

The Prosecution might justifiably wait to file an amendment while it continues its investigation, to determine whether further evidence either strengthens its case or weakens it.[530]

When allowing an amendment, the Judge must ensure that: (i) the amendment does not deprive the accused of an adequate opportunity to prepare an effective defence; and (ii) the amendment will not adversely affect the accused's right to be tried without undue delay.[531]

new charges

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[525] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Prosecution Motion to Amend the Indictment* (17 October 2019) at para. 6; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion to Amend the Indictment* (24 February 2021) at para. 8

[526] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Prosecution Motion to Amend the Indictment* (17 October 2019) at para. 10; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion to Amend the Indictment* (24 February 2021) at para. 9

[527] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Prosecution Motion to Amend the Indictment* (17 October 2019) at para. 10; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion to Amend the Indictment* (24 February 2021) at para. 9

[528] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Prosecution Motion to Amend the Indictment* (17 October 2019) at para. 11

[529] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Prosecution Motion to Amend the Indictment* (17 October 2019) at para. 19; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion to Amend the Indictment* (24 February 2021) at para. 12

[530] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Prosecution Motion to Amend the Indictment* (17 October 2019) at para. 19

[531] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Prosecution Motion to Amend the Indictment* (17 October 2019) at para. 24; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion to Amend the Indictment* (24 February 2021) at para. 14

Where the new allegation could be the sole action or omission of the Accused that justifies his conviction, that amendment is a "new charge" which triggers the procedures set out in Rule 50(B) and (C).[532]

One essential criterion is whether the proposed amendment introduces a basis for conviction that is factually and/or legally distinct from any fact alleged in the original indictment.[533]

Although the proposed amendments constitute new charges that trigger the procedures set forth in Rule 50(B) and (C), the changes have the effect of clarifying and focusing the case against the accused and will assist in tailoring his defence and will not cause undue delay at this early stage of the pre-trial phase.[534]

prima facie case

The prima facie standard requires that the supporting material provide a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge.[535]

This evaluation does not involve a process of fully verifying the evidence or the alleged facts.[536]

An accused may raise objections to the sufficiency of the supporting material by way of preliminary motion alleging defects in the form of the indictment under Rule 79.[537]

Rule 51—withdrawal of indictment

(A) The Prosecutor may withdraw an indictment:
(i) at any time before its confirmation, without leave;
(ii) between its confirmation and the assignment of the case to a Trial Chamber or a Single Judge, with the leave of the duty Judge or Single Judge who confirmed the indictment, or a Single Judge assigned by the President; and
(iii) after the assignment of the case to a Trial Chamber or a Single Judge, by motion before that Trial Chamber or that Single Judge pursuant to Rule 80.

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[532] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Prosecution Motion to Amend the Indictment* (17 October 2019) at fn.76
[533] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Prosecution Motion to Amend the Indictment* (17 October 2019) at fn. 76
[534] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion to Amend the Indictment* (24 February 2021) at para. 18
[535] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion to Amend the Indictment* (24 February 2021) at para. 19
[536] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion to Amend the Indictment* (24 February 2021) at para. 19
[537] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion to Amend the Indictment* (24 February 2021) at para. 20

(B) The withdrawal of the indictment shall be promptly notified to the suspect or the accused and to the Counsel of the suspect or accused.

Termination of case authorized where prosecution presented sufficient evidence to believe that the accused had died.[538]

Rule 52—public character of indictment

Subject to Rule 53, upon confirmation by a duty Judge or Single Judge, the indictment shall be made public.

Rule 53—non-disclosure

(A) In exceptional circumstances, a duty Judge or Single Judge may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order.
(B) When confirming an indictment, the duty Judge or Single Judge may, in consultation with the Prosecutor, order that there be no public disclosure of the indictment until it is served on the accused or, in the case of joint accused, on all the accused.
(C) A duty Judge or Single Judge may, in consultation with the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice.
(D) Notwithstanding paragraphs (A), (B), and (C), the Prosecutor may disclose an indictment or part thereof to the authorities of a State or an appropriate authority or international body where the Prosecutor deems it necessary to secure the possible arrest of an accused.

In contempt case involving allegations of witness tampering, Single Judge ordered the Defence not to disclose to the public any of the supporting materials disclosed by the Prosecution except to the limited extent that such disclosure is directly and specifically necessary for the preparation and presentation of its case.[539]

Defence counsel ordered to maintain record of when it discloses material to third parties and to notify Registry of team members having access to disclosure material.[540]

Rule 54—service of indictment

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[538] *Prosecutor v Ndimbati*, No. MICT-12-14, *Decision on Motion to Terminate Proceedings* (19 March 2024)
[539] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution Motion for Order of Non-Disclosure to Third Parties* (7 December 2018) at p. 2
[540] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution Motion for Order of Non-Disclosure to Third Parties* (7 December 2018) at p. 3

(A) Service of the indictment shall be effected personally on the accused at the time the accused is taken into custody or as soon as reasonably practicable thereafter. (B) Personal service of an indictment on the accused is effected by giving the accused a copy of the indictment certified in accordance with Rule 48(G).

Rule 55—general rule

At the request of either Party or proprio motu, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants, and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

facilitating defence investigation

Although trial chambers are obliged to provide every practicable facility to assist parties in presenting their case, this obligation does not extend to allowing out-of-time motions in the absence of good cause or admitting evidence that does not meet the formal requirements for admission.[541]

freezing assets

Provisional order freezing assets of person charged with disclosure of protected witness information was no longer warranted in view of the nature of the charge against him and eight months of pretrial detention.[542]

necessity

An order under Rule 55 is "necessary" where the applicant has demonstrated a reasonable basis for his belief that the sought material will likely assist his case materially in relation to clearly identified issues.[543]

obtaining material from the Registry

The Witness Support and Protection Unit shall operate with the highest levels of integrity, impartiality, and confidentiality. All records kept by the WISP shall be considered strictly confidential. Information, the disclosure of which is likely to endanger the safety or security of any individual, included protected witnesses, shall be exempt from disclosure.[544]

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[541] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 184
[542] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Renewed Request to Release Frozen Assets* (7 May 2019) at p. 2
[543] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution's Motions related to Augustin Ngirabatware's Laptops* (20 December 2019) at para. 17; *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision in relation to Material Seized from Dick Prudence Munyeshuli* (24 February 2020) at para. 16
[544] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Marie Rose Fatuma's Request for Access to Information and Records from the Witness Support and Protection Unit* (18 May 2020) at p. 2

Where Prosecution witnesses claimed that they had been advised by the Witness Support and Protection Unit how to behave in their contacts with the accused, it was not necessary to order disclosure of WISP records where the issue could be explored with the witnesses during cross examination.[545]

Prosecution would be allowed to access a list of dates that recanting witness was in contact with the Witness Support and Protection Unit as it had shown the information might be relevant to the upcoming review hearing.[546]

obtaining material from States

In the interests of facilitating trial proceedings, a Single Judge may request the prosecution to use its good offices to try and obtain material needed by the defence from a State.[547]

Prosecution ordered to use its good offices to request from the Government of Rwanda, and to disclose to the defence, the information Rwanda used to attribute certain telephone numbers to the parties it had identified as participating in the intercepted conversations.[548]

reconsideration

There is no time limit for the filing of a request for reconsideration.[549]

A party requesting reconsideration must satisfy the court of the existence of a clear error of reasoning in the impugned decision, or of particular circumstances justifying reconsideration to avoid injustice.[550]

Particular circumstances may include new facts or arguments that have arisen since the issuance of a decision, including whether a new fact was not known to the Single Judge at the time of the decision.[551]

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[545] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Marie Rose Fatuma's Request for Access to Information and Records from the Witness Support and Protection Unit* (18 May 2020) at pp. 2-3
[546] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Prosecution Motion for Registry Information* (13 November 2024) at p. 3
[547] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Joint Defence Motion for Issuance of an Order of Mandamus* (13 May 2019) at p. 3
[548] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Joint Defence Motion for Issuance of an Order of Mandamus* (13 May 2019) at p. 3
[549] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Reconsideration and Further Submission* (11 February 2019) at para. 9
[550] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution's Motions related to Augustin Ngirabatware's Laptops* (20 December 2019) at para. 10; *Prosecutor v Nzuwonemeye*, No. 13-43, *Decision on Motion for Reconsideration* (15 November 2022) at p. 3
[551] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution's Motions related to Augustin Ngirabatware's Laptops* (20 December 2019) at para. 10

However, the existence of a new fact does not necessarily demonstrate that reconsideration is necessary to prevent injustice.[552]

Interlocutory decisions may always be reconsidered based on new information to prevent an injustice.[553]

Reconsideration of decision to return laptops seized from detainee was not warranted where considerable delay would result from vetting of attorney-client privilege material from the laptops before they could be turned over to the prosecution and where the information presented for reconsideration was available to the prosecution at the time the original motion was decided.[554]

Although a request for reconsideration, by definition, must be made before the Judge, or Chamber, that rendered the impugned decision, in exceptional circumstances and in the interests of judicial economy, the Appeals Chamber can dispose of a request for reconsideration of a decision by a Judge or Chamber.[555]

search and seizure

Forensic search of laptop seized from detainee to determine if documents already in the prosecution's possession were created by the detainee would not invade attorney-client privilege and would not unduly delay the proceedings and would therefore be ordered.[556]

Search of all electronic devices and everywhere within them for evidence of contempt offense would not be proportional and would be a fishing expedition.[557]

Search of electronic devices seized from investigator denied where incriminating information could not reasonably be expected to be found considering the results of the Prosecution's investigation, including extensive review of electronic devices of co-

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[552] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution's Motions related to Augustin Ngirabatware's Laptops* (20 December 2019) at para. 10
[553] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution Motion to Reconsider or Certify to Appeal the Decision related to Material Seized from Dick Prudence Munyeshuli* (5 May 2020) at para. 12
[554] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution's Motions related to Augustin Ngirabatware's Laptops* (20 December 2019) at paras. 11-12
[555] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Prosecution Motion to Strike Karadzic's Second Motion to Disqualify Judge Theodor Meron, Motion to Strike Judge William Sekule, and for Related Orders* (1 November 2018) at para. 15
[556] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution's Motions related to Augustin Ngirabatware's Laptops* (20 December 2019) at paras. 18-19
[557] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution Motion to Reconsider or Certify to Appeal the Decision related to Material Seized from Dick Prudence Munyeshuli* (5 May 2020) at para. 17

accused's and where presence of attorney-client privileged material would make review an undue burden on the resources of the Mechanism.[558]

Procedures required by prosecution inspection of electronic devices which contained privileged information would be overly time consuming and burdensome and unlikely to result in further evidence of the crimes charged.[559]

Reasonable suspicion that investigator had committed contempt was not established to warrant allowing Prosecution to search his electronic devices.[560]

Item seized from independent examination of laptop outside the scope of the authorised search parameters, although relevant, would not be furnished to the Prosecution.[561]

Prosecution request for forensic data from accused's laptop was denied as untimely where the data could not be obtained and analysed without delaying the close of the Prosecution case-in-chief.[562]

stay of proceedings

A stay of proceedings is an exceptional measure ordered by a chamber to avoid prejudice to a party and for which a chamber must consider whether the continuation of the proceedings would have an impact on the fairness or integrity of the trial.[563]

subpoenas

The applicant seeking a subpoena must demonstrate a reasonable basis for his belief that the prospective witness is likely to give information that will materially assist the applicant with respect to clearly identified issues in the forthcoming trial.[564]

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[558] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision in relation to Material Seized from Dick Prudence Munyeshuli* (24 February 2020) at paras. 17-19
[559] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution Motion to Reconsider or Certify to Appeal the Decision related to Material Seized from Dick Prudence Munyeshuli* (5 May 2020) at para. 18
[560] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution Motion to Reconsider or Certify to Appeal the Decision related to Material Seized from Dick Prudence Munyeshuli* (5 May 2020) at paras. 14-16
[561] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision regarding an Item Extracted from Augustin Ngirabatware's Laptop* (24 July 2020) at para. 12
[562] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution Request for Information from Forensic Data Copies of Augustin Ngirabatware's Laptops* (11 November 2020) at p. 3
[563] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Stanisic's Request for Stay of Proceedings* (2 February 2017) at para. 22
[564] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at paras. 148, 277; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion to Compel an Interview with a Prosecution Investigator and for the Production of Documents* (30 September 2019) at p. 3; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Request for a Subpoena* (28 February 2020) at fn. 14

It may not be appropriate to issue a subpoena if the information sought by the applicant from the witness is obtainable through other means.[565]

The applicant must show that he has made reasonable attempts to obtain the voluntary cooperation of the potential witness and has been unsuccessful.[566]

Where potential witness was known to be employed by government of Gambia, defence had failed to make reasonable attempts to obtain his cooperation when it failed to contact him via the representatives of that government.[567]

To satisfy this requirement, the applicant may need to present information about such factors as the position held by the prospective witness in relation to the events in question, any relationship the witness may have had with the accused which is relevant to the charges, any opportunity the witness may have had to observe or to learn about those events, and any statements the witness made to the Prosecution or others in relation to them.[568]

Subpoenas should not be issued lightly, for they involve the use of coercive powers and may lead to the imposition of a criminal sanction.[569]

In deciding whether the applicant has met the evidentiary threshold for issuance of a subpoena, the Trial Chamber may properly consider both whether the information the applicant seeks to elicit using subpoena is necessary for the preparation of his case and whether this information is obtainable through other means.[570]

Defence subpoena to interview prosecution investigator granted where investigator was uniquely placed to provide information given his central role in the collection of information, where he declined to be voluntarily interviewed, and thus the information was not available by other means.[571]

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[565] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion to Compel an Interview with a Prosecution Investigator and for the Production of Documents* (30 September 2019) at p. 3; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Request for a Subpoena* (28 February 2020) at fn. 14

[566] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion to Compel an Interview with a Prosecution Investigator and for the Production of Documents* (30 September 2019) at p. 3; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Request for a Subpoena* (28 February 2020) at fn. 14

[567] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Request for a Subpoena* (28 February 2020) at fn. 16

[568] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at paras. 148, 277; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion to Compel an Interview with a Prosecution Investigator and for the Production of Documents* (30 September 2019) at fn. 16

[569] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at paras. 148, 277; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion to Compel an Interview with a Prosecution Investigator and for the Production of Documents* (30 September 2019) at fn. 20

[570] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at paras. 148, 277

[571] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion to Compel an Interview with a Prosecution Investigator and for the Production of Documents* (30 September 2019) at pp. 3-4

The Trial Chamber's considerations must focus not only on the usefulness of the information to the applicant but on its overall necessity in ensuring that the trial is informed and fair.[572]

While it would have been within the Trial Chamber's discretion to consider the credibility of the prospective evidence or its capability to corroborate or impeach other evidence when deciding whether to issue a subpoena, the Trial Chamber was not required to do so.[573]

Request to subpoena for Defence interview Prosecution witnesses whose written evidence was admitted was properly denied where accused failed to establish that the information would materially advance his case or that the information he sought could not be obtained through calling or cross-examining other witnesses.[574]

Accused failed to demonstrate that evidence from witness he sought to subpoena was not obtainable from documents authored by those witnesses or from other members of their units. Therefore, denial of subpoenas was not error.[575]

Rule 56—order directed to States for the production of documents

(A) A Party requesting an order under Rule 55 that a State produce documents or information shall apply in writing to the relevant Judge or Trial Chamber and shall:
(i) identify as far as possible the documents or information to which the application relates;
(ii) indicate how they are relevant to any matter in issue before the Judge or Trial Chamber and necessary for a fair determination of that matter; and
(iii) explain the steps that have been taken by the applicant to secure the State's assistance.
(B) The Judge or Trial Chamber may reject an application under paragraph (A) in limine if satisfied that:
(i) the documents or information are not relevant to any matter in issue in the proceedings before them or are not necessary for a fair determination of any such matter; or
(ii) no reasonable steps have been taken by the applicant to obtain the documents or information from the State.
(C) (i) A decision by a Judge or a Trial Chamber under this Rule shall be subject to:
(a) an application by a State for review under Rule 134; or
(b) an appeal by the Party making the application, with certification under Rule 80(B).
(D) (i) Except in cases where a decision has been taken pursuant to paragraph

[572] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at paras. 148, 277
[573] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at fn. 716
[574] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 150
[575] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at paras. 277-81

(B) or paragraph (E), the State concerned shall be given notice of the application, and not less than fifteen days' notice of the hearing of the application, at which the State shall have an opportunity to be heard.
(ii) Except in cases where the Judge or Trial Chamber determines otherwise, only the Party making the application and the State concerned shall have the right to be heard.
(E) If, having regard to all circumstances, the Judge or Trial Chamber has good reasons for so doing, the Judge or Trial Chamber may make an order to which this Rule applies without giving the State concerned notice or the opportunity to be heard under paragraph (D), and the following provisions shall apply to such an order:
(i) the order shall be served on the State concerned;
(ii) subject to paragraph (iv), the order shall not have effect until fifteen days after such service;
(iii) a State may, within fifteen days of service of the order, apply by notice to the Judge or Trial Chamber to have the order set aside, on the grounds that disclosure would prejudice national security interests. Paragraph (F) shall apply to such a notice as it does to a notice of objection;
(iv) where notice is given under paragraph (iii), the order shall thereupon be stayed until the decision on the application;
(v) paragraphs (F) and (G) shall apply to the determination of an application made pursuant to paragraph (iii) as they do to the determination of an application of which notice is given pursuant to paragraph (D);
(vi) the State and the Party who applied for the order shall, subject to any special measures made pursuant to a request under paragraphs (F) or (G), have an opportunity to be heard at the hearing of an application made pursuant to paragraph (E)(iii) of this Rule.
(F) The State, if it raises an objection pursuant to paragraph (D) on the grounds that disclosure would prejudice its national security interests, shall file a notice of objection not less than five days before the date fixed for the hearing, specifying the grounds of objection. In its notice of objection the State:
(i) shall identify, as far as possible, the basis upon which it claims that its national security interests will be prejudiced; and
(ii) may request the Judge or Trial Chamber to direct that appropriate protective measures be made for the hearing of the objection, including in particular:
(a) hearing the objection in camera and ex parte;
(b) allowing documents to be submitted in redacted form, accompanied by an affidavit signed by a senior State official explaining the reasons for the redaction;
(c) ordering that no transcripts be made of the hearing and that documents not further required by the Mechanism be returned directly to the State without being filed with the Registry or otherwise retained.
(G) With regard to the procedure under paragraph (F) above, the Judge or Trial Chamber may order the following protective measures for the hearing of the objection:
(i) the designation of a single Judge from a Chamber to examine the documents or hear submissions; and/or

(ii) that the State be allowed to provide its own interpreters for the hearing and its own translations of sensitive documents.
(H) Rejection of an application made under this Rule shall not preclude a subsequent application by the requesting Party in respect of the same documents or information if new circumstances arise.
(I) An order under this Rule may provide for the documents or information in question to be produced by the State under appropriate arrangements to protect its interests, which may include those arrangements specified in paragraphs (F)(ii) or (G).

Unless good reasons justifying the issuance of an order without giving the State concerned notice and an opportunity to be heard exist, any party requesting an order for state cooperation should ensure that the application is served upon the concerned State to provide it notice and the opportunity to respond.[576]

The Trial Chamber may direct appropriate protective measures to be applied to documents voluntarily produced by a State in the protection of the State's demonstrated national security interests.[577]

An individual's right to privacy does not *per s*e amount to a national security interest.[578]

The State carries the burden of demonstrating that national security interests justify the application of protective measures.[579]

Protective measures granted under Rule 56 in a specific case do not apply *mutatis mutandis* in other proceedings. [580]

Rule 57—transmission and execution of arrest warrants

(A) A warrant of arrest shall be signed by a Single Judge and shall bear the seal of the Mechanism.
(B) The original warrant shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Mechanism.
(C) Each certified copy shall be accompanied by a copy of the indictment certified in accordance with Rule 48(G) and a statement of the rights of the accused set forth in Article 19 of the Statute, and in Rules 40 and 41 mutatis mutandis. If the accused does not understand either of the official languages of the Mechanism

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[576] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Order for Service of Filings* (10 July 2019)
[577] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on the Requests of the Republic of Serbia for Protective Measures for Documents* (25 February 2021) at p. 2
[578] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on the Requests of the Republic of Serbia for Protective Measures for Documents* (25 February 2021) at p. 2
[579] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on the Requests of the Republic of Serbia for Protective Measures for Documents* (25 February 2021) at p. 2
[580] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on the Requests of the Republic of Serbia for Protective Measures for Documents* (25 February 2021) at p. 2

and if the language understood by the accused is known to the Registrar, each certified copy of the warrant of arrest shall also be accompanied by a translation of the statement of the rights of the accused in that language.
(D) Subject to any order of the Single Judge, the Registrar may transmit a certified copy of the warrant for the arrest of an accused to the person or authorities to which it is addressed, to another appropriate authority, international body, or the Prosecutor, on such terms as the Single Judge may determine.
(E) The certified copy of the warrant of arrest shall be accompanied by an order for the prompt transfer of the accused to the seat of the relevant branch of the Mechanism in the event that the accused is taken into custody by these authorities or this international body or the Prosecutor.
(F) The Registrar shall instruct the person or authorities to which a warrant is transmitted that, at the time of arrest, the indictment and the statement of the rights of the accused be read to the accused in a language that the accused understands and that the accused be cautioned in that language that the accused has the right to remain silent, and that any statement the accused makes shall be recorded and may be used in evidence.
(G) At the time of being taken into custody an accused shall also be informed immediately, in a language the accused understands, of the fact that the accused is being transferred to the seat of the relevant branch of the Mechanism.
(H) Notwithstanding paragraph (E), if at the time of arrest the accused is served with, or with a translation of, the indictment and the statement of rights of the accused in a language that the accused understands and is able to read, these need not be read to the accused at the time of arrest.
(I) When an arrest warrant issued by the ICTY, the ICTR, or the Mechanism is executed by the authorities of a State, or an appropriate authority or international body, a member of the Office of the Prosecutor may be present as from the time of the arrest.

Rule 58—cooperation of States

The State to which a warrant of arrest or a transfer order for a detained witness is transmitted shall act promptly and with all due diligence to ensure proper and effective execution thereof, in accordance with Article 28 of the Statute, including, in the case of a detained witness, by facilitating the testimony of such witness by video-conference link where necessary or appropriate.

Rule 59—procedure after arrest

(A) Upon arrest, the accused shall be detained by the State or international body concerned which shall promptly notify the Registrar. The transfer of the accused to the seat of the relevant branch of the Mechanism shall be arranged between the State authorities concerned, the authorities of the host country, and the Registrar.
(B) Where an arrest is executed in respect of a warrant issued under Rule 14(B), the Registrar shall arrange for the transfer of an accused to the State named in the warrant of arrest.

Rule 60—national extradition procedures

The obligations laid down in Article 28 of the Statute shall prevail over any legal impediment to the surrender or transfer of the accused or of a detained witness to the Mechanism in accordance with Rule 58 that may exist under the national law or treaties of the State concerned.

Rule 61—failure to execute a warrant of arrest or transfer order

(A) Where the State to which a warrant of arrest or transfer order has been transmitted has been unable to execute the warrant or transfer order, it shall report forthwith its inability to the Registrar, and the reasons therefor.
(B) If, within a reasonable time after the warrant of arrest or transfer order has been transmitted to the State, no report is made on action taken, this shall be deemed a failure to execute the warrant of arrest or transfer order and the Mechanism, through the President, may notify the Security Council accordingly.

Serbia's failure to arrest persons accused of offenses against the administration of justice was not excused by its willingness to conduct domestic proceedings in the case and required that it be reported to the Security Council for non-compliance with its obligations.[581]

Rule 62—advertisement of indictment

At the request of the Prosecutor, a form of advertisement shall be transmitted by the Registrar to the national authorities of any State or States or an international body, for publication in newspapers or on the internet or for broadcast via radio and television, notifying publicly the existence of an indictment, calling upon the accused to surrender to the Mechanism, and inviting any person with information as to the whereabouts of the accused to communicate that information to the Mechanism.

Rule 63—procedure in case of failure to execute a warrant

(A) If, within a reasonable time, a warrant of arrest issued by the ICTY, the ICTR, or the Mechanism has not been executed, and personal service of the indictment has consequently not been effected, the President may designate a Single Judge to invite the Prosecutor to report on the measures taken. When the Single Judge is satisfied that:
(i) the Registrar and the Prosecutor have taken all reasonable steps to secure the arrest of the accused, including recourse to the appropriate authorities of the State in whose territory or under whose jurisdiction and control the person to be served resides or was last known to them to be; and

[581] *In the case against Jojic & Radeta*, MICT-17-111-R90, *Decision on the Failure of the Republic of Serbia to Execute Arrest Warrants* (16 April 2021) at p. 4

(ii) if the whereabouts of the accused are unknown, the Prosecutor and the Registrar have taken all reasonable steps to ascertain those whereabouts, including by seeking publication of advertisements pursuant to Rule 62, the Single Judge shall order that the indictment be submitted by the Prosecutor to him.
(B) Upon obtaining such an order, the Prosecutor shall submit the indictment to the Single Judge in open court, together with all the evidence that was before the Judge who initially confirmed the indictment. The Prosecutor may also call before the Single Judge and examine any witness whose statement has been submitted to the confirming Judge. In addition, the Single Judge may request the Prosecutor to call any other witness whose statement has been submitted to the confirming Judge.
(C) If the Single Judge is satisfied on that evidence, together with such additional evidence as the Prosecutor may tender, that there are reasonable grounds for believing that the accused has committed all or any of the crimes charged in the indictment, he shall so determine. The Single Judge shall have the relevant parts of the indictment read out by the Prosecutor together with an account of the efforts to effect service referred to in paragraph (A) above.
(D) The Single Judge shall also issue an international arrest warrant in respect of the accused which shall be transmitted to all States. Upon request by the Prosecutor or proprio motu, after having heard the Prosecutor, the Single Judge may order a State or States to adopt provisional measures to freeze the assets of the accused, considering the gravity of the crimes charged and the level of responsibility of the accused, without prejudice to the rights of third parties.
(E) If the Prosecutor satisfies the Single Judge that the failure to effect personal service was due in whole or in part to a failure or refusal of a State to cooperate with the Mechanism in accordance with Article 28 of the Statute, the Single Judge shall so certify. The President shall notify the Security Council thereof in such manner as the President thinks fit.

Prosecutor's application to freeze assets of suspects in case of procuring false testimony denied where assets were not linked to the crimes charged or needed for the benefit of victims of the crimes.[582]

Single Judge did not abuse his discretion when holding that applicants to lift freeze on assets had failed to establish the current unavailability of the assets and their entitlement to them.[583]

Rule 64—initial appearance and plea

(A) Upon transfer of an accused to the seat of the relevant branch of the Mechanism, the President shall forthwith assign the case to a Trial Chamber or, for a case pursuant to Article 1, paragraph 4, of the Statute, a Single Judge. The accused shall be brought before a Judge of the Trial Chamber or the

[582] *In Re Jojic & Radeta*, No. MICT-17-111-R90, *Decision on an Application for the Adoption of Provisional Measures* (10 May 2021) at p. 5
[583] *Prosecutor v Kabuga*, No. MICT-13-38-Misc.2, *Decision on Appeal of Decision on Motion Concerning Frozen Assets* (10 January 2022) at para. 15

Single Judge as appropriate without delay, and shall be formally charged. The Judge shall:
(i) satisfy himself that the rights of the accused are respected, including the right to counsel;
(ii) read or have the indictment read to the accused in a language the accused understands, satisfy himself that the accused understands the indictment, and confirm that the accused understands the indictment;
(iii) inform the accused that, within thirty days of the initial appearance, the accused will be called upon to enter a plea of guilty or not guilty on each count but that, should the accused so request, the accused may immediately enter a plea of guilty or not guilty on one or more counts; and
(iv) if the accused fails to enter a plea at the initial or any further appearance, enter a plea of not guilty on the accused's behalf.
(B) (i) In case of a plea of not guilty, the Judge shall set the date for trial.
(ii) In case of a plea of guilty:
(a) the Single Judge shall act in accordance with paragraph (C); or
(b) the Judge of the Trial Chamber shall refer the plea to the Trial Chamber so that it may act in accordance with paragraph (C).
(C) If an accused pleads guilty in accordance with paragraph (B), or requests to change his plea to guilty, the Trial Chamber or the Single Judge shall satisfy itself or himself that the guilty plea:
(i) is made freely and voluntarily;
(ii) is an informed plea;
(iii) is unequivocal; and
(iv) is based on a sufficient factual basis for the crime and the accused's participation in it, either on the basis of objective indicia or on the lack of any material disagreement between the Parties about the facts of the case. Thereafter, the Trial Chamber or the Single Judge may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.
(D) Where the interests of justice so require, the Registrar may assign Counsel or Duty Counsel as within Rule 43(C) to represent the accused at the initial appearance. Such assignments shall be treated in accordance with the relevant provisions of the Directive referred to in Rule 43(A).
(E) Within thirty days of the initial appearance, if the accused has not retained permanent Counsel or has not yet elected in writing to conduct his own defence in accordance with Rule 43(F), permanent Counsel shall be assigned by the Registrar. Should the Registrar be unable to appoint permanent Counsel within the time-limit, the Registrar will seek an extension from the Trial Chamber or the Single Judge.

Where the essential elements of the amended indictment did not radically depart from the core charges in the earlier indictment, and to avoid unnecessary risk associated with a further appearance during the pandemic, the Trial Chamber maintained the accused's plea of not guilty entered on his behalf at the initial appearance and will confirm this plea in conjunction with the next status conference.[584]

[584] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion to Amend the Indictment* (24 February 2021) at para. 21

Rule 65—plea agreement procedure

(A) The Prosecutor and the Defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor shall do one or more of the following before the Trial Chamber or Single Judge:
(i) apply to amend the indictment accordingly;
(ii) submit that a specific sentence or sentencing range is appropriate; and/or
(iii) not oppose a request by the accused for a particular sentence or sentencing range.
(B) The Trial Chamber shall not be bound by any agreement specified in paragraph (A).
(C) If a plea agreement has been reached by the Parties, the Trial Chamber shall require the disclosure of the agreement in open session or, on a showing of good cause, in closed session, at the time the accused pleads guilty in accordance with Rule 64(C), or requests to change his plea to guilty.

Rule 66—questioning of the accused

(A) Questioning of an accused, including after the initial appearance, shall not proceed without the presence of Counsel unless the accused has voluntarily and expressly agreed to proceed without Counsel present. If the accused subsequently expresses a desire to have Counsel, questioning shall thereupon cease, and shall only resume when the accused's Counsel is present.
(B) The questioning, including any waiver of the right to counsel, shall be audiorecorded or video-recorded in accordance with the procedure provided for in Rule 41. At the beginning of the questioning, the accused shall be cautioned in accordance with Rule 40(A)(iii).

Rule 67—detention on remand

Upon being transferred to the relevant branch of the Mechanism, the accused shall be detained in facilities provided by the host country, or by another country. In exceptional circumstances, the accused may be held in facilities outside of the host country. The President may, on the application of a Party, request modification of the conditions of detention of an accused.

A request for release to a "safe house", to the extent it seeks a controlled residence requirement, would be considered a motion for modification of conditions of detention and should be addressed to the President, not the Single Judge.[585]

The President's broad authority to supervise the conditions of detention of all detainees, including both accused persons and convicted persons awaiting transfer to an

[585] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Motion for Provisional Release* (29 March 2019) at p. 3

enforcement State from the UNDF or the UNDU, necessarily embraces the ability to modify their conditions of detention.[586]

A request for modification of conditions of detention involving detention at a location other than the UNDF will only be granted in exceptional circumstances which imperatively demand it.[587]

The possibility, if review is authorized, that the defendant's convictions or sentence may be vacated and quashed does not, as such, amount to exceptional circumstances which imperatively demand the modification of the conditions of his detention.[588]

Undue delay such as to warrant modification of the conditions of detention had not yet occurred where review proceedings had been delayed for six months due to arrest of Appeals Chamber judge. Motion should be re-filed in three months' time.[589]

Modification of conditions of detention not warranted where review hearing would be scheduled in near future and President could delay transfer to enforcement state pending the review hearing.[590]

Modification of detention condition of person found unfit to stand trial so as to allow him to reside in safe house, rather than at UNDU, where he could be cared for by his family, was not justified by exceptional circumstances, particularly where The Netherlands declined to agree to such conditions.[591]

The right of persons detained at the UNDU to have access to all information on their medical file upon request is fundamental.[592]

The detainee, and any other persons authorised by him in accordance with the

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[586] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Motion to Report Government of Turkey to United Nations Security Council and for Modification of Conditions of Detention* (22 March 2017) at fn. 17

[587] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Motion to Report Government of Turkey to United Nations Security Council and for Modification of Conditions of Detention* (22 March 2017) at p. 3; *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Felicien Kabuga's Motion for Modification of Conditions of Detention* (29 October 2024) at p. 3

[588] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Motion to Report Government of Turkey to United Nations Security Council and for Modification of Conditions of Detention* (22 March 2017) at p. 4

[589] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Motion to Report Government of Turkey to United Nations Security Council and for Modification of Conditions of Detention* (22 March 2017) at p. 4

[590] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Second Renewed Motion to Modify Conditions of Detention* (9 November 2017)

[591] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Felicien Kabuga's Motion for Modification of Conditions of Detention* (29 October 2024) at p. 4

[592] *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (10 May 2024) at para. 45

applicable procedure, should receive as soon as possible any medical records he has requested.[593]

It is important for any patient being able to discuss health issues in their own native language. The Registrar should ensure that the detainee has access to translation services in his own language when interacting with medical personnel.[594]

Rule 68—provisional release

(A) Once detained, an accused may not be released except upon an order of a Chamber.
(B) Release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement by the Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness, or other person. The existence of sufficiently compelling humanitarian grounds may be considered in granting such release.
(C) The Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.
(D) Any decision rendered under this Rule by the Trial Chamber shall be subject to appeal as of right.
(E) The Prosecutor may apply for a stay of a decision by the Trial Chamber to release an accused on the basis that the Prosecutor intends to appeal the decision, and shall make such an application at the time of filing his response to the initial application for provisional release by the accused.
(F) Where the Trial Chamber grants a stay of its decision to release an accused, the Prosecutor shall file his appeal not later than one day from the rendering of that decision.
(G) Where the Trial Chamber orders a stay of its decision to release the accused pending an appeal by the Prosecutor, the accused shall not be released until either:
(i) the time-limit for the filing of an appeal by the Prosecutor has expired, and no such appeal is filed;
(ii) the Appeals Chamber dismisses the appeal; or
(iii) the Appeals Chamber otherwise orders.
(H) If necessary, the Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been released or is for any other reason at liberty. The provisions of Rules 55 to 63 shall apply mutatis mutandis.
(I) Without prejudice to the provisions of Rule 131, the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed

[593] *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (10 May 2024) at para. 45
[594] *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (10 May 2024) at para. 40

period if it is satisfied that:
(i) the appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be;
(ii) the appellant, if released, will not pose a danger to any victim, witness, or other person; and
(iii) special circumstances exist warranting such release. The provisions of paragraphs (C) and (H) shall apply mutatis mutandis.

appeal

To successfully challenge a discretionary decision on provisional release, a party must demonstrate that the trial chamber has committed a discernible error in that the decision is: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the trial chamber's discretion. The Appeals Chamber will also consider whether the trial chamber has given' weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.[595]

burden of proof

The burden falls upon the accused to demonstrate, on the balance of the probabilities, that, if released, he or she will appear for trial and will not interfere with any victim, witness, or other person.[596] These requirements are cumulative.[597]

awaiting trial

Accused awaiting contempt trial ordered released to Rwanda where they posed neither a flight risk or a danger to witnesses and where the length of their pretrial detention might exceed the length of any sentence imposed.[598]

during trial

Generally and in practice, provisional release ends when trial begins.[599]

Normally, an accused person should be present at his trial. Authorizing provisional release during ongoing proceedings, especially the presentation of evidence,

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[595] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR68.1, *Decision on Prosecution Appeal Against Decision Granting Marie Rose Fatuma Provisional Release…* (6 June 2019) at para. 5
[596] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion for Provisional Release to the United States of America* (8 February 2019) at fn. 16
[597] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion for Provisional Release to the United States of America* (8 February 2019) at p. 5
[598] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Motion for Provisional Release* (29 March 2019); *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's Motion for Provisional Release* (29 March 2019)
[599] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Stanisic's Motion for Extension of Provisional Release* (19 May 2017) at para. 15

should be the exception.[600]

Both the Statute and the Rules allow for the possibility of an accused remaining on provisional release during proceedings if the accused continues to satisfy the conditions for provisional release, is represented by counsel, and has voluntarily and unequivocally waived his right to be present in the courtroom during that portion of the ongoing trial.[601]

Should the accused wish to be provisionally released during trial, they would be required to waive their presence at trial.[602]

While the balance of factors favored continuing provisional release during trial for an accused who waived his presence, it would not be appropriate or in the interests of justice to allow him to remain on provisional release during the initial stage of the Prosecution case. This would also allow for an updated assessment of his health while at the detention unit.[603]

The existence of humanitarian grounds, while relevant, is not a mandatory requirement for provisional release at trial.[604]

Provisional release during trial was contingent upon adequate assurances that the health of the accused does not deteriorate to cause a disruption to the trial proceedings should he be unable to travel to The Hague when required. Provisional release extended and further medical examinations in Serbia ordered.[605]

Accused provisionally released during recess in the trial where he had obeyed all conditions of previous provisional releases.[606]

Accused allowed to waive his appearance and be provisionally released for

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[600] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Stanisic's Motion for Extension of Provisional Release* (19 May 2017) at para. 16; *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Simatovic's Motion requesting Provisional Release* (12 September 2018) at p. 2

[601] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Modalities for Trial* (13 April 2017) at para. 16

[602] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Modalities for Trial* (13 April 2017) at para. 20

[603] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Stanisic's Motion for Extension of Provisional Release* (19 May 2017) at paras. 25-26

[604] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Simatovic's Motion Requesting Provisional Release during the Trial Recess* (19 July 2017) at para. 8; *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Simatovic's Motion Requesting Provisional Release during the Court Recess* (4 December 2017), p. 2

[605] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Stanisic Defence Motion for Extension of Provisional Release* (25 September 2017) at para.12

[606] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Simatovic's Urgent Defence Motion Requesting Provisional Release* (16 October 2017) at paras. 5-7; *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Simatovic's Motion Requesting Provisional Release during the Court Recess* (4 December 2017); *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Simatovic's Motion Requesting Provisional Release during Summer Judicial Recess* (17 July 2018)

periods when the trial would be in session.[607]

financial assistance

Registrar did not err in refusing to provide subsistence to the accused while he remained in Arusha and in concluding that the accused could safely return to Rwanda when released from custody pending trial and engage in gainful employment there.[608]

handover to State

It is not necessary that the Registry hand over the accused to an official of the State when executing her provisional release and this should not delay the accused's release.[609]

Registry ordered to engage with the Defence and use its good offices to provide all possible support in facilitating contact and communication between the Defence and the appropriate authorities of any national jurisdictions in which a person deemed unfit to stand trial seeks provisional release.[610]

interference with witnesses

Concerns about interference with witnesses are not sufficient by themselves to refuse provisional release given the presumption of innocence.[611]

Prosecution failed to provide a concrete basis to substantiate its concern that, if released, the accused who is alleged to have interfered with witnesses, may continue to do so.[612]

length of detention

Further pre-trial detention of an accused in a contempt prosecution who had already been detained for more than 9 months presented a clear risk of violating the principle of proportionality - that the duration of pre-trial detention should not exceed the likely duration of the sentence if the accused were to be convicted - and

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[607] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Simatovic's Motion for Provisional Release* (9 March 2020) at p. 3
[608] *Prosecutor v Nzabonimpa et al,* No, MICT-18-116-T, *Decision on Dick Prudence Munyeshuli's Request for Review of the Registrar's Decision of 17 May 2021* (19 August 2021) at paras. 30-31
[609] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Registrar's Submission in relation to Decision on Provisional Release of Marie Rose Fatuma* (15 August 2019)
[610] *Prosecutor v Kabuga,* No. MICT-13-38-T, *Decision Imposing an Indefinite Stay of Proceedings* (8 September 2023) at p. 5
[611] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR68.1, *Decision on Prosecution Appeal Against Decision Granting Marie Rose Fatuma Provisional Release…* (6 June 2019) at para. 10
[612] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR68.1, *Decision on Prosecution Appeal Against Decision Granting Marie Rose Fatuma Provisional Release…* (6 June 2019) at para. 10

becoming arbitrary.[613]

The Mechanism must exercise its contempt jurisdiction in full compliance with the rights afforded to accused under the Statute. Continued pre-trial detention beyond nine months in contempt case threatens to undermine fundamental fairness, which is a cornerstone of international justice.[614]

Liberty interests of the accused were considerable where she had been in pretrial detention for almost 11 months on a multi-accused contempt case in which her pretrial detention could exceed her likely sentence if convicted.[615]

Since it was designed for persons accused of serious international crimes, the provisional release regime necessarily cannot be the only means in the context of a contempt case to prevent arbitrary detention or infringements on the presumption of innocence due to prospective or actual excessive preventative detention.[616]

Where the preventative detention was rapidly approaching the likely maximum sentence, imposing provisional release with conditions would not be necessary or appropriate given that such restrictions should not also be imposed beyond a maximum possible sentence. Unconditional release is the only relief that will ensure the fairness of the proceedings.[617]

Arrest warrant vacated and accused ordered immediately released and his travel documents returned to him where his pretrial detention of 13 months had exceeded the likely maximum sentence if convicted in contempt case.[618]

modification of conditions

Reporting requirements modified from in person to telephonic considering restrictions on movement imposed by government of Rwanda considering coronavirus pandemic.[619]

over objection of accused

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[613] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Second Motion for Provisional Release* (19 June 2019) at para. 20
[614] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Second Motion for Provisional Release* (19 June 2019) at para. 21
[615] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Marie Rose Fatuma's Second Motion for Provisional Release to Rwanda* (29 July 2019) at pp. 3-4
[616] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Order to Show Cause* (1 October 2019) at para. 10, fn. 31
[617] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Order to Show Cause* (1 October 2019) at para. 12
[618] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Order to Show Cause* (1 October 2019) at para. 13
[619] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Further Decision on Maximilien Turinabo's Provisional Release* (26 March 2020) at p. 2

There is no practice before the *ad hoc* Tribunals, or the Mechanism, of provisional release to a State over an accused's objection.[620]

persons awaiting appeal

Whether an applicant satisfies the requirements of Rule 68(I) is to be determined on a balance of probabilities. The fact that an individual has already been sentenced is a matter to be considered when balancing the probabilities.[621]

Accused's provisional release pending appeal denied where his current state of health did not amount to an acute crisis or a life-threatening medical condition for which appropriate medical treatment was unavailable in the Netherlands.[622]

In principle, the risk of flight is higher when a person has been sentenced to a long period of imprisonment than when a person is undergoing trial.[623]

Considering long time remaining to complete 40-year sentence, and history of actively evading justice before being arrested, the appellant was a flight risk and did not satisfy the first condition for provisional or temporary release.[624]

persons awaiting transfer

Rule 68(I) applies, mutatis mutandis, to convicted persons who are in the custody of the Mechanism pending transfer to an enforcement State.[625]

Provisional release may be granted if the Appeals Chamber is satisfied that: (i) the convicted person, if released, will surrender into detention at the conclusion of the fixed period; (ii) the convicted person, if released, will not pose a danger to any victim, witness, or other person; and (iii) special circumstances exist warranting such release.[626]

Whether an applicant satisfies these requirements is to be determined on a balance of probabilities, and the fact that an individual has already been sentenced is a matter to

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[620] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Felicien Kabuga's Fitness to Travel to Rwanda* (14 November 2025) at para. 22
[621] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion for Provisional Release on Humanitarian Grounds…*(8 June 2018) at para. 10
[622] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion for Provisional Release on Humanitarian Grounds…*(8 June 2018) at para. 10
[623] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motions for Provisional Release and Temporary Release to Attend a Memorial Service* (31 May 2016) at para. 10
[624] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motions for Provisional Release and Temporary Release to Attend a Memorial Service* (31 May 2016) at paras. 10-11
[625] *Prosecutor v Tolimir*, No. MICT-15-95-ES, *Decision on Motion for Provisional Release* (23 February 2016) at para. 7; *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion for Provisional Release on Humanitarian Grounds…*(8 June 2018) at para. 10
[626] *Prosecutor v Tolimir*, No. MICT-15-95-ES, *Decision on Motion for Provisional Release* (23 February 2016) at para. 8

be considered by the Appeals Chamber when balancing the probabilities.[627]

Special circumstances warranting provisional release related to humane and compassionate considerations exist where there is an "acute justification", such as a medical need, a memorial service for a close family member, or a visit to a close relative in extremely poor health whose death is believed to be imminent.[628]

Requests premised solely on the combination of advanced age and poor health, do not meet the threshold of "acute justification" in the absence of demonstration of the existence of an acute crisis or a life-threatening medical condition.[629]

An applicant for provisional release on medical grounds bears the burden of establishing that appropriate medical treatment is unavailable or cannot be performed in the Netherlands. An applicant's preference to obtain medical care in a hospital where he had been formerly treated does not satisfy this requirement.[630]

Transfer to Serbia for medical treatment pending designation of an enforcement state denied where prisoner was receiving adequate treatment in The Netherlands.[631]

President has authority to grant provisional release to person awaiting transfer for enforcement of sentence.[632]

A person whose conviction is final cannot seek provisional release since issuing a final conviction concludes the competence of the Appeals Chamber with respect to a convicted person. Any requests for the release of such persons should be in the form of a request to the President for early release.[633]

Provisional release to seriously ill prisoner granted for six months while he is awaiting enforcement of his sentence.[634]

Provisional release to prisoner with medical problems denied where his current

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[627] *Prosecutor v Tolimir*, No. MICT-15-95-ES, *Decision on Motion for Provisional Release* (23 February 2016) at para. 8
[628] *Prosecutor v Tolimir*, No. MICT-15-95-ES, *Decision on Motion for Provisional Release* (23 February 2016) at para. 9
[629] *Prosecutor v Tolimir*, No. MICT-15-95-ES, *Decision on Motion for Provisional Release* (23 February 2016) at para. 9; *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion for Provisional Release on Humanitarian Grounds…*(8 June 2018) at para. 11
[630] *Prosecutor v Tolimir*, No. MICT-15-95-ES, *Decision on Motion for Provisional Release* (23 February 2016) at para. 10; *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion for Provisional Release on Humanitarian Grounds…*(8 June 2018) at para. 14
[631] *Prosecutor v Mladic*, No, MICT-13-56, *Decision on the Application for Release of Ratko Mladic* (8 November 2024) at para. 26
[632] *Prosecutor v Nikolic,* No. MICT-15-85-ES.4, *Decision of the President on the Application for Early Release and Other Relief of Drago Nikolic* (13 October 2015) at para. 38
[633] *Prosecutor v Mladic*, No. MICT 13-56-ES, *Decision on the Application for Release of Ratko Mladic* (10 May 2024) at para. 18
[634] *Prosecutor v Nikolic,* No. MICT-15-85-ES.4, *Decision of the President on the Application for Early Release and Other Relief of Drago Nikolic* (13 October 2015) at para. 43

state does not amount to an acute crisis or life-threatening medical condition meeting the stringent threshold of special circumstances.[635]

persons serving sentence in enforcement state

Rule 68(I) does not apply to persons serving their sentence in an enforcement state.[636]

Applications for provisional release for persons serving their sentences at the UN Detention Unit awaiting designation to an enforcement state are to be heard by the President, and not the Appeals Chamber.[637]

Release of convicted person serving his sentence at the UN Detention Unit to attend the memorial service of a close family member denied where the defendant evaded justice for 16 years as had many years left to serve on his life sentence.[638]

persons found unfit to stand trial

Release prior to acquittal or termination of a case is only expressly contemplated in the Statute and Rules through provisional release under Rule 68. Therefore, where an indefinite stay of proceedings was entered for a person deemed unfit to stand trial, he would remain in the detention unit until a State could be found willing to host him on provisional release.[639]

reasoned decision

A Chamber or Judge faced with a motion for provisional release must consider all the relevant factors that a reasonable trial chamber would have been expected to consider before coming to a decision and provide a reasoned opinion indicating their view on those factors.[640]

The judge must assess the relevant circumstances not only as they exist at the time when the decision on provisional release is reached but also, as much as can be

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[635] *Prosecutor v Tolimir*, No. MICT-15-95-ES, *Decision on Motion for Provisional Release* (23 February 2016) at para. 11
[636] *Prosecutor v Semanza*, No. MICT-13-36-ES.2, *Decision on Motion for Provisional Release* (21 April 2020) at p. 5; *Prosecutor v Lukic*, No. MICT-14-67-ES.4, *Decision on Motion for Provisional Release or Immediate Conditional Release of 1 May 2020* (14 August 2020) at p. 4; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on Motions for Temporary Release and a Covid-19 Test* (23 April 2021) at p. 3
[637] *Prosecutor v Simatovic*, No. MICT-15-96-ES.1, *Decision on Franko Simatovic's Applications for Provisional Release and Legal Aid* (29 September 2023) at p. 2
[638] *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (11November 2025) at p. 2
[639] *Prosecutor v Kabuga,* No. MICT-13-38-T, *Decision Imposing an Indefinite Stay of Proceedings* (8 September 2023) at p. 2
[640] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion for Provisional Release to the United States of America* (8 February 2019) at p. 4

foreseen, at the time the accused is expected to return to the Mechanism.[641]

single judge

A Single Judge has the authority to adjudicate provisional release issues in contempt cases.[642]

State guarantees

It is not a prerequisite to obtaining provisional release for an applicant to provide guarantees from the state to which the accused seeks to be released, or from anyone else, that he will appear for trial.[643]

A response from the State to which the accused proposes to be released is not a prerequisite to provisional release.[644]

Single Judge abused his discretion in granting provisional release by placing significant weight on the expectation that Rwanda would ensure compliance with the conditions of provisional release, when government on Rwanda had stated that it was unable to guarantee compliance with conditions of release or assure the accused's return for trial.[645]

Single Judge did not err in failing to infer from the fact that Rwanda did not respond to invitation to be heard on provisional release that it opposed such release.[646]

Provisional release to Rwanda granted where Rwanda did not affirmatively oppose it and Rwanda was not being requested to guarantee that the accused will appear for trial or to monitor the conditions of her provisional release.[647]

Where motion for provisional release proposed release of accused to the United States, the Single Judge invited submissions from the United States as to whether it is willing to receive and supervise the accused.[648]

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[641] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion for Provisional Release to the United States of America* (8 February 2019) at p. 4
[642] *Prosecutor v Turinabo*, No. MICT-18-116-PT, *Order for Submissions* (14 December 2018) at fn. 3
[643] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion for Provisional Release to the United States of America* (8 February 2019) at p. 4; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Motion for Provisional Release* (29 March 2019) at p. 3
[644] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR68.2&3, *Decision on Prosecution Appeals against the Decisions Granting Turinabo and Ndagijimana Provisional Release* (5 August 2019) at para. 19
[645] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR68.1, *Decision on Prosecution Appeal Against Decision Granting Marie Rose Fatuma Provisional Release…* (6 June 2019) at para. 15
[646] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR68.2&3, *Decision on Prosecution Appeals against the Decisions Granting Turinabo and Ndagijimana Provisional Release* (5 August 2019) at para. 18
[647] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Marie Rose Fatuma's Second Motion for Provisional Release to Rwanda* (29 July 2019) at p. 4
[648] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Order for Submissions* (14 December 2018) at p. 2

A single judge may grant provisional release only if satisfied that, if released, the accused will appear for trial and will not pose a danger to any victim, witness, or other person, and after having given both the host country and the State to which the accused seeks to be released the opportunity to be heard.[649]

While the accused's work as a defence investigator and his interest in litigating this case in order to establish his innocence; the relative limited gravity of the nature of the charge against him when compared with other crimes over which the Mechanism has jurisdiction, including other contempt crimes; and the fact that cases of contempt are generally of short duration that carry lower prison terms, if any, support his provisional release, in light of the absence of assurances from the United States, these are insufficient to establish that the accused will be able to ensure his return for trial if provisionally released to the United States.[650]

Provisional release to United States denied without prejudice where there was no indication that the United States would honour his ten-year visa and allow the accused to enter the United States now that he had been charged with an international crime.[651]

Provisional release to Tanzania requires the consent of the government of Tanzania pursuant to the Host State Agreement.[652]

Provisional release to Netherlands denied where government of The Netherlands declined to allow accused to reside on its territory and he was a flight risk.[653]

While guarantees from the State to which release is sought are not a prerequisite, provisional release under Rule 68 can not be ordered where the State refuses to voluntarily accept the accused and the applicant does not have a right to reside in the country of prospective release.[654]

stay pending appeal

A decision may be stayed if the objective of an appeal against the decision would be significantly impaired should the decision be already given effect. Where no evidentiary hearings were currently scheduled for the period of release, giving effect to

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[649] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion for Provisional Release to the United States of America* (8 February 2019) at p. 3
[650] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion for Provisional Release to the United States of America* (8 February 2019) at fn. 22
[651] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion for Provisional Release to the United States of America* (8 February 2019) at p. 4
[652] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Motion for Provisional Release* (29 March 2019) at p. 3
[653] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Motion Seeking a Stay of Proceedings or Alternatively Provisional Release* (1 June 2021) at p. 3
[654] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Defence Request for an Article 28 Order for Provisional Release* (29 February 2024) at p. 4

the decision would not impair the objective of a potential Prosecution's appeal, and therefore the decision would not be stayed.[655]

Rule 69—status conferences

(A) A Trial Chamber or a Single Judge shall convene a status conference within one hundred and twenty days of the initial appearance of the accused and thereafter within one hundred and twenty days after the last status conference:
(i) to organise exchanges between the Parties so as to ensure expeditious preparation for trial;
(ii) to review the status of his case and to allow the accused the opportunity to raise issues in relation thereto, including the mental and physical condition of the accused.
(B) The Appeals Chamber or an Appeals Chamber Judge shall convene a status conference, within one hundred and twenty days of the filing of a notice of appeal and thereafter within one hundred and twenty days after the last status conference, to allow any person in custody pending appeal the opportunity to raise issues in relation thereto, including the mental and physical condition of that person.
(C) With the written consent of the accused, given after receiving advice from his Counsel, a status conference under this Rule may be conducted:
(i) in the presence of the accused, but with his Counsel participating either via teleconference or video-conference; or
(ii) in the absence of the accused, but with his participation via teleconference if he so wishes and/or participation of his Counsel via teleconference or video-conference.

Rule 69(B) was not applicable on appeal by acquitted and released persons detained under house arrest in Niger because they were not in the custody of the Mechanism.[656]

Given that the situation of the Relocated Persons is being addressed through other avenues by the President and the Registrar, it was unnecessary for the Appeals Chamber to hold a status conference. The Appeals Chamber cannot support the suggestion that a status conference should be used as a mechanism to circumvent proper procedures.[657]

President has discretion to hold a remote hearing, as opposed to a status conference, as interacting with counsel for the Relocated Persons in a hearing could be an appropriate complement to the Registrar's written reports and allow counsel to express

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[655] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Simatovic's Motion requesting Provisional Release* (12 September 2018) at p. 4
[656] *Prosecutor v Nzuwonemeye et al*, No. MICT-22-124, *Decision on Joint Request for Assignment of Counsel, Extension of Time for Filing an Appeal, and Scheduling a Status Conference* (15 March 2022) at p. 4; *Prosecutor v Nzuwonemeye et al*, No. MICT-22-124, *Order on Motion for Status Conference* (16 April 2024) at p. 2
[657] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 46

any concerns in a different forum. Parties ordered to make submissions on modalities of such a hearing.[658]

Although President has the power to order a hearing, as opposed to a status conference, concerning the fate of the relocated persons detained in Niger, she would not order a hearing where the relocated persons feared that contact with the current authorities in Niger might trigger their expulsion and the matter could best be dealt with by the Registrar convening a meeting with counsel for the relocated persons.[659]

Request for status conference prior to filing of notice of appeal denied, but appellant invited to inform President if he wished to be heard on a pressing matter related to his physical or mental health.[660]

In the absence of an express requirement in the Rules. a status conference or other procedural hearing may he held by a judge or a Chamber if it is in the interests of justice or required for the proper preparation of the hearing.[661]

Request that newly substituted judge attend status conference and that parties be able to highlight arguments to that judge denied as not grounded in the Rules or necessary in the interests of justice.[662]

Request for status conference prior to review hearing denied where it was not necessary for the proper preparation of the hearing and there was no specific issue raised concerning the physical or mental condition of the defendant.[663]

During coronavirus pandemic, status conference ordered to be held with the convicted person participating remotely from the UNDU and able to communicate with his counsel before and during the hearing.[664]

During coronavirus pandemic, status conference would be conducted in writing, with the consent on the accused.[665]

During coronavirus pandemic, status conference would be vacated where

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[658] *Prosecutor v Nzuwonemeye et al*, No. MICT-22-124, *Order on Motion for Status Conference* (16 April 2024) at p. 2
[659] *Prosecutor v Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motion for Status Conference* (27 May 2024) at pp. 3-4
[660] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Request for Status Conference* (1 April 2016)
[661] *Prosecutor v Ngirabatware,* No. MICT-12-29-R, *Decision on Request for Status Conference* (3 October 2017) at p. 1
[662] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request Related to the Next Status Conference* (3 December 2018)
[663] *Prosecutor v Ngirabatware,* No. MICT-12-29-R, *Decision on Request for Status Conference* (3 October 2017)
[664] *Prosecutor v Mladic*, No. MICT-13-56-A, *Order Scheduling a Status Conference* (11 May 2020)
[665] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Order Regarding the Status Conference* (18 May 2020)

convicted person preferred to wait until he could be in the courtroom with his counsel.[666]

During coronavirus pandemic, judge would preside at status conference by video from country of her residence.[667]

Rule 70—trial preparation

(A) The Presiding Judge of the Trial Chamber shall, no later than seven days after the initial appearance of the accused, designate from among its members a Judge responsible for the pre-trial proceedings ("Pre-Trial Judge").
(B) The Pre-Trial Judge shall, under the authority and supervision of the Trial Chamber seised of the case, coordinate communication between the Parties during the pre-trial phase. The Pre-Trial Judge shall ensure that the proceedings are not unduly delayed and shall take any measure necessary to prepare the case for a fair and expeditious trial.
(C) The Pre-Trial Judge shall be entrusted with all of the pre-trial functions set forth in Rules 71, 72, and 81, and with all or part of the functions set forth in Rule 80.
(D) The Pre-Trial Judge, with the assistance of a Senior Legal Officer, where appropriate, shall establish a work plan indicating the obligations that the Parties are required to meet pursuant to this Rule and the dates by which these obligations must be fulfilled.
(E) Once any existing preliminary motions filed within the time-limit provided under Rule 79 are disposed of, the Pre-Trial Judge shall order the Prosecutor, within a time-limit set by the Pre-Trial Judge and not less than six weeks before the Pre-Trial Conference required by Rule 81, to file the following:
(i) the final version of the Prosecutor's pre-trial brief including, for each count, a summary of the evidence which the Prosecutor intends to bring regarding the commission of the alleged crime and the form of responsibility incurred by the accused; this brief shall include any admissions by the Parties and a statement of matters which are not in dispute; as well as a statement of contested matters of fact and law;
(ii) the list of witnesses the Prosecutor intends to call with:
(a) the name or pseudonym of each witness;
(b) a summary of the facts on which each witness will testify;
(c) the points in the indictment as to which each witness will testify, including specific references to counts and relevant paragraphs in the indictment;
(d) the total number of witnesses and the number of witnesses who will testify against each accused and on each count;
(e) an indication of whether the witness will testify in person or pursuant to Rules 110, 111, 112, or 113 by way of written statement or use of a transcript of testimony from other proceedings before the ICTY, the ICTR, or the Mechanism; and
(f) the estimated length of time required for each witness and the total time

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[666] *Prosecutor v Mladic*, No. MICT-13-56-A, *Order Concerning the Status Conference and Medical Reporting by the Registrar* (22 May 2020)
[667] *Prosecutor v Mladic*, No. MICT-13-56-A, *Order Relating to the Status Conference* (20 May 2020), p. 3

estimated for presentation of the Prosecutor's case.
(iii) the list of exhibits the Prosecutor intends to offer stating where possible whether the Defence has any objection as to authenticity. The Prosecutor shall serve on the Defence copies of the exhibits so listed.
(F) After the submission by the Prosecutor of the items mentioned in paragraph (E), the Pre-Trial Judge shall order the Defence, within a time-limit set by the Pre-Trial Judge, and not later than three weeks before the Pre-Trial Conference, to file a pre-trial brief addressing the factual and legal issues, and including a written statement setting out:
(i) in general terms, the nature of the accused's defence;
(ii) the matters with which the accused takes issue in the Prosecutor's pretrial brief; and
(iii) in the case of each such matter, the reason why the accused takes issue with it.
(G) In order to perform his functions, the Pre-Trial Judge may proprio motu, where appropriate, hear the Parties without the accused being present. The Pre-Trial Judge may hear the Parties in his private room, in which case minutes of the meeting shall be taken by a representative of the Registry.
(H) The Pre-Trial Judge shall keep the Trial Chamber regularly informed, particularly where issues are in dispute, and may refer such disputes to the Trial Chamber.
(I) The Pre-Trial Judge may set a time for the making of pre-trial motions and, if required, any hearing thereon. A motion made before trial shall be determined before trial unless the Pre-Trial Judge, for good cause, orders that it be deferred for determination at trial. Failure by a Party to raise objections or to make requests which can be made prior to trial at the time set by the pre-trial shall constitute waiver thereof, but the Pre-Trial Judge for cause may grant relief from the waiver.
(J) After the filings by the Prosecutor pursuant to paragraph (E), the Pre-Trial Judge shall submit to the Trial Chamber a complete file consisting of all the filings of the Parties, transcripts of status conferences, and minutes of meetings held in the performance of the Pre-Trial Judge's functions pursuant to this Rule.
(K) The Trial Chamber may proprio motu exercise any of the functions of the Pre-Trial Judge.
(L) Upon a report of the Pre-Trial Judge, the Trial Chamber shall decide, should the case arise, on sanctions to be imposed on a Party which fails to perform its obligations pursuant to the present Rule. Such sanctions may include the exclusion of testimonial or documentary evidence.
(M) After the close of the Prosecutor's case and before the commencement of the Defence case, the Trial Chamber shall order the Defence to file the following:
(i) a list of witnesses the Defence intends to call with:
(a) the name or pseudonym of each witness;
(b) a summary of the facts on which each witness will testify;
(c) the points in the indictment as to which each witness will testify;
(d) the total number of witnesses and the number of witnesses who will testify for each accused and on each count;
(e) an indication of whether the witness will testify in person or pursuant to Rules 110, 111, 112, or 113 by way of written statement or use of a transcript of testimony

from other proceedings before the ICTY, the ICTR, or the Mechanism; and
(f) the estimated length of time required for each witness and the total time estimated for presentation of the Defence case; and
(ii) a list of exhibits the Defence intends to offer in its case, stating where possible whether the Prosecutor has any objection as to authenticity. The Defence shall serve on the Prosecutor copies of the exhibits so listed.
(N) The Trial Chamber shall record the points of agreement and disagreement on matters of law and fact. In this connection, the Trial Chamber may order the Parties to file written submissions with the Trial Chamber.

Addition of prosecution witness was not error where witness testified nearly three months after his statement was disclosed, was cross-examined extensively, and accused did not seek additional time to prepare for the cross-examination.[668]

It is impermissible to list unidentified witnesses in the Prosecution's witness list. Any effort to call an unidentified witness would require leave to amend the witness list.[669]

Late addition of two CDs to Prosecution's exhibit list denied without prejudice to Prosecution's specifying which intercepted conversations on the recently received CDs it intended to offer into evidence.[670]

Rule 71—disclosure by the Prosecution

(A) Subject to the provisions of Rules 53, 75, and 78, the Prosecutor shall make available to the Defence in a language which the accused understands:
(i) within thirty days of the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused; and
(ii) within the time-limit prescribed by the Trial Chamber or the Pre-Trial Judge, and not later than thirty days before the date set for trial, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all transcripts and written statements taken in accordance with Rules 110, 111, 112, and 113; copies of the statements of additional prosecution witnesses shall be made available to the Defence when a decision is made to call those witnesses.
(B) The Prosecutor shall, on request, permit the Defence to inspect any books, documents, photographs, and tangible objects in the Prosecutor's custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

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[668] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at paras. 46-47
[669] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on the Prosecution Motion to Amend the Indictment* (17 October 2019) at para. 42 and fn. 114
[670] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motions related to the Proposed Amendment of the Prosecution Rule 70(E)(iii) Exhibit List* (27 February 2020) at p. 3

(C) Where information is in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to the Trial Chamber sitting in camera to be relieved from an obligation under the Rules to disclose that information. When making such application the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential.

certification by the Prosecution

Where Prosecution represented that it had disclosed all items seized from the accused, the filing of a certification to that effect was neither necessary nor required by Rule 71.[671]

conditions of disclosure

Defence shall not in any way, either directly or indirectly, disclose to the public any of the confidential information and materials provided to it by the Prosecution pursuant to Rule 71(A)(i), except as directly and specifically necessary to allow it to prepare for and participate in these proceedings and present a defence, or where such material has become public during public and open session proceedings;

When it is directly and specifically necessary to make disclosures of confidential material or information shared under Rule 71(A)(i) to allow it to prepare for and participate in these proceedings and present a defence, shall not disclose information in contravention of applicable protective measures and take precautions to avoid identifying individuals as Prosecution witnesses; inform each person among the public to whom such material is shown or disclosed that the information and materials are confidential pursuant to judicial order and that breach of the confidentiality provisions may entail legal consequences; inform each person among the public to whom such material is shown or disclosed that such person is not to copy, reproduce, or publish such material or information, in whole or in part, and is not to show or disclose it to any other person; ensure that, if provided with the original or any copy of such material, the person shall return it to the Defence when the material is no longer specifically necessary to allow it to prepare for and participate in these proceedings; and maintain a list of persons to whom the material or information is disclosed, recording the name of the persons, a description of the material disclosed, and the dates of both disclosure and return of the material or confirmation of its deletion or destruction.[672]

items seized from the accused

It was in the interests of justice to provide the accused a mirror image of his

[671] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion to Compel the Prosecution to Disclose Items Obtained from Maximilien Turinabo* (17 July 2019) at p. 3
[672] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion for Confidentiality of Disclosed Information and Materials* (30 November 2020) at p. 4

laptops' hard drives while litigation related to their seizure is pending.[673]

Providing disclosure of data extracted from seized devices in the same format available to the Prosecution satisfied the Prosecution's obligation under Rule 71(B).[674]

items subject to the rule

Applications for variation of protective measures, filed by national authorities, although in the prosecution's custody and control were not "books, documents, or tangible objects" within the meaning of Rule 71(B).[675]

Rule 71(A)(ii) does not apply to review hearings where the prosecution is the respondent.[676]

material to the preparation of the defence

Rule 71(B) applies to appeal proceedings.[677]

Does not apply in the post-trial stage.[678]

In relation to appellate proceedings, the Prosecution should consider the following criteria to determine if material in its possession is material to the preparation of the defence: (i) whether the issue to which the material relates is the subject of a ground of appeal; or (ii) whether the material could reasonably lead to further investigation by the Defence and the discovery of additional evidence admissible on appeal.[679]

Prior to obtaining a judicial order for the inspection of any item material the preparation of the defence, the applicant must: (i) demonstrate that the material sought is in the custody or control of the Prosecution; (ii) establish the prima facie materiality of the document sought to the preparation of the defence case; and (iii) specifically identify the requested material.[680]

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[673] *Prosecutor v Ngirabatware,* No. MICT-12-29-R, *Order to the Registry for Mirror Images of Augustin Ngirabatware's Laptops' Hard Drives* (17 July 2019) at p. 2
[674] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Defence Motion for Disclosure of Material Seized from the Accused in September 2018* (20 September 2019) at p. 3
[675] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Compel Inspection of Pseudonyms of Witnesses* (22 May 2017) at p. 3
[676] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Motion for Disclosure* (5 September 2018)
[677] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on Motions for Disclosure* (25 May 2016) at p 2
[678] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Third Motion to Compel Disclosure of Witness GEK Material* (21 March 2007) at p. 5
[679] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on Motions for Disclosure* (25 May 2016) at p 3
[680] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on Motions for Disclosure* (25 May 2016) at p 3; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion for Access to Prosecution*

The preparation of the defence case is a broad concept, which is not limited to material to counter the Prosecution evidence and may, for example, be determined by assessing whether it is necessary for the cross-examination of a witness or by reference to the indictment.[681]

payments to witnesses

Record of amounts paid to witnesses for expenses are material to the preparation of the defence and should be disclosed.[682]

redactions

Prosecution failed to demonstrate the existence of exceptional circumstances warranting the redaction of information identifying the whereabouts of witnesses and victims in its disclosures.[683]

relief from disclosure

Prosecution redactions and refusal to disclose communications with Rwanda over telecommunication records were unwarranted where the prosecution had not applied pursuant to Rule 71(C) to be relieved from its disclosure obligations.[684]

requests for assistance to States

Request seeking the disclosure of all RFA's relating to the investigation into the alleged conduct of all the accused, and responses thereto, was too broad to meet the specificity and materiality requirements of Rule 71(B).[685]

The Prosecution should disclose its correspondence with Rwandan authorities as it endeavours to seek additional intercepts conducted by Rwandan authorities.[686]

Requests for Assistance and Responses Thereto (18 April 2019) at pp. 2-3; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion to Compel the Prosecution to Provide Information under Rule 71(B) relating to Prosecution Personnel* (18 April 2019) at pp. 2-3

[681] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion for Access to Prosecution Requests for Assistance and Responses Thereto* (18 April 2019) at p. 3; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion to Compel the Prosecution to Provide Information under Rule 71(B) relating to Prosecution Personnel* (18 April 2019) at p. 3

[682] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Requests for Disclosure of Information Arising From Interviews with Investigator Tomasz Blaszczyk* (7 May 2020) at p. 7

[683] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion for Confidentiality of Disclosed Information and Materials* (30 November 2020) at p. 2

[684] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Request for Further Order of Disclosure of Telecommunication-Related Material* (2 September 2019) at p. 4

[685] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion for Access to Prosecution Requests for Assistance and Responses Thereto* (18 April 2019) at p. 4

[686] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Requests for Disclosure of Information Arising From Interviews with Investigator Tomasz Blaszczyk* (7 May 2020) at p. 5

In addition to RFAs by which intercepted communications were obtained, the Prosecution is required to disclose the clearance letter by which the Rwandan government transmitted the intercepts to the Prosecution.[687]

statements of prosecution witnesses

Notes taken by investigator of interview with witness and contained in internal memorandum recorded answers of the witness and came within Rule 71(A)(ii). Failure to disclose the notes violated this rule.[688]

supporting materials

A defendant arrested on a warrant issued by the Mechanism but whose case has been referred to Rwanda is not entitled to disclosure of the supporting materials submitted in support of his indictment prior to being transferred to the seat of the Mechanism.[689]

Amicus curiae reports ordered disclosed to the accused upon the finding of a *prima facie* case to proceed with a prosecution for contempt.[690]

telecommunications data

Where prosecution had disclosed to defence call data records in the same format as it had received them, no further order that they be disclosed in harmonised, searchable, or analysed form was warranted.[691]

Rule 72—additional disclosure

Subject to the provisions of Rules 53 and 75:
(A) Within the time-limit prescribed by the Trial Chamber, at a time not prior to a ruling under Rule 121, but not less than one week prior to the commencement of the Defence case, the Defence shall:
(i) on request, permit the Prosecutor to inspect and copy any books, documents, photographs, and tangible objects in the Defence's custody or control, which are intended for use by the Defence as evidence at trial;
(ii) provide to the Prosecutor copies of statements, if any, of all witnesses whom the

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[687] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Requests for Disclosure of Information Arising From Interviews with Investigator Tomasz Blaszczyk* (7 May 2020) at p. 7
[688] *Ngirabatware v Prosecutor*, No. MICT-12-29-A, *Decision on Augustin Ngirabatware's Motion for Sanctions for the Prosecution and for an Order of Disclosure* (15 April 2014) at para. 15
[689] *Prosecutor v Kayishema,* No MICT-12-23, *Decision on Fulgence Kayishema Motion for Disclosure and Reclassification* (28 June 2024) at p. 4
[690] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 40
[691] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Urgent Motion for Disclosure of Harmonised Call Data Records* (2 September 2019) at p. 2

Defence intends to call to testify at trial, and copies of all written statements taken in accordance with Rules 110, 111, 112, or 113, which the Defence intends to present at trial. Copies of the statements, if any, of additional witnesses shall be made available to the Prosecutor prior to a decision being made to call those witnesses;
(B) Within the time-limit prescribed by the Trial Chamber:
(i) the Defence shall notify the Prosecutor of its intent to offer:
(a) the defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;
(b) any special defence, including that of diminished or lack of mental responsibility; in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence; and
(ii) the Prosecutor shall notify the Defence of the names of the witnesses that the Prosecutor intends to call in rebuttal of any defence plea of which the Prosecutor has received notice in accordance with paragraph (B)(i) above.
(C) Failure of the Defence to provide notice under this Rule shall not limit the right of the accused to testify on the above defences.
(D) If either Party discovers additional evidence or material which should have been disclosed earlier pursuant to the Rules, that Party shall immediately disclose that evidence or material to the other Party and the Trial Chamber.

alibi

The evolving nature of ongoing investigations and the reality of a party's possession of incomplete information at certain stages of trial proceedings might excuse the provision of an incomplete initial notice of alibi or justify subsequent supplemental filings. However, the complete absence of any detail whatsoever concerning particularized locations or possible witnesses in an alibi notice until the eve of the defence case confirms that the Trial Chamber correctly determined that the accused did not provide notice in accordance with Rule 67(A)(ii)(a).[692]

The way an alibi is presented may impact its credibility. This is the case even if the Prosecution ultimately had an opportunity to interview the potential alibi witnesses or call additional evidence to rebut the alibi. A trial chamber is not required to consider whether the Prosecution suffered prejudice from the delayed filing of the notice of alibi.[693]

Rule 73—disclosure of exculpatory evidence and other relevant material

Subject to the provisions of Rule 76,
(A) The Prosecutor shall, as soon as practicable, disclose to the Defence any material that in the actual knowledge of the Prosecutor may suggest the innocence

[692] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 194
[693] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 195

or mitigate the guilt of the accused or affect the credibility of Prosecution evidence;
(B) Without prejudice to paragraph (A), the Prosecutor shall make available to the Defence, in electronic form, collections of relevant material held by the Prosecutor, together with appropriate computer software with which the Defence can search such collections electronically;
(C) The Prosecutor shall take reasonable steps, if confidential information is provided to the Prosecutor by a person or entity under Rule 76(B) and contains material referred to in paragraph (A) above, to obtain the consent of the provider to disclosure of that material, or the fact of its existence, to the accused;
(D) The Prosecutor shall apply to the Trial Chamber sitting in camera to be relieved from an obligation under paragraph (A) to disclose information in the possession of the Prosecutor if its disclosure may prejudice further or ongoing investigations, or for any other reason may be contrary to the public interest or affect the security interests of any State, and when making such application, the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential;
(E) Notwithstanding the completion of the trial and any subsequent appeal, the Prosecutor shall disclose to the other Party any material referred to in paragraph (A) above.

appeal

An appeal lies as of right of any decision taken under Rule 73 by a single judge or trial chamber after an applicant's trial and appeal proceedings have concluded. This is necessary to give full effect to the continuous obligation imposed upon the Prosecution by Rule 73(E) to disclose exculpatory material after the completion of trial and any subsequent appeal.[694]

certification

Prosecution required to certify when its review of subsequent statements of Prosecution witnesses is complete and any additional disclosures resulting therefrom, if applicable, have been made[695]

continuing duty

The Prosecution's obligation to disclose exculpatory materials continues notwithstanding the completion of the trial and any subsequent appeal.[696]

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[694] *Prosecutor v Niyitegeka,* No. MICT-12-16-R, *Decision on Appeals of Decision Rendered by a Single Judge* (9 August 2017) at para. 12
[695] *Prosecutor v Niyitegeka,* No. MICT-12-16-R, *Decision on Appeals of Decision Rendered by a Single Judge* (9 August 2017) at para. 20
[696] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Eliezer Niyitegeka's Request for an Order for Disclosure of Exculpatory Evidence and other Relevant Evidence* (28 August 2013) at para. 11; *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Motion to Compel Disclosure of Witness GEK Material* (25 November 2015) at para. 6;; *Prosecutor v Musema*, No. MICT-12-15, *Decision on a Motion for Access and a Motion for Disclosure* (27 February 2018) at para. 12

The Office of the Prosecutor has a duty to utilize procedures designed to ensure that, particularly in instances where the same witnesses testify in different cases, the evidence provided by such witnesses is re-examined considering Rule 73 of the Rules to determine whether any material must be disclosed. This obligation reflects the possibility that statements, or testimony given by a witness in a subsequent proceeding may contain material subject to disclosure under Rule 73 of the Rules and underscores that, as noted above, determining what is subject to disclosure is a fact-based enquiry by the Prosecution.[697]

contradict prosecution evidence

Where interview notes of prosecution witness appeared to contradict witness' testimony on a certain point, the failure to disclose the notes violated Rule 73.[698]

Considering that the primary purpose of the statement was to gather historical information rather than gather information related to a criminal investigation, the accused did not demonstrate that the statement was materially inconsistent with the witness's testimony at trial. He did not therefore suffer prejudice because of the Prosecution's failure to disclose the witness' statement in a timely manner.[699]

exculpatory nature

Information of interview with ICTR employee in which he denied trying to influence prosecution witness to recant her testimony against the accused, contrary to what was claimed by prosecution witness, is potentially exculpatory and should be disclosed as this material may affect the credibility of prosecution evidence.[700]

Identity of former ICTR employee who allegedly participated in encouraging prosecution witness to testify falsely was exculpatory and must be disclosed by prosecution.[701]

Fact that ICTR Appeals Chamber declined to consider issue of prosecution witness' claim that ICTR employee sought to influence her to recant her testimony against the accused does not mean that evidence with contradicted the prosecution

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[697] *Prosecutor v Niyitegeka,* No. MICT-12-16-R, *Decision on Appeals of Decision Rendered by a Single Judge* (9 August 2017) at para. 19
[698] *Ngirabatware v Prosecutor*, No. MICT-12-29-A, *Decision on Augustin Ngirabatware's Motion for Sanctions for the Prosecution and for an Order of Disclosure* (15 April 2014) at para. 15
[699] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 100
[700] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Motion to Compel Disclosure of Witness GEK Material* (25 November 2015) at para. 9; *Prosecutor v Kamuhanda*, No. MICT-13-33, *Further Decision on Motion to Compel Disclosure of Witness GEK Material* (29 February 2016) at p. 4
[701] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Motion to Compel Disclosure of Witness GEK Material* (25 November 2015) at para. 9

witness should not be disclosed.[702]

The obligation for the Prosecution to disclose exculpatory material must be broadly interpreted. The Judge needs only to examine whether the material is potentially – rather than in fact – exculpatory.[703]

Entire recording must be disclosed to defence where it contained potentially exculpatory material that had been redacted by prosecution.[704]

All statements and transcripts of evidence given by Prosecution witnesses during proceedings after the conclusion of appellant's case do not *per se* constitute material subject to disclosure pursuant to Rule 73.[705]

Correspondence between prosecution and State authorities concerning cooperation in seeking the arrest of a suspect is not exculpatory as it does not relate to innocence or the merits of the case and therefore need not be disclosed in conjunction with a potential motion to revoke referral of the case to Rwanda.[706]

***in camera* inspection**

Prosecution ordered to provide disputed material for in camera inspection by Judge to determine if it is of an exculpatory nature and should be disclosed to the defence.[707]

obligation in general

The ICTR/ICTY standards under Rule 68 (a) dealing with the disclosure obligations of the Prosecution apply *mutatis mutandis* to Rule 73 of the IRMCT Rules.[708]

The prosecution's obligation to disclose exculpatory material is essential to a fair trial. This obligation has always been interpreted broadly.[709]

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[702] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on a Motion to Compel Full Disclosure of Material Related to Witness GEK* (13 June 2016) at p. 3
[703] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Third Motion to Compel Disclosure of Witness GEK Material* (21 March 2007) at p. 3
[704] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Third Motion to Compel Disclosure of Witness GEK Material* (21 March 2007) at p. 4
[705] *Prosecutor v Niyitegeka,* No. MICT-12-16-R, *Decision on Appeals of Decision Rendered by a Single Judge* (9 August 2017) at para. 19
[706] *Prosecutor v Kayishema,* No MICT-12-23, *Decision on Fulgence Kayishema Motion for Disclosure and Reclassification* (28 June 2024) at p. 4
[707] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Motion to Compel Disclosure of Witness GEK Material* (25 November 2015) at para. 10
[708] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Eliezer Niyitegeka's Request for an Order for Disclosure of Exculpatory Evidence and other Relevant Evidence* (28 August 2013) at para. 9
[709] *Ngirabatware v Prosecutor*, No. MICT-12-29-A, *Decision on Augustin Ngirabatware's Motion for Sanctions for the Prosecution and for an Order of Disclosure* (15 April 2014) at para. 12; *Prosecutor v*

possession of the prosecution

The Prosecution has no obligation to assist the defence in obtaining judicial material related to its witnesses from domestic jurisdictions. Therefore, a contradictory statement made by a prosecution in a subsequent domestic prosecution in Canada that was not in the possession of the prosecution would not be ordered disclosed.[710]

prejudice

If the Defence satisfies the Chamber that the Prosecution failed to comply with its disclosure obligations under Rule 68, the Chamber must examine whether the Defence was prejudiced by that failure before considering whether a remedy is appropriate.[711]

The onus is on the Defence to substantiate its claim of alleged prejudice from the disclosure violation.[712]

The accused did not substantiate his general contentions that he was deprived of the ability to develop a coherent defence strategy before trial due to disclosure during the trial or show how disclosure during his proceedings prejudiced his ability to review exculpatory material as well as conduct other aspects of his defence.[713]

The Defence failed to demonstrate prejudice from the repeated disclosure violations because the material was of limited length, not of such significance, he had sufficient time to review that material before the testimony of the affected witnesses, or if the disclosure was made after the witness testified, he could ask to recall the witness.[714]

Defence was not prejudiced by Prosecution's failure to disclose statement of witness that Bosnian Muslims had shelled their own people where the statement referred to a shelling that was not included in the scheduled incidents.[715]

presumption

A chamber will not intervene in the prosecution's discretion in determining whether material is exculpatory unless it can be shown that the prosecution abused its

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Kamuhanda, No. MICT-13-33, *Decision on Motion to Compel Disclosure of Witness GEK Material* (25 November 2015) at para. 9; *Prosecutor v Niyitegeka,* No. MICT-12-16-R, *Decision on Appeals of Decision Rendered by a Single Judge* (9 August 2017) at para. 18

[710] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Eliezer Niyitegeka's Request for an Order for Disclosure of Exculpatory Evidence and other Relevant Evidence* (28 August 2013) at para. 17

[711] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 88; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic Defence Motion Alleging Violation of the Prosecution's Disclosure Obligations* (18 December 2019) at p. 2

[712] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 88

[713] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 91

[714] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 93

[715] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 106

discretion. Where there is no evidence to the contrary, the chamber will presume that the Prosecution acted in good faith.[716]

public materials

The prosecution's disclosure obligation extends to transcripts of open session testimony in other ICTR trials. Therefore, its failure to disclose such transcripts violated Rule 73.[717]

remedies

The exclusion of evidence for disclosure violations is an extreme remedy that should not be imposed unless the defence has demonstrated sufficient prejudice to justify such a remedy.[718]

Where aspects of the witness' evidence were supported by contemporaneous documentation or formed part of a larger body of evidence relied upon by the Trial Chamber in its assessment, the Trial Chamber did not err in limiting its remedy for failure to disclose a prior inconsistent statement of the witness to disregarding the witness' evidence on the limited topic addressed in the undisclosed statement.[719]

Where prosecution violation of its disclosure requirements appeared to be inadvertent, it was correcting the flaws that led to the non-disclosure, and the defence had not been prejudiced, a finding of violation was considered an adequate remedy.[720]

Suspensions due to extensive disclosure during proceedings are precisely the remedy that may be necessary to ensure an accused's right to a fair trial.[721]

requirements

To establish a violation of the disclosure obligations, the Defence must (1) identify specifically the material sought; (2) present a prima facie showing of its potential exculpatory nature; (3) prove that the material requested is in the custody or under the control of the Prosecution.[722]

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[716] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Gerard Ntakirutimana's Motion for Reconsideration of Decision on Request for Review* (18 September 2024) at p. 7
[717] *Ngirabatware v Prosecutor*, No. MICT-12-29-A, *Decision on Augustin Ngirabatware's Motion for Sanctions for the Prosecution and for an Order of Disclosure* (15 April 2014) at para. 22
[718] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 103
[719] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 103
[720] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic Defence Motion Alleging Violation of the Prosecution's Disclosure Obligations* (18 December 2019) at p. 3
[721] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 112
[722] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Eliezer Niyitegeka's Request for an Order for Disclosure of Exculpatory Evidence and other Relevant Evidence* (28 August 2013) at para. 10; *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Third Motion to Compel Disclosure of Witness GEK Material* (21 March 2007) at p. 3; *Ngirabatware v Prosecutor*, No. MICT-12-29-A, *Decision on Augustin Ngirabatware's Motion for Sanctions for the Prosecution and for an Order of Disclosure* (15 April 2014)

The assessment of whether material is subject to disclosure does not turn on its probative value.[723]

If the defence satisfies the Chamber that the prosecution failed to comply with Rule 73, the Chamber must examine whether the defence has been prejudiced by that failure before considering whether a remedy is appropriate.[724]

The determination as to which material is subject to disclosure under Rule 73 is a fact-based enquiry made by the Prosecution." A chamber will not intervene in the exercise of the Prosecution's discretion unless it is shown that the Prosecution abused it and, where there is no evidence to the contrary, will presume that the Prosecution is acting in good faith.[725]

timing

Disclosure of exculpatory material is a continuous obligation that does not require disclosure prior to the commencement of trial but "as soon as practicable".[726]

Prosecution violated its disclosure obligation under Rule 68 in relation to a witness statement that was exculpatory and failed to disclose for three years.[727]

waiver

Defence did not waive right to object to disclosure violation where the material was only received after the deadline relied upon by the Chamber.[728]

Rule 74—failure to comply with disclosure obligations

The Pre-Trial Judge or the Trial Chamber may decide proprio motu, or at the request of either Party, on sanctions to be imposed on a Party that fails to perform

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at para. 13; *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Motion to Compel Disclosure of Witness GEK Material* (25 November 2015) at para. 7; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 96; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic Defence Motion Alleging Violation of the Prosecution's Disclosure Obligations* (18 December 2019) at p. 2

[723] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Motion to Compel Disclosure of Witness GEK Material* (25 November 2015) at para. 9

[724] *Ngirabatware v Prosecutor*, No. MICT-12-29-A, *Decision on Augustin Ngirabatware's Motion for Sanctions for the Prosecution and for an Order of Disclosure* (15 April 2014) at para. 13

[725] *Prosecutor v Niyitegeka,* No. MICT-12-16-R, *Decision on Appeals of Decision Rendered by a Single Judge* (9 August 2017) at para. 18; *Prosecutor v Musema*, No. MICT-12-15, *Decision on a Motion for Access and a Motion for Disclosure* (27 February 2018) at para. 11; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic Defence Motion Alleging Violation of the Prosecution's Disclosure Obligations* (18 December 2019) at p. 2

[726] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 91

[727] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 96

[728] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 95

its disclosure obligations pursuant to the Rules and/or appropriate remedies for the prejudiced Party.

Rule 75—protection of victims and witnesses

(A) In exceptional circumstances, either of the Parties may apply to the Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Trial Chamber decides otherwise.
(B) In the determination of protective measures for victims and witnesses, the Trial Chamber may consult the Witness Support and Protection Unit.
(C) Subject to Rule 86, the identity of the victim or witness shall be disclosed within such time as determined by the Trial Chamber, to allow adequate time for preparation of the Prosecution and the Defence.

The protection of witnesses and victims is of utmost importance to the proper functioning of the Mechanism and that, once protective measures have been ordered, they continue to have effect unless modified by a competent Chamber.[729]

Once protective measures have been ordered in respect of a victim or a witness in any proceedings before the ICTY or the Mechanism, they continue to have effect mutatis mutandis in any other jurisdiction unless and until they are rescinded, varied, or augmented.[730]

Rule 76—matters not subject to disclosure

(A) Notwithstanding the provisions of Rules 71 and 72, reports, memoranda, or other internal documents prepared by a Party, its assistants, or representatives in connection with the investigation, preparation, or presentation of the case are not subject to disclosure or notification under those Rules.
(B) If the Prosecutor is in possession of information which has been provided to the Prosecutor on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information and shall in any event not be given in evidence without prior disclosure to the accused.
(C) If, after obtaining the consent of the person or entity providing information under this Rule, the Prosecutor elects to present as evidence any testimony, document, or other material so provided, the Trial Chamber, notwithstanding Rule 120, may not order either Party to produce additional evidence received from the person or entity providing the initial information, nor may the Trial Chamber for the purpose of obtaining such additional evidence itself summon that person or a representative of that entity as a witness or order their attendance. A Trial

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[729] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Reclassify the Public Redacted Version of Defence Final Trial Brief and Defence Response…* (1 June 2018) at p. 3
[730] *Prosecutor v Seselj*, No. MICT-16-99-R90.1, *Order Concerning the Publication of Confidential Information of 15 March 2021* (23 May 2023) at p. 2

Chamber may not use its power to order the attendance of witnesses or to require production of documents in order to compel the production of such additional evidence.
(D) If the Prosecutor calls a witness to introduce in evidence any information provided under this Rule, the Trial Chamber may not compel that witness to answer any question relating to the information or its origin, if the witness declines to answer on grounds of confidentiality.
(E) The right of the accused to challenge the evidence presented by the Prosecution shall remain unaffected subject only to the limitations contained in paragraphs (C) and (D).
(F) The Trial Chamber may order, upon an application by the accused, that, in the interests of justice, the provisions of this Rule shall apply mutatis mutandis to specific information in the possession of the accused.
(G) Nothing in paragraphs (C) or (D) above shall affect a Trial Chamber's power under Rule 105(D) to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

internal documents

Records of the identification, periods, and capacity of Prosecution personnel who worked with the Rwandan investigators and who had access to the seized material or to copies of it constitute internal documents prepared in connection with the investigation of contempt case and are exempt from disclosure pursuant to Rule 76(A).[731]

Mission reports and internal notes are protected from disclosure by Rule 76(A).[732]

Prosecution communications with Rwandan authorities were not "internal" documents.[733]

Information concerning the internal processes of the Prosecution during the initial stages of its investigation is covered by Rule 76(A) and a request to subpoena a member of the Prosecution staff for a defence interview was denied.[734]

Prosecution communications with Registrar in connection with obtaining records of communication by detainees were not exempt from disclosure pursuant to Rule 76(A) because they were not internal documents.[735]

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[731] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion to Compel the Prosecution to Provide Information under Rule 71(B) relating to Prosecution Personnel* (18 April 2019) at p. 4
[732] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Requests for Disclosure of Information Arising From Interviews with Investigator Tomasz Blaszczyk* (7 May 2020) at p. 6
[733] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Request for Further Order of Disclosure of Telecommunication-Related Material* (2 September 2019) at p. 4
[734] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Request for a Subpoena* (28 February 2020) at pp. 2-3
[735] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Motion for Reclassification* (27 May 2019) at para. 6

material provided by third parties

Rule 76 provides guarantees to those who provide information on a confidential basis that they may limit its disclosure to opposing parties in proceeding and/or use in trial proceedings before the Mechanism.[736]

The purpose of Rule 76 is to encourage States, organizations, and individuals to share sensitive information relevant to judicial proceedings. This provision creates an incentive for such cooperation by permitting the sharing of information on a confidential basis and by guaranteeing information providers that the confidentiality of the information they offer and of the information's sources will be protected.[737]

The purpose of Rule 76 is to encourage States and other entities and persons to share sensitive information by providing certain guarantees of confidentiality with respect to the information they offer and by allowing the provider to, inter alia, place limitations on the scope of a witness's testimony or on the dissemination of that witness's testimony.[738]

The purpose of Rule 76 is to encourage States to share sensitive information with parties and the Mechanism by providing certain guarantees of confidentiality.[739]

The purpose of Rule 70 was to encourage States and other entities and persons to share sensitive information with parties and the ICTY by providing certain guarantees of confidentiality with respect to the information they offer.[740]

Under Rule 76(B) of the Rules, information provided to the Prosecutor on a confidential basis, and which has been used solely for the purpose of generating new evidence, shall not be disclosed by the parties without the consent of the person or entity providing the initial information.[741]

Information provided to the Defence by the US government under a Rule 76 order shall not be disclosed such to any persons, governments, organisations, entities, clients, associations, or groups, or sought to be adduced as additional evidence on appeal without

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[736] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 25
[737] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Reclassify the Public Redacted Version of Defence Final Trial Brief and Defence Response…* (1 June 2018) at pp. 3-4; *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 22
[738] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 26
[739] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for a Binding Order pursuant to Article 28 and on Related Requests* (18 February 2019) at p. 5
[740] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 262
[741] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Reclassify the Public Redacted Version of Defence Final Trial Brief and Defence Response…* (1 June 2018) at p. 4

the prior written approval of the Government.[742]

Rule 76 enables the defence to request a Trial Chamber that it be permitted to give the same undertaking as the Prosecution to a prospective provider of confidential material that that material will be protected if disclosed to the defence.[743]

Rule 76 of the Rules gives providers of sensitive information considerable control over the use of information in trials before the Mechanism. Once judicially-ordered protection is provided under this rule, it continues until consent from the information provider has been obtained. [744]

In addition to guaranteeing providers that the confidentiality of the information they offer, and its sources, will be protected, Rule 76 guarantees that this protection will not be lifted without the consent of the information provider.[745]

Where the Prosecution or the Defence elects to present as evidence any testimony, document or other material so provided' before a Trial Chamber and must disclose it to the other party in the proceedings, they are required to first obtain the consent of the provider.[746]

By controlling the confidentiality of the information, the provider also has control over whether the information may be used only for evidence generation purposes or also as evidence at trial.[747]

The protection afforded under Rule 76 is that of confidentiality, not of control over the direction or the nature of the proceedings, for example disciplinary or criminal, that may be initiated.[748]

An information provider's control over whether the information provided may be used as evidence at trial necessarily derives from the control that the provider has over whether and to whom the information may be disclosed. Allowing an information provider control that extends beyond the parameters of the confidentiality protection would be contrary to the object and purpose of Rule 76.[749]

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[742] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for a Binding Order pursuant to Article 28 and on Related Requests* (18 February 2019) at p. 5
[743] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 26
[744] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 27
[745] *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 24
[746] *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 24
[747] *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 24
[748] *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 25
[749] *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 25

Where the provider consented to the disclosure of Rule 76 material to the Amicus Curiae and the Single Judge, no further consent to the disclosure of the material would be required and it will be for the Amicus Curiae to elect whether such material should be presented as evidence in future criminal proceedings.[750]

Those providing information under this rule who show genuine interest in protecting the information in their possession may require, inter alia, limitations on the scope of a witness's testimony or on the dissemination of that witness's testimony.[751]

Any restrictions under this rule on the presentation of evidence at trial may only be allowed after the trial chamber has determined that the restrictions would not undermine the fairness of the trial.[752]

Rule 70 does not place a burden on those providing information under this rule to substantiate their concerns.[753]

A provider's consent to use of the Rule 76 materials in one proceeding does not equate to consenting to their use as evidence in a subsequent proceeding. The fact that information contained in these documents is in the public domain does not unequivocally undermine the necessity of the provider's consent to use them in subsequent proceedings.[754]

That other witnesses, similarly situated testified without limitations on the public disclosure of their evidence or their identities does not demonstrate that the Trial Chamber erred in the exercise of its discretion in allowing the Prosecution Witnesses to testify with certain trial-related restrictions on their evidence.[755]

Trial Chamber correctly determined that allowing prosecution witness to testify in closed session did not substantially outweigh his right to a fair trial.[756]

In motion for access under Rule 86, access to confidential material provided

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[750] *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 26
[751] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 262
[752] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 262
[753] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 263; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 26; *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 23
[754] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 27; *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 26
[755] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 263
[756] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 264

pursuant to Rule 76 would not be granted absent consent of the provider.[757]

post-conviction

Rule 76 motion by person whose conviction is final would not be granted absent exceptional circumstances in which it is demonstrated that the information sought is to establish a new fact that can constitute the basis of a review application.[758]

Rule 77—depositions
(A) Where it is in the interests of justice to do so, a Trial Chamber may order, proprio motu or at the request of a Party, that a deposition be taken for use at trial, whether or not the person whose deposition is sought is able physically to appear before the Mechanism to give evidence. The Trial Chamber shall appoint a Presiding Officer for that purpose.
(B) The motion for the taking of a deposition, or the proprio motu order, shall be in writing and shall indicate the name and whereabouts of the person whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined, and of the circumstances justifying the taking of the deposition.
(C) If the motion is granted, the Party at whose request the deposition is to be taken shall give reasonable notice to the other Party, who shall have the right to attend the taking of the deposition and cross-examine the person whose deposition is being taken.
(D) If the taking of a deposition is ordered proprio motu, the Parties shall have the right to attend the taking of the deposition and cross-examine the person whose deposition is being taken.
(E) Deposition evidence may be taken either at or away from the seat of the relevant branch of the Mechanism, and may also be given by means of a video-conference.
(F) The Presiding Officer shall ensure that the deposition is taken in accordance with the Rules and that a record is made of the deposition, including cross examination and objections raised by either Party for decision by the Trial Chamber. The Presiding Officer shall transmit the record to the Trial Chamber.

Rule 78—preservation of evidence by special deposition for future trials

(A) If within a reasonable time, a warrant of arrest has not been executed, the Prosecutor may submit a request to the President that evidence relating to the indictment be preserved for a future trial by special deposition recorded in a proceeding conducted by a Single Judge.
(B) If a warrant of arrest has been executed, but the accused has not yet been transferred to the relevant branch of the Mechanism, the Prosecutor or the accused's Counsel, if any, may submit a request to the President that the

[757] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Decision on Amicus Curiae's Motion for Access and Requests for Clarification and Variation of Protective Measures* (21 January 2022) at p. 5
[758] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on a Motion for an Order pursuant to Rule 76* (16 April 2020) at p. 2

evidence of particular witnesses be preserved for a future trial by special deposition recorded in a proceeding conducted by a Single Judge.
(C) Upon receiving a request pursuant to paragraphs (A) or (B), the President shall refer the matter to a Single Judge and, if the accused is not represented by Counsel, shall instruct the Registrar to appoint Counsel who meets the requirements under Rule 43(C) to represent the interests of the accused as Duty Counsel.
(D) The Single Judge shall hear the Prosecutor and Counsel representing the interests of the accused in a closed session and may, where appropriate, receive ex parte information from the Prosecutor on the whereabouts of the accused.
(E) The Single Judge may grant a request pursuant to paragraph (A), if satisfied that:
(i) reasonable efforts have been made to execute the warrant of arrest;
(ii) the execution of the warrant of arrest is not likely to take place within a reasonable time; and
(iii) it is in the interests of justice to do so.
(F) The Single Judge may grant a request pursuant to paragraph (B), if satisfied that exceptional circumstances exist and that it is in the interests of justice to do so.
(G) When granting a request pursuant to paragraphs (A) and (E) or (B) and (F), the Single Judge shall:
(i) with respect to a decision pursuant to paragraphs (A) and (E), request the Registrar to issue a public notice of the decision and the arrest warrant against the accused;
(ii) request the Registrar to assign Counsel representing the interests of the accused such staff as the Registrar deems necessary.
(H) The Registrar shall transmit the notice pursuant to paragraph (G)(i) to the national authority of the concerned State or States, where the accused and/or his family may be known or believed to be or to have, at any time, resided, for publication in newspapers or for broadcast via radio, transmission via internet or television, or by any other appropriate means notifying the public including, if possible, the family of the accused, that, pursuant to a decision of the Mechanism, the taking of special depositions for the preservation of evidence will commence after the expiry of 30 days from the date of this notification.
(I) Upon a decision from a Single Judge granting a request pursuant to paragraph (A) and (E), Counsel representing the interests of the accused may submit a request to the President that evidence relevant to the case of the accused be preserved by way of special deposition. Paragraphs (C), (D), (E), and (G)(ii) shall apply mutatis mutandis.
(J) Rules 47, 55, 58, 71-76, 77(E), 80-82, 86-90, 94-95, 106-108, 114, 117-119, and, subject to paragraph (L), 111 shall apply, mutatis mutandis, to the special deposition proceedings with the following modifications:
(i) the Single Judge shall have the same powers as a Trial Chamber or the Single Judge in cases pursuant to Article 1, paragraph 4, of the Statute;
(ii) the Duty Counsel shall have the same rights and duties as a Defence Counsel;
(iii) disclosure pursuant to Rule 71(A)(i)-(ii) shall be made within the time limit prescribed by the Single Judge;
(iv) the special deposition proceedings shall take place in closed sessions;

(v) the taking of depositions shall be video-recorded, in addition to other forms of recording, unless, under extraordinary circumstances, a special deposition is taken in a place where video-recording facilities are not available or for other reasons, cannot be organized. All recordings of special depositions shall be maintained by the Registrar in accordance with the procedures established in Rule 95.
(K) If a Party has obtained a written statement that it wishes to tender into evidence pursuant to Rule 110, the Single Judge shall make a preliminary finding, if required, whether the witness shall appear for cross-examination or whether to request the Registrar to proceed pursuant to Rule 110(B)(i)(b).
(L) Exhibits used in connection with the examination of witnesses and written statements that have given rise to cross-examination pursuant to paragraph (K) or Rule 111 shall be marked for identification and kept on the file in accordance with the procedures established in Rule 95.
(M) At the subsequent trial of an accused before a designated Trial Chamber or Single Judge, the Registrar shall as soon as practicable transmit copies of the special depositions and exhibits kept on the file to the Parties. On the application of either Party, the Trial Chamber or the Single Judge may admit special depositions and exhibits from the file that are relevant and of a probative value not outweighed by their prejudicial effect.
(N) Notwithstanding paragraph (M), a special deposition may only be admitted into evidence in lieu of live testimony if:
(i) the opposite Party does not oppose the admission; or
(ii) Rule 110(A) is applicable; or
(iii) the Trial Chamber or the Single Judge is satisfied that the deponent is deceased, can no longer with reasonable diligence be traced, is by reason of bodily or mental condition unable to testify orally, or in exceptional circumstances is unwilling to testify following threats or intimidation; and
(iv) it is in the interests of justice to do so.

The purpose of the procedure under Rule 78 is to preserve evidence that might otherwise deteriorate or be lost while a person indicted or wanted remains at large and to prevent a fugitive accused from avoiding effective prosecution and obstructing the proper administration of justice.[759]

Preservation of evidence is in the interests of justice where Serbia has refused to execute the arrest warrants for the accused.[760]

Rule 79—preliminary motions

(A) Preliminary motions, being motions which:
(i) challenge jurisdiction;
(ii) allege defects in the form of the indictment;

[759] *In the case against Jojic & Radeta*, No. MICT-17-111-R90-R78.1, *Decision on Amicus Curiae Prosecutor's Request for Preservation of Evidence by Special Deposition* (3 September 2021), at p. 6
[760] *In the case against Jojic & Radeta*, No. MICT-17-111-R90-R78.1, *Decision on Amicus Curiae Prosecutor's Request for Preservation of Evidence by Special Deposition* (3 September 2021), at p. 7

(iii) seek the severance of counts joined in one indictment under Rule 49(A) or seek separate trials under Rule 97(B); or
(iv) raise objections based on the refusal of a request for assignment of Counsel made under Rule 43(C)
shall be in writing and be brought not later than thirty days after disclosure by the Prosecutor to the Defence of all material and statements referred to in Rule 71(A)(i) and shall be disposed of not later than sixty days after they were filed and before the commencement of the opening statements provided for in Rule 100, Subject to any order made by the Trial Chamber, where permanent Counsel has not yet been assigned to or retained by the accused, or where the accused has not yet elected in writing to conduct his defence in accordance with Rule 43(F), the thirty-day time-limit under this Rule shall not run, notwithstanding the disclosure to the Defence of the material and statements referred to in Rule 71(A)(i), until permanent Counsel has been assigned to the accused.
(B) Decisions on preliminary motions are without interlocutory appeal save:
(i) in the case of motions challenging jurisdiction;
(ii) in other cases where certification has been granted by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.
(C) Requests for certification under paragraph (B)(ii) shall be filed within seven days of filing of the impugned decision. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless:
(i) the Party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging Party is notified of the oral decision; or
(ii) the Trial Chamber has indicated that a written decision will follow, in which case, the time-limit shall run from filing of the written decision.
(D) For the purpose of paragraphs (A)(i) and (B)(i), a motion challenging jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to the material, territorial, temporal, or personal jurisdiction of the Mechanism provided for in Article 1 of the Statute.

certification to appeal

Certification to appeal decision rejecting challenge to specificity of indictment denied.[761]

timing

Although 30-day period had long past, the importance of the accused's right to be

[761] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Motion for Certification to Appeal Decision on Stanisic's Motion for Further Particularisation of the Prosecution's Case* (25 September 2018)

informed of the charges against him under Article 19(4)(a) of the Statute, which goes to the heart of the fair trial guarantee, and the risk of incurring serious prejudice if material facts crucial to the Prosecution case are communicated for the first time at trial, required consideration of the motion midway through the trial.[762]

Where date for filing of preliminary motions had passed, time would not be enlarged, but such motions would nevertheless be considered since they involve issues of fundamental fairness and due process.[763]

Rule 80—other motions

(A) Subject to Rule 79, either Party may move before a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. The Trial Chamber, or a Judge designated by the Chamber from among its members, may rule on such motions based solely on the briefs of the Parties, unless it is decided to hear the motion in open court.
(B) Decisions rendered on such motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.
(C) Requests for certification shall be filed within seven days of the filing of the impugned decision. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless:
(i) the Party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging Party is notified of the oral decision; or
(ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.
(D) In addition to the sanctions envisaged by Rule 47, a Trial Chamber may impose sanctions against Counsel if Counsel brings a motion, including a preliminary motion, that, in the opinion of the Trial Chamber, is frivolous or is an abuse of process. Such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof.

certification to appeal

applicability

Rule 80 by its plain language applies to interlocutory decisions taken in the context of a trial proceeding and not to final decisions related to witness protection issued

[762] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Motion for Further Particularisation of the Prosecution's Case* (2 May 2018) at para. 13
[763] *Prosecutor v Turinabo*, No. MICT-18-116-PT, *Decision on Motions for Extension of Time to File Preliminary Motions* (14 December 2018) at p. 2

after the close of the trial and appeal proceedings in a given case.[764]

Rule 80(B) is not applicable to a decision concerning frozen assets of the accused's family made in a proceeding ancillary to the case of the accused. A direct appeal is permitted.[765]

Appellate review of decisions related to the admission of evidence is limited to where the issue arises in an interlocutory appeal certified by a trial chamber or in an appeal against a conviction or acquittal. Appeals Chamber had no jurisdiction to entertain Prosecution appeal of decisions excluding evidence during retrial.[766]

Appeal of decisions on admission of evidence was not allowed as ancillary to the earlier appeal decision ordering a retrial—certification to appeal was still required.[767]

intermediate orders

Although he had certified the issue of the Prosecution's access to the accused's computer for appeal, Single Judge retained jurisdiction to order a copy of the hard drive to be provided to the defence where the Prosecution did not object and access to the hard drive would significantly affect the fair and expeditious conduct of the proceedings.[768]

standard

For certification to appeal to be granted, both of the requirements of Rule 80(B) must be satisfied.[769]

Even where both requirements of Rule 80(B) are satisfied, certification is not automatic, and it remains at the discretion of the Trial Chamber.[770]

When determining whether to grant leave to appeal, the Trial Chamber is not

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[764] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness* (14 November 2016) at para. 6; *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on a Motion for Certification to Appeal* (1 November 2016), at p, 2; *Prosecutor v Niyitegeka*, No. MICT-12-16-R, *Decision on a Request for Certification* (10 May 2017)
[765] *Prosecutor v Kabuga*, No. MICT-13-38-Misc.2, *Decision on Appeal of Decision on Motion Concerning Frozen Assets* (10 January 2022) at fn. 47
[766] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-AR.MISC, *Decision on a Prosecution Motion for Enforcement of Order for Retrial* (14 December 2018) at para. 9
[767] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-AR.MISC, *Decision on a Prosecution Motion for Enforcement of Order for Retrial* (14 December 2018) at fn. 25.
[768] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Dick Prudence Munyeshuli's Motion regarding Mirror Image of Laptop Hard Drive* (11 April 2019) at p. 2
[769] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Certification to Appeal the Decision Denying his Request for Stay of Proceedings and for Oral Hearing* (22 October 2015) at p. 3
[770] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Certification to Appeal the Decision Denying his Request for Stay of Proceedings and for Oral Hearing* (22 October 2015) at p. 3

concerned with whether a decision was correctly reasoned or not.[771]

Certification to appeal must be the absolute exception when deciding on the admissibility of evidence.[772]

standing

Only parties to proceedings before the Mechanism, namely the Prosecution or the Defence, may file an interlocutory appeal. However, clients of accused private investigator would be granted provisional standing to participate in appeal on issue of whether their attorney-client privileged documents seized from him can be reviewed by Prosecution. [773]

stay pending appeal

Decision requiring greater specificity in contempt indictment would not be stayed pending appeal of jurisdiction to prosecute contempt under JCE mode of liability, where greater specificity needed for defence to prepare and further amendments would be straightforward after JCE issue resolved on appeal.[774]

Decision on fitness to stand trial could be appealed, but the trial would commence in the meantime.[775]

denied

Certification to appeal denied for issues of stay of national proceedings pending revocation of referral,[776] amendment of indictment,[777] adequacy of notice of charges,[778]

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[771] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Certification to Appeal the Decision Denying his Request for Stay of Proceedings and for Oral Hearing* (22 October 2015) at p. 3

[772] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Request for Certification to Appeal Decision on Prosecution Motions for Admission of Evidence pursuant to Rule 112* (16 May 2018) at p. 2

[773] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Requests for Extension of Time and Synchronised Briefing Schedule* (22 March 2019) at pp. 3-4

[774] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution Urgent Motion for a Stay* (21 March 2019) at p. 3

[775] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Felicien Kabuga's Motion for Certification to Appeal the Decision of 13 June 2022* (23 June 2022) at p. 2

[776] *Prosecutor v Uwinkindi*, No. MICT-12-25-R14.1, *Decision on Uwinkindi's Request for Certification to Appeal the Decision Denying his Request for Stay of Proceedings and for Oral Hearing* (22 October 2015) at p. 4

[777] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimana's Request for Certification to Appeal the Decision on Motion to Amend the Indictment* (31 October 2019)

[778] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Defence Motions for Certification to Appeal Decision on Prosecution Motion for Reconsideration and Further Submissions* (21 February 2019)

search of electronic devices,[779] request for documents from State,[780] granting of protective measures,[781] request to interview protected prosecution witness,[782] scope of retrial,[783] continuing fitness to stand trial,[784] admissibility of new evidence on retrial,[785] authentication of evidence,[786] admission of prior statements and testimony,[787] admission of evidence from the bar table,[788] expert witness evidence,[789] judicial notice of adjudicated facts,[790] denial of motion for judgement of acquittal[791]

granted

Certification to appeal granted for issue of protective measures for deceased witnesses,[792] fitness to stand trial,[793] choice of counsel,[794] Rule 76 consent by the provider.[795]

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[779] *Prosecution v Turinabo et al*, No. MICT-18-116-PT, *Decision on Prosecution Motion to Reconsider or Certify to Appeal the Decision related to Material Seized from Dick Prudence Munyeshuli* (5 May 2020) at para. 25

[780] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Motion for Reconsideration or Certification to Appeal Decisions pertaining to State Production of Documents and Information* (28 October 2019)

[781] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion for Reconsideration or Certification to Appeal the Decision of 30 November 2020* (13 January 2021)

[782] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on a Motion for Certification to Appeal* (1 November 2016)

[783] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Requests for Certification to Appeal Decision on Stanisic's Request for Stay of Proceedings* (1 March 2007)

[784] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Felicien Kabuga's Motion for Certification to Appeal the Decision of 13 February 2023 on Conduct of the Proceedings* (23 February 2023)

[785] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Request for Certification to Appeal Decision on Prosecution Motions for Admission of Evidence pursuant to Rule 112* (16 May 2018); *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Request for Certification to Appeal Decisions on Prosecution Motions for Admission of Evidence of RFJ-040 and RFJ-104 pursuant to Rule 111* (26 September 2018); *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Simatovic's Request for Certification to Appeal Decision on Admission of Evidence of Witness RFJ-084* (25 September 2018); *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Request for Certification to Appeal Decision on Prosecution's First, Second, and Third Omnibus Motions for Admission of Evidence pursuant to Rule 111* (2 October 2018); *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Request for Certification to Appeal Decision on Prosecution Fourth Omnibus Motion for Admission of Evidence pursuant to Rule 111* (5 November 2018)

[786] *Prosecutor v Turinabo et al*, No, MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Request for Certification to Appeal the Order on the Procedure for the Conduct of the Trial* (30 October 2020)

[787] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Simatovic Defence Request for Certification to Appeal Decision on Prosecution Motion for Admission of Evidence of Witnesses RFJ-011 and RFJ-055 pursuant to Rule 112* (12 November 2018)

[788] *Prosecutor v Turinabo et al,* No. MICT-18-116-T, *Decision on Request for Certification to Appeal the Decision on Prosecution Fourth Motion for Admission of Evidence from the Bar Table* (16 March 2021)

[789] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Simatovic Defence Request for Certification to Appeal Decision in relation to Witness Jovan Krstic* (15 September 2020)

[790] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic Defence Motion for Certification to Appeal against Decision on Judicial Notice of Adjudicated Facts* (15 January 2019)

[791] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Simatovic's Request for Certification to Appeal Against Oral Decision Issued Pursuant to Rule 121* (20 May 2019)

[792] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on a Motion for Certification to Appeal* (8 August 2016)

frivolous motion

Appeals Chamber ordered withholding of fees for work on motion for reconsideration of medical issues that it considered unduly repetitive, frivolous, and an abuse of process.[796]

Rule 81—Pre-Trial Conference

(A) Prior to the commencement of the trial, the Trial Chamber shall hold a Pre-Trial Conference.
(B) In light of the file submitted to the Trial Chamber by the Pre-Trial Judge pursuant to Rule 70(J), the Trial Chamber may call upon the Prosecutor to shorten the estimated length of the examination-in-chief for some witnesses.
(C) In light of the file submitted to the Trial Chamber by the Pre-Trial Judge pursuant to Rule 70(J), the Trial Chamber, after having heard the Prosecutor, shall determine
(i) the number of witnesses the Prosecutor may call; and
(ii) the time available to the Prosecutor for presenting evidence.
(D) After having heard the Prosecutor, the Trial Chamber, in the interest of a fair and expeditious trial, may invite the Prosecutor to reduce the number of counts charged in the indictment and may fix a number of crime sites or incidents comprised in one or more of the charges in respect of which evidence may be presented by the Prosecutor which, having regard to all the relevant circumstances, including the crimes charged in the indictment, their classification and nature, the places where they are alleged to have been committed, their scale, and the victims of the crimes, are reasonably representative of the crimes charged.
(E) Upon or after the submission by the Pre-Trial Judge of the complete file of the Prosecution case pursuant to Rule 70(J), the Trial Chamber, having heard the Parties and in the interest of a fair and expeditious trial, may direct the Prosecutor to select the counts in the indictment on which to proceed. Any decision taken under this paragraph may be appealed as of right by a Party.
(F) After commencement of the trial, the Prosecutor may file a motion to vary the decision as to the number of crime sites or incidents in respect of which evidence may be presented or the number of witnesses that are to be called or for additional time to present evidence, and the Trial Chamber may grant the Prosecutor's request if satisfied that this is in the interests of justice.

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[793] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Felicien Kabuga's Motion for Certification to Appeal the Decision of 13 June 2022* (23 June 2022); *Prosecutor v Kabuga*, No, MICT-13-38-T, *Decision on Motions for Certification to Appeal the Further Decision on Felicien Kabuga's Fitness to Stand Trial* (16 June 2023)
[794] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Request for Certification to Appeal the Second Decision related to Felicien Kabuga's Representation* (20 September 2022)
[795] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Amicus Curiae Request for Certification* (24 April 2024)
[796] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Reconsider the Decision on Motions for Hospitalisation* (28 August 2020) at p. 3

Trial Chamber's failure to order, reductions of additional crime sites and incidents in the indictment did not render the trial unmanageable or unfair.[797]

Rule 82—Pre-Defence Conference

(A) Prior to the commencement by the Defence of its case the Trial Chamber may hold a Pre-Defence Conference.
(B) In light of the information submitted to the Trial Chamber in accordance with Rule 70(M), the Trial Chamber may call upon the Defence to shorten the estimated length of the examination-in-chief for some witnesses.
(C) In light of the information submitted to the Trial Chamber in accordance with Rule 70(M), the Trial Chamber, after having heard the Defence, shall set the number of witnesses the Defence may call.
(D) After commencement of the Defence case, the Defence may, if it considers it to be in the interests of justice, file a motion to reinstate the list of witnesses or to vary the decision as to which witnesses are to be called.
(E) After having heard the Defence, the Trial Chamber shall determine the time available to the Defence for presenting evidence.
(F) During a trial, the Trial Chamber may grant a Defence request for additional time to present evidence if this is in the interests of justice.

Rule 83—amicus curiae

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organisation, or person to appear before it and make submissions on any issue specified by the Chamber.

The primary criterion for determining whether to grant leave to make submissions as amicus curiae is whether such submissions would assist in the consideration of the questions at issue in the given proceeding.[798]

Amicus curiae submissions are generally limited to questions of law.[799]

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[797] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 73
[798] *Prosecutor v Muhimana*, No. MICT-12-12, *Decision on Motion for Interim and Permanent Orders and Related Requests* (21 December 2017) at p. 7; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request to Make Submissions as an Amicus Curiae* (22 January 2018) at p. 2; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request for Leave to Make Submissions as Amicus Curiae* (28 March 2018) at p. 2; *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 43
[799] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request to Make Submissions as an Amicus Curiae* (22 January 2018) at p. 2; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request for Leave to Make Submissions as Amicus Curiae* (28 March 2018) at p. 2

Associations of defence counsel allowed to file submissions on contact with protected witnesses in review proceedings where the decision may impact other cases before the Mechanism.[800]

Association of Defence Counsel request to file submissions on appeal concerning disclosure violations would not assist the Appeals Chamber where the issues raised related to procedural issues at the trial, they had been briefed thoroughly by the parties, and the ADC had not been privy to the confidential filings in the case.[801]

Association of Defence Counsel request to file submissions on issue of whether the President has the authority to impose conditions of release rejected where the President was already aware of the ICTY and ICTR jurisprudence that the Association proposed to discuss.[802]

Association of Defence Counsel request to file submissions on issue of assignment of counsel on appeal for relocated persons detained in Niger rejected where the issue was one of exceptional circumstances, rather than the obligation to assign counsel in general.[803]

Lawyers and academics allowed to file brief on application of UK Supreme Court case on joint criminal enterprise to ICTY jurisprudence.[804]

Amicus submissions on use of logic theory to analyse factual findings on contested issue from Trial Judgement refused where the submissions were not based on consideration of or access to the entire record that is relevant to the Trial Chamber' s conclusions.[805]

Leave to file amicus curiae submissions in case involving impact of UNHCR cessation of refugee protections on protected defence witnesses facing repatriation to Rwanda denied.[806]

The role of an amicus curiae is not to represent an individual's interests before a

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[800] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on ADAD-ICTR and ADC-ICTY Motions for leave to submit Amicus Curiae Observations and Decision on Application for Leave to Reply* (13 August 2015) at para. 11
[801] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request to Make Submissions as an Amicus Curiae* (22 January 2018) at pp. 2-3
[802] *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision on Motions related to Valentin Coric's Request for Variation of Early Release Decision* (21 February 2020) at para. 25
[803] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 44
[804] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request for Leave to Make Submissions as an Amicus Curiae* (25 September 2017)
[805] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request for Leave to Make Submissions as Amicus Curiae* (28 March 2018) at p. 3
[806] *Prosecutor v Muhimana*, No. MICT-12-12, *Decision on Motion for Interim and Permanent Orders and Related Requests* (21 December 2017) at p. 8

Judge or Chamber of the Mechanism, but to assist said Judge or Chamber in its consideration of questions at issue for the proper determination of a case, or to ensure the fairness of the proceedings of a case. Application to intervene by defendant with similar interest in early release decision denied.[807]

Rule 84—medical examination of accused

(A) A Trial Chamber may, proprio motu or at the request of a Party, order a medical, psychiatric, or psychological examination of the accused. In such a case, unless the Trial Chamber otherwise orders, the Registrar shall entrust this task to one or several experts whose names appear on a list previously drawn up by the Registry.
(B) In case of a medical necessity the accused or other person detained under the authority of the Mechanism may request an alternative/additional medical examination at a recognised medical institution that he believes to be capable of providing an impartial and qualified report on his medical condition in case he has reasonable grounds for such request. The Mechanism shall duly consider such request and the following report.

A party may request an order for medical , psychiatric, or psychological examination of the accused without being invited to do so.[808]

Rule 85—death of accused or person detained

Upon the death of an accused or other person detained under the authority of the Mechanism, when an investigation has been carried out, a copy of the entire dossier of the Mechanism's investigations and findings shall, subject to any confidentiality limitations that may be applicable and necessary, be transmitted to the President of the Security Council within fourteen days from its compilation.

Rule 86—measures for protection of victims and witnesses

(A) A Chamber may, proprio motu or at the request of either Party, or of the victim or witness concerned, or of the Witness Support and Protection Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.
(B) A Chamber may hold an in camera proceeding to determine whether to order:
(i) measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness by such means as:
(a) expunging names and identifying information from the Mechanism's public records;

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[807] *Prosecutor v Ntawukulilyayo et al*, No. MICT-13-34-ES, *Decision on Ntabakuze's Application for Leave to Intervene* (6 July 2018) at p. 5
[808] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Defence Request to be Invited to File Rule 84 Submissions* (4 December 2020) at p. 2

(b) non-disclosure to the public of any records identifying the victim or witness;
(c) giving of testimony through image- or voice- altering devices or closed circuit television; and
(d) assignment of a pseudonym;
(ii) closed sessions, in accordance with Rule 93;
(iii) appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.
(C) The Witness Support and Protection Unit shall ensure that the witness has been informed before giving evidence that his testimony and his identity may be disclosed at a later date in another case, pursuant to paragraph (F).
(D) A Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation.
(E) When making an order under paragraph (A) above, a Chamber shall wherever appropriate state in the order whether the transcript of those proceedings relating to the evidence of the witness to whom the measures relate shall be made available for use in other proceedings before the Mechanism or another jurisdiction.
(F) Once protective measures have been ordered in respect of a victim or witness in any proceedings before the ICTY, the ICTR, or the Mechanism (the "first proceedings"), such protective measures:
(i) shall continue to have effect mutatis mutandis in any other proceedings before the Mechanism ("second proceedings") or another jurisdiction unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in this Rule; but
(ii) shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings.
A judge or bench in another jurisdiction or parties in another jurisdiction authorized by an appropriate judicial authority may seek identification or confirmation of protective measures of a victim or witness for whom protective measures have been ordered by the ICTY, the ICTR, or the Mechanism by applying to the President of the Mechanism, who shall refer the application to a Single Judge or to the Chamber remaining seised of the proceedings. The Judge or Chamber determining such an application shall ensure through the Witness Support and Protection Unit that the protected victim or witness is informed of the pending request and has been given an opportunity to comment.
(G) A Party to the second proceedings seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply:
(i) to any Chamber, however constituted, remaining seised of the first proceedings; or
(ii) if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings.
(H) A judge or bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the ICTY, the ICTR, or the Mechanism may seek to rescind, vary, or augment protective measures ordered in proceedings

before the ICTY, the ICTR, or the Mechanism by applying to the President of the Mechanism, who shall refer the application to a Single Judge or to the Chamber remaining seised of the proceedings.
(I) The Chamber determining an application under paragraphs (G) and (H) above shall enquire through the Witness Support and Protection Unit whether the protected victim or witness has any comments related to privacy and protection concerns, including whether the victim or witness consents to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may order the rescission, variation, or augmentation of protective measures in the absence of such consent.
(J) A victim or witness may waive in whole or in part protective measures granted pursuant to this Rule after being advised by a Trial Chamber or the Witness Support and Protection Unit of the consequences thereof. The waiver must be made before a Trial Chamber or in a written statement signed by the victim or witness and an officer of the Witness Support and Protection Unit.
(K) An application to a Chamber to rescind, vary, or augment protective measures in respect of a victim or witness may be dealt with either by the Chamber or by a Judge of that Chamber, and any reference in this Rule to "a Chamber" shall include a reference to "a Judge of that Chamber".

augmenting protective measures

It is appropriate to consider augmenting protective measures if a protected witness is exposed to danger or risk because of cessation of UNHCR protected status to Rwandan refugees.[809]

A witness seeking to augment protective measures must establish a real likelihood of danger or risk to the witness should the requested protective measures not be granted.[810]

Information was not sufficient to demonstrate a real danger or risk to defence witness if the protective measures were not augmented to prohibit repatriation to Rwanda upon the expiration of UNHCR refugee status.[811]

burden of proof

The party seeking access to confidential material bears the burden to justify its request.[812]

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[809] *Prosecutor v Muhimana*, No. MICT-12-12, *Decision on Motion for Interim and Permanent Orders and Related Requests* (21 December 2017) at p. 6
[810] *Prosecutor v Muhimana*, No. MICT-12-12, *Decision on Motion for Interim and Permanent Orders and Related Requests* (21 December 2017) at p. 7
[811] *Prosecutor v Muhimana*, No. MICT-12-12, *Decision on Motion for Interim and Permanent Orders and Related Requests* (21 December 2017) at p. 7
[812] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motion for Access to Ex Parte Filings in Completed Cases* (10 May 2012) at p. 2

The requesting party must establish that such material is likely to assist its case materially, or that there is at least a good chance that it would. This standard may be met by showing the existence of a nexus between the applicant's case and the cases from which the material is sought.[813]

consent of witnesses

The Chamber determining an application under Rule 86(H) shall enquire through the WISP whether the protected victim or witness has any comments related to privacy and protection concerns, including whether the victim or witness consents to the rescission, variation, or augmentation of protective measures. A victim or witness may waive in whole or in part protective measures after being advised by a Chamber or the WISP of the consequences thereof.[814]

Pursuant to Rules 86(1) and 86(K), in the absence of a protected witness's consent to the variation of protective measures, a judge may order the variation of protective. measures based on a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result.[815]

Nature of protective measures for witnesses who could not be locate or refused to consent to disclosure to applicant would not be disclosed absent compelling showing of exigent circumstances.[816]

Rule 86(A) and not Rule 86(F)(H) or (I) applies when a party seeks rescission of protective measures in its own proceedings. Therefore, the Single Judge erred in refusing to consider the consent of the witness' family when denying a motion to rescind protective measures.[817]

Where witness' evidence would be crucial for showing the criminal responsibility of the accused and the same evidence could not be obtained from other witnesses, compelling showing of exceptional circumstances existed to disclose protected witness information to national authorities in the absence of consent of the witness, who the

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[813] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motion for Access to Ex Parte Filings in Completed Cases* (10 May 2012) at p. 3
[814] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on an Application pursuant to Rule 86* (3 December 2018) at p. 2
[815] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on an Application pursuant to Rule 86* (3 December 2018) at p. 2; *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on an Application pursuant to Rule 86* (16 October 2019) at p. 3; *Prosecutor v Nikolic*, No. MICT-19-118-R86F.2, *Decision on an Application pursuant to Rule 86…*(31 January 2020) at p. 3
[816] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on an Application pursuant to Rule 86* (16 October 2019) at p. 3
[817] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness* (14 November 2016) at paras. 10-11

WISP could not locate.[818]

Compelling showing of exigent circumstances was made where witness was key eyewitness to the events to be prosecuted in the national court and the evidence could not be obtained in any other manner. Therefore, national authorities were provided with witness' protective measures from ICTY despite witness' refusal to consent.[819]

Although compelling circumstances had been demonstrated by applicant from national proceedings for disclosure of witness' identity and private session testimony, disclosure would be denied where witness' consent could not be obtained.[820]

Where national authorities already knew identity of witness but sought to learn the nature of protective measures so they could be continued in national proceedings, the consent of the witness was not required to disclose that information.[821]

It was not necessary to seek the consent of the witness to disclose an exhibit tendered during the witness' testimony that was not authored by the witness.[822]

continuing protective measures

A trial chamber may order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused. A chamber must apply the protective measures ordered in prior proceedings *mutatis mutandis* to the proceeding before it. Given these materially distinct considerations, the Trial Chamber's continuation of protective measures for Prosecution witnesses has no bearing on the exercise of its discretion in denying protective measures in the first instance to Defence witnesses. Therefore, there was no double standard when the Trial Chamber denied protective measures for defence witnesses while continuing protective measures for Prosecution witnesses who had the same security concerns.[823]

current whereabouts of witnesses

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[818] *Prosecutor v Karadzic*, No. MICT-13-55-R86H.5, *Decision on an Application Pursuant to Rule 86(H)*(6 April 2017) at p 3; *Prosecutor v Karadzic*, No. MICT-13-55-R86H.6, *Decision on an Application Pursuant to Rule 86(H)*(25 May 2017)

[819] *Prosecutor v Nikolic*, No. MICT-19-118-R86F.2, *Decision on an Application pursuant to Rule 86…*(31 January 2020) at p. 3

[820] *Prosecutor v Mladic*, No. IT-13-56-A, *Decision on an Application pursuant to Rule 86* (3 December 2018) at p. 2

[821] *Prosecutor v Naletilic & Martinovic,* No. MICT-15-86-R86F.1, *Decision on an Application pursuant to Rule 86* (21 January 2016) at p. 2; *Prosecutor v Stakic*, No. MICT-13-60-R86F.1, *Decision on an Application pursuant to Rule 86* (16 March 2016) at p. 2; *Prosecutor v Brdjanin*, No. MICT-13-48-R86F.2, *Decision on an Application pursuant to Rule 86* (16 July 2016) at p. 2

[822] *Prosecutor v Blaskic*, No. MICT-14-69-R86G.1, *Decision on Prosecution Application pursuant to Rule 86(G)* (19 September 2014), at para. 9

[823] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 252

Prosecution allowed to withhold disclosure of current whereabouts of its witnesses as the defence would be able to contact such witnesses upon request to the prosecution.[824]

deceased witnesses

Under Rule 86(H), the consent of family members of a deceased witness to rescission of the protective measures are irrelevant. Absent the consent of the witness, which cannot be obtained once he is deceased, the protective measures can only be varied or rescinded upon a showing of compelling exigent circumstances.[825]

Following the death of a witness who had benefited from protective measures, security concerns may remain for the witness's family. Therefore, the security concerns of members of a deceased witness's family may constitute a relevant consideration in determining whether the protective measures granted to the witness should remain in place or be rescinded under Rule 86(A) of the Rules[826]

To determine whether to rescind protective measures for deceased witness, WISP should contact the family members, particularly those living in Rwanda or neighboring countries, to determine whether rescinding the protective measures would pose security risks for them.[827]

Protective measures for deceased defence witness rescinded where witness' family indicated that protective measures were no longer needed and where no close family members lived in Rwanda or DRC.[828]

defence obligations

The defence may disclose protected witness information when directly and strictly necessary for the preparation and presentation of the defence case.[829]

defence team members

Defence ordered to provide Registry with a list of its team members.[830]

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[824] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Motion for Protective Measures for Victims and Witnesses and Documentary Evidence* (18 February 2016) at para. 9
[825] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Consider Variation of Protective Measures for a Witness* (11 September 2018) at p. 3; *Prosecutor v Karadzic*, No. MICT-13-55-R86H.9, *Decision on an Application pursuant to Rule 86(H)* (21 December 2018) at p. 2
[826] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness* (14 November 2016) at para. 12
[827] *Prosecutor v Kamuhanda,* No. MICT-13-33, *Order for Further Submissions* (13 January 2017) at p. 3
[828] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on a Motion to Rescind Witness ALM's Protective Measures* (24 February 2017) at p. 4
[829] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Motion for Protective Measures for Victims and Witnesses and Documentary Evidence* (18 February 2016) at para. 7
[830] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Motion for Protective Measures for Victims and Witnesses and Documentary Evidence* (18 February 2016) at para. 10

delayed disclosure

While the ICTR Appeals Chamber in *Bagosora* stated required disclosure of the identity of all witnesses, including protective witnesses be made "prior to the trial", it did not rule out a deviation from this requirement for the purposes of a more restrictive disclosure schedule required for the protection of witnesses. Therefore, the Trial Chamber did not err in delaying disclosure of the identity and statements of some witnesses until after the trial commenced.[831]

disclosure in other cases

access standard

A party is entitled to seek material from any source, including from another case at the Tribunal, to assist in the preparation of its case.[832]

Where a party requests access to material from another case, such material must be identified and described by its general nature and a legitimate forensic purpose must be demonstrated.[833]

The relevance of the material sought may be demonstrated by the nexus between the requesting party's case and the case from which the material is being sought.[834]

The requesting party must demonstrate that the materially is likely to advance its case materially, or at least that there is a good chance that it would.[835]

The nexus between the requesting party and the earlier case is shown where the

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[831] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 235
[832] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Stanislav Galic's Further Motion to Access Confidential Information in the Karadzic Case* (4 August 2016), para. 11; *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Defence Motion Seeking Access to Confidential Records in Other Cases* (21 April 2021) at p. 2
[833] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Stanislav Galic's Further Motion to Access Confidential Information in the Karadzic Case* (4 August 2016), para. 11; *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Defence Motion Seeking Access to Confidential Records in Other Cases* (21 April 2021) at p. 2
[834] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Stanislav Galic's Further Motion to Access Confidential Information in the Karadzic Case* (4 August 2016), para. 11; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Stanisic Request for Access to Confidential Material in the Martic Case* (24 January 2017) at p, 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Simatovic's Request for Access to Confidential Material in the Hadzic Case…*(18 July 2018) at p. 2; *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Defence Motion Seeking Access to Confidential Records in Other Cases* (21 April 2021) at p. 2
[835] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Stanislav Galic's Further Motion to Access Confidential Information in the Karadzic Case* (4 August 2016), para. 11; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Stanisic Request for Access to Confidential Material in the Martic Case* (24 January 2017) at p, 2; *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Defence Motion Seeking Access to Confidential Records in Other Cases* (21 April 2021) at p. 2

accused are alleged to have been members of the same joint criminal enterprise.[836]

Regarding confidential material, the Mechanism must find a balance between the right of a party to have access to material to prepare its case and the need to guarantee the protection of witnesses.[837]

Accused person granted access to confidential material from other cases limited to overlapping events in those cases and material in which his name is mentioned.[838]

A request for access to confidential material from another case can only be granted where such material is sufficiently identified and a legitimate forensic purpose for granting access is sufficiently demonstrated.[839]

Confidential documents relating to remuneration, provisional release, fitness to stand trial, reports on health issues, notices of non-attendance in court, modalities of trial, protective measures, subpoenas, video conference links; and orders to redact the public transcript and the public broadcasting of a hearing are not ordinarily included in access orders.[840]

Providing the pseudonyms assigned to the Prosecution witnesses in his case and asking for access to other material related to their testimony in other cases before the ICTR identified the requested material with sufficient precision.[841]

continuing access at IRMCT

Where access was granted to the case of another accused while that case was pending before the ICTY, the same access automatically continues when the case is later before the IRMCT.[842]

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[836] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Stanisic Request for Access to Confidential Material in the Martic Case* (24 January 2017) at p, 2
[837] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motion for Access to Ex Parte Filings in Completed Cases* (10 May 2012) at p. 2
[838] *Prosecutor v Kabuga*, No, MICT-13-38-PT, *Decision on Defence Motion Seeking Access to Confidential Records in Other Cases* (21 April 2021) at p. 3
[839] *Prosecutor v Kamuhanda*, No. MICT-13-33-R86.2, *Second Decision on Request for Access to Confidential Material from the Nshogoza Case* (9 November 2015) at para. 4; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motion for Access to Ex Parte Filings in Completed Cases* (10 May 2012) at p. 2
[840] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Stanisic's Request for Access to Confidential Material in the Hadzic Case* (29 September 2016) at p. 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Stanisic Request for Access to Confidential Material in the Martic Case* (24 January 2017) at p, 3; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Simatovic's Request for Access to Confidential Material in the Hadzic Case…*(18 July 2018) at p. 3
[841] *Niyitegeka v Prosecutor*, No. MICT-12-16, *Decision on Niyitegeka's Urgent Request for Orders relating to Prosecution Witnesses* (29 January 2016) at para. 9
[842] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Radovan Karadzic's Motion for Access to Confidential Material* (5 April 2016); *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Stanisic's Request for Access to Confidential Material in the Krajisnik Case* (29 September 2016) at p. 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Stanisic's Request for*

IRMCT does not have jurisdiction to vary protective measures for witness who was originally granted protective measures in a completed case at the ICTY, but had those protective measures varied and continued in a case still pending at the ICTY.[843]

Where a witness has testified pursuant to protective measures in both a case now pending before the IRMCT and a case now pending before the ICTY, the IRMCT has jurisdiction to vary the protective measures.[844]

contempt cases

Defendant in review proceedings entitled to access to all confidential material in contempt case arising from allegedly corrupting witnesses in the review proceedings.[845]

Pro bono counsel for convicted person allowed access to related contempt case to be able to assist in a subsequent motion for review of the underlying conviction even after initial motion for review denied.[846]

Amicus curiae investigator granted access to confidential information from underlying prosecution for contempt to fulfil his mandate to investigate additional contempt allegation referred by Single Judge.[847]

convicted persons

Where the proceedings have been definitively concluded, the only forensic purpose, which would be legitimate for access by a convicted person is for establishing a "new fact" capable of constituting the basis for a review of his conviction.[848]

Access to Confidential Material in the Simic et al Case (13 October 2016) at p. 2; *Prosecutor v Seselj,* No. MICT-16-99-A, *Decision on Stanisic Request for Access to Confidential Material in the Seselj Case* (24 January 2017) at p. 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Simatovic's Request for Access to Confidential Material in the Hadzic Case…*(18 July 2018) at p. 2

[843] *Prosecutor v Kunarac et al*, No. MICT-15-88-R86(H).1&2, *Decision on Applications pursuant to Rule 86(H) (*9 February 2016) at para. 9

[844] *Prosecutor v Karadzic,* No, MICT-13-55-R86H.3, *Order on an Application pursuant to Rule 86* (16 February 2017) at p. 2

[845] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Requests for Access* (25 February 2019) at p. 3

[846] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Registrar's Submission in relation to Access to Contempt Cases for Pro Bono Counsel* (11 March 2020) at p. 3

[847] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Decision on Amicus Curiae's Motion for Access and Requests for Clarification and Variation of Protective Measures* (21 January 2022) at p. 4

[848] *Prosecutor v Kamuhanda*, No. MICT-13-33-R86.2, *Second Decision on Request for Access to Confidential Material from the Nshogoza Case* (9 November 2015) at para. 5; *Niyitegeka v Prosecutor*, No. MICT-12-16, *Decision on Niyitegeka's Urgent Request for Orders relating to Prosecution Witnesses* (29 January 2016) at para. 9; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Stanislav Galic's Motion for Confidential Materials from the Karadzic Case* (9 June 2016) at para. 10; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Stanislav Galic's Further Motion to Access Confidential Information in the Karadzic Case* (4 August 2016), para. 14; *Prosecutor v Tolimir*, No. MICT-15-95, *Decision on Vujadin Popovic's Motion for Access to Confidential Material in the…Tolimir Case* (8

Simply pointing to the nexus between the applicant's case and the case to which he seeks access is insufficient to justify granting access to the confidential material in the absence of an explanation of how the material requested would serve to establish a new fact and impact the conviction[849]

Although the issue to which the material sought relates was litigated in the applicant's case, the qualitative difference in the evidence between the two cases could be framed as a new fact or could lead to the discovery of a new fact, and therefore there is a legitimate forensic purpose for access by a person whose conviction is final.[850]

Private session testimony of gendarme witness who allegedly participated in attack for which the applicant was convicted could not lead to discovery of a new fact where issue of participation of gendarmes during attack had been litigated at trial.[851]

The mere fact that witnesses may have testified in another case after having testified in the case of the applicant does not necessarily reflect that their evidence is relevant to establishing a "new fact" in the context of review proceedings or demonstrate that any related material may be of material assistance to the preparation of a review application.[852]

The obligations stemming from Articles 11 and 12 of the Code of Conduct for Defence Counsel to inspect all available material likely favourable to a client's case does not impact the analysis for determining requests for access to confidential material from another case.[853]

Findings made by a separate Trial Chamber on the criminal liability of another

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February 2017), at para. 9; *Prosecutor v. Karadzic*, No. MICT-13-55-A, *Decision on Vujadin Popovic's Motion for Access to Confidential Material in the…Karadzic Case* (17 February 2017), at para. 10; *Prosecutor v Tolimir*, No. MICT-12-85, *Decision on Request for Access to Confidential Material in the Prosecutor v Zdravko Tolimir case Presented by Vujadin Popovic* (17 May 2017) at para. 14; *Prosecutor v Niyitegeka*, No. MICT-12-16-R86G.1, *Decision on Motions for Access to Confidential Materials in the Niyitegeka and Kayishema and Ruzindana Cases* (27 February 2018) at para. 7; *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at para. 8

[849] *Prosecutor v Tolimir*, No. MICT-12-85, *Decision on Request for Access to Confidential Material in the Prosecutor v Zdravko Tolimir case Presented by Vujadin Popovic* (17 May 2017) at para. 15

[850] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Stanislav Galic's Further Motion to Access Confidential Information in the Karadzic Case* (4 August 2016), para. 16

[851] *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at para. 10

[852] *Niyitegeka v Prosecutor*, No. MICT-12-16, *Decision on Niyitegeka's Urgent Request for Orders relating to Prosecution Witnesses* (29 January 2016) at para. 9; *Prosecutor v Niyitegeka*, No. MICT-12-16-R86G.1, *Decision on Motions for Access to Confidential Materials in the Niyitegeka and Kayishema and Ruzindana Cases* (27 February 2018) at para. 7; *Prosecutor v Musema*, No. MICT-12-15, *Decision on a Motion for Access and a Motion for Disclosure* (27 February 2018) at para. 7

[853] *Prosecutor v Tolimir*, No. MICT-15-95, *Decision on Vujadin Popovic's Motion for Access to Confidential Material in the…Tolimir Case* (8 February 2017), at para. 9, fn. 30; *Prosecutor v. Karadzic*, No. MICT-13-55-A, *Decision on Vujadin Popovic's Motion for Access to Confidential Material in the…Karadzic Case* (17 February 2017), at para. 10, fn. 37

accused that are based upon a different evidentiary record, do not, in and of themselves, amount to a new fact.[854]

Convicted person denied access to all confidential *inter partes* material from case in which an accused was acquitted of some of the same events, as in the absence of a particularized showing from publicly available material, such as the Trial Judgement, it is not clear how a new fact arises from the acquittal itself.[855]

Convicted person denied access to all confidential *inter partes* material in the contempt case of his investigator and must specify the particular documents to which he seeks access.[856]

Convicted person only entitled to access a redacted version of list of persons mentioned in testimony in trial of his investigator, limited to the names of witnesses who testified both in his case and the investigator's case.[857]

Convicted person not entitled to access to statements of witnesses disclosed in investigator's case which pertains to the crime for which he was convicted absent further specification of the material.[858]

enforcement proceedings

Defence is entitled to redacted information from early release decision relating to a person who is to testify as a Prosecution witness in the case.[859]

national proceedings

Where national authorities know the identity of protected witnesses but seek information from the IRMCT as to what protective measures have been ordered for the witnesses, it is not necessary to seek the consent of the witness and request for information on protective measures was granted.[860]

In circumstances where an external party is unable to file an application for

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[854] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Stanislav Galic's Motion for Confidential Materials from the Karadzic Case* (9 June 2016) at para. 10
[855] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Stanislav Galic's Motion for Confidential Materials from the Karadzic Case* (9 June 2016) at para. 10
[856] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Request for Access to Confidential Inter Partes Information from the Nshogoza Case* (21 September 2015) at para. 10
[857] *Prosecutor v Kamuhanda*, No. MICT-13-33-R86.2, *Second Decision on Request for Access to Confidential Material from the Nshogoza Case* (9 November 2015) at para. 5
[858] *Prosecutor v Kamuhanda*, No. MICT-13-33-R86.2, *Second Decision on Request for Access to Confidential Material from the Nshogoza Case* (9 November 2015) at para. 5
[859] *Prosecutor v Nikolic*, No. MICT-14-65-ES, *Decision on Ratko Mladic's Requests for Leave to Reply and Reconsideration...*(6 June 2018) at paras. 24-25
[860] *Prosecutor v Delic*, No. MICT-14-74-R86F.2, *Decision on Application pursuant to Rule 86* (11 February 2016) at pp. 3-4; *Prosecutor v Karadzic*, No. MICT-13-55-R86H7&8, *Decision on Applications pursuant to Rule 86(H)* (8 March 2018) at p. 2

variation of protective measures due to lack of, or erroneous, knowledge of a case before the ICTY in which the protected witness testified, an application made by the Prosecution on behalf of the external party is the appropriate approach.[861]

Even though the Rules do not explicitly provide for the Prosecution filing an application on behalf of a local Prosecutor, applying under Rule 86(G) is the most practical approach when the Prosecution seeks to render assistance to an external party, who can, due to lack of knowledge, not be expected to file an application itself.[862]

It was appropriate to grant motion for variance of protective measures filed by Office of the Prosecutor pursuant to Rule 86(G) where it was impractical for the recipient organisation to obtain judicial authorisation and where the witness consented to disclosure.[863]

IRMCT defendant lacks standing under Rule 86 to request disclosure of exculpatory material to national authorities because unlike the Prosecution, it has no statutory obligation to assist investigations and prosecutions by national authorities.[864]

A party to the proceedings in which the protective measures concerned in a Rule 86(H) Application were ordered has standing to request access to the application.[865]

Where protective measures have been continued in a case currently pending before the Appeals Chamber, the Single Judge appointed in the case in which the protective measures were originally issued lacks jurisdiction to hear an application by national authorities to vary those protective measures.[866]

Disclosure of confidential information pertaining to protected witnesses to person accused in national jurisdiction denied where the witnesses refused to consent to disclosure, or was deceased, and no exigent circumstances warranting disclosure were presented.[867]

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[861] *Prosecutor v Karadzic*, No. MICT-13-55-R86G.1, *Decision on an Application pursuant to Rule 86(G) and on a Motion to Exceed the Word Limit* (7 August 2017) at p. 2
[862] *Prosecutor v Blaskic*, No. MICT-14-69-R86G.1, *Decision on Prosecution Application pursuant to Rule 86(G)* (19 September 2014), at para. 8
[863] *Prosecutor v Haradinaj*, No. MICT-13-47-R86G.1, *Decision on Prosecution's Application for Variation of Protective Measures* (19 December 2013) at para. 7
[864] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Disclosure of Exculpatory Material* (19 February 2018) at p. 2
[865] *Prosecutor v Karadzic*, No. MICT-13-55-R86H.9, *Decision on a Motion to Reclassify Rule 86(H) Application* (24 January 2019) at p. 2
[866] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Version of a Decision* (15 March 2018) at Annex, p. 3
[867] *In Re Ntakirutimana et al*, No. MICT-12-17, *Decision in Respect to Jacques Mungwarere's Motions to Access Materials* (18 January 2013) at para. 15; *In Re Bagosora et al*, No. MICT-12-26, *Decision in Respect of the Request for Access to Materials Concerning Pascal Simbikangwa* (21 January 2013) at para. 10; *Prosecutor v Gatete*, MICT-13-42, *Decision in Respect to the Application for Variation of Protective Measures* (15 May 2013) at para. 13

Disclosure of protected ICTY witness' testimony to national authorities denied where witness did not consent and where the national authorities already had access to one statement of the witness and therefore exigent circumstances for disclosure of the testimony were not present.[868]

Disclosure of confidential information pertaining to protected witnesses to national authorities granted where one witness refused to consent and other witness could not be located, but there were no other witnesses who could identify the subject of the national proceedings as the perpetrator and the national prosecution would be in jeopardy without the disclosure of the identity and testimony of the two witnesses.[869]

Disclosure of confidential information pertaining to protected witnesses to national authorities denied in the exercise of the Chamber's discretion even where the applicant had made a compelling showing of exigent circumstances.[870]

Disclosure of closed session testimony of witnesses at an ICTY trial to person accused of the same crimes in national jurisdiction denied on reconsideration where the fact that the witnesses did not mention the applicant was not sufficiently exculpatory to overcome the lack of consent of the witnesses to disclosure and considering threats to witnesses in the ICTY case.[871]

Disclosure of confidential information pertaining to protected witnesses to prosecution in national jurisdiction denied where the witnesses refused to consent to disclosure and there was no showing that the prosecution case would collapse without the evidence of the protected witnesses.[872]

Disclosure of protected witness information to national authorities granted for one witness who consented, for another witness who had consented in the past, and for one witness who did not consent but whose testimony was considered of "huge importance" by the national authorities.[873]

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[868] *Prosecutor v Mladic*, No. MICT-13-56-R86H.2, *Decision on an Application pursuant to Rule 86* (2 July 2018) at p. 4

[869] *Prosecutor v Karadzic*, No. MICT-13-55-R86G.1, *Decision on an Application pursuant to Rule 86(G) and on a Motion to Exceed the Word Limit* (7 August 2017) at p. 3

[870] *Prosecutor v Mladic*, No. MICT-13-56-R86H.3, *Decision on an Application pursuant to Rule 86 (*31 August 2018) at p. 3

[871] *Prosecutor v Lukic & Lukic*, No. MICT-13-52-R86H.1, *Decision on Prosecution Motion for Reconsideration or Certification on Application Pursuant to Rule 86(H)* (10 February 2016) at paras. 10,12

[872] *Prosecutor v Kunarac et al*, No. MICT-15-88-R86(H).1&2, *Decision on Applications pursuant to Rule 86(H) (*9 February 2016) at para. 12; *Prosecutor v Delic*, No. MICT-14-74-R86H.1, *Decision on Application pursuant to Rule 86(H)* (11 February 2016) at para. 10

[873] *Prosecutor v Mladic*, No. MICT-13-56-R86H.1, *Decision on an Application pursuant to Rule 86(H)*(30 May 2018) at p. 3

Disclosure of material concerning potential defence witnesses granted to counsel appointed to represent the accused whose case was referred to Rwanda despite objection of accused.[874]

real time access

Where review hearing was scheduled to take place on the eve of the trial of a related contempt prosecution, defence teams would be allowed to receive draft transcripts at the end of each hearing day but would not be granted real time access to the proceedings, as there was not a complete overlap in access to material from the review case.[875]

referred contempt cases

Access to confidential material from underlying ICTY case granted to Serbia's prosecution office to whom contempt case had been referred.[876]

relevance

Access to transcript showing that unrelated witness had fabricated evidence in another case was not likely to assist accused's case since fabrication of evidence in other cases had no relevance to present charges of seeing to have witnesses fabricate their evidence.[877]

dropped witnesses

The fact that a witness did not eventually testify for the Prosecution did not in any way terminate his protected status.[878]

***ex parte* material**

Regarding *ex parte* confidential material, the requesting party must meet a higher standard to establish a forensic purpose for accessing such material. [879]

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[874] *Prosecutor v Munyagishari*, No. MICT-12-20, *Decision on an Application for Access to Confidential Information* (5 January 2017) at pp. 2-3
[875] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Request for Real Time Access* (5 August 2019)
[876] *Prosecutor v Sesel et al*, No. MICT-23-129-I, *Decision on Prosecution Request concerning Protected Witnesses and on Access to the Case Record* (23 January 2025)
[877] *Prosecutor v Turinabo et al*, MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Request for Variation of Protective Measures of Witness BTH and Access to Documents* (19 October 2020) at p. 4
[878] *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 26
[879] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motion for Access to Ex Parte Filings in Completed Cases* (10 May 2012) at p. 3; *Prosecutor v Akayesu*, No. MICT-13-30, *Decision on a Motion for Access to Confidential and Ex Parte Filings* (10 June 2016); *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules* (18

The party on whose behalf ex parte status has been granted enjoys a protected degree of trust that the *ex parte* material will not be disclosed.[880]

Appellant who sought access to *ex parte* prosecution motions outlining reasons for protective measures granted in other cases to witnesses who testified in his case with a continuation of those measures failed to satisfy the heightened showing required for access to the *ex parte* filings.[881]

Fact that the identity of the protected witness was disclosed to the defence in national proceedings did not justify allowing the defence in the IRMCT proceedings to have access to the *ex parte* filings that led to variance of the IRMCT protective measures.[882]

Fact that the Applicant is an accused in ongoing judicial proceedings before a national court, or that the purpose of the Application is to allow the protected witness to be called as a defence witness was not a sufficient circumstance to justify dispensing with the "heightened showing" required to be made by a defendant in the case in which the protected measures were ordered for access to the application.[883]

Convicted person would not be granted access to *ex parte* material relating to prosecution witnesses who had allegedly violated their protective measures by appearing in a film under their true names.[884]

Redacted versions of *ex parte* decisions on requests by national authorities for variation of protected measures granted where it would ensure the public nature of the proceedings while protecting the interests of the parties to the *ex parte* proceedings.[885]

July 2016) at p. 4; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Compel Inspection of Pseudonyms of Witnesses* (22 May 2017) at p. 3

[880] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motion for Access to Ex Parte Filings in Completed Cases* (10 May 2012) at p. 3; *Prosecutor v Akayesu*, No. MICT-13-30, *Decision on a Motion for Access to Confidential and Ex Parte Filings* (10 June 2016); *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Compel Inspection of Pseudonyms of Witnesses* (22 May 2017) at p. 3

[881] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Motion for Access to Ex Parte Filings in Completed Cases* (10 May 2016) at p. 3

[882] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Reclassify Filings* (3 October 2017) at p. 6

[883] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Reclassification and a Motion for Service* (22 March 2018) at p. 4

[884] *Prosecutor v Akayesu*, No. MICT-13-30, *Decision on a Motion for Access to Confidential and Ex Parte Filings* (10 June 2016)

[885] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules* (18 July 2016) at p. 5; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Rule 86(F) Filings* (24 January 2017) at pp. 4-5; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Inter Partes Proceedings in Rule 86 Matters* (9 March 2017) at para. 6

Prosecution ordered to re-file redacted versions of its pleading so as to provide the defence with the citations to the jurisprudence it relied upon in responding to motions to modify protective measures filed *ex parte* by national authorities.[886]

Considering the varied circumstances of applications made under Rule 86(F), access to any future confidential *ex parte* materials in such cases should be determined on a case-by-case basis.[887]

Reclassification of Rule 86(H) application for variance of protective measures for defence witness from *ex parte* to confidential granted where national proceedings were underway and where national authorities agreed that *ex parte* classification was not necessary.[888]

Disclosure of pseudonym of witnesses who were the subject of applications for variation of protective measures by national authorities to the accused in whose case the witnesses had testified was denied where it may reveal details of non-public investigations by national authorities.[889]

The "heightened showing" standard for access to *ex parte* material applies to a defendant in the case in which the protective measures were ordered.[890]

An accused does not have standing to participate in Rule 86 proceedings brought by national authorities, as such proceedings concern the application of witness protection measures in domestic proceedings, not the IRMCT case.[891]

interview of protected prosecution witnesses

Requirement of ICTR Trial Chamber that defence obtain judicial approval when seeking to interview a protected prosecution witness would not be varied after trial and appeal, as there is a strong interest in finality.[892]

Contact with protected prosecution witness to determine if the witness consents to interview by defence should be made by the Witness and Victims Section and not the Office of the Prosecutor.[893]

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[886] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Public Redacted Versions of Rule 86(F) Jurisprudence* (6 April 2017) at p. 3
[887] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Rule 86(F) Filings* (24 January 2017) at p. 5
[888] *Prosecutor v Karadzic*, No. MICT-13-55-R86H7&8, *Decision on a Motion for Reclassification* (16 March 2018) at p. 2
[889] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Compel Inspection of Pseudonyms of Witnesses* (22 May 2017) at p. 4
[890] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Reclassification and a Motion for Service* (22 March 2018) at p. 3
[891] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Inter Partes Proceedings in Rule 86 Matters* (9 March 2017) at para. 7
[892] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Motion for Contact with Witnesses Benefitting from Protective Measures* (10 March 2016) at para. 14

If the witness consents to meet defence counsel when asked by the Witness and Victims Section, the prosecution must thereafter facilitate that interview.[894]

Convicted person investigating potential new facts as grounds for review made the requisite showing to interview protected prosecution witness. Witness Support and Protection Unit ordered to determine if witness consented to the interview.[895]

Prosecution and/or Witness and Victims Unit has the right to be present at the interview of a protected prosecution witness who consents to be interviewed by the defence.[896]

WISP advice that Prosecution witness must hold WISP and UN harmless for any "moral and material prejudice" from interview with defence counsel did not violate the generally accepted principle that the interpretation and implementation of protective measures should be the least restrictive necessary to provide for the protection of victims or witnesses.[897]

Convicted person failed to show that WISP advice that Prosecution witness must hold WISP and UN harmless for any "moral and material prejudice" from interview with defence counsel was the cause of witness' refusal to meet with defence counsel.[898]

Prosecution witness who had been advised by Witnesses and Victims Unit that he must hold WISP and UN harmless for any "moral and material prejudice" if he consented to interview with defence counsel could not be re-contacted where defence argument that this discouraged the witness from meeting defence counsel was speculative.[899]

Where witness had declined on two occasions to consent to meet with defence counsel, oral hearing to determine if witness' lack of consent was due to faulty advice from Victims and Witnesses Unit was denied.[900]

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[893] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Motion for Contact with Witnesses Benefitting from Protective Measures* (10 March 2016) at para. 19
[894] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Motion for Contact with Witnesses Benefitting from Protective Measures* (10 March 2016) at para. 19
[895] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Request to Interview a Witness* (10 March 2016) at p. 3; *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Motion for Contact with Witnesses Benefitting from Protective Measures* (10 March 2016) at para. 23
[896] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Motion for Contact with Witnesses Benefitting from Protective Measures* (10 March 2016) at para. 23
[897] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on an Appeal of a Decision Rendered by a Single Judge* (6 October 2017) at para. 14
[898] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on an Appeal of a Decision Rendered by a Single Judge* (6 October 2017) at para. 15
[899] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on a Request to Re-Contact Witness GAE* (14 October 2016) at p. 2
[900] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Motion for Hearing for Prosecution Witness* (19 October 2016) at p. 5

Although it may have been in the interest of justice to grant motion of convicted person seeking review to interview a protected prosecution witness, absent the witness' consent, such an interview cannot be granted.[901]

Witnesses and Victims Unit directed to determine if relative of deceased protected witness consented to meet with defence counsel for convicted person seeking review where although there was an interest in the finality of the proceedings, the accused had encountered difficulties posed by the protective measures' regime in this case and its impact on defence efforts to prepare a request for review.[902]

Defence allowed to interview relative of deceased protected prosecution witness when relative consented to be interviewed.[903]

Counsel's knowledge of the witness protection measures in place is of central importance to the conduct of any defence investigation. Therefore, there was a violation of the protective measures even where counsel did not know at the time of the contact that the witness has once been a Prosecution witness who had been dropped.[904]

In order to safeguard the integrity of the evidence of a recanting prosecution witness at the review hearing and to ensure that there is no interference with the course of justice, it is appropriate that the Defence and the Prosecution be aware of the other party's contact with the witness and for the WISP to seek consent of the witness prior to any such contact and to be present during any resulting meeting between the parties and the witness.[905]

Protective measures varied to allow defence to interview protected Prosecution witnesses that it intended to call at review hearing without the requirement that the Prosecution be present.[906]

In contempt case, protective measures for witnesses of both parties modified to provide that the other party would not be notified of, or be present at, an interview of the witness, but that the presence a representative of the WISP would be required.[907]

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[901] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Motion to Interview a Witness* (16 April 2018) at p. 2
[902] *Prosecutor v Kamuhanda*, MICT-13-33, *Order Related to a Motion to Interview a Witness' Relative* (30 October 2018) at p. 2
[903] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on a Motion to Interview a Witness' Relative* (11 December 2018)
[904] *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 24
[905] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Prosecution Motion for Enforcement of Protective Measures* (4 June 2024) at p. 4
[906] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Application for Modification of Protective Measures* (12 September 2019) at p. 2
[907] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, Order Varying Protective Measures (6 December 2019) at p. 4

jurisdiction

A judge of the Mechanism has jurisdiction to vary or reconsider protective measures issued by an ICTR Trial Chamber.[908]

Jurisdiction to grant access to confidential information in contempt proceedings lied with Single Judge presiding over those proceedings, not with Appeals Chamber presiding over underlying review motion, as the contempt case was the "first proceedings" within the meaning of Rule 86(G).[909]

The Mechanism did not have jurisdiction to provide information to national authorities on the protective measures granted to a witness in the *Mladic* trial while that trial was still ongoing at the ICTY.[910]

medical services

Variation of protective measures granted to allow disclosure of identity of consenting protected witnesses to Rwandan authorities who would assume responsibility for providing medical services to witnesses following the closure of the IRMCT Kigali field office.[911]

new counsel

To carry out their duties in full, counsel recognized, assigned, or appointed by the Registrar as acting for an accused or convicted person must, in principle, automatically have access to the complete record of the proceedings to which their client is entitled.[912]

Once counsel is recognized by the Mechanism as acting for a convicted person, the Registrar must automatically grant counsel full access to his client's complete case file. except if the Registrar identifies (following relevant consultations with the Prosecution, if necessary) exceptional circumstances requiring denial of such access, in which case the judiciary may review the circumstances raised and issue an appropriate order.[913]

The Registry's standard practice of requiring newly recognized counsel to request access to his client's confidential judicial records in the absence of any

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[908] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Motion for Contact with Witnesses Benefitting from Protective Measures* (10 March 2016) at para. 9
[909] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Motion for Access* (24 December 2018)
[910] *Prosecutor v Mladic*, No. MICT-13-56-R86F.1, *Decision on an Application pursuant to Rule 86(F)* (23 November 2013)
[911] No. MICT-24-132-MISC, *Decision on Request for Partial Variation of Protective Measures in relation to the Closing of the Kigali Field Office* (29 August 2024) at p. 4
[912] *Prosecutor v Brdjanin*, No. MICT-13-48, *Decision on Request for Access* (3 August 2015); *Prosecutor v Kajelijeli*, No. MICT-14-64, *Decision on a Request for Access* (29 March 2016)
[913] *Prosecutor v Karera*, No. MICT-12-24-R, *Decision on Request for Access* (10 August 2016), p. 2

exceptional circumstances wastes judicial resources.[914]

A variation of witness protection orders under Rule 86 is not required for new counsel to have access to the confidential material in his client's case file.[915] However, a judicial order is required to obtain such access.[916]

Where there are no exceptional circumstances, no judicial order is required for new counsel to have access to the confidential material in his client's case file.[917]

objective threat

Trial Chamber did not commit discernible error in finding that the information presented by Defence did not support a finding of an objective threat to Defence witness' security or welfare or that of his family members.[918]

The witness' fear, which did not directly implicate the physical safety of the witness and the witness's family, did not require the imposition of all the protective measures sought by the Defence.[919]

Defence witness' fears of self-incrimination and increased likelihood of prosecution in the witness's home jurisdiction were speculative and unrelated to any objectively grounded risk to his security or welfare, and therefore denial of protective measures was not error.[920]

post-conviction stage

Protective measures continue in the post-conviction stage, and it was not necessary for defence counsel to obtain judicial approval of contact with protected prosecution witnesses where the protective measures order did not require it. The Prosecution was obligated to facilitate those contacts.[921]

public testimony

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[914] *Prosecutor v Karera*, No. MICT-12-24-R, *Decision on Request for Access* (10 August 2016), p. 2
[915] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Request for Access* (26 June 2015) at para. 11
[916] *Prosecutor v Kamuhanda*, MICT-13-33, *Decision on Request for Access* (26 June 2015) at paras. 18-19
[917] *Prosecutor v Brdjanin*, No. MICT-13-48, *Decision on Request for Access* (3 August 2015); *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Request for Access* (16 September 2015); *Prosecutor v Kajelijeli*, No. MICT-14-64, *Decision on a Request for Access* (29 March 2016)
[918] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 253
[919] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 255
[920] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 256
[921] *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 11

Witnesses who have publicly provided evidence before the ICTR without a pseudonym do not require protective measures if called to testify in this case.[922]

recording of interviews

Appeals Chamber varied protective measures to allow recording of defence post-conviction interviews of Prosecution witnesses with their consent where it was satisfied that recording would assist in ensuring the integrity of any statements given by the witnesses in relation to their testimony before the ICTR.[923]

refugee status

Protective measures varied to allow disclosure of identity of protected witness to UNHCR and state of residence where witness consented to the same.[924]

removal of confidential material from publication

Individuals ordered to remove publications that contained confidential filings including information on the identities of protected prosecution witnesses or to provide in writing reasons for not doing so.[925]

Individuals ordered to cease and desist from all publication, sale, distribution, public display and all other dissemination of confidential ICTY and Mechanism material; ensure that all existing hardcopy books, manuscripts and other printing material are destroyed; handover video tapes of protected ICTY court proceedings and hardcopy confidential ICTY filings and transcripts in their possession to the Registry; destroy all electronic copies of confidential material in their possession and instruct any person or entity they have provided copies to do the same; and file a report setting out the steps taken to comply with the Order or provide reasons for not doing so.[926]

rescission

Pursuant to Rule 86(H), a witness for whom protective measures have been granted may seek to rescind, vary, or augment such measures.[927]

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[922] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Order on Prosecution Submissions Concerning Protective Measures* (9 November 2021) at para. 14
[923] *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 13
[924] *Prosecutor v Muhimana*, No. MICT-12-12, *Decision on Motion for Interim and Permanent Orders and Related Requests* (21 December 2017) at p. 9
[925] *Prosecutor v Seselj*, No. MICT-16-99-R90.1, *Order Concerning the Publication of Confidential Information of 15 March 2021* (26 May 2023) at p. 3
[926] *Prosecutor v Seselj*, No. MICT-16-99-R90.1, *Order Concerning the Publication of Confidential Information of 15 March 2021* (26 May 2023) at p. 3; *Prosecutor v Seselj*, No. MICT-16-99-R90.1, *Order Concerning the Publication of Confidential Information of* 6 January 2023 (26 May 2023) at p. 2
[927] *Prosecutor v Mladic*, No. MICT-13-56-R86H.12, *Decision on Registrar's Submission in relation to a Witness Request dated 21 March 2025* (25 April 2025) at p. 2

Pursuant to Rule 86(J), a witness may waive in whole or in part protective measures granted after being advised by the WISP of the consequences thereof, and that such waiver must be made in a written statement signed by the witness and an officer of the WISP.[928]

Protective measures for defence witness rescinded at his request and after WISP obtained a statement from him consenting to the rescission of his protective measures.[929]

Protective measures for prosecution witnesses who identified themselves as such in a film would not be rescinded where no written statement requesting the same had been filed with WISP or the Trial Chamber as required by Rule 86(J).[930]

Protective measures for prosecution rescinded where she subsequently testified in other cases in her true name and her prior testimony was publicly acknowledged by the witness.[931]

scope of protective measures

When Trial Chamber found objectively grounded risk to the security and welfare of the Defence witness, but only granted image distortion, it did not commit a discernible error.[932]

violation of protective measures

Protective measures instruments must be interpreted according to their plain and ordinary meaning in their context and considering their object and purpose.[933]

Where Prosecution disclosure of witness' identity to state authorities in country where witness resided was to protect the witness and to secure the witness's evidence, it did not contradict the object and purpose of the protective measures order and therefore was not a violation.[934]

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[928] *Prosecutor v Mladic*, No. MICT-13-56-R86H.12, *Decision on Registrar's Submission in relation to a Witness Request dated 21 March 2025* (25 April 2025) at p. 2
[929] *Prosecutor v Kamuhanda*, No. MICT-12-33.R86H.1, *Decision on Application Pursuant to Rule 86(H)* (12 January 2016); *Prosecutor v Akayesu*, No. MICT-13-30, *Decision on an Application pursuant to Rule 86* (30 October 2017); *Prosecutor v Mladic*, No. MICT-13-56-R86H.12, *Decision on Registrar's Submission in relation to a Witness Request dated 21 March 2025* (25 April 2025) at p. 3
[930] *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Order Terminating Proceedings and Vacating an Order* (17 October 2017) at fn. 45
[931] *Prosecutor v Nahimana et al*, No. MICT-13-37, *Decision on an Application pursuant to Rule 86* (21 March 2023) at p. 2
[932] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 255
[933] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for an Order Referring a Matter to the President pursuant to Rule 90(C)* (23 November 2018) at p. 4; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Motion for Appointment of an Amicus Curiae* (23 October 2019) at p. 4
[934] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for an Order Referring a Matter to the President pursuant to Rule 90(C)* (23 November 2018) at p. 7, 13

Prosecution's request to state authorities to intercept calls related to protected witnesses did not explicitly disclose the fact that the persons being intercepted were protected witnesses and hence did not violate the protective measures, although it would have been preferable for the Prosecution to have sought a variance of the protective measures before making such disclosures to State authorities.[935]

The interpretation and implementation of protective measures orders should be the least restrictive necessary to provide for the protection of victims and witnesses.[936]

Defence counsel did not violate protective measures by receiving report of interview of protected prosecution witness conducted by prior counsel. However, counsel was cautioned to ensure that protective measures were respected and to seek a variation when necessary.[937]

Rule 87—requests for assistance of the Mechanism in obtaining testimony

(A) A Judge or bench in another jurisdiction or parties in another jurisdiction authorised by an appropriate judicial authority ("Requesting Authority") may request the assistance of the Mechanism in obtaining the testimony of a person under the authority of the Mechanism for use in an ongoing investigation or prosecution taking place in the jurisdiction of the Requesting Authority for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 or the territory of Rwanda in 1994, or committed by Rwandan citizens in the territory of Rwanda's neighbouring States in 1994.
(B) Requests pursuant to paragraph (A) shall be submitted to the President of the Mechanism, who shall refer the application to a Single Judge.
(C) Requests under paragraph (A) shall not be granted if granting the request may prejudice ongoing investigations or proceedings before the Mechanism.
(D) The Single Judge, having heard the Parties to the proceedings before the Mechanism, may grant a request pursuant to paragraph (A) after having verified that:
(i) granting the request will not prejudice the rights of the person under the authority of the Mechanism;
(ii) provisions and assurances are in place for observing any protective measures granted by the ICTY, the ICTR, or the Mechanism to the person under its authority;
(iii) granting the request will not pose a danger or risk to any victim, witness, or other person; and
(iv) no overriding grounds oppose granting the request.

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[935] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Motion for Appointment of an Amicus Curiae* (23 October 2019) at p. 4
[936] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for an Order Referring a Matter to the President pursuant to Rule 90(C)* (23 November 2018) at p. 4; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Motion for Appointment of an Amicus Curiae* (23 October 2019) at p. 4
[937] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at p. 5

(E) The assistance will be rendered by way of video-conference link. If legal provisions in the jurisdiction of the Requesting Authority do not allow for the testimony to be received by way of video-conference link, the Single Judge may consider to render the assistance by way of granting the Requesting Authority access to the person to be heard on the premises of the Mechanism or the transfer of the person under Rule 88.
(F) Upon order of the Single Judge, the Registrar shall coordinate the arrangements for the video-conference link and be present during the hearing.
(G) The Single Judge shall be present during the hearing and shall ensure that paragraphs (D)(i)-(iii) are respected.
(H) The questioning of the person to be heard shall be conducted directly by, or under the direction of, the Requesting Authority in accordance with its own laws.
(I) For purposes of this Rule, "person under the authority of the Mechanism" means an accused or convicted person detained on the premises of the detention unit or facility of the relevant branch of the Mechanism.
(J) Decisions taken under this Rule or Rule 88 are not subject to appeal.
(K) The President or the Single Judge may in all cases request any document or additional information from the Requesting Authority.

Rule 88—transfer of persons for purpose of testimony (non—Mechanism cases)

(A) The Single Judge, considering the transfer of a person under Rule 87(E), shall not grant such transfer unless:
(i) the person under the authority of the Mechanism has been duly summoned to testify;
(ii) the person under the authority of the Mechanism has provided his consent to the transfer;
(iii) the host country and the State to which the person under the authority of the Mechanism is to be transferred ("Requesting State") have been given the opportunity to be heard;
(iv) the Requesting State has provided written guarantees to the Mechanism as to the return of the transferred person within a stipulated period; the nontransfer of the person to another jurisdiction; the appropriate conditions of detention; and immunities from prosecution and service of process for acts, omissions, or convictions prior to the person's arrival in the territory of the Requesting State;
(v) the transfer of such person will not extend the period of the person's detention as foreseen by the ICTY, the ICTR, or the Mechanism; and
(vi) there are no overriding grounds for not transferring the person to the territory of the Requesting State.
(B) The Single Judge may impose such conditions upon the transfer of the person under the authority of the Mechanism as he may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the person for trial thereafter and the protection of others.
(C) For purposes of this Rule, "person under the authority of the Mechanism"

means an accused or convicted person detained on the premises of the detention unit or facility of the relevant branch of the Mechanism.
(D) If necessary, the Single Judge may issue a warrant of arrest to secure the presence of a person who has been transferred under this Rule. The provisions of Part Four shall apply mutatis mutandis.
(E) At any time after an order has been issued pursuant to this Rule, the Single Judge may revoke the order and make a formal request for the return of the transferred person.

Rule 89—solemn declaration by interpreters and translators

Before performing any duties, an interpreter or a translator shall solemnly declare to do so faithfully, independently, impartially, and with full respect for the duty of confidentiality.

Rule 90—contempt

(A) The Mechanism in the exercise of its inherent power may, with respect to proceedings before the ICTY, the ICTR, or the Mechanism, hold in contempt those who knowingly and wilfully interfere with the administration of justice, including any person who:
(i) being a witness before a Chamber or a Single Judge, contumaciously refuses or fails to answer a question;
(ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber or a Single Judge;
(iii) without just excuse fails to comply with an order by a Chamber or Single Judge, including an order to attend before or produce documents before a Chamber or a Single Judge;
(iv) threatens, intimidates, causes any injury, or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber or a Single Judge, or a potential witness; or
(v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Chamber or a Single Judge.
(B) Any incitement or attempt to commit any of the acts punishable under paragraph (A) is punishable as contempt of the ICTY, the ICTR, or the Mechanism with the same penalties.
(C) When a Chamber or a Single Judge has reason to believe that a person may be in contempt of the ICTY, the ICTR, or the Mechanism and, after weighing the gravity of the alleged offence and the efficient use of judicial resources, it shall refer the matter to the President who shall designate a Single Judge who may:
(i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt;
(ii) where the Prosecutor, in the view of the Single Judge, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an amicus curiae to investigate the matter and report back to the Single Judge as to whether

there are sufficient grounds for initiating contempt proceedings; or
(iii) initiate proceedings himself.
(D) Subject to Article 6 of the Statute, if the Single Judge considers that there are sufficient grounds to proceed against a person for contempt and, after weighing the gravity of the alleged offence and the efficient use of judicial resources, the Single Judge may:
(i) in circumstances described in paragraph (C)(i), direct the Prosecutor to prosecute the matter; or
(ii) in circumstances described in paragraph (C)(ii) or (iii), issue an order in lieu of an indictment and either direct amicus curiae to prosecute the matter or prosecute the matter.
(E) The Rules shall apply mutatis mutandis to proceedings under this Rule. The time limit for entering a plea pursuant to Rule 64(A), disclosure pursuant to Rule 71(A)(i), or filing of preliminary motions pursuant to Rule 79(A) shall each not exceed ten days.
(F) Any person indicted for or charged with contempt shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned Counsel in accordance with Rule 43.
(G) The maximum penalty that may be imposed on a person found to be in contempt shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 50,000 Euros or the equivalent thereof, or both.
(H) Payment of a fine shall be made to the Registrar to be held in a separate account.
(I) If a Counsel is found guilty of contempt of the ICTY, the ICTR, or the Mechanism pursuant to this Rule, the Single Judge making such finding may also determine that Counsel is no longer eligible to represent a suspect or accused before the ICTY, the ICTR, or the Mechanism or that such conduct amounts to misconduct of counsel pursuant to Rule 47, or both.
(J) Any decision disposing of a contempt case rendered by a Single Judge under this Rule shall be subject to appeal as of right. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. Where such decision is rendered orally, the notice shall be filed within fifteen days of the oral decision, unless:
(i) the Party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging Party is notified of the oral decision; or
(ii) the Single Judge has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.
The appellant shall file an appeal brief within fifteen days after filing the notice of appeal. The respondent shall file a response within ten days of the filing of the appeal brief, and the appellant may file a reply within four days of the filing of the response.

amicus curiae

Office of the Prosecutor has power to investigate contempt and the appointment of an amicus curiae prosecutor is not required.[938]

Office of Prosecutor did not have conflict of interest to investigate and prosecute alleged bribery of prosecution witnesses to overturn a conviction in a case to which it was a party.[939]

Where Prosecutor was a party to the underlying review proceedings before the Mechanism, in which the respondent was acting as defence counsel, it may have a conflict of interest in investigating the matter, thereby warranting the assignment of an amicus curiae.[940]

The assignment of an *amicus curiae* continues until the close of all related proceedings.[941]

arrest

Contempt matters do not always necessitate an arrest warrant given the gravity of the crime and the general level of cooperation demonstrated by the accused during the proceedings.[942]

In view of the nature of the offence and general cooperation of the accused during the investigation, it was not necessary to issue an arrest warrant upon a finding of a *prima facie* case of contempt.[943]

discretion

A Judge has discretion to determine whether a prosecution for contempt should proceed where a prima facie case for contempt has been made out.[944]

While a single judge has discretion to decide whether to initiate contempt proceedings, neither the Rules nor prior jurisprudence support the conclusion that such

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[938] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Joint Motion to Quash Indictment or Enter Stay of Proceedings* (13 March 2019) at pp. 2-3
[939] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Joint Motion to Quash Indictment or Enter Stay of Proceedings* (13 March 2019) at p. 3
[940] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-R90.1, *Order Directing the Registrar to Appoint an Amicus Curiae to Investigate pursuant to Rule 90(C)*(25 October 2021), p. 3
[941] *In the Matter of Peter Robinson*, MICT-25-135-AR14.1, *Decision on Motion to Strike Notice of Appeal* (22 December 2025) at p. 3
[942] *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on the Suitability of Referral of the Case* (7 November 2025) at fn. 30
[943] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at fn. 132
[944] *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Order Terminating Proceedings and Vacating an Order* (17 October 2017) at para. 13

discretion extends to the decision whether to enter a conviction for contempt, once all the elements of the offence have been proven.[945]

The Single Judge erred in law in concluding that the accused's proven violation of the protective measures decision should not result in criminal responsibility and, consequently, in declining to enter a conviction against him.[946]

Prosecution of producer for disclosing witnesses' identity in a film not in the interests of justice where the witnesses willingly disclosed their identities in the film and forcing the witnesses to testify in a contempt proceeding may cause the witnesses unnecessary anxiety and emotional trauma.[947]

An investigation into the allegations of interference with the administration of justice against defence counsel is the most appropriate and efficient way of determining whether there are sufficient grounds to proceed for contempt or to initiate other appropriate disciplinary action.[948]

Judge exercised his discretion not to prosecute alleged disclosure of the content of protective measures orders where the disclosure was triggered primarily by the accused's reference to his ability to meet with protected ICTR Prosecution witnesses, as authorized by the Judges of the Mechanism, and to explain the procedure entailed in meeting with the protected witnesses and where there is no showing of any harm that befell the protected witnesses due to these disclosures.[949]

Judge exercised his discretion not to prosecute tacit confirmation that certain individuals were protected witnesses where the disclosures were to persons who, by the very nature of their relationships and/or their discussions with the relevant protected witnesses, knew at the time of such disclosures that the protected witnesses had testified, and where there was no showing of any harm that befell protected witnesses due to these disclosures.[950]

Judge exercised his discretion not to prosecute alleged false statements to the court derivative from the violation of the protective measures order that he had found to warrant prosecution.[951]

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[945] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 94
[946] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 98
[947] *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Order Terminating Proceedings and Vacating an Order* (17 October 2017) at paras. 15-16
[948] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-R90.1, *Order Directing the Registrar to Appoint an Amicus Curiae to Investigate pursuant to Rule 90(C)*(25 October 2021), p. 3
[949] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 24
[950] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 26
[951] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 32

disclosure of amicus curiae reports

Disclosure of the amicus curiae reports to the accused upon issuing decision instituting contempt proceedings was within the Single Judge's discretion where the decision referred extensively to the reports, the amicus curiae failed to demonstrate that he was prejudiced by the disclosure, and disclosure was in line with the interests of transparency and justice.[952]

violation of court order

contact with protected witnesses

Protective measures should be interpreted and implemented in the least restrictive manner necessary to provide protection for victims and witnesses.[953]

Making inquiries about a protected witness is not per se a violation of protective measures.[954]

Violation of protective measures was not made out where accused had contact with family members of protected witnesses who were themselves defence witnesses. [955]
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Prohibited contact with protected witnesses that amounts to an interference with the administration of justice can be direct or indirect.[956]

Any such contact may still be in violation of protective measures even if the contact is initiated by protected witnesses.[957]

Although the accused may have had a good faith belief that protective measures would be modified and subsequently told his investigator not to contact the protected witness, the existence of a prima facie case for violation of the protective measures was made out.[958]

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[952] *In the matter of Peter Robinson*, No. MICT-25-135-I, *Decision on Amicus Curiae's Request for Reclassification of Investigative Reports to Ex Parte* (12 March 2025) at p. 2
[953] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 28
[954] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 28
[955] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 28
[956] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 10
[957] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 10
[958] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 19

Informing intermediary that prosecution had requested to meet protected witnesses constituted prohibited indirect contact with the protected witnesses by the investigator in violation of the protective measures.[959]

Circumventing the protective measures by communicating with an individual close to the protected witness, whom the accused knew was in direct communication with the protected witness, so as to contact the witness on the accused's behalf in order to relay certain information that may otherwise not reach the witness, was a *prima facie* violation of the protective measures order.[960]

A prima facie violation of the protective measures order was made out even if the accused did not intend for contact with the protected witnesses to take place on his behalf, where his conduct displayed reckless indifference to the fact that such contact would likely occur and would elicit a response or reaction from these witnesses that would be transmitted back to him.[961]

Giving explicit instructions to the defence investigator to inform certain individuals, who were in contact with the protected ICTR Prosecution witnesses, that the WISP would contact them in relation to the case, which information was subsequently shared with protected ICTR Prosecution witnesses, gives rise to a *prima facie* case of violation of the protective measures order.[962]

Prima facie violation of protective measures order was not made out where the prohibition against the recording of protected witness in the order was addressed to "person]s]", not parties, and bearing in mind that the recording of interviews during an investigation can be considered best practices.[963]

detention issues

Allegations against medical staff of detention unit failed to demonstrate that the staff knowingly and wilfully interfered with the administration of justice by failing to comply with an order of a Chamber or Single Judge and therefore an investigation for contempt would not be authorised.[964]

Rule 90(A) pertains to the interference with the administration of justice through, *inter alia*, a failure to comply with an order of a Chamber or a Single Judge, and not to an

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[959] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 362
[960] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 17
[961] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 18
[962] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 20
[963] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 30
[964] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Renewed Motion for Contempt* (15 May 2018) at p. 3

alleged violation of UNDU guidelines in the absence of a judicial order.[965]

Evidence of the accused's participation in his client's violations of the relevant Rules Governing Detention and Rules Governing Visits and Communication by possessing e-mail capable electronics did not give rise to a *prima facie* case for contempt.[966]

disclosure of confidential filings

The issuance of a confidential decision constitutes an order for nondisclosure of the information contained therein.[967]

It is not for a party to decide which aspects of a confidential decision may be disclosed.[968]

The accused violated Rule 90(A)(ii) by knowingly and wilfully disclosing confidential witness information and the contents of confidential filings related to his review proceedings.[969]

There is no requirement in the jurisprudence that unauthorised disclosure of protected information must take place in a public domain or be accessible to the public to amount to an interference with the administration of justice.[970]

The Rules and previous contempt jurisprudence do not sustain the proposition that release of protected information does not amount to "disclosure" in circumstances where the recipient is already in possession of such information.[971]

Release, whether in a public or private domain, of protected information may constitute unauthorised disclosure, irrespective of whether the intended recipient of such information was already aware of it due to previous disclosure by another person.[972]

The fact that the person to whom the disclosure was made had been an intermediary for the defence for many years and was already aware of the protected witnesses' identities does not alter the fact that the accused was aware that the protective

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[965] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Reconsider Decision on Renewed Motion for Contempt* (31 July 2018) at p. 3
[966] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 34
[967] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 24
[968] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 24
[969] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 385
[970] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 77
[971] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 77
[972] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 77; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 26

measures decision prohibited the disclosure of information identifying protected witnesses to him.[973]

No reasonable trier of fact could have concluded that, by sharing information on the identity of the recanting witnesses with the defence team resource person, the accused did not knowingly and wilfully violate the protective measures decision.[974]

While the accused did not refer to the people explicitly as "witnesses" nor mentioned their pseudonyms, the only reasonable inference from the evidence is that he identified these individuals as protected witnesses.[975]

By mentioning the names of the recanting witnesses to the local resource person, who was not a member of the defence team, the accused violated the protective measures decision by disclosing protected information.[976]

The *mens rea* for a violation under Rule 90(A)(ii) is the knowledge that the disclosure in question is in violation of an order of a Chamber or a Single Judge.[977]

existence of order

Alleged disclosure of confidential defence witness list by former ICTY prosecutor was not prosecutable under this section because there was no court order that made the witness list confidential.[978]

interference with administration of justice

Any defiance of an order of a chamber per se interferes with the administration of justice for the purposes of a conviction for contempt. No additional proof of harm to the administration of justice is required.[979]

Interference may be by way of conduct that obstructs, prejudices, or abuses the administration of justice.[980]

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[973] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 85
[974] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 86
[975] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 77
[976] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 79
[977] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 84; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 11
[978] *Prosecutor v Karadzic*, No. MICT-13-55-R90.1, *Decision on Karadzic Requests to Appoint an Amicus Curiae Prosecutor to Investigate Contempt Allegations Against Former ICTY Prosecutor Carla Del Ponte* (27 November 2013) at para. 10
[979] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 75; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 10,11
[980] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 10

mens rea

No demonstration of a "specific intent to interfere with the administration of justice" is required for violation of Rule 90(A)(ii).[981]

The *mens rea* for allegations under Rule 90(A)(iii) of the Rules is satisfied when it is shown that the accused was not only able to fully comprehend the contents of the order and its implications, but also the obligations it imposed on the accused.[982]

It is sufficient to establish that the conduct which constituted the violation was deliberate and not accidental. This may be inferred from circumstantial evidence. Where it is established that an accused had knowledge of the existence of a Court order, a finding of intent to violate the order will almost necessarily follow. Wilful blindness to the existence of the order, or reckless indifference to the consequences of the act by which the order is violated may satisfy the mental element. Mere negligence in failing to ascertain whether an order had been made is insufficient.[983]

Following the instructions of lead counsel is not a defence to a violation of witness protection orders.[984]

The *mens rea* for contempt requires the knowledge of the facts that make the conduct of the accused illegal.[985]

It is sufficient to establish that the act that constitutes contempt is deliberate and not accidental.[986]

Submitting false documents for the purpose of intending to deceive the Mechanism in litigation to obtain release of funds, if proven, would satisfy the *mens rea* requirement.[987]

incitement

The Mechanism has jurisdiction over all conduct that interferes with the

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[981] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 84
[982] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 11
[983] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 84; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 11
[984] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 366
[985] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 21
[986] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 21
[987] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 21

Mechanism's administration of justice, including incitement to commit contempt.[988]

While commission requires that the person' s acts form part of the *actus reus* element of the offence, without however being limited to direct and physical perpetration, incitement relates to actions that encourage or persuade another to commit the offence.[989]

Any person who knowingly and wilfully encourages and/or persuades another person to commit any act described in Rule 90(A) of the Rules shall be subject to the same penalties as one who commits the act.[990]

interference

The *actus reus* of contempt is the act of interfering with the administration of justice.[991]

Interference may be by way of conduct which obstructs, prejudices, or abuses the administration of justice.[992]

Liability under Rule 90(A)(iv) may be predicated on any conduct that is intended to disturb the administration of justice by deterring a witness or a potential witness from giving full and truthful evidence, or in any way to influence the nature of the witness or potential witness' evidence.[993]

The enumerated offences under Rule 90(A)(iv) do not require that the interference with a witness's testimony result in it ultimately being false.[994]

Making and promising substantial payments to witnesses to induce and maintain their cooperation with the defence and training the witnesses in relation to meetings with the parties or the WISP, amounted to an interference with the administration of justice.[995]

"Otherwise interfering" with a witness or a potential witness is an indication that Rule 90(A)(iv) reflects a non-exhaustive list of modes of commission of contempt of the

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[988] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Challenges to Jurisdiction* (12 March 2019) at para. 9
[989] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 12
[990] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 12
[991] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 18
[992] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 18
[993] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Challenges to Jurisdiction* (12 March 2019) at para. 19; [993] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 330
[994] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 330
[995] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 333

Mechanism.[996]

Creating false documents filed with the court to support a motion to release seized funds was conduct that, if proven, would amount to the *actus reus* of interfering with the administration of justice and justified an indictment for contempt.[997]

Defence arguments and evidence that the Accused acted with the genuine belief that Ngirabatware was innocent have not raised reasonable doubt in relation to their liability. The proper process for challenging a conviction perceived as unjust is through the review proceedings provided for in law and by doing so transparently in accordance with the law.[998]

The clandestine communications with key witnesses subject to protective measures, the instructions provided on what to say to judicially accountable agents investigating the case and/or to the Judges who might review Ngirabatware's convictions, and secretly paying them or offering to pay them to ensure their cooperation is a crime. This is no less true in a situation where the Accused felt they were being extorted by the witnesses. This is simply not how to legitimately and legally conduct a defence.[999]

investigation for contempt

amicus curiae

While the initiation of criminal proceedings is ordinarily the prerogative of the Prosecution, the initiation of contempt proceedings cannot be left to the Prosecution alone, because the prosecution, as a party to the underlying proceedings, will often have a conflict of interest or can itself be the subject of contempt allegations.[1000]

discretion

Even if a *prima facie* case exists, the Single Judge has the discretion to decide not to initiate proceedings for contempt.[1001]

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[996] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Challenges to Jurisdiction* (12 March 2019) at fn. 41; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Maximilien Turinabo's, Anselme Nzabonimpa's and Marie Rose Fatuma's Motions Challenging the Form of the Indictment* (12 March 2019) at fn. 32; *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 18

[997] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 20

[998] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 337

[999] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 338

[1000] *Prosecutor v Karadzic*, No.MICT-13-55-R90.3, *Decision to Invite the ICTY Trial Chamber in the Karadzic case to Determine Whether there is Reason to Believe that Contempt has been Committed by Members of the Office of the Prosecutor* (21 July 2014) at para. 14

[1001] *In the Matter of Deogratius Sebureze and Maximilian Turinabo*, No. MICT-13-40-R90, *Decisions on Allegations of Contempt of the ICTR* (17 July 2013) at para. 14; *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 15; *Prosecutor v Mladic*, No. MICT-13-56-R90.1, *Order Terminating Proceedings for Contempt* (15 November 2016) at p. 1; *Prosecutor v*

In exercising discretion, the Single Judge may consider the personal motives of the alleged perpetrators, the gravity of the alleged perpetrators' conduct, and the penal goals to be served by initiating contempt proceedings.[1002]

In exercising discretion, the Single Judge may consider, *inter alia*, the personal motives of the alleged perpetrators and the gravity of the alleged perpetrators' conduct.[1003]

The exercise of discretion entails a careful and reasonable consideration of proportionality that takes into account and acknowledges the nature and seriousness of the alleged events, which are balanced against a variety of factors.[1004]

The United Nations Security Council has repeatedly emphasized that the Mechanism shall be a small, temporary and efficient structure, whose functions and size will diminish over time. This emphasis is just one of the many factors that shall be considered against the nature and seriousness of the alleged events in the judicious determination of whether to initiate criminal contempt proceedings.[1005]

Where defence counsel's disclosure to the Court in Bosnia & Herzegovina that a person had testified as a witness before the Tribunal was a *prima facie* case of contempt, prosecution was not in the interests of justice where the disclosure did not cause harm to the witness.[1006]

The Single Judge is entitled to consider all the available evidence and not simply accept the evidence at its face value.[1007]

Prosecution was warranted to prevent others from submitting false documents to the Mechanism in the future.[1008]

standard

Nzabonimpa et al, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 9

[1002] *In the Matter of Deogratius Sebureze and Maximilian Turinabo*, No. MICT-13-40-R90, *Decisions on Allegations of Contempt of the ICTR* (17 July 2013) at para. 15

[1003] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 24

[1004] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 9

[1005] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 9

[1006] *Prosecutor v Mladic*, No. MICT-13-56-R90.1, *Order Terminating Proceedings for Contempt* (15 November 2016) at pp. 2-3

[1007] *In the Matter of Deogratius Sebureze and Maximilian Turinabo*, No. MICT-13-40-R90, *Decisions on Allegations of Contempt of the ICTR* (17 July 2013) at para. 17

[1008] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 21

The determination as to whether sufficient grounds exist to initiate a prosecution for contempt is based on whether a *prima facie* case exists, namely, whether a credible case exists, which if accepted and uncontradicted, would be a sufficient basis upon which to convict the accused.[1009]

The "sufficient grounds" standard requires the Single Judge determine whether the evidence before him gives rise to a prima facie case of contempt.[1010]

standing

Neither the prosecutor nor a party under investigation for contempt are entitled to make submissions to the Single Judge considering initiation of contempt proceedings, unless specifically requested to do so.[1011]

sufficiency

Evidence of alleged bribes and persuasion by defence investigators to give false testimony was rife with contradictions and did not rise to a credible case that met the standard for initiating contempt proceedings.[1012]

Accused failed to provide sufficient evidence to warrant appointment of amicus curiae prosecutor to investigate USA officials for intercepting privileged and confidential communications at the ICTY.[1013]

Appointment of amicus curiae investigator to investigate Prosecution's disclosure of protected witness identities to State authorities conducting intercepts of telephone calls not warranted where Prosecution did not explicitly advise the State authorities that the persons were protected witnesses.[1014]

[1009] *In the Matter of Deogratius Sebureze and Maximilian Turinabo*, No. MICT-13-40-R90, *Decisions on Allegations of Contempt of the ICTR* (17 July 2013) at para. 14; *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 18; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 8

[1010] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 15

[1011] *In the Matter of Deogratius Sebureze and Maximilian Turinabo*, No. MICT-13-40-R90, *Decisions on Allegations of Contempt of the ICTR* (17 July 2013) at para. 10

[1012] *In the Matter of Deogratius Sebureze and Maximilian Turinabo*, No. MICT-13-40-R90, *Decisions on Allegations of Contempt of the ICTR* (17 July 2013) at para. 36, 43, 46, 54

[1013] *Prosecutor v Karadzic*, No. MICT-13-55-R90.2, *Decision on Karadzic's Request to Appoint an Amicus Curiae Prosecutor to Investigate Officials of the United States of America…*(13 March 2014) at para. 14

[1014] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Motion for Appointment of an Amicus Curiae* (23 October 2019) at p. 5

Investigation of Office of the Prosecutor for contempt was not warranted where, upon invitation, the ICTY Trial Chamber hearing the case found that there was no reason to believe that the disclosure violations amounted to contempt.[1015]

There was no reason to believe that the Prosecution may be in contempt of the Mechanism by disclosing the identities of protected Prosecution witnesses to diplomatic bodies and immigration authorities of States where the witnesses resided, and therefore no reason to refer the matter to the President for an investigation.[1016]

Where there was no indication that he knew the motion was confidential at the time he disclosed it, there were no grounds to investigate former defence team member for contempt.[1017]

It was not in the interests of justice to investigate how news media and counsel for witness in national proceedings came into possession of *ex parte* IRMCT order where the order was subsequently reclassified as public.[1018]

Where evidence at trial indicated that counsel had directed his investigator to have indirect contact with protected prosecution witness, provided a protected prosecution witness with the phone number by which he could contact the investigator, and was in contact with the accused at the detention facility through unauthorised communication devices, the matter was referred to the President for assignment to a Single Judge to determine whether contempt or disciplinary proceedings ought to be instituted.[1019]

summons

In view of the nature of the offense of submitting false documents to the Mechanism and the defendant's cooperation, it was unnecessary to issue an arrest warrant and a summons would be issued to commence contempt proceedings.[1020]

joint criminal enterprise

Joint criminal enterprise liability does not apply to the commission of contempt.[1021]

[1015] *Prosecutor v Karadzic*, No. MICT-13-55-R90.3, *Decision on Request for Designation of Single Judge to Consider Appointment of Amicus Curiae Prosecutor to Investigate Contempt by Office of the Prosecutor* (22 August 2014)
[1016] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for an Order Referring a Matter to the President pursuant to Rule 90(C)* (23 November 2018) at p. 14
[1017] *Prosecutor v Karadzic*, No.MICT-13-55-R90.4, *Decision on a Matter Related to Rule 90* (20 July 2016) at p. 3
[1018] *Prosecutor v Akayesu*, No. MICT-13-30, *Order relating to the Registrar's Submission of 16 December 2016* (31 January 2017) at pp. 3-4
[1019] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Order Referring a Matter to the President* (20 September 2021), p. 3
[1020] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at fn. 120

relation with underlying case

Contempt proceedings are separate and ancillary proceedings from the main proceedings involving separate inquiries, and they can and should run contemporaneously so as not to impede the expeditious nature of the main proceedings.[1022]

standing

Where amicus curiae has been appointed to investigate, Office of the Prosecutor would not be permitted to make submissions on issue of application of Rule 76 on appeal due to a conflict of interest.[1023]

When there is doubt with respect to the confidentiality of the information or the protections provided pursuant to Rule 76 of the Rules, information providers have standing to be heard and make submissions on the use of Rule 76 material in contempt proceedings.[1024]

State officials

Request to initiate contempt proceedings against President of Turkey and Minister of Justice for disobeying order to release IRMCT judge who had diplomatic immunity denied because the IRMCT has no jurisdiction to prosecute State officials for violating orders directed to States. The enforcement remedy rests exclusively with the UN Security Council.[1025]

submission of false documents

Where it appeared that false documents had been submitted in connection with an application to unfreeze bank accounts held by the applicants, the conduct of the applicant and his counsel would be referred to the President for appointment of an amicus curiae investigator.[1026]

[1021] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR90, *Decision on Prosecution Appeal Against Decision on Challenges to Jurisdiction* (28 June 2019), paras. 12,22; *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Challenges to Jurisdiction* (12 March 2019) at para. 29
[1022] *Prosecutor v Ngirabatware*, No, MICT-12-29-R, *Decision on Prosecution Request to Postpone the Review Hearing* (20 August 2019) at p. 3
[1023] *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 12
[1024] *Prosecutor v Nzabonimpa et al*, MICT-18-116-R90.1, *Decision on Appeal of Decision on the Use of Materials subject to Rule 76 in Further Proceedings* (17 July 2024) at para. 13
[1025] *Prosecutor v Ngirabatware*, No. MICT 12-29-R, *Decision on Motion to Initiate Contempt Proceedings* (26 April 2017) at p. 3
[1026] *Prosecutor v Kabuga*, No. MICT-13-38-Misc.1, *Decision on Second Motion Filed by Felicien Kabuga's Family for Return of Frozen Assets and Seized Property* (21 February 2022) at p. 4

A *prima facie* case of contempt for submitting a false document was not made out where the *amicus curiae* was unable to establish whether the defendant was authorized to sign the name of another to the document.[1027]

A *prima facie* case for contempt was not made out where the *amicus curiae* had been unable to establish that the defendant knew that a declaration had been submitted in her name.[1028]

A prima facie case for contempt was not made out where attorney submitted false documents prepared by his client without proof that the attorney knew the documents were false.[1029]

Prosecution for submitting false documents to the Mechanism was warranted where the defendant forged multiple documents, did so for the purpose of obtaining the release of funds, and his conduct had the potential of frustrating the recovery of funds that could be paid into the legal aid system.[1030]

Frustration with the delays in releasing funds he believed lawfully belonged to him did not justify the submission of false documents.[1031]

contempt appeal

An appeal is not properly before the Appeals Chamber while a motion for reconsideration of the Impugned Decision is pending. Prosecutor's appeal of decision that ICTR Trial Chamber did not have jurisdiction to initiate contempt proceedings dismissed.[1032]

Appeal of right lies from decision of Single Judge declining to appoint an *amicus curiae* prosecutor to investigate possible contempt and false testimony, as such a decision effectively disposed of the case.[1033]

A decision initiating contempt proceedings does not dispose of a contempt case such as to allow for an appeal as of right.[1034]

[1027] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 23
[1028] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at paras. 27-28
[1029] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 32
[1030] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 24
[1031] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 21
[1032] *In the Matter of Deogratius Sebureze and Maximilian Turinabo*, No. MICT-13-40.AR90, *Decision on ICTR Prosecutor's Interlocutory Appeal,,,*(2 May 2013) at p. 4
[1033] *Prosecutor v Kamuhanda*, No. MICT-13-33-AR90/018.1, *Decision on Kamuhanda's Appeal of Decision on Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK* (8 December 2015) at para. 11

Where *amicus curiae* prosecutor has been appointed, ICTR or IRMCT prosecutor does not automatically have standing to appeal a decision on contempt by virtue of his being a party to the underlying proceedings.[1035]

Rule 91—payment of fines

(A) In imposing a fine under Rules 90 or 108, the Single Judge shall specify the time for its payment.
(B) Where a fine imposed under Rules 90 or 108 is not paid within the time specified, the Single Judge imposing the fine may issue an order requiring the person on whom the fine is imposed to appear before, or to respond in writing to, the Mechanism to explain why the fine has not been paid.
(C) After affording the person on whom the fine is imposed an opportunity to be heard, the Single Judge may make a decision that appropriate measures be taken, including:
(i) extending the time for payment of the fine;
(ii) requiring the payment of the fine to be made in instalments;
(iii) in consultation with the Registrar, requiring that the moneys owed be deducted from any outstanding fees owing to the person by the Mechanism where the person is a Counsel retained by the Mechanism pursuant to the Directive on the Assignment of Defence Counsel;
(iv) converting the whole or part of the fine to a term of imprisonment not exceeding seven months.
(D) In addition to a decision under paragraph (C), the Single Judge may find the person in contempt of the Mechanism and impose a new penalty applying Rule 90(G), if that person was able to pay the fine within the specified time and has wilfully failed to do so. This penalty for contempt of the Mechanism shall be additional to the original fine imposed.
(E) The Single Judge may, if necessary, issue an arrest warrant to secure the person's presence where he fails to appear before or respond in writing pursuant to an order under paragraph (B). A State or authority to whom such a warrant is addressed, in accordance with Article 28 of the Statute, shall act promptly and with all due diligence to ensure proper and effective execution thereof. Where an arrest warrant is issued under this paragraph, the provisions of Rules 43, 57 ,59, 60, 61, and 62 shall apply mutatis mutandis. Following the transfer of the person concerned to the Mechanism, the provisions of Rules 67, 68, and 123 shall apply mutatis mutandis.
(F) Where under this Rule a penalty of imprisonment is imposed, or a fine is converted to a term of imprisonment, the provisions of Rules 126, 127, and 128 and Part Nine shall apply mutatis mutandis.
(G) Any finding of contempt or penalty imposed under this Rule shall be subject to

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[1034] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-AR90.1, *Decision on Appeal of Decision on Allegations of Contempt and on Requests to Appear as Amici Curiae* (15 May 2025) at p. 3
[1035] *In the Matter of Deogratias Sebureze and Maximilian Turinabo*, No. MICT-13-40-R90, *Decision on ICTR Prosecutor's Motion for Reconsideration of 20 March 2013 Decision* (17 July 2013) at para. 9

appeal as allowed for in Rule 90(J).

Rule 92—open sessions

All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.

changed circumstances

Reclassification of decisions from completed cases on site visits granted where no reason existed to continue to maintain the confidentiality of the decisions and where the decisions were relevant to a pending appeal.[1036]

While at the early stages of the review proceedings the Appeals Chamber decided, out of an abundance of caution, to treat the basis of the new fact as confidential, maintaining the confidentiality of the new fact beyond the commencement of the review hearing would frustrate the public nature of the proceedings.[1037]

confidential filings

A document should be filed on a confidential basis only when it contains information, which, if disclosed. might cause prejudice, concerns about safety, or serious embarrassment to a party or witness, or where the very fact of filing might have the very same result.[1038]

Where there is doubt about the security classification of a filing or document, the matter shall be determined by the President or a Chamber.[1039]

Party should not file as public a request for review of detention conditions that the Registrar had imposed on a strictly confidential basis.[1040]

Defence ordered to redact its final briefs where reference, when read in conjunction with trial judgement, could reveal the identity of a protected witness or reveal the identity of an entity that had provided information to the prosecution pursuant

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[1036] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request for Reclassification of Decisions related to Ground 2* (3 May 2017) at p. 2
[1037] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision Regarding the Confidentiality of the Basis of the New Fact* (17 April 2019) at p. 3
[1038] *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Decision on a Request from Film at Eleven* (7 September 2016) at p. 3; *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Decision on a Motion for Public Version of a Decision* (24 January 2017) at p.2, fn.8
[1039] *Prosecutor v Kanyabashi*, No. MICT-15-90, *Decision on the Registrar's Request for a Determination of Security Classification* (6 April 2016); *Prosecutor v Kajelijeli,* No. MICT-14-64, *Decision on the Registrar's Request for a Determination of Security Classification* (6 April 2016)
[1040] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Complaint filed by Dick Prudence Munyeshuli…*(9 August 2019) at para. 17

to Rule 76.[1041]

disclosure of confidential filings

Parties may refer to the existence of confidential exhibits or testimonies to support their assertions if they do not disclose any confidential information contained therein.[1042]

Disclosure of a redacted version of confidential *ex parte* ICTY decision was authorized where the decision in a subsequent case has been based on the confidential decision.[1043]

It is not for the parties to decide what aspects of a confidential testimony or exhibit can be disclosed. If a party considers that public disclosure of information under seal becomes necessary, it may move the appropriate Chamber for a variation of the protective measures.[1044]

Where agreement between the United Nations and Niger for the transfer of acquitted and released persons had already been referred to in court decisions and was publicly registered in the archives of the United Nations, there was no need to maintain confidential status of filings referring to that agreement.[1045]

Where the confidential *note verbale* from the government of Tanzania had been discussed in public decisions, there was no need to maintain the confidential status of a filing that referred to the contents of that *note verbale*.[1046]

ex parte

Registrar's submission on rescinding protective measures for deceased witnesses need not have been filed *ex parte*.[1047]

Rule 86(H) Application showed good cause for its *ex parte* status as it contains sensitive information identifying an ongoing investigation in a domestic jurisdiction.[1048]

[1041] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Reclassify the Public Redacted Version of Defence Final Trial Brief and Defence Response…* (1 June 2018) at pp. 3-4
[1042] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Reclassify the Public Redacted Version of Defence Final Trial Brief and Defence Response…* (1 June 2018) at p. 3
[1043] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on a Motion for a Public Redacted Version…*(10 May 2016) at p. 2
[1044] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Reclassify the Public Redacted Version of Defence Final Trial Brief and Defence Response…* (1 June 2018) at p. 3
[1045] *In the Matter of Jerome-Clement Bicamumpaka*, No. MICT-14-75, *Decision on Registrar's Submission Requesting Reclassification* (9 June 2022) at p. 2
[1046] *In the Matter of Francis-Xavier Nzuwonemeye et al*, No. MICT-22-124, *Decision on Francis-Xavier Nzuwonemeye's Motion for Reclassification* (3 October 2022)
[1047] *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on a Motion to Reclassify the Registrar's Submission and for an Extension of Time* (19 December 2016) at p. 2
[1048] *Prosecutor v Karadzic*, No. MICT-13-55-R86H.9, *Decision on a Motion to Reclassify Rule 86(H) Application* (24 January 2019) at p. 2

Issuing public redacted versions of *ex parte* Rule 86 proceedings would ensure the public nature of proceedings to the extent possible, while the interests of the parties on whose behalf the confidential and ex parte status was granted can be adequately protected by appropriate redactions.[1049]

A heightened showing of a legitimate forensic purpose exists for access to *ex parte* material to protect the interest of the party who designated its filing as *ex parte* and who enjoys a protected degree of trust that the *ex parte* material will not be disclosed.[1050]

Defence access to the confidential *ex parte* Rule 86(H) application can only be granted when it demonstrates a heightened showing of a legitimate forensic purpose to protect the interests of the party who designated its filing as *ex parte* and who enjoys a protected degree of trust that the ex parte material will not be disclosed.[1051]

Disclosure of form in which protected prosecution witness was asked to consent to interview with defence ordered reclassified from *ex parte* to confidential.[1052]

Where information in a confidential decision does not implicate the concerns of protection of witnesses or damage the trust of the filing party in an *ex parte* proceeding, disclosure of the decision is warranted.[1053]

Where the confidential *ex parte* decision had been discussed in public court sessions in Rwanda and much of the decision had been revealed to the public, a public redacted version of the decision would be issued.[1054]

Reclassification of *ex parte* and confidential decision rejecting request to revoke referral to Rwanda ordered where secrecy was no longer necessary following the arrest of the defendant.[1055]

[1049] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Second Motion for Public Redacted Versions of Rule 86(F) Jurisprudence* (10 May 2017) at p. 3; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Latest Rule 86(F) Decisions* (24 January 2018) at p. 2
[1050] *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Decision on a Request from Film at Eleven* (7 September 2016) at p. 3; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Rule 86(F) Filings* (24 January 2017) at pp. 3-4; *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Decision on a Motion for Public Version of a Decision* (24 January 2017) at p.2, fn.8; *Prosecutor v Kayishema*, No. MICT-12-23-AR53, *Decision on Prosecution Appeal of Decision on Reconsideration of Reclassification* (1 October 2024) at para. 13
[1051] *Prosecutor v Karadzic*, No. MICT-13-55-R86H.9, *Decision on a Motion to Reclassify Rule 86(H) Application* (24 January 2019) at p. 2
[1052] *Prosecutor v Kamuhanda,* No. MICT-13-33, *Decision on a Motion to Reclassify Annex to Registrar's Submissions* (7 October 2016) at p. 4
[1053] *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Decision on a Motion for Public Version of a Decision* (24 January 2017) at p.2, fn.8
[1054] *Prosecutor v Munyagishari*, No. MICT-12-20, *Decision on a Motion to Reclassify a Decision* (4 May 2017) at pp. 2-3
[1055] *Prosecutor v Kayishema,* No MICT-12-23, *Decision on Fulgence Kayishema Motion for Disclosure and Reclassification* (28 June 2024) at p. 5; *Prosecutor v Kayishema,* No MICT-12-23, *Decision on Remand concerning Decision on Reclassification* (7 November 2024) at para. 16

Single Judge erred in failing to consider the relevant consideration in deciding whether to reclassify *ex parte* filings, whether information in the filings concerned the Prosecution's tracking activities, practices, procedures, and relationships with national and international law enforcement agencies, that may remain sensitive following the applicant's arrest.[1056]

In general, *ex parte* material, being of a higher degree of confidentiality, by nature contains information which has not been disclosed because of security interests of a State, other public interests, or privacy interests of a person or institution.[1057]

legal aid payments

The principle that all proceedings in the Mechanism shall be public unless otherwise provided dictated that amount of accused person's contribution to legal aid and amount of legal aid extended to accused person be made public.[1058]

It would be in the interests of justice to make remuneration review decisions, publicly available, insofar as exceptional reasons do not require keeping such decisions confidential, to ensure greater transparency with respect to the Mechanism's judicial proceedings and in particular, those related to remuneration matters.[1059]

Remuneration decisions in which the accused are now deceased would be reclassified as public.[1060]

Remuneration decisions in which the accused were still alive would be provided to the accused for comment prior to reclassification as public.[1061]

It is in the interests of justice and transparency to make requests for review of administrative decisions related to remuneration matters public.[1062]

[1056] *Prosecutor v Kayishema*, No. MICT-12-23-AR53, *Decision on Prosecution Appeal of Decision on Reconsideration of Reclassification* (1 October 2024) at para. 17
[1057] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Motion for Reclassification* (27 May 2019) at para. 7
[1058] *In the Case against Florence Hartmann*, No. MICT-15-87-ES, *Decision on the Urgent Appeal to the President to Review and Quash Registry Decision* (4 July 2016) at para. 14
[1059] *Prosecutor v Milutinovic et al*, No. MICT-14-67, *Decision on Registrar's Submission regarding Reclassification or in the Alternative, a Public Redacted Version of a Decision of the ICTY President* (4 December 2017) at p. 2; *Prosecutor v Turinabo et al,* No, MICT-17-116-PT, *Decision on Request for Reclassification and Request for Leave to Appeal as Amicus Curiae* (13 February 2020)
[1060] *Prosecutor v Milutinovic et al*, No. MICT-14-67, *Decision on Registrar's Submission regarding Reclassification or in the Alternative, a Public Redacted Version of a Decision of the ICTY President* (4 December 2017)
[1061] *Prosecutor v Milutinovic et al*, No. MICT-14-67, *Decision on Registrar's Submission regarding Reclassification or in the Alternative, a Public Redacted Version of a Decision of the ICTY President* (4 December 2017)
[1062] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Requests for Notification and Reclassification* (7 August 2019) at p. 3

medical information

Where fact of witness' illness had already been disclosed publicly, and the confidential pleadings and decisions did not contain information on the nature of the illness, those pleadings and decisions would be reclassified as public so they could be referred to publicly during the appeal.[1063]

ongoing investigations

Preserving the integrity of an ongoing investigation justified maintaining the confidential status of documents concerning alleged disclosure of protected witness information.[1064]

Where the existence of a contempt investigation was part of the public record and the information contained in the confidential filings did not appear to be highly sensitive or prejudicial in the specific context of this case, those filings would be reclassified as public.[1065]

Although the *ex parte* status of communications between the Registrar and Prosecution to obtain communication records from the detention unit was justified while the investigation was ongoing, the completion of the investigation warranted reclassification of those submissions and their disclosure to the defence.[1066]

referred cases

Confidential decision on a request for the redaction of certain sensitive and confidential identifying information provided to a State when referring a contempt case has no relevance to any issue related to the referral of another contempt case to a national jurisdiction, and would not be reclassified as public.[1067]

standard

All proceedings before the Mechanism shall be public unless there are exceptional reasons for keeping them confidential.[1068]

[1063] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Request for Reclassification of Filings related to Ground 26 of Karadzic's Appeal Brief* (24 January 2017) at p. 2
[1064] *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Decision on a Request from Film at Eleven* (7 September 2016) at p. 3
[1065] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-R90.1, *Decision on Request for Reclassification* (21 May 2024) at p. 2.
[1066] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Motion for Reclassification* (27 May 2019) at paras. 7-8
[1067] *In the Matter of Peter Robinson*, No. MICT-25-135-I, *Decision on Motion to Reclassify Decisions* (14 March 2025) at p. 2
[1068] *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 8; *Prosecutor v Kamuhanda*, No. MICT-12-33-R86.1, *Decision on a Motion to Reclassify a Submission by the Registry* (5 February 2016), p. 2; *Prosecutor v Oric*, No. MICT-14-79, *Decision on an*

Regarding confidential material, the Mechanism must find a balance between the right of a party to have access to material to prepare its case and the need to guarantee the protection of witnesses and confidentiality of sensitive information.[1069]

The decision of a single judge concerning reclassification of filings is a discretionary one to which the Appeals Chamber must accord deference.[1070]

transfer of prisoners

Decisions on requests by prisoner for transfer from enforcement state could be made public with redactions for the personal circumstances of the prisoner or matters that the State provided with the expectation of confidentiality.[1071]

Rule 93—closed sessions

(A) A Judge or Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:
(i) public order or morality;
(ii) safety, security, or non-disclosure of the identity of a victim or witness as provided in Rule 86; or
(iii) the protection of the interests of justice.
(B) A Judge or Trial Chamber shall make public the reasons for the order.

Rule 94—control of proceedings

(A) A Judge or Trial Chamber may exclude a person from the courtroom in order to protect the right of the accused to a fair and public trial, or to maintain the dignity and decorum of the proceedings.

Application for Leave to Appeal the Single Judge's Decision of 10 December 2015 (17 February 2016) at para. 8; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules* (18 July 2016) at p. 3; *Prosecutor v Akayesu*, No. MICT-13-30-R90.1, *Decision on a Request from Film at Eleven* (7 September 2016) at p. 2; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Rule 86(F) Filings* (24 January 2017) at p. 3; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Compel Inspection of Pseudonyms of Witnesses* (22 May 2017) at p. 3; *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on a Motion to Reclassify the Public Redacted Version of Defence Final Trial Brief and Defence Response…* (1 June 2018) at p. 3; *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision Regarding the Confidentiality of the Basis of the New Fact* (17 April 2019) at p. 2; *In the Matter of Jerome-Clement Bicamumpaka*, No. MICT-14-75, *Decision on Registrar's Submission Requesting Reclassification* (9 June 2022) at p. 2; *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision on Nzuwonemeye Motion for Public Redacted Versions of Transfer Decisions* (14 February 2024) at p. 1

[1069] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Rule 86(F) Filings* (24 January 2017) at p. 3; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Compel Inspection of Pseudonyms of Witnesses* (22 May 2017) at p. 3

[1070] *Prosecutor v Kayishema*, No. MICT-12-23-AR53, *Decision on Prosecution Appeal of Decision on Reconsideration of Reclassification* (1 October 2024) at para. 11

[1071] *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision on Nzuwonemeye Motion for Public Redacted Versions of Transfer Decisions* (14 February 2024) at p. 2

(B) A Judge or Trial Chamber may order the removal of an accused from the courtroom and continue the proceedings in the absence of the accused if the accused has persisted in disruptive conduct following a warning that such conduct may warrant the removal of the accused from the courtroom.

Rule 95—record of proceedings and evidence

(A) The Registrar shall cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts, and video recordings.
(B) The Trial Chamber, after giving due consideration to any matters relating to witness protection, may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist. The Trial Chamber shall apply Rule 86(I) mutatis mutandis.
(C) The Registrar shall retain and preserve all physical evidence offered during the proceedings unless otherwise ordered by a Judge or Chamber.
(D) Photography, video-recording, or audio-recording of the trial, otherwise than by the Registrar, may be authorised at the discretion of the Trial Chamber.

While as a general matter, complaints regarding the conditions of detention and decisions rendered thereon are not filed on the record, the request of a detainee could be filed on the record in the interests of transparency as there is no prejudice in doing so.[1072]

Rule 96—proceedings by video conference link

At the request of a Party or proprio motu, a Judge or a Chamber may order, if consistent with the interests of justice, that proceedings be conducted by way of video-conference link.

During coronavirus pandemic, testimony by video-link would be authorised whenever a witness requested it.[1073]

Video link of Prosecution investigator during coronavirus pandemic denied where, although quarantine requirements for the witness would be inconvenient, he was willing to give live testimony and his testimony was important.[1074]

Video link of defence witness from Hague branch of the Mechanism during coronavirus pandemic approved.[1075]

[1072] *In the Case Against Florence Hartmann*, No. MICT-15-57, *Decision on Request to File Documents on the Record* (30 March 2016)
[1073] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Urgent Simatovic Request for Video Conference Link* (11 September 2020) at p, 1
[1074] *Prosecutor v Turinabo et al*, MICT-18-116-T, *Decision on Prosecution Motion for Testimony by Video-Teleconference Link for Investigator Tomasz Blaszczyk* (11 November 2020) at p. 2
[1075] *Prosecutor v Turinabo et al*, MICT-18-116-T, *Decision on Anselme Nzabonimpa's Request for Video-Teleconference Link (*17 March 2021)

There is no principle that witnesses first and foremost must appear directly in court.[1076]

In assessing whether it is consistent with the interests of justice to hear witnesses by way of video-conference link, the Chamber considers the following factors: (i) the witness is unable, or has good reasons to be unwilling, to attend proceedings at the Mechanism; (ii) the witness's testimony is sufficiently important to make it unfair to the requesting party to proceed without it; and (iii) the accused is not prejudiced in the exercise of his or her right to confront the witness.[1077]

The Trial Chamber does not consider the three factors - with the exception of not prejudicing the accused's confrontation rights - to be prescriptive. The ultimate determination to be made when considering a request for video-conference link is whether it would be consistent with the interests of justice.[1078]

The Trial Chamber's ability to assess the credibility and reliability of a testimony is not hindered when a video-conference link is used.[1079]

Video-conference link testimony is not incompatible with the accused's right to cross-examine and confront the witness, and to observe his or her reactions, or that such testimony should not be given as much probative value as testimony presented in the courtroom. Allowing the witnesses to appear by video-conference link will give the accused a fair chance to deal with the allegations against him and is consistent with a fair trial and the interests of all parties.[1080]

The Trial Chamber is willing to give the Defence the opportunity to conduct their cross-examinations from the remote video-conference link locations, if they choose to do so.[1081]

Considering logistical constraints, testimony of Rwandan detained witnesses would be heard by video-link from Arusha rather than requiring them to testify before the Trial Chamber in The Hague.[1082]

[1076] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Prosecution Motion for Video-Conference Link* (12 October 2022) at para. 10
[1077] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Prosecution Motion for Video-Conference Link* (12 October 2022) at para. 11
[1078] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Prosecution Motion for Video-Conference Link* (12 October 2022) at para. 11
[1079] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Prosecution Motion for Video-Conference Link* (12 October 2022) at para. 16
[1080] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Prosecution Motion for Video-Conference Link* (12 October 2022) at para. 16
[1081] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Prosecution Motion for Video-Conference Link* (12 October 2022) at para. 17
[1082] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Prosecution Motion for Video-Conference Link* (12 October 2022) at para. 18

Rule 97—joint and separate trials

(A) In joint trials, each accused shall be accorded the same rights as if such accused were being tried separately.
(B) The Trial Chamber may order that persons accused jointly under Rule 49 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

When a conflict of interest is alleged, the burden rests on the accused to demonstrate its existence and the fact that it might cause the accused serious prejudice.[1083]

In joint trials with more than one indictment, each accused shall be accorded the same rights as if he or she were being tried separately and the Prosecution remains under an obligation to unambiguously plead the material facts underpinning the charges against each accused.[1084]

When considering whether joinder is in the interests of justice, the following factors are considered: (i) avoiding the duplication of evidence; (ii) promoting judicial economy; (iii) minimizing hardship to witnesses and increasing the likelihood that they will be available to give evidence; and (iv) ensuring consistency of verdicts.[1085]

Potential delay of a few months in the commencement of the trial, as well as potential additional time needed for conduct of joint trial, were insufficient to outweigh the judicial economy of a joint trial.[1086]

Rule 98—trial in absence of accused

If an accused refuses to appear before the Trial Chamber for trial, the Chamber may order that the trial proceed in the absence of the accused, provided that the Trial Chamber is satisfied that:
(i) the accused has made an initial appearance under Rule 64;
(ii) the Registrar has duly notified the accused that the accused is required to be present for trial;
(iii) the accused is physically and mentally fit to be present for trial;
(iv) the accused has voluntarily and unequivocally waived, or has forfeited, his right to be tried in his presence;
(v) the interests of the accused are represented by Counsel.

[1083] *Prosecutor v Turinabo et al*, MICT-18-116-PT, *Decision on Prosecution Motion for Joinder…*(10 December 2019) at para. 24
[1084] *Prosecutor v Turinabo et al*, MICT-18-116-PT, *Decision on Prosecution Motion for Joinder…*(10 December 2019) at para. 24
[1085] *Prosecutor v Turinabo et al*, MICT-18-116-PT, *Decision on Prosecution Motion for Joinder…*(10 December 2019) at para. 28
[1086] *Prosecutor v Turinabo et al*, MICT-18-116-PT, *Decision on Prosecution Motion for Joinder…*(10 December 2019) at para. 28

The right to be present at one's trial may be waived provided that: (i) the accused has made an initial appearance; (ii) the Registrar has duly notified the accused that he is required to be present at trial; (iii) the accused is physically and mentally fit to be present for trial; (iv) the accused has voluntarily and unequivocally waived, or has forfeited, his right to be tried in his presence; and (v) the interests of the accused are represented by counsel.[1087]

The right to be present in court may be waived, provided, *inter alia*, that: (i) the accused is physically and mentally fit to be present for trial; (ii) the accused has voluntarily and unequivocally waived his right to be tried in his presence; and (iii) the interests of the accused are represented by counsel.[1088]

Rule 99—instruments of restraint

Instruments of restraint, such as handcuffs, shall be used only on the order of the Registrar as a precaution against escape during transfer or in order to prevent an accused from self-injury, injury to others, or to prevent serious damage to property. Instruments of restraint shall be removed when the accused appears before a Chamber or a Judge.

Rule 100—opening statements

Before presentation of evidence by the Prosecutor, each Party may make an opening statement. The Defence may, however, elect to make its statement after the conclusion of the Prosecutor's presentation of evidence and before the presentation of evidence for the Defence.

Rule 101—statement of accused

(A) After the opening statements of the Parties or, if the Defence elects to defer its opening statement pursuant to Rule 100, after the opening statement of the Prosecutor, if any, the accused may, if he so wishes, and the Trial Chamber so decides, make a statement under the control of the Trial Chamber. The accused shall not be compelled to make a solemn declaration and shall not be examined about the content of the statement.
(B) The Trial Chamber shall decide on the probative value, if any, of the statement.

Rule 102—presentation of evidence

(A) Each Party is entitled to call witnesses and present evidence. Unless otherwise directed by a Trial Chamber in the interests of justice, evidence at the trial shall be

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[1087] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Stanisic's Motion for Extension of Provisional Release* (19 May 2017) at para. 14
[1088] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Simatovic's Motion for Provisional Release* (9 March 2020) at pp. 2-3

presented in the following sequence:
(i) evidence for the prosecution;
(ii) evidence for the Defence;
(iii) prosecution evidence in rebuttal;
(iv) Defence evidence in rejoinder;
(v) evidence ordered by a Trial Chamber pursuant to Rule 120; and
(vi) any relevant information that may assist the Trial Chamber in determining an appropriate sentence if the accused is found guilty on one or more of the charges in the indictment.
(B) Examination-in-chief, cross-examination, and re-examination shall be allowed in each case. It shall be for the Party calling a witness to examine such witness in chief, but a Judge may at any stage put any question to the witness.
(C) If the accused so desires, the accused may appear as a witness in his own defence.

Rule 103—closing arguments

(A) After the presentation of all the evidence, the Prosecutor may present a closing argument; whether or not the Prosecutor does so, the Defence may make closing arguments. The Prosecutor may present a rebuttal argument to which the Defence may present a rejoinder.
(B) Not later than five days prior to presenting closing arguments, a Party shall file a final trial brief.
(C) The Parties shall also address matters of sentencing in closing arguments.

Rule 104—deliberations

(A) When both Parties have completed their presentation of the case, the Presiding Judge shall declare the hearing closed, and the Trial Chamber shall deliberate in private. A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.
(B) The Trial Chamber shall vote separately on each charge contained in the indictment. If two or more accused are tried together under Rule 49, separate findings shall be made as to each accused.
(C) If the Trial Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused.

The beyond-a-reasonable doubt standard requires the Prosecution to prove each element of the alleged crimes and of the mode of liability with which an accused is charged, as well as any fact, which is indispensable for a conviction, beyond a reasonable doubt.[1089]

[1089] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Judgement* (30 June 2021) at para. 8

The Trial Chamber may draw inferences to establish a fact on which a conviction relies based on circumstantial evidence if it is the only reasonable inference that could be drawn from the evidence presented.[1090]

Pattern of interference with witnesses could serve as circumstantial evidence to support Single Judge's conclusion that the accused offered a witness a bribe.[1091]

If there is another conclusion, which is also reasonably open from the evidence, and which is consistent with the non-existence of the fact, the conclusion of guilt beyond reasonable doubt cannot be drawn.[1092]

Single Judge erred in finding that the accused had sent others to attempt to bribe the witness where another reasonable inference were that those others had been sent by someone else.[1093]

There is a presumption that the single judge evaluated all the relevant evidence if there is no indication that he completely disregarded any particular piece of evidence.[1094]

The standard "beyond reasonable doubt" connotes that the evidence establishes a particular point, and it is beyond dispute that any reasonable alternative is possible.[1095]

The standard of proof beyond reasonable doubt requires the Trial Chamber to be satisfied that there is no reasonable explanation of the evidence other than the guilt of the Accused.[1096]

Where English-speaking Single Judge pronounced the judgement before the accused's final trial brief was translated from French to English, any claim that he did not consider the accused's brief was speculative. English and French are the working languages of the Mechanism. The fact that one of the working languages is commonly used by a judge does not demonstrate, per se, that the judge is unable to comprehend documents written in the other working language of the Mechanism.[1097]

concurrent sentences

Neither the Statute nor the Rules vest in the single judge the power to order that a sentence for contempt be served concurrently with a previous sentence imposed on the

[1090] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Judgement* (30 June 2021) at para. 8
[1091] *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 29
[1092] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Judgement* (30 June 2021) at para. 595
[1093] *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 46
[1094] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 378; *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 37
[1095] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 20
[1096] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Judgement* (30 June 2021) at para. 8
[1097] *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 58

same accused in separate proceedings under a different indictment before the ICTY, the ICTR, or the Mechanism.[1098]

The power to suspend a sentence for contempt in a single proceeding is distinguishable from the power to order that a sentence for contempt run concurrently with another sentence imposed on the accused in separate proceedings by different judges, concerning unrelated charges under different indictments. The authority to impose a concurrent sentence for contempt is not part of the inherent power of the Single Judge.[1099]

untested evidence

A conviction may not rest solely, or in a decisive manner, on the evidence of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial.[1100]

This principle applies to any fact which is indispensable for a conviction, meaning the findings that a trier of fact must reach beyond reasonable doubt.[1101]

It is considered to run counter to the principles of fairness to allow a conviction based on untested evidence without sufficient corroboration.[1102]

Where a witness, whose evidence was tendered in writing at the retrial, testified in the original trial and his or her evidence was tested by the Defence through cross-examination, the Trial Chamber could rely on such evidence even in the absence of corroboration.[1103]

Adjudicated facts are presumptions and are not equivalent to untested evidence requiring sufficient corroboration to be relied upon in support of conviction.[1104]

Requiring corroboration of adjudicated facts would undermine the judicial economy function served by taking judicial notice of adjudicated facts, as judicial notice relieves the Prosecution of the initial burden of producing evidence on such facts.[1105]

Trial chambers, after having. reviewed the record as a whole, may rely on adjudicated facts to establish the underlying crime base when making findings in support of convictions.[1106]

[1098] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 104
[1099] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 105
[1100] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 449; *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Judgement* (30 June 2021) at para. 12
[1101] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 449
[1102] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 449
[1103] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Judgement* (30 June 2021) at para. 12
[1104] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 452
[1105] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 452
[1106] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 452

Evidence demonstrating' a consistent pattern of conduct can provide sufficient corroboration in support of convictions based on written evidence admitted without cross-examination.[1107]

The principle that no conviction can rest solely or decisively on untested evidence without sufficient corroboration stems from the fundamental right of the accused to examine, or have examined, the witnesses against him.[1108]

The Trial Chamber erred in relying solely or decisively upon untested written evidence in support of the accused's conviction for some incidents.[1109]

The only appropriate remedy where the Trial Chamber relied solely or decisively upon untested written evidence in support of the accused's conviction for some incidents is to set aside the convictions for these incidents.[1110]

Rule 105—general provisions

(A) A Chamber shall apply the rules of evidence set forth in Rules 105 to 120, and shall not be bound by national rules of evidence.
(B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.
(C) A Chamber may admit any relevant evidence which it deems to have probative value.
(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.
(E) A Chamber may request verification of the authenticity of evidence obtained out of court.
(F) A Chamber may receive the evidence of a witness orally or in written form as provided for in Rules 110, 111, 112, 113, and 116.

A document is marked for identification if the decision to grant or deny its admission is deferred to a later time, and that such proposed evidence is not admitted until the Trial Chamber makes a ruling on its admissibility.[1111]

The lack of official signature, stamp, or other proof of authorship does not necessarily render a document unreliable.[1112]

[1107] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 457
[1108] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 458
[1109] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 462
[1110] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 474
[1111] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Submission on Exhibits Marked for Identification* (11 February 2019) at p. 2
[1112] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Submission on Exhibits Marked for Identification* (11 February 2019) at p. 3; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents from the Bar Table (Bosnia)*

The mere fact that an exhibit is handwritten or that it lacks an official signature, stamp or other proof of authorship does not necessarily render it unreliable.[1113]

Parties may not request the admission into evidence of voluminous documents when only certain passages thereof are relevant to the testimony of the witness through whom the document is presented.[1114]

Where numerous excerpts from a single collection of materials, which is of sui generis nature, are requested to be admitted by both parties throughout the proceedings, there are interests of judicial economy and the efficient administration of the case if the collection of materials were to be admitted in its entirety rather than in a piecemeal approach.[1115]

bar table

Evidence may be admitted from the bar table if the item proposed for admission has sufficient reliability , relevance, and probative value in respect of issues in the case.[1116]

The tendering party must demonstrate , with clarity and specificity, the relevance of each document or category of documents and where and how they fit into the party's case.[1117]

Admission of evidence does not require definitive proof of reliability or credibility of the evidence, but a showing of prima facie reliability and credibility based on sufficient indicia.[1118]

Newspaper articles and media reports are often not sufficiently reliable to serve as evidence unless they have been tendered through a witness. [1119]

(11 February 2019) at p. 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents from the Bar Table (Croatia)* (11 February 2019) at p. 3

[1113] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents and Videos from the Bar Table* (11 February 2019) at p. 3

[1114] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Submission on Exhibits Marked for Identification* (11 February 2019) at p. 4

[1115] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Judicial Notice of Authenticity and Admission of Documents from the Bar Table (Mladic Notebooks and Audio Files)* (11 February 2019) at para. 10

[1116] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-T, *Decision on Augustin Ngirabatware's First Motion for Admission of Evidence from the Bar Table…*(29 April 2021) at p. 2

[1117] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-T, *Decision on Augustin Ngirabatware's First Motion for Admission of Evidence from the Bar Table…*(29 April 2021) at p. 2

[1118] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-T, *Decision on Augustin Ngirabatware's First Motion for Admission of Evidence from the Bar Table…*(29 April 2021) at p. 2

[1119] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents and Videos from the Bar Table* (11 February 2019) at p. 3; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents from the Bar Table (Croatia)* (11 February 2019) at p. 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's First Bar Table Motion (Personnel Files)*(26 May 2020) at p. 1; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Second Bar Table Motion (Arkan and the*

A party's decision not to tender evidence through a witness, even if it could, does not, in and of itself, prevent it from being tendered from the bar table.[1120] It goes to the weight to be given to the evidence.[1121]

Documents related to credibility of witness would not be admitted from the bar table where the party failed to put the documents to the witness even though it had them in its possession at the time the witness testified.[1122]

A party's decision not to tender a document through an expert witness does not, in and of itself, prevent it from being tendered from the bar table.[1123]

Tendering documents from the bar table is a supplementary method of introducing evidence, which should be used sparingly.[1124]

Overwhelming the trial record with a large number of documents, often of cumulative nature, will neither expedite the proceedings, nor facilitate the fair adjudication of the case.[1125]

Documents which related to collateral issues or were cumulative to other evidence would not be admitted from the bar table.[1126]

Tendering large numbers of documents from the bar table, does not, per se, bar their admission, but does require the tendering party to provide greater clarity and

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Serbian Volunteer Guard)(26 May 2020) at p. 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Third Bar Table Motion (JCE in Croatia)*(26 May 2020) at p. 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Fifth Bar Table Motion (Red Berets in Bosnia)*(29 May 2020) at p. 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Fourth Bar Table Motion (Serbian State Security and Stanisic's Focus)*(23 June 2020) at p. 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Seventh Bar Table Motion (Bosnia JCE)*(24 July 2020) at p. 3; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Simatovic Defence Bar Table Motion* (14 January 2021) at p. 3

[1120] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Judicial Notice of Authenticity and Admission of Documents from the Bar Table (Mladic Notebooks and Audio Files)* (11 February 2019) at para. 7

[1121] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Second Bar Table Motion (Arkan and the Serbian Volunteer Guard)*(26 May 2020) at p. 2; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Stanisic's Third Bar Table Motion (JCE in Croatia)*(26 May 2020) at p. 3

[1122] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Simatovic Defence Bar Table Motion* (14 January 2021) at p. 4

[1123] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents from the Bar Table (Expert Reports)*(11 February 2019) at para. 7

[1124] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Judicial Notice of Authenticity and Admission of Documents from the Bar Table (Mladic Notebooks and Audio Files)* (11 February 2019) at para. 9

[1125] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Judicial Notice of Authenticity and Admission of Documents from the Bar Table (Mladic Notebooks and Audio Files)* (11 February 2019) at para. 9

[1126] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Simatovic Defence Bar Table Motion* (14 January 2021) at p. 3

specificity in explaining each document' s relevance to the case. [1127]

At a review hearing, documents that did not specifically relate to the circumstances of the recantations of Prosecution witnesses would not assist the Chamber in determining the existence of a new fact and would not be admitted from the bar table.[1128]

Documents obtained from accused's electronic devices were *prima facie* authentic and could basis to be admitted from the bar table.[1129]

Gacaca documents showing lack of involvement of investigator's client in underlying crime were not relevant in defence of charges of disclosing confidential information or violating court orders related to witness protection.[1130]

discretion

Any determination that prospective evidence appears to be relevant does not require the trial chamber to admit it. Rule 105(D) provides that a trial chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.[1131]

intercepted conversations

Defence failed to show that the purported incompleteness of the intercepts rendered them wholly unreliable nor did the defence demonstrate any violation of the Prosecution's obligation to provide exculpatory material.[1132]

tu quoque

The admissibility of evidence related to crimes committed by adversaries depends on the purpose for which it is adduced and whether it tends to refute allegations made in the indictment. It is for the defence to clarify to the trial chamber the purpose of tendering

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[1127] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents from the Bar Table (Expert Reports)*(11 February 2019) at para. 7; *Prosecutor v Turinabo et al*, No. MICT-18-116-T, *Decision on Prosecution Second Motion for Admission of Evidence from the Bar Table…*(15 January 2021) at p. 3

[1128] *Prosecutor v Ngirabatware,* No. MICT-12-29-R, *Decision on Defence Motion for Admission of Evidence pursuant to Rule 105(C) of the Rules* (19 September 2019) at p. 1

[1129] *Prosecutor v Turinabo et al*, No. MICT-18-116-T, *Decision on Prosecution Second Motion for Admission of Evidence from the Bar Table…*(15 January 2021) at p. 3; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-T, *Decision on Augustin Ngirabatware's First Motion for Admission of Evidence from the Bar Table…*(29 April 2021) at p. 2

[1130] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-T, *Decision on Dick Prudence Munyeshuli's Motion for Admission of Evidence from the Bar Table* (27 April 2021), at p. 2

[1131] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 590

[1132] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 58

such evidence.[1133]

Defence contention that Trial Chamber erroneously excluded as "tu quoque" evidence that established the existence of legitimate military targets, the goal of protecting Serb areas, or that crimes committed at the local level were acts of revenge did not demonstrate error in the exclusion of that evidence.[1134]

Rule 106—testimony of witnesses

(A) Every witness shall, before giving evidence, make the following solemn declaration: "I solemnly declare that I will speak the truth, the whole truth, and nothing but the truth."
(B) A child who, in the opinion of the Chamber, does not understand the nature of a solemn declaration, may be permitted to testify without that formality, if the Chamber is of the opinion that the child is sufficiently mature to be able to report the facts of which the child had knowledge and understands the duty to tell the truth. A judgement, however, cannot be based on such testimony alone.
(C) A witness, other than an expert, who has not yet testified shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying.
(D) Notwithstanding paragraph (C), upon order of the Chamber an investigator in charge of a Party's investigation shall not be precluded from being called as a witness on the ground that he has been present in the courtroom during the proceedings.
(E) A witness may object to making any statement which might tend to incriminate the witness. The Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than false testimony.
(F) The Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to:
(i) make the interrogation and presentation effective for the ascertainment of the truth; and
(ii) avoid needless consumption of time.
(G) The Chamber may refuse to hear a witness whose name does not appear on the list of witnesses compiled pursuant to Rules 70(E) and (M).
(H) (i) Cross-examination shall be limited to the subject-matter of the evidence-in-chief and matters affecting the credibility of the witness and, where the witness is able to give evidence relevant to the case for the cross-examining Party, to the subject-matter of that case.
(ii) In the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining Party, Counsel shall put to that witness the nature of the case of the Party for whom that Counsel appears which is in contradiction of the evidence given by the witness.

[1133] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 321
[1134] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 322

(iii) The Chamber may, in the exercise of its discretion, permit enquiry into additional matters.

compelled testimony

Compelling an accused in another case to testify is not in itself inconsistent with the right not to incriminate oneself given the absolute prohibition on direct or indirect use of self-incriminating statements so compelled in the proceedings against him.[1135]

Compelling a witness to answer a question which may incriminate him where he is an accused in another case must be balanced with need to ensure that trials are fair and conducted with full respect for the rights of the accused.[1136]

Trial Chamber did not err in declining to compel witness to answer accused's potentially incriminating questions where answers to these questions would have been directly relevant to the charges against the witness in his own ongoing trial.[1137]

Failure to compel testimony of accused in another case not error where other similar evidence was rejected, and Trial Chamber preferred to rely instead on contrary evidence.[1138]

corroboration

Two testimonies corroborate one another when one prima facie credible testimony is compatible with the other prima facie credible testimony regarding the same fact or a sequence of linked facts.[1139]

Corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way that is not compatible with the description given in another credible testimony.[1140]

A trial chamber may rely on a single witness testimony for the proof of a material fact, including a witness who may have motive to implicate the accused, provided that appropriate caution is exercised in the evaluation of that testimony.[1141]

A trial chamber may rely on uncorroborated, but otherwise credible, accomplice witness testimony.[1142]

Corroboration is not a requirement for admission of prior statements of

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[1135] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 288
[1136] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 288
[1137] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 289
[1138] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 291
[1139] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 74
[1140] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 74
[1141] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 77
[1142] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 173

unavailable witnesses. However, corroboration is required to rely on such evidence to support a conviction.[1143]

The testimony of an unavailable witness at the original trial may form the basis of a conviction without corroboration since the witness was cross-examined in the original trial. [1144]

Prior consistent statements cannot be used to bolster a witness's credibility, except to rebut a charge of recent fabrication of testimony.[1145]

Since there was no claim of recent fabrication, the Single Judge erred in relying on the witness' prior statement as corroboration. However, the evidence was harmless considering other evidence.[1146]

Appeals Chamber declined to draw an adverse inference from the Prosecution's decision not to call a witness on its list as there are many reasons why a party might choose to call or not to call a particular witness and the accused himself could have called the witness to testify yet did not do so.[1147]

credibility

Trial chambers have a broad discretion in weighing evidence and are best placed to assess the credibility of a witness and the reliability of the evidence adduced.[1148]

A single judge's assessment of a witness's demeanour may be implicit in his assessment of the witness's credibility.[1149]

Assessment of a witness's demeanour is one of the fundamental functions of a single judge to which the Appeals Chamber must accord considerable deference.[1150]

It is within a trial chamber's discretion to: (i) evaluate any inconsistencies that may arise within or among witnesses' testimonies and consider whether the evidence taken as a whole is reliable and credible, and to accept or reject the fundamental features of the evidence; (ii) decide, in the circumstances of each case, whether corroboration of evidence is necessary or to rely on uncorroborated, but otherwise credible, witness testimony; and (iii) accept a witness's testimony, notwithstanding inconsistencies between the said testimony and the witness's previous statements.[1151]

[1143] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 294
[1144] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 295
[1145] *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 27
[1146] *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 27
[1147] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at fn. 1006
[1148] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 363
[1149] *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 40
[1150] *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 40
[1151] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 363

It is for the trial chamber to determine whether an alleged inconsistency is sufficient to cast doubt on the evidence of the witness concerned.[1152]

It is not unreasonable for a trier of fact to accept some but reject other parts of a witness' testimony.[1153]

Accomplice evidence is to be treated with appropriate caution, the main question being whether the witness concerned might have motives or incentives to implicate the accused. [1154]

Witness need not be treated as accomplice and have his evidence treated with caution where, although interviewed by the Prosecution as a "suspect", there were no actual or potential criminal proceedings against the witness in relation to the events about which he testified.[1155]

Collusion has been defined as an agreement, usually secret, between two or more persons for a fraudulent, unlawful, or deceitful purpose.[1156]

If an agreement between witnesses for the purpose of untruthfully incriminating an accused were indeed established, their evidence would have to be excluded pursuant to Rule 95 of the ICTR Rules. However, a mere risk of collusion is insufficient to exclude evidence.[1157]

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The mere fact that two prosecution witnesses were serving sentences in the same prison does not, in itself, demonstrate collusion.[1158]

The presence of inconsistencies in the evidence does not, per se, require a reasonable trier of fact to reject it as unreliable.[1159]

cross-examination

This rule requires the cross-examining party to put the general substance of its case conflicting with the testimony of the witness and not every detail that the party does not accept.[1160]

[1152] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 363
[1153] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 378; *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 37
[1154] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 173
[1155] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 529
[1156] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 66
[1157] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 66
[1158] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 68
[1159] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at fn. 296
[1160] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Order on Procedure for the Conduct of the Trial* (6 December 2016) at para. 21

When confronting a witness with testimony of another witness, the party should ordinarily not identify the witness from whom the testimony has come and should not ask a witness to comment on the credibility of another witness.[1161]

hearsay

Trial chambers have the discretion to rely on hearsay evidence.[1162]

privileges

War correspondent witnesses validly waived war correspondent privilege where none of the news organizations for which the war correspondents worked sought to assert any qualified privilege. The accused had no standing to assert it on their behalf.[1163]

Rule 107—transfer of detained witnesses

(A) Any detained person whose personal appearance as a witness has been requested by the Mechanism shall be transferred temporarily to the detention facility of the relevant branch of the Mechanism, conditional on the person's return within the period decided by the Mechanism.
(B) The transfer order shall be issued by a Judge or Trial Chamber only after prior verification that the following conditions have been met:
(i) the presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Mechanism;
(ii) transfer of the witness does not extend the period of detention as foreseen by the requested State.
(C) The Registrar shall transmit the order of transfer to the national authorities of the State on whose territory, or under whose jurisdiction or control, the witness is detained. Transfer shall be arranged by the national authorities concerned in liaison with the host country and the Registrar.
(D) The Registrar shall ensure the proper conduct of the transfer, including the supervision of the witness in the detention unit of the Mechanism; the Registrar shall remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the detention of the witness in the detention unit and, as promptly as possible, shall inform the relevant Judge or Chamber.
(E) On expiration of the period decided by the Mechanism for the temporary transfer, the detained witness shall be remanded to the authorities of the requested State, unless the State, within that period, has transmitted an order of release of the witness, which shall take effect immediately.
(F) If, by the end of the period decided by the Mechanism, the presence of the

[1161] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Order on Procedure for the Conduct of the Trial* (6 December 2016) at para. 22
[1162] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 598
[1163] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 306

detained witness continues to be necessary, a Judge or Chamber may extend the period on the same conditions as stated in paragraph (B).

Rule 108--false testimony under solemn declaration

(A) A Chamber or a Single Judge, proprio motu or at the request of a Party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so.
(B) If a Chamber or a Single Judge has strong grounds for believing that a witness has knowingly and wilfully given false testimony and considers that, in relation to a final judgement, such testimony was decisive for the decision, it shall refer the matter to the President who shall designate a Single Judge who may:
(i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony; or
(ii) where the Prosecutor, in the view of the Single Judge, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an amicus curiae to investigate the matter and report back to the Single Judge as to whether there are sufficient grounds for initiating proceedings for false testimony.
(C) Subject to Article 6 of the Statute, if the Single Judge considers that there are sufficient grounds to proceed against a person for giving false testimony, the Single Judge may:
(i) in circumstances described in paragraph (B)(i), direct the Prosecutor to prosecute the matter; or
(ii) in circumstances described in paragraph (B)(ii), issue an order in lieu of an indictment and direct an amicus curiae to prosecute the matter.
(D) The Rules shall apply mutatis mutandis to proceedings under this Rule.
(E) Any person indicted for or charged with false testimony shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned Counsel in accordance with Rule 43.
(F) No Judge who sat as a member of the Trial Chamber before which the witness appeared shall sit for the trial of the witness for false testimony.
(G) The maximum penalty for false testimony under solemn declaration shall be a fine of 50,000 Euros or the equivalent thereof or a term of imprisonment of seven years, or both. The payment of any fine imposed shall be paid to the Registrar to be held in the account referred to in Rule 90(H).
(H) Paragraphs (B) to (G) apply mutatis mutandis to a person who knowingly and willingly makes a false statement in a written statement taken in accordance with Rules 110, 111, 112, or 113 which the person knows or has reason to know may be used as evidence in proceedings before the ICTY, the ICTR, or the Mechanism.
(I) Decisions disposing of the false testimony case rendered by a Single Judge under this Rule shall be subject to appeal as of right. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. Where such decision is rendered orally, the notice shall be filed within fifteen days of the oral decision, unless:
(i) the Party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging Party is notified of the oral decision; or

(ii) the Single Judge has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.
The appellant shall file an appeal brief within fifteen days after filing the notice of appeal. The respondent shall file a response within ten days of the filing of the appeal brief, and the appellant may file a reply within four days of the filing of the response.

burden of proof

A party seeking to institute proceedings for false testimony bears the burden to prove the alleged falsehood.[1164]

contradictions

Contradictions between witnesses' testimony do not, standing alone, demonstrate that a witness intended to mislead a Trial Chamber and to cause harm.[1165]

The mere existence of discrepancies between the witness' testimony and his or her earlier statements does not constitute strong grounds for believing that the witness may have knowingly and wilfully given false testimony.[1166]

Alleged contradictions between witness' testimony and other facts merely go to the credibility of the witness and do not demonstrate that he wilfully gave false testimony.[1167]

disclosure

The interests of justice favored the disclosure of the *ex parte amicus curiae* report and its annexes to the convicted person and prosecution.[1168]

discretion

A chamber has discretion to choose whether to initiate proceedings even if a prima facie case of false testimony exists.[1169]

[1164] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Motion to Appoint an Amicus Curiae to Investigate False Testimony* (2 March 2016), at para. 11
[1165] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Request to Initiate Proceedings Against Witness KJ…*(28 January 2014) at para. 18
[1166] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Request to Initiate Proceedings Against Witness KJ…*(28 January 2014) at para. 18
[1167] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Request to Initiate Proceedings Against Witness GGH…*(26 February 2014) at para. 17
[1168] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 22
[1169] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 14

A chamber may consider whether prosecuting a witness for false testimony is the most effective and efficient way to ensure compliance with the obligations flowing from the Statute or the Rules.[1170]

Prosecuting a witness who has voluntarily and unequivocally admitted his wrongdoing could have a discouraging effect on others in similar circumstances.[1171]

Prosecuting a witness for the principal purpose of eliciting evidence in support of review proceedings that may be sought by a convicted person is inefficient, as the convicted person can use the information in independent review proceedings regardless of whether the witness is prosecuted for giving false testimony.[1172]

Witness' motives of anger and grief. which made him want to take revenge against the accused after having survived the genocide, while not a defence to false testimony, weigh against initiating false testimony proceedings.[1173]

Whether prosecuting a witness for false testimony will serve penal goals - such as deterrence and denunciation, rehabilitation, protection of society, and retribution - is relevant to determining whether to initiate such proceedings.[1174]

Where witness confessed to giving false testimony, and trial of the convicted person was already completed, prosecution of the witness would not necessarily "achieve the important goals of deterrence and denunciation.[1175]

Judge exercised her discretion not to prosecute witness who confessed to false testimony, asked forgiveness, and was the sole caregiver of several children.[1176]

elements

The elements of false testimony are: (i) the witness must make a solemn declaration; (ii) a false statement must be contrary to the solemn declaration; (iii) the witness must believe at the time that it was false; and (iv) there must be a relationship

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[1170] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 16
[1171] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 16
[1172] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at paras. 17, 21
[1173] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 18
[1174] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 19
[1175] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 19
[1176] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at paras. 20, 23

between the statement and a material matter within the case.[1177]

gravity

False testimony under solemn declaration is a very grave offence as it constitutes a direct challenge to the integrity of the trial process and to the administration of justice.[1178]

The nature of the crimes under the jurisdiction of the ICTR and the context in which they were committed necessitated substantial reliance upon oral evidence and, as such, false testimony in such proceedings is extremely prejudicial.[1179]

interference with administration of justice

False testimony interfered with the administration of justice even though the conviction of the accused was also based on other witnesses' testimony.[1180]

mens rea

False testimony is a deliberate offence which requires wilful intent on the part of the perpetrator to mislead the judge and thus to cause harm.[1181]

Single Judge

Rule 108(B) does not allow the Single Judge to initiate contempt proceedings or refer the matter of false testimony for prosecution but requires him to refer the matter to the President where there are strong grounds for believing that false testimony has taken place.[1182]

For Rule 108 (B), the use of "strong grounds" raises the threshold for the opening of false testimony proceedings for which the onus lies on the Applicant to prove that the alleged false testimony was given "knowingly and wilfully". In such situation, it is necessary for the party alleging the falsehood to prove the falsehood of the witness statement, the harmful intent of the maker or his awareness that it was false, and the

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[1177] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 10

[1178] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 15

[1179] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 15

[1180] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 15

[1181] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Motion to Appoint an Amicus Curiae to Investigate False Testimony* (2 March 2016), at para. 10; *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 10

[1182] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Request to Initiate Proceedings Against Witness KJ…*(28 January 2014) at para. 13; *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Motion to Appoint an Amicus Curiae to Investigate False Testimony* (2 March 2016), at para. 17, fn. 57

possible bearing of the said statements on the judge's decision on a material matter in the case.[1183]

The “strong grounds” standard represents a heightened threshold for initiating investigations of false testimony as distinguished from the “sufficient grounds” threshold for contempt investigations.[1184]

standard

The "sufficient grounds" standard is satisfied where the evidence establishes a *prima facie* case of false testimony, which is the same standard employed in confirming an indictment, namely a "credible case which, if accepted and uncontradicted, would be a sufficient basis on which to convict the accused.[1185]

strong grounds

Strong grounds existed to believe that witness had committed the offense of false testimony where a prosecution witness subsequently testified in national proceedings in Canada that he had lied in his ICTR testimony when he claimed the accused was present at the attacks and had done so out of vengeance.[1186]

Appointment of *amicus curiae* prosecutor ordered where prosecution witness had testified in domestic proceedings that he had lied during ICTR testimony by false implicating the accused out of revenge.[1187]

Sufficient grounds found exist to support the elements of false testimony that would allow for the initiation of false testimony proceedings against a prosecution witness where the witness admitted in domestic proceedings and to the *amicus curiae* that he had lied during his ICTR testimony.[1188]

Rule 109—confessions

A confession by the accused given during questioning shall, provided the requirements of Rule 66 were strictly complied with, be presumed to have been free

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[1183] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Request to Initiate Proceedings Against Witness KJ…*(28 January 2014) at para. 17
[1184] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Motion to Appoint an Amicus Curiae to Investigate False Testimony* (2 March 2016), at para. 10
[1185] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 11
[1186] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Motion to Appoint an Amicus Curiae to Investigate False Testimony* (2 March 2016), at para. 15
[1187] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R108.1, *Order Appointing Amicus Curiae to Investigate False Testimony* (13 June 2016)
[1188] *Prosecutor v Ntakirutimana*, No. MICT-12-17, *Decision on Allegations of False Testimony* (20 November 2017) at para. 13

and voluntary unless the contrary is proved.

Rule 110—admission of written statements and transcripts

(A) A Trial Chamber may dispense with the attendance of a witness in person, and instead admit, in whole or in part, the evidence of a witness in the form of a written statement or a transcript of evidence, which was given by a witness in proceedings before the ICTY, the ICTR, or the Mechanism, in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.
(i) Factors in favour of admitting evidence in the form of a written statement or transcript include but are not limited to circumstances in which the evidence in question:
(a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;
(b) relates to relevant historical, political, or military background;
(c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;
(d) concerns the impact of crimes upon victims;
(e) relates to issues of the character of the accused; or
(f) relates to factors to be taken into account in determining sentence.
(ii) Factors against admitting evidence in the form of a written statement or transcript include but are not limited to whether:
(a) there is an overriding public interest in the evidence in question being presented orally;
(b) a Party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or
(c) there are any other factors which make it appropriate for the witness to attend for cross-examination.
(B) A written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person's knowledge and belief and
(i) the declaration is witnessed by:
(a) a person authorised to witness such a declaration in accordance with the law and procedure of a State; or
(b) a Presiding Officer appointed by the Registrar of the Mechanism for that purpose; and
(ii) the person witnessing the declaration verifies in writing:
(a) that the person making the statement is the person identified in the said statement;
(b) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;
(c) that the person making the statement was informed that if the content of the written statement is not true then he may be subject to proceedings for giving false testimony; and

(d) the date and place of the declaration.
The declaration shall be attached to the written statement presented to the Trial Chamber.
(C) The Trial Chamber shall decide, after hearing the Parties, whether to require the witness to appear for cross-examination; if it does so decide, the provisions of Rule 111 shall apply.

acts and conduct of accused

Trial Chamber erred in concluding that written statements of potential defence witnesses which related to fabrication of evidence by prosecution witness related to the acts and conduct of the accused.[1189]

associated exhibits

Documents which were not referred to in the witness' testimony could not be admitted as associated exhibits.[1190]

cumulative

Trial Chamber admitted testimony from another trial without cross-examination where the evidence did not go to the acts and conduct of the accused and was cumulative.[1191]

defence investigation

Trial Chamber did not err in deciding motions to admit written statements of 124 prosecution witnesses before giving defence an opportunity to interview the witnesses.[1192]

Trial Chamber was not required to grant Defence request to interview Prosecution witnesses simply because they were not subject to cross-examination in his trial.[1193]

Accused failed to demonstrate that his inability to interview 124 Prosecution witnesses whose written evidence was admitted without cross-examination violated the principle of equality of arms.[1194]

discretion

[1189] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 103
[1190] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of Witness Dragan Lukac pursuant to Rule 110* (12 October 2018) at p. 3
[1191] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of Witness RFJ-160 pursuant to Rule 111*
[1192] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 144
[1193] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 151
[1194] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 147

Trial Chamber acted within its discretion in refusing to admit written defence witness statements of prosecution witness fabrication of evidence and determining that there was an overriding public interest for such serious allegations to be presented orally.[1195]

Trial Chamber declined to admit written statements of witnesses who the prosecution had planned to call as live witnesses, finding that the defence should have the opportunity to cross examine witnesses who the prosecution considered important enough to be called to testify.[1196]

need for cross examination

Trial Chamber properly refused to call Prosecution witness for cross examination where information obtained from the witness by Defence interview about the accused were at most of a minor or generalised nature and consisted at best of the witness's personal opinion.[1197]

This rule does not prohibit the admission of written evidence in circumstances where it might be appropriate for the witness to be cross-examined but provides instead that such circumstances would weigh against admission.[1198]

provisional admission

The Trial Chamber did not err in refusing to provisionally admit defence written statements pending certification of the statements, as it had done for prosecution witnesses, because prosecution witnesses' willingness to cooperate was not in question.[1199]

standard

A decision to accept evidence without cross-examination is one that trial chambers should arrive at only after careful consideration of its impact on the rights of the accused.[1200]

timeliness

Trial Chamber did not err in excluding Defence written evidence on ground that Defence had failed to comply with its deadline. Fact that admitting witnesses' evidence in writing was necessitated by Trial Chamber's post-deadline denial of the witnesses' protective measures for *viva voce* testimony was not good cause to fail to comply with

[1195] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 104
[1196] *Prosecutor v Kabuga*, No. MICT-13-38-T, *Decision on Prosecution Fifth Motion for the Admission of Evidence pursuant to Rule 110: Witnesses KAB083 and KAB112* (31 March 2023) at p. 2
[1197] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 163
[1198] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 164
[1199] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 184
[1200] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 162

deadline.[1201]

The Trial Chamber did not abuse its discretion in rejecting Defence requests for admission of written evidence as untimely without considering whether the Prosecution might be prejudiced by the admission of this evidence.[1202]

unavailability

While unavailability is not a requirement for admission of written evidence under this rule, Trial Chamber did not err in imposing an unavailability requirement on the admission of defence written evidence where the defence justified filing the motion to admit the evidence in writing after the deadline on the grounds that the witnesses had become unavailable to testify due to their health conditions.[1203]

Rule 111—other admission of written statements and transcripts

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the ICTY, the ICTR, or the Mechanism, under the following conditions:
(i) the witness is present in court;
(ii) the witness is available for cross-examination and any questioning by the Judges; and
(iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.
(B) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

Rule 112—unavailable persons

(A) The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 110, if the Trial Chamber:
(i) is satisfied of the person's unavailability as set out above; and
(ii) finds from the circumstances in which the statement was made and recorded that it is reliable.
(B) If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.

[1201] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 178
[1202] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 179
[1203] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 190

acts and conduct of accused

Prior testimony of deceased witness admitted despite going to the acts and conduct of the accused, where the defence would have an opportunity to question other witnesses on these issues.[1204]

Prior testimony of deceased witness admitted at retrial despite going to the acts and conduct of the accused where the witness testified at the first trial of the case.[1205]

The fact that the proposed evidence goes to proof of acts and conduct of an accused may be a factor against the admission of written evidence under this rule.[1206]

Testimony of deceased witness that did not go to the acts and conduct of the accused would be admitted.[1207]

The fact that portions of the prior testimony go to the acts and conduct of the accused does not bar its admission under Rule 112. The evidence of a deceased witness cannot be used as the sole basis for a conviction. The accused will have the opportunity to challenge the evidence through the cross-examination of other witnesses called by the prosecution and through the presentation of defence evidence.[1208]

associated exhibits

To admit a document as an associated exhibit, the witness's testimony must actually discuss the document, and the document must be one without which the witness's testimony would become incomprehensible or of lesser probative value. Such exhibits must also satisfy the requirements of Rule 105.[1209]

cross-examination

While the cross examination may reflect a defence strategy that differs in certain aspects from the interests of the Accused in the present case, such differences do not preclude the admission of the witness' prior testimony. Any deficiencies in previous cross examination, specifically on issues central to the responsibility of the Accused in the present case, will be considered when assessing the weight, if any, to be attributed to the

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[1204] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of Milan Babic pursuant to Rule 112* (17 January 2018) at para. 13
[1205] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of Witness RFJ-142 pursuant to Rule 112* (9 October 2018) at p. 3
[1206] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at fn. 491
[1207] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of Witness RFJ-054 pursuant to Rule 112* (26 September 2018) at p. 3
[1208] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Prosecution Motion for Admission of Evidence of Witness KAB004 pursuant to Rule 112* (26 August 2022) at p. 3
[1209] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Prosecution Omnibus Motion for Admission of Evidence pursuant to Rule 112* (11 April 2022) at para. 13

evidence.[1210]

discretion

The assessment of admissibility criteria must be done with respect to each tendered document. Therefore, it cannot be said that Trial Chamber imposed a double standard when admitting Prosecution witness statements and excluding defence witness statements under this rule.[1211]

portions of statement

The Trial Chamber may decide not to admit parts of the witness's evidence.[1212]

reliability

To be admissible under this rule, the proffered evidence must be relevant and have probative value. To assess whether proposed evidence satisfies both prerequisites, consideration must be given to its prima facie reliability and credibility.[1213]

An item of evidence may be so lacking in terms of indicia of reliability that it is not "probative" and is therefore inadmissible.[1214]

The factors a trial chamber can consider in assessing whether an item of evidence has sufficient indicia of reliability to be admissible pursuant to this rule may vary and that these have included the absence of manifest or obvious inconsistencies in a statement.[1215]

In assessing the reliability of a statement tendered under Rule 112(A)(ii), a trial chamber may take into account: (i) whether the statement was given under oath; (ii) whether it was signed by the witness with an acknowledgement of the truth of its contents; (iii) whether it was given with the assistance of a Registry-approved interpreter; (iv) whether it has been subject to cross-examination; (v) whether it relates to events about which there is other evidence; and (vi) other factors, such as the absence of manifest inconsistencies in the evidence tendered.[1216]

If one or more of the indicia of reliability are absent, the evidence can still be admitted, and the Trial Chamber will take this into consideration in determining the

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[1210] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of Milan Babic pursuant to Rule 112* (17 January 2018) at para. 12; *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Prosecution Omnibus Motion for Admission of Evidence pursuant to Rule 112* (11 April 2022) at para. 27
[1211] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 211
[1212] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Prosecution Omnibus Motion for Admission of Evidence pursuant to Rule 112* (11 April 2022) at para. 12
[1213] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 209
[1214] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 209
[1215] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 210
[1216] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Prosecution Omnibus Motion for Admission of Evidence pursuant to Rule 112* (11 April 2022) at para. 12

appropriate weight to be given to it in its overall consideration of all the evidence on the record.[1217]

Trial Chamber was justified in considering the inconsistencies and evasiveness of the witness' responses in determining the reliability of his statement under this rule.[1218]

Although a plea agreement may be relevant to the circumstances under which a statement or testimony was given and recorded, the existence of such an agreement is itself enough to merit the exclusion of the evidence under Rule 112.[1219]

sole basis for a conviction

The evidence of a deceased witness cannot be used as the sole basis for a conviction.[1220]

If an accused is not given the opportunity to cross-examine a witness, that witness's statement may lead to a conviction only if there is other evidence which sufficiently corroborates its content.[1221]

Where the defence had cross-examined the deceased witness at the first trial, the Trial Chamber would not be prevented, as a matter of law, from relying on the witness' evidence even in the absence of corroboration.[1222]

unavailability

Death certificates duly certified by Rwandan authorities were adequate proof of unavailability despite not being translated into English or French.[1223]

This rule permits the admission of written evidence from a person who is objectively unable to attend a court hearing, either because he is deceased or because of a physical or mental impairment.[1224]

[1217] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Prosecution Omnibus Motion for Admission of Evidence pursuant to Rule 112* (11 April 2022) at para. 12
[1218] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 210
[1219] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of Milan Babic pursuant to Rule 112* (17 January 2018) at para. 11
[1220] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of Milan Babic pursuant to Rule 112* (17 January 2018) at para. 13; *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Prosecution Omnibus Motion for Admission of Evidence pursuant to Rule 112* (11 April 2022) at para. 14
[1221] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Prosecution Omnibus Motion for Admission of Evidence pursuant to Rule 112* (11 April 2022) at para. 20
[1222] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of RFJ-070 pursuant to Rule 111* (31 January 2018) at p. 2
[1223] *Prosecutor v Kabuga,* No. MICT-13-38-PT, *Decision on Prosecution Omnibus Motion for Admission of Evidence pursuant to Rule 112* (11 April 2022) at para. 17
[1224] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 198

An individual who is "theoretically able to attend" is not "unavailable" within the meaning of this rule.[1225]

The burden to demonstrate a witness's unavailability to testify f rests with the party asserting the witness's unavailability.[1226]

The Trial Chamber was not required to order a medical examination where a defence witness who had suffered from a brain tumour refused to undertake a medical examination at his own expense to demonstrate his unavailability.[1227]

Rule 113—admission of statements and transcripts of persons subject to interference

(A) A Trial Chamber may admit the evidence of a person in the form of a written statement or a transcript of evidence given by the person in proceedings before the ICTY, the ICTR, or the Mechanism, where the Trial Chamber is satisfied that:
(i) the person has failed to attend as a witness or, having attended, has not given evidence at all or in a material respect;
(ii) the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, injury, bribery, or coercion;
(iii) where appropriate, reasonable efforts have been made pursuant to Rules 55 and 86 to secure the attendance of the person as a witness or, if in attendance, to secure from the witness all material facts known to the witness; and
(iv) the interests of justice are best served by doing so.
(B) For the purposes of paragraph (A):
(i) an improper interference may relate inter alia to the physical, economic, property, or other interests of the person or of another person;
(ii) the interests of justice include:
(a) the reliability of the statement or transcript, having regard to the circumstances in which it was made and recorded;
(b) the apparent role of a Party or someone acting on behalf of a Party to the proceedings in the improper interference; and
(c) whether the statement or transcript goes to proof of the acts and conduct of the accused as charged in the indictment;
(iii) evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.
(C) The Trial Chamber may have regard to any relevant evidence, including written evidence, for the purpose of applying this Rule.

Rule 114—evidence of consistent pattern of conduct

(A) Evidence of a consistent pattern of conduct relevant to serious violations of

[1225] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 198
[1226] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 200
[1227] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 200

international humanitarian law under the Statute may be admissible in the interests of justice.
(B) Acts tending to show such a pattern of conduct shall be disclosed by the Prosecutor to the Defence pursuant to Rule 71.

Rule 115—judicial notice

(A) A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.
(B) At the request of a Party or proprio motu, a Trial Chamber, after hearing the Parties, may decide to take judicial notice of adjudicated facts or of the authenticity of documentary evidence from other proceedings of the ICTY, the ICTR, or the Mechanism relating to matters at issue in the current proceedings.

acts and conduct of the accused

Judicial notice may not be taken of adjudicated facts from other cases relating to the acts, conduct, and mental state of the accused. It is, nevertheless, permissible to take judicial notice of adjudicated facts relating directly or indirectly to an accused's guilt, for example, of facts relating to the existence of a joint criminal enterprise, the conduct of its members other than the accused, and the conduct of physical perpetrators of crimes for which an accused is alleged to be criminally responsible.[1228]

There is a distinction between facts related to the conduct of physical perpetrators of a crime for which an accused is being alleged criminally responsible through another mode of liability and those related to the acts and conduct of the accused himself. The burden remained on the Prosecution to establish by evidence other than judicial notice that the accused possessed the relevant mens rea and engaged in the required actus reus to be held responsible for the crimes established by way of judicial notice of adjudicated facts.[1229]

authenticity

A trial chamber may take judicial notice of the authenticity of documentary evidence from other proceedings before the ICTY relating to matters at issue in the current proceedings. The Trial Chamber should be satisfied that the documentary evidence in question was sufficiently authenticated and admitted into evidence in a previous trial. After creating a well-founded presumption of authenticity of the documentary evidence by virtue of taking judicial notice, the moving party may tender

[1228] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 121; *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 126; *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Judicial Notice of Adjudicated Facts* (15 October 2018) at para. 14; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* (6 October 2021) at p. 4
[1229] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 122

the evidence in question either through a witness or through a bar table motion by establishing the relevance and probative value vis-a-vis the second proceedings.[1230]

constitutionality

The practice of taking judicial notice of adjudicated facts is not "unconstitutional". By taking judicial notice of adjudicated facts, the Trial Chamber did not violate the presumption of innocence or relieve the Prosecution of its burden of proof.[1231]

Judicially noticed facts are merely presumptions that may be rebutted by the defence with evidence at trial. Consequently, judicial notice of adjudicated facts does not shift the ultimate burden of proof or persuasion, which remains squarely on the Prosecution.[1232]

core facts

Proposed facts that go to issues that are at the core of the prosecution's case should be denied judicial notice in the interests of justice.[1233]

corroboration

Adjudicated facts are presumptions and do not require corroboration.[1234]

discretion

A trial chamber ought to take a cautious approach in exercising its discretion to take judicial notice of adjudicated facts to ensure the right of an accused to a fair trial.[1235]

Even if the criteria for judicial notice are met, a trial chamber retains the discretion not to take judicial notice if doing so would not serve the interests of justice.[1236]

[1230] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Judicial Notice of Authenticity and Admission of Documents from the Bar Table (Mladic Notebooks and Audio Files)* (11 February 2019) at para. 5
[1231] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 124
[1232] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 219
[1233] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Judicial Notice of Adjudicated Facts* (15 October 2018) at para. 14; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* (6 October 2021) at p. 3
[1234] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 126
[1235] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Judicial Notice of Adjudicated Facts* (15 October 2018) at para. 5; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* (6 October 2021) at p. 3
[1236] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Judicial Notice of Adjudicated Facts* (15 October 2018) at para. 6

A trial chamber may decline to take judicial notice if the fact was less central to the previous proceedings than in the current proceedings.[1237]

The discretion to accept adjudicated facts is limited by the need to ensure the accused's right to a fair and expeditious trial.[1238]

Trial Chamber declined to take judicial notice of adjudicated facts that contained characterisations of a legal nature, went to the core of the prosecution's case, or were immediately proximate to the acts and conduct of the accused.[1239]

effect of judicial notice

By taking judicial notice of an adjudicated fact, a trial chamber establishes a well-founded presumption for the accuracy of a fact, which therefore does not have to be proven again at trial.[1240]

Judicial notice does not shift the ultimate burden of persuasion, which remains with the prosecution. The effect of taking judicial notice of an adjudicated fact is only to relieve the prosecution of its initial burden to introduce evidence on the point.[1241]

Adjudicated facts are admitted as rebuttable presumptions that may be disproved by the opposing party through the presentation of evidence at trial.[1242]

facts of common knowledge

Trial Chamber took judicial notice of facts of common knowledge: (i) genocide against the Tutsi ethnic group occurred in Rwanda"; (ii) Rwandans were identified according to the ethnic classifications of Hutu ,Tutsi and Twa, which were protected groups; (iii) There were throughout Rwanda widespread or systematic attacks against the civilian population based on Tutsi ethnic identification.[1243]

[1237] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Judicial Notice of Adjudicated Facts* (15 October 2018) at para. 7
[1238] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 121
[1239] *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* (6 October 2021) at pp. 5-7
[1240] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Judicial Notice of Adjudicated Facts* (15 October 2018) at para. 5; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* (6 October 2021) at p.2
[1241] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Judicial Notice of Adjudicated Facts* (15 October 2018) at para. 5; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 120
[1242] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Judicial Notice of Adjudicated Facts* (15 October 2018) at para. 5; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 120
[1243] *Prosecutor v Kabuga,* No. 13-38-PT, *Decision on Defence Submission Related to Judicial Notice of Facts of Common Knowledge* (27 October 2021), p. 3

modification

A trial chamber may make minor corrections or additions to proposed facts to render them clear and consistent with the meaning intended by the original judgement, so long as the corrections do not introduce any substantive changes or new information, and do not alter the meaning of the original judgement.[1244]

number of adjudicated facts

The fact that the Trial Chamber took judicial notice of considerably more adjudicated facts than in other cases (2379) does not render the trial unfair as long as the Trial Chamber followed the procedure provided for in the Rules.[1245]

Admission of 2379 adjudicated facts and written testimony from 148 Prosecution witnesses did not impede the defence's ability to mount an effective defence.[1246]

purpose

Taking judicial notice of adjudicated facts is a method of achieving judicial economy while ensuring the right of the accused to a fair, public, and expeditious trial.[1247]

rebuttal

An accused may rebut the presumption by introducing "reliable and credible" evidence to the contrary.[1248]

The requirement that the evidence be "reliable and credible" is the showing of prima facie reliability and credibility based on sufficient indicia.[1249]

For evidence presented in rebuttal of an adjudicated fact to be admissible, and thereby bringing the presumption of its accuracy into dispute, such evidence must be contrary to the adjudicated fact and bear sufficient indicia of prima facie reliability and credibility.[1250]

[1244] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Judicial Notice of Adjudicated Facts* (15 October 2018) at para. 7; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* (6 October 2021) at p. 4
[1245] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 220
[1246] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 222
[1247] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 219
[1248] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 128
[1249] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 128
[1250] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 55

Evidence produced in rebuttal to adjudicated facts must either point to a specific alternative scenario or unambiguously demonstrate that the scenario as found in the adjudicated fact must reasonably be excluded as true to successfully contradict it.[1251]

The mere presentation of evidence seeking to rebut an adjudicated fact does not deprive a trial chamber of its discretion to assess the credibility or probative value of such evidence or prevent it from drawing conclusions from the relevant adjudicated fact.[1252]

requirements

To be admissible, a proposed adjudicated fact must (1) be relevant to an issue in the proceedings; (2) be distinct, concrete, and identifiable; (3) as formulated by the moving party, not differ in any substantial way from the formulation in the original judgement; (4) not be unclear or misleading in the context in which it is placed in the moving party's motion; (5) be identified with adequate precision by the moving party; (6) not contain characterisations or findings of an essentially legal nature; (7) not be based on an agreement between the parties to the original proceedings; (8) not relate to the acts, conduct, or mental state of the accused; and (9) not be subject to a pending appeal or review.[1253]

Rule 116—testimony of expert witnesses

(A) The full statement and/or report of any expert witness to be called by a Party shall be disclosed within the time-limit prescribed by the Trial Chamber or the Pre-Trial Judge.
(B) Within thirty days of disclosure of the statement and/or report of the expert witness, or such other time prescribed by the Trial Chamber or Pre-Trial Judge, the opposing Party shall file a notice indicating whether:
(i) it accepts or does not accept the witness's qualification as an expert;
(ii) it accepts the expert witness statement and/or report; or
(iii) it wishes to cross-examine the expert witness.
(C) If the opposing Party accepts the statement and/or report of the expert witness, the statement and/or report may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

The rule that the preferred method for tendering evidence is through a witness while the witness is on the stand equally applies to expert witnesses. Therefore, if the parties wish to tender into evidence a document cited in an expert report, they should, in principle, present the document to the expert while the expert is on the stand.[1254]

[1251] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 56
[1252] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 131
[1253] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Judicial Notice of Adjudicated Facts* (15 October 2018) at para. 6; *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* (6 October 2021) at p. 3
[1254] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents underlying Expert Report of Christian Nielsen* (5 March 2018) at para. 9

While some documents relied upon by an expert may be tendered from the bar table, this method should be used sparingly. Overwhelming the trial record with large number of documents, often of cumulative nature, will neither expedite the proceedings, nor facilitate the fair adjudication of the case.[1255]

Where the witness is found qualified to testify as an expert and the report is admitted into evidence, it is not necessary to admit voluminous evidence for the sole purpose of verifying the propositions contained in the expert report. To do so, would be incompatible with the nature and purpose of expert evidence, and would unnecessarily burden the record.[1256]

The mere fact that the proposed exhibits were cited in the expert report and support the conclusions contained therein does not suffice to demonstrate their independent relevance and probative value. The party must make focused submissions justifying the admission of documents referred to in the expert report.[1257]

It is not necessary to admit evidence for the sole purpose of verifying the propositions contained in an expert report, as this would be incompatible with the nature and purpose of expert evidence.[1258]

Where the qualifications and report of a defence expert witness were not contested by the Prosecution, the defence request to nevertheless call the witness to give live testimony would be denied.[1259]

Rule 117—exclusion of certain evidence

No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.

Order for search and seizure implicitly authorised the access of Rwandan authorities to such material and effectively varied witness protection orders to the extent necessary to execute the order. Accordingly, the Rwandan authorities' access to any protected information in the seized material was done with judicial authorisation.[1260]

[1255] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents underlying Expert Report of Christian Nielsen* (5 March 2018) at para. 10
[1256] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents underlying Expert Report of Christian Nielsen* (5 March 2018) at para. 11
[1257] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents underlying Expert Report of Christian Nielsen* (5 March 2018) at para. 14
[1258] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents from the Bar Table (Expert Reports)*(11 February 2019) at para. 6
[1259] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Simatovic's Request for Video-Conference Link for Witness Jovan Krstic* (20 August 2020) at p. 2
[1260] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019) at para. 59

Rule 118—evidence in cases of sexual assault

In cases of sexual assault:
(i) notwithstanding Rule 106(B), no corroboration of the victim's testimony shall be required;
(ii) consent shall not be allowed as a defence if the victim:
(a) has been subjected to or threatened with or has had reason to fear violence, duress, detention, or psychological oppression, or
(b) reasonably believed that if the victim did not submit, another might be so subjected, threatened, or put in fear;
(iii) before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;
(iv) prior sexual conduct of the victim shall not be admitted in evidence.

Rule 119—lawyer-client privilege

(A) All communications between lawyer and client shall be regarded as privileged, and consequently not subject to disclosure at trial, unless:
(i) the client consents to such disclosure; or
(ii) the client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.
(B) Nothing in this Rule shall be interpreted as permitting the use of confidentiality between Counsel and client to conceal the participation of Counsel in illegal practices such as fee-splitting with the client.

assistants

Where, due to the coronavirus pandemic, lead counsel may be absent from Arusha during parts of the trial, the attorney-client privilege would be extended to legal consultants and assistants who are admitted to practice in a domestic jurisdiction and who are present in Arusha.[1261]

case-by-case examination

Whether a specific document sought to be introduced in any further proceedings is covered by the lawyer-client privilege will be considered then on a case-by-case basis, bearing in mind, inter alia, the possibility of the crime-fraud exception as well as defence counsel's ability to use privileged yet exculpatory material in his defence as provided for in the Mechanism's Code of Conduct.[1262]

contraband devices

[1261] *Prosecutor v Turinabo et al,* No. MICT-18-116-PT, *Order on the Extension of Attorney-Client Privilege* (25 September 2020) at p. 2
[1262] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 21

There can be no claim of privilege for any information on devices illegally possessed by a detainee. Any potentially privileged information put on these devices or exchanges made through them cannot enjoy privilege provided by law. The protections of privilege do not extend to contraband.[1263]

crime-fraud exception

The lawyer-client privilege is not absolute and may not be relied upon to conceal communications that are in furtherance of criminal activities.[1264]

domestic law

National law protections related to attorney-client privilege cannot be seen as binding on the Mechanism and serve to prevent the Prosecution from undertaking duly authorized investigative activities.[1265]

investigators

The attorney-client privilege can extend to communication with investigators, but this is not without limits.[1266]

Investigators do not enjoy independent privileged communication' with clients without the presence of counsel.[1267]

Correspondence between investigators and clients is considered privileged only if the correspondence is clearly identified as emanating from counsel and secured in such a manner as to prevent persons, other than the intended recipient, from seeing the contents of the correspondence.[1268]

The scope of the investigator's limited privilege necessarily terminates with the end of the employment relationship with the relevant attorney or the attorney-client relationship.[1269]

[1263] *Prosecutor v Turinabo et al,* No. MICT-18-116-PT, *Decision on the 7 February 2019 Search at the United Nations Detention Facility* (5 July 2019) at para. 28
[1264] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Inspection of Privileged Material* (24 April 2020) at p. 2; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 18
[1265] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision in Relation to Material Seized from Dick Prudence Munyeshuli* (18 February 2019) at para. 19
[1266] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision in Relation to Material Seized from Dick Prudence Munyeshuli* (18 February 2019) at para. 18
[1267] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision in Relation to Material Seized from Dick Prudence Munyeshuli* (18 February 2019) at para. 18
[1268] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision in Relation to Material Seized from Dick Prudence Munyeshuli* (18 February 2019) at para. 18
[1269] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision in Relation to Material Seized from Dick Prudence Munyeshuli* (18 February 2019) at para. 18

purpose

The lawyer-client privilege, which protects the confidentiality of communications between lawyers and their clients, is to encourage clients to openly share information with their lawyers so that the lawyers can effectively represent their client's interests.[1270]

The lawyer-client privilege is vital to the defence of an accused or appellant by allowing for open communication between counsel and client that is necessary for effective legal assistance.[1271]

segregation of privileged items

Where defence investigator had been arrested for contempt and his files seized, to protect potentially privileged communications, Registrar was ordered to take and maintain custody of seized items pending determination of privilege.[1272]

showing required

No relief would be granted where allegations that defence counsel's communications with his client and other members of the defence team were intercepted by the Rwandan government using spyware were unsubstantiated and speculative.[1273]

specific items

Judge conducting inspection of allegedly privileged communications on accused's laptop computer found that certain items should not be disclosed to the Prosecution because they were protected by the lawyer-client privilege or the right of privacy. [1274]

Single Judge made factual error in concluding that investigator had no active cases at the Mechanism and in thus allowing prosecution access to potential attorney-client communications.[1275]

waiver

The legal professional privilege is the privilege of the client and not the legal

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[1270] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 18
[1271] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 98
[1272] *Prosecutor v Turinabo et al*, No. MICT-18-116, *Decision on Prosecution Motion Requesting to Seal and Transfer Seized Materials to the Registry and for Submissions* (17 September 2018) at p. 2
[1273] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-Misc.1, *Decision on Joint Defence Motion regarding Reported Spyware Attack on Counsel's Telephone* (18 October 2021) at p. 3
[1274]*Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Inspection of Privileged Material* (24 April 2020) at p. 2
[1275] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019) at para. 41

adviser.[1276]

The lawyer-client privilege will be lost where a client consents to the disclosure, or voluntarily discloses the content of the communication to a third party.[1277]

A client's consent to disclosure of otherwise privileged material can be express or implied.[1278]

Failure of counsel to take reasonable steps to safeguard the material, does not waive the client's privilege.[1279]

Single Judge erred in finding that counsel's failure to ensure that investigator destroyed privileged material after his assignment ended constituted a waiver of the attorney-client privilege.[1280]

To the extent that otherwise privileged communications were admitted as evidence at a trial of the client, the lawyer-client privilege in those communications has been waived.[1281]

Rule 120—powers of Chamber to order production of additional evidence

A Trial Chamber may order either Party to produce additional evidence. It may proprio motu summon witnesses and order their attendance.

Where Rwandan government had cooperated extensively with Prosecution in investigation into witness bribery, Single Judge ordered Prosecution to use its good offices to obtain additional intercepted conversations requested by the Defence but ignored by Rwandan government.[1282]

[1276] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019) at para. 52; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 18
[1277] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019) at para. 52; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 18
[1278] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019) at para. 52; *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 18
[1279] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019) at para. 52
[1280] *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019) at para. 52
[1281] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Application of Lawyer-Client Privilege and Use of Materials Subject to Rule 76 in Further Proceedings* (2 April 2024) at para. 21
[1282] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Jean de dieu Ndagijimana's Renewed Motion and Augustin Ngirabatware's Motion for State Production of Documents* (28 February 2020) at p. 3

Single Judge declined to order Prosecution to use its good offices to obtain material from Rwandan government on financial status of Prosecution witnesses as the request sought broad swathes of materials that were not demonstrated to be of importance to the case. [1283]

Rule 121—judgement of acquittal

At the close of the Prosecutor's case, the Trial Chamber shall, unless it decides otherwise, by oral decision and after hearing the oral submissions of the Parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction.

The test to be applied by the trial chamber is whether there is evidence, if accepted, upon which a reasonable trier of fact could be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question", not whether an accused's guilt has been established beyond reasonable doubt.[1284]

A trial chamber may find at the close of the Prosecution case-in-chief that the evidence is sufficient to sustain a conviction beyond reasonable doubt and yet, even if no defence evidence is subsequently adduced, proceed to acquit at the end of the trial, if in its own view of the evidence, the prosecution has not in fact proved guilt beyond reasonable doubt.[1285]

Rule 122—judgement

(A) The judgement shall be pronounced in public by the Trial Chamber, or a Judge thereof, or the Single Judge, on a date of which notice shall have been given to the Parties and Counsel and at which they shall be entitled to be present, subject to the provisions of Rule 126(B).
(B) If the Trial Chamber finds the accused guilty of a crime and concludes from the evidence that unlawful taking of property by the accused was associated with it, it shall make a specific finding to that effect in its judgement that shall be prepared in a reasonable time. The Trial Chamber may order restitution as provided in Rule 129.
(C) The judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.
(D) A copy of the judgement and of the Judges' opinions in a language which the accused understands shall as soon as possible be served on the accused if in custody. Copies thereof in that language and in the language in which they were delivered shall also as soon as possible be provided to Counsel for the accused.

[1283] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Anselme Nzabonimpa's Request for Order to Prosecution to use its Good Offices* (3 July 2020) at pp. 2-3
[1284] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 18
[1285] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 18

cumulative convictions

Convictions for interference with administration of justice fully encapsulate the criminal conduct of the Accused. Therefore, it is not necessary to assess whether the proven conduct may also have amounted to incitement to interfere with the administration of justice and find the accused not guilty of incitement.[1286]

Rule 123—status of acquitted persons

(A) Subject to paragraph (B), in the case of an acquittal or the upholding of a challenge to jurisdiction, the accused shall be released immediately.
(B) If, at the time the judgement is pronounced, the Prosecutor advises the Trial Chamber in open court of the Prosecutor's intention to file notice of appeal pursuant to Rule 133, the Trial Chamber may, on application by the Prosecutor and upon hearing the Parties, in its discretion, issue an order for the continued detention of the accused, pending the determination of the appeal.

duty of Mechanism

The Mechanism has a duty to ensure the welfare of the acquitted persons and to enquire whether their life or liberty would be at risk upon relocation.[1287]

The duty of the Mechanism towards acquitted persons continues where under a relocation agreement, the Mechanism was obligated to provide for their support for the first year.[1288]

While the Mechanism's duty of care towards acquitted or released persons does not continue indefinitely following their relocation, in the particular circumstance of the present case, where the relocation appears not to have been carried out in accordance with the full terms of the Relocation Agreement, the duty of care continues.[1289]

[1286] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 341
[1287] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 24; *In the Matter of Nzuwonemeye et al*, No. MICT-22-124, *Further Order to the Government of Niger and to the Registrar* (14 January 2022) at para. 13; *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Motions Regarding the Relocation Agreement with Niger and Order for the Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022) at para. 22
[1288] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Motions Regarding the Relocation Agreement with Niger and Order for the Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022) at para. 22
[1289] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 24

Decision of Registrar terminating financial and housing support to acquitted person who declined to be relocated to Niger vacated where Niger had decided to expel those who had been relocated there.[1290]

Duty of care towards acquitted and released persons detained in Niger in violation of relocation agreement included payment of $10,000 to cover utilities, necessities, and food.[1291]

violation of relocation agreement

assignment of counsel

Acquitted persons whose relocation to Niger was revoked by the government of Niger did not demonstrate exceptional circumstances entitling them to the assignment of counsel.[1292]

Two persons detained in Niger after completing their ICTR sentences failed to demonstrate the existence of exceptional circumstances which would warrant an order to the Registrar to allocate additional funds for an in-person visit of their counsel in Niger.[1293]

diplomatic solution required

In view of the limitations on the Mechanism's jurisdiction to invoke the cooperation of States on matters concerning the relocation of acquitted persons and persons who have completed serving their sentences, it was reasonable for the Duty Judge to conclude that the matter before him could not be resolved by a further judicial order.[1294]

Relocation Agreement with Niger was a treaty and could not be invalidated or terminated by a Judge's order.[1295]

President was unconvinced that undertaking a mission to certain countries to persuade them to relocate the ICTR acquitted and released persons detained in Niger or

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[1290] *In the matter of Bicamumpaka*, No. MICT-14-75, *Decision on Motion for Judicial Review of the Registrar's Decision of 8 December 2021* (4 February 2022) at p. 4
[1291] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions for an Order for Subsistence Funds* (12 January 2023) at p. 3; *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Further Decision on Motions for an Order for Subsistence Funds* (4 January 2024) at p. 3
[1292] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Innocent Sagahutu's and Anatole Nsengiyumva's Requests for Assignment of Legal Aid Counsel* (16 February 2022) at p. 3
[1293] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Request for Attorney Visit and Reclassification of Filings* (3 May 2023) at p. 3
[1294] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 37
[1295] *In the matter of Francois-Xavier Nzuwonemeye et al*, No MICT-22-124, *Decision on Ntagerura's Motion for Judicial Review of Relocation Agreement* (22 September 2023) at p. 3

developing a contingency plan in case of their sudden deportation to Rwanda, as suggested by the defendant, was useful.[1296]

Acquitted person detained in Niger for almost three years failed to show that the Registrar's diplomatic efforts require the assistance of a special advisor with diplomatic experience.[1297]

expulsion

Persons acquitted at the ICTR or who have completed their sentences cannot be transferred to Rwanda without their consent or through a proper domestic or international process where their voices and views are heard and thoroughly considered in conformity with national and international norms.[1298]

host country

The judge did not err in refusing to enforce his order that the relocated persons be brought back to Tanzania from Niger because he lacked the power to compel Tanzania to accept the relocated persons on its territory and he fulfilled his duty of care to the relocated persons by urging the Registrar to intensify his efforts and encouraging Niger to comply with the relocation agreement.[1299]

Registrar erred in considering that The Netherlands had declined to permanently resettle acquitted person when deciding that acquitted person currently detained in Niger should not be transferred temporarily to The Hague. However, it was not material to his decision.[1300]

Registrar erred in considering that Single Judge had declined to bring acquitted person to the seat of the Mechanism for a hearing when deciding that acquitted person currently detained in Niger should not be transferred temporarily to The Hague several months later. However, it was not material to his decision.[1301]

[1296] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision in relation to the Requests of Francois-Xavier Nzuwonemeye* (12 April 2023)
[1297] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision in relation to the Request of Francois-Xavier Nzuwonemeye* (19 November 2024) at p.2
[1298] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Motions Regarding the Relocation Agreement with Niger and Order for the Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022) at para. 20
[1299] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at paras. 31-33
[1300] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on the Request of Francois-Xavier Nzuwonemeye for Review of an Administrative Decision* (16 September 2022) at para. 23
[1301] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on the Request of Francois-Xavier Nzuwonemeye for Review of an Administrative Decision* (16 September 2022) at para. 23

Registrar's refusal to transfer acquitted person currently detained in Niger to The Hague as a means of ending his unlawful detention was not unreasonable.[1302]

A judicial order transferring acquitted and released persons unlawfully detained in Niger is different from a judicial order transferring a convicted person whose rights are violated in an enforcement State because the relocation agreement with Niger, unlike those with enforcements States, did not contain a provision for transfer in the event of breach of the agreement. Request for transfer denied.[1303]

The Headquarters Agreement does not provide a basis for the transfer of an acquitted person detained in Niger to the Netherlands for emergency medical reasons.[1304]

Transfer of an acquitted person to The Netherlands for medical treatment does not concern the proper exercise by the Mechanism of its residual functions as set out in the Statute. The Headquarters Agreement cannot be interpreted to allow for transfer to the seat of the Mechanism on the sole ground of benefitting from the host State's medical services. The privileges conferred by the Headquarters Agreement are granted in the interests of the Mechanism and not for the personal benefit of the individuals themselves.[1305]

The Mechanism does not have the legal authority in the present circumstances to issue a judicial order for the medical evacuation of an acquitted person detained in Niger to the Netherlands or another third country with adequate facilities for diagnosis and treatment.[1306]

Single Judge declined to hold a hearing in the presence of an acquitted person detained in Niger at the Hague Branch of the Mechanism, in order to observe the gravity of his medical condition.[1307]

Acquitted person detained in Niger who sought evacuation for medical procedure not available in Niger should explore possibility of receiving treatment in Rwanda, with appropriate security guarantees, and the Registrar should, in the meantime, provide him with assistance in Niger for his medical needs.[1308]

[1302] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on the Request of Francois-Xavier Nzuwonemeye for Review of an Administrative Decision* (16 September 2022) at para. 28
[1303] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Nzuwonemeye Request for Transfer* (25 July 2023) at p. 2
[1304] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Francois-Xavier Nzuwonemeye Motion for Emergency Medical Evacuation* (15 May 2024) at p. 2
[1305] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Appeal of Decision Denying Motion for Emergency Medical Evacuation and Motion for Oral Hearing* (18 July 2024) at para. 17
[1306] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Francois-Xavier Nzuwonemeye Motion for Emergency Medical Evacuation* (15 May 2024) at p. 3
[1307] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Francois-Xavier Nzuwonemeye Motion for Emergency Medical Evacuation* (15 May 2024) at p. 4
[1308] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Francois-Xavier Nzuwonemeye Motion for Emergency Medical Evacuation* (15 May 2024) at p. 4

Even if medical equipment needed to diagnose the acquitted person was not available in Rwanda, the Single Judge did not err in recommending that the acquitted person return to Rwanda, where he could pursue other forms of diagnosis and treatment.[1309]

Registrar's obligations

Registrar's decision not to engage with individual who purported to represent a State willing to relocate acquitted persons was not unreasonable where questions of the validity of the individual's initiative had been raised by the relocated persons themselves.[1310]

Neither Rule 31 nor the Security Council resolutions provide mandatory and positive obligations on the Registrar to contact States at the precise moment and under the specific circumstances requested by the relocated persons.[1311]

report to UNSC

The judge did not err in declining to report Niger's violation of the relocation agreement to the UN Security Council, where he had instructed the Registrar to negotiate with Niger under the terms of the relocation agreement and the President had already brought the matter to the attention of the Security Council.[1312]

violation

Niger's unilateral action to order the expulsion of the relocated persons, to confiscate their identity documents, and to limit their freedom of movement was in flagrant violation of the relocation agreement.[1313]

Rule 124—sentencing procedure on guilty plea

(A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the Defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.
(B) The sentence shall be pronounced in a judgement in public and in the presence

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[1309] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Appeal of Decision Denying Motion for Emergency Medical Evacuation and Motion for Oral Hearing* (18 July 2024) at para. 18
[1310] *In the matter of Nzuwonemeye et al*, No. IT-22-124, *Decision on Requests for Review of an Administrative Decision* (30 August 2024) at p. 6
[1311] *In the matter of Nzuwonemeye et al*, No. IT-22-124, *Decision on Requests for Review of an Administrative Decision* (30 August 2024) at p. 6
[1312] *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 26
[1313] *In the Matter of Nzuwonemeye et al,* No. MICT-22-124, *Decision on Motions Regarding the Relocation Agreement with Niger and Order for the Transfer of the Relocated Persons to the Arusha Branch* (7 February 2022) at para. 23

of the convicted person, subject to Rule 126(B).

Rule 125—penalties

(A) A person convicted of a crime or crimes under Article 1, paragraphs 1 to 3, of the Statute may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
(B) In determining a sentence, the Trial Chamber shall take into account the factors mentioned in Article 22, paragraph 3, of the Statute, as well as such factors as:
(i) any aggravating circumstances;
(ii) any mitigating circumstances, including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia or in the courts of Rwanda;
(iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 7, paragraph 3, of the Statute.
(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the ICTY, the ICTR, or the Mechanism or pending trial or appeal.

aggravating factors

Consideration of abuse of an accused's position of authority as an aggravating factor in sentencing does not require a finding of superior responsibility.[1314]

A Trial Chamber may only consider in aggravation factors pleaded in the Indictment and that the Prosecution must prove the existence of such factors beyond a reasonable doubt.[1315]

comparison with other sentences

Trial chambers are under no obligation to expressly compare the case of one accused to that of another.[1316]

Any given case may contain a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual.[1317]

[1314] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 529
[1315] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 275
[1316] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 767
[1317] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 767

Comparison between cases is of limited assistance in challenging a sentence. Trial chambers are under no obligation to expressly compare the case of one accused to that of another. Similar cases do not provide a legally binding tariff of sentences on others.[1318]

A disparity between sentences rendered in similar cases may be considered capricious or excessive, hence warranting the intervention of the Appeals Chamber, if it is out of reasonable proportion with a line of sentences passed in similar circumstances for the same offences.[1319]

contempt

Contempt of the court is a grave offence, constituting a direct challenge to the integrity of the trial process, and it is necessary for general deterrence and denunciation to be given high importance in sentencing policies.[1320]

This type of interference remains a major threat to the administration of justice and public confidence in the integrity of these proceedings. However, the fact that witnesses were not threatened or harmed is a consideration and places the gravity of the offence in its proper context.[1321]

In mitigation, consideration would be given the accused's comportment since their arrest, including while released in Rwanda and during the trial proceedings, and the general evidence pertaining to their good character and positive roles in their local communities.[1322]

The fact that the accused's interference with a witness failed to produce the expected results do not diminish or mitigate her responsibility for the purpose of sentencing.[1323]

The accused's sincere belief that the witnesses had lied during the trial and that the person she was assisting was innocent did not make her crime any less grave and would not be considered in mitigation.[1324]

No weight would be given to the accused's claim that his conduct was motivated by a desire to pursue the truth, considering the means he chose to do so amounted to an elaborate criminal scheme.[1325]

The accused's detention pending the present trial has not been based on the contempt indictment but of the sentence of 30 years' imprisonment for his genocide

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[1318] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 319
[1319] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 767
[1320] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 397
[1321] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 398
[1322] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 403
[1323] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 403
[1324] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 111
[1325] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 404

convictions. He is therefore not entitled to credit for time served. However, any custodial sentence for contempt charges shall run concurrently with the sentence that he is currently serving.[1326]

Sentence of time served (11 months) imposed on accused who facilitated bribery and training scheme.[1327]

In sentencing investigator to 5 months imprisonment, the Appeals Chamber considered the mitigating circumstances that the person to whom he disclosed the identity of protected witnesses was already aware of their identities and that, in initiating indirect contact with the witnesses, the investigator acted under defence counsel's instructions.[1328]

Sentence of two years imposed on accused who masterminded bribery and training scheme.[1329]

domestic sentencing practices

While a trial chamber must take account of the general practice regarding sentences in the Rwandan or Yugoslavian courts, it is not bound by that practice.[1330]

gravity

The assessment of the gravity of the offence must be determined by reference to the particular circumstances of the case and the form and degree of the accused's participation in the crimes.[1331]

While aiding and abetting is considered as a lower form of liability, which may attract a lesser sentence, the gravity of the underlying crimes remains an important consideration to reflect the totality of the criminal conduct.[1332]

The primary goal in sentencing is to ensure that the final or aggregate sentence reflects the totality of the criminal conduct and overall culpability of the offender. While gravity of the offence is the primary factor in sentencing, the inherent gravity must be determined by reference to the particular circumstances of the case and the form and degree of the accused's participation in the crime. While a position of influence or authority, even at a high level, does not automatically warrant a harsher sentence, its abuse may constitute an aggravating factor.[1333]

[1326] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 406
[1327] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Judgement* (25 June 2021) at para. 407; *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 112
[1328] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 115
[1329] *Prosecutor v Fatuma et al,* No. MICT-18-116-A, *Judgement* (29 June 2022) at para. 119
[1330] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 261; *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 563
[1331] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 339
[1332] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 339
[1333] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 545

mitigating factors

age

Age of the accused may be a mitigating factor.[1334]

assistance to victims

An accused's assistance to victims or detainees can be considered in mitigation of his or her sentence. [1335]

Considering the gravity of the offences and the noted sporadic nature of the benevolent treatment and assistance undertaken by the accused, the Trial Chamber did not err in declining to credit him for this mitigating circumstance. [1336]

burden of proof

The accused bears the burden of establishing mitigating factors by a preponderance of the evidence.[1337]

disclosure violations

There was no error in the Trial Chamber's refusal to consider the Prosecution's disclosure violations in mitigation of sentence where such violations caused the accused no prejudice or where any prejudice was remedied by the Trial Chamber during trial.[1338]

discretion

A trial chamber is required to consider any mitigating circumstance when determining the appropriate sentence, but it enjoys considerable discretion in determining what constitutes a mitigating circumstance and the weight, if any, to be accorded to the factors identified.[1339]

The existence of mitigating factors does not automatically imply a reduction of sentence or preclude the imposition of a particular sentence.[1340]

[1334] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 554; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 329
[1335] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 556
[1336] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 556
[1337] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 274
[1338] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 757
[1339] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 753; *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 553
[1340] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 753; *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 553

failure to raise

Although a Trial Chamber is not under the obligation to hunt for information that counsel does not see fit to put before it during closing arguments, the Trial Chamber considered as mitigating circumstances the Accused's advanced age and ill health, his compliance with the terms of provisional release, and his assistance in the release of UN hostages.[1341]

A trial chamber is under no obligation to search for information that counsel did not put before it at the appropriate time in assessing mitigating factors. It is an accused's prerogative to identify any mitigating circumstances before the trial chamber, and if he fails to specifically refer in his final brief or closing arguments to a mitigating circumstance, he cannot raise it for the first time on appeal.[1342]

Where the accused did not make any submissions related to sentencing at the conclusion of trial, he has waived his right to identify mitigating circumstances on appeal.[1343]

family circumstances

The individual circumstances of the convicted person could include family circumstances. However, little weight is afforded to this factor in the absence of exceptional family circumstances. [1344]

good character and conduct

Good conduct during the war may be a relevant factor in sentencing.[1345]

Good character or conduct of a convicted person often carries little weight in the determination of the sentence.[1346]

health

Poor health is accepted as a mitigating factor in exceptional cases only.[1347]

lack of training and control

Given the broad discretion trial chambers enjoy in determining what constitutes a

[1341] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Judgement* (30 June 2021) at para. 627
[1342] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 327
[1343] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 328
[1344] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 555
[1345] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 759
[1346] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 759
[1347] *Prosecutor v Mladic,* No. MICT-13-56-A, *Judgement* (8 June 2021) at para. 554; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 329

mitigating circumstance, the Trial Chamber did not err in refusing to give weight to the accused's lack of preparation and control during the war in mitigation of his sentence.[1348]

length of proceedings

Length of the proceedings, spanning some 18 years, and limited freedom during that period by the accused would not be taken into consideration as a factor in mitigation of sentence where the retrial was ordered by the Appeals Chamber.[1349]

peace efforts

Trial Chamber did not err in determining that Ngirabatware's involvement in the Arusha Peace Accords did not constitute a mitigating factor.[1350]

promise of immunity

The Trial Chamber correctly did not consider any purported non-prosecution agreement with Richard Holbrooke when assessing the mitigating factors.[1351]

relinquishing power

The Trial Chamber concluded that Karadzic's decision to step down from public .office in July 1996 had a "positive influence on the establishment of peace and stability" in Bosnia and Herzegovina and the region and found this to be a mitigating factor.[1352]

relevant considerations

The fact that an accused did not physically commit a crime is relevant to the determination of an appropriate sentence.[1353]

The Trial Chamber erred in law in failing to give any weight to evidence solely on the basis that it was tendered for purposes other than sentencing during the trial.[1354]

standard of review

Trial chambers are vested with a broad discretion in determining an appropriate sentence.[1355]

[1348] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 758
[1349] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Judgement* (30 June 2021) at paras. 631-32
[1350] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 269
[1351] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 755
[1352] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 754
[1353] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 339
[1354] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 270
[1355] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 749

Generally, the Appeals Chamber will not revise a sentence unless the trial chamber has committed a "discernible error" in exercising its discretion or has failed to follow the applicable law.[1356]

To demonstrate a discernible error in sentencing, an appellant must show that the trial chamber gave weight to extraneous or irrelevant considerations; failed to accord weight or sufficient weight to relevant considerations; made a clear error as to the facts upon which it exercised its discretion or, its decision was so unreasonable or plainly unjust that the trial chamber must have failed to exercise its discretion properly.[1357]

40-year sentence inadequately reflects the extraordinary gravity of the crimes as well as accused's central and instrumental participation in four joint criminal enterprises, which spanned more than four years and covered a large number of municipalities in Bosnia and Herzegovina.[1358]

The sentence of 40 years underestimates the extraordinary gravity of the accused's responsibility and his integral participation in the most egregious of crimes that were committed throughout the entire period of the conflict in Bosnia and Herzegovina and were noted for their sheer scale and systematic cruelty. In the circumstances, the sentence the Trial Chamber imposed was so unreasonable and plainly unjust that the Appeals Chamber can only infer that the Trial Chamber failed to properly exercise its discretion.[1359]

In light of the accused's position at the apex of power in Republika Srpska and its military, his instrumental and integral participation in the four joint criminal enterprises, the scale and systematic cruelty of the crimes committed, the large number of victims, the continued impact of these crimes on victims who have survived, as well as the relevant mitigating and aggravating factors, the only appropriate sentence in the circumstances of this case is imprisonment for the remainder of his life.[1360]

Rule 126—status of convicted persons

(A) The sentence shall begin to run from the day it is pronounced. However, as soon as notice of appeal is given, the enforcement of the judgement shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided in Rule 67.
(B) If, by a previous decision of the Trial Chamber, the convicted person has been released, or is for any other reason at liberty, and is not present when the judgement is pronounced, the Trial Chamber shall issue a warrant for the convicted person's arrest. On arrest, the convicted person shall be notified of the conviction

[1356] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 749
[1357] *Ngirabatware v Prosecutor,* No. MICT-12-29-A, *Judgement* (18 December 2014) at para. 255; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 749
[1358] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 766
[1359] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 773
[1360] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Judgement* (20 March 2019) at para. 776

and sentence, and the procedure provided in Rule 127 shall be followed.

Rule 127—place of imprisonment

(A) Imprisonment shall be served in a State designated by the President of the Mechanism from a list of States with which the United Nations has agreements for this purpose or with States which have indicated their willingness to accept convicted persons under any other arrangement.
(B) Transfer of the convicted person to that State shall be effected as soon as possible after the time-limit for appeal has elapsed.
(C) Pending the finalisation of arrangements for his transfer to the State where his sentence will be served, the convicted person shall remain in the custody of the Mechanism.

change of enforcement state

A prisoner has standing to request a transfer from an enforcement State where he has already been transferred to that State and alleges that the enforcement State is violating the person's rights.[1361]

There is a very high threshold that must be met before the enforcement State where a convicted person is serving his or her sentence will be changed.[1362]

[1361] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision of the President on Request for Pardon or Transfer to Another Enforcement State* (7 September 2016) at para. 46; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer to Another Enforcement State* (23 January 2018) at para. 13; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Requests for Transfer* (3 December 2020) at para. 12; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer* (19 January 2022) at para. 17; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer* (23 September 2022) at p. 3; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request to Transfer to Another Enforcement State* (19 December 2017) at para. 12; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request for Transfer* (12 February 2021) at para. 14; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Request to Transfer to Another Enforcement State* (21 July 2016) at para. 7; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Renewed Request to Transfer to Another Enforcement State* (12 June 2017) at para. 12; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Request for Transfer* (24 December 2020) at para. 12

[1362] *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision of the President on Motion for Reconsideration and Review of Sentence of Milan Lukic* (28 January 2016) at para. 19; *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision on Request for Transfer to Other Enforcement State* (21 January 2016) at p. 3; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision of the President on Request for Pardon or Transfer to Another Enforcement State* (7 September 2016) at para. 47; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer to Another Enforcement State* (23 January 2018) at para. 14; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Requests for Transfer* (3 December 2020) at para. 13; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer* (19 January 2022) at para. 18; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request to Transfer to Another Enforcement State* (19 December 2017) at para. 13; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request for Transfer* (12 February 2021) at para. 15; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Request to Transfer to Another Enforcement State* (21 July 2016) at para. 8; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Renewed Request to Transfer to Another Enforcement State* (12 June 2017) at para. 13; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Request*

Requests for change in the enforcement State will only be granted in the most serious of circumstances, where there is a direct and continuing threat to the rights of an individual which cannot be cured through coordination with relevant national authorities.[1363]

While travel of family members to the enforcement State may be expensive and inconvenient, this difficulty does not rise to the level of constituting a violation of the right to maintain family ties.[1364]

The mere existence of enforcement agreements with States closer to the prisoner's usual place of residence is insufficient to render a transfer of the prisoner to one of these States obligatory.[1365]

Not being able to speak the language of the enforcement State is not a sufficient basis for reconsideration or review where a prisoner can take language courses and obtain educational and leisure reading material in his own language.[1366]

Registrar ordered to liaise with Estonian authorities to encourage them to make a Bosnian interpreter available to the prison on a more frequent basis to overcome the

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for Transfer (24 December 2020) at para. 13; *Prosecutor v Nzabonimana*, No. MICT-17-110-ES, *Decision on Callixte Nzabonimana's Request for Transfer* (12 March 2026) at p. 2

[1363] *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision of the President on Motion for Reconsideration and Review of Sentence of Milan Lukic* (28 January 2016) at para. 19; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision of the President on Request for Pardon or Transfer to Another Enforcement State* (7 September 2016) at para. 47; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer to Another Enforcement State* (23 January 2018) at para. 14; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Requests for Transfer* (3 December 2020) at para. 13; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer* (19 January 2022) at para. 18; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request to Transfer to Another Enforcement State* (19 December 2017) at para. 13; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request for Transfer* (12 February 2021) at para. 15; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Request to Transfer to Another Enforcement State* (21 July 2016) at para. 8; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Renewed Request to Transfer to Another Enforcement State* (12 June 2017) at para. 13; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Request for Transfer* (24 December 2020) at para. 13

[1364] *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision of the President on Motion for Reconsideration and Review of Sentence of Milan Lukic* (28 January 2016) at para. 21; *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision on Request for Transfer to Other Enforcement State* (21 January 2016) at p. 3; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision of the President on Request for Pardon or Transfer to Another Enforcement State* (7 September 2016) at para. 61; *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer to Another Enforcement State* (23 January 2018) at para. 19; *Prosecutor v Nzabonimana*, No. MICT-17-110-ES, *Decision on Callixte Nzabonimana's Request for Transfer* (12 March 2026) at p. 2

[1365] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer to Another Enforcement State* (23 January 2018) at para. 20

[1366] *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision of the President on Motion for Reconsideration and Review of Sentence of Milan Lukic* (28 January 2016) at para. 22; *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision on Request for Transfer to Other Enforcement State* (21 January 2016) at p. 3

language difficulties he is experiencing.[1367]

Registrar ordered to liaise with Estonian authorities to encourage them to provide employment opportunities to prisoner so that he can meet the living expenses at the prison, including the cost of hygiene products.[1368]

Use of restraints during medical visits was of concern, but did not warrant transfer of a prisoner from Estonia. Registrar directed to liaise with prison officials to encourage them to use restraints only when necessary.[1369]

Requiring strip searches of visitors was highly concerning to the President and he urged the Estonian authorities to discontinue the practice, at least as to the Mechanism's prisoners. However, it did not warrant transferring the prisoner from Estonia.[1370]

While national prison authorities retain jurisdiction over the day-to-day conditions in their prisons, and over the regulations that govern the detention of convicted persons supervised by the Mechanism, the President is concerned over the continuing nature of the problems raised by the prisoner and intends to closely monitor the situation.[1371]

National authorities must ensure that the continuing needs of persons serving their sentences under the supervision of the Mechanism are met, even if it results in disparities with national prisoners. Should the State be unable to adequate address these specific needs, it should inform the Mechanism that it is unable to enforce the sentence.[1372]

Medical evacuation constitutes an exceptional measure, reserved for situations of a serious and urgent nature amounting to an emergency necessitating transfer.[1373]

While specialised diagnostic examinations in order to clarify the prisoner's diagnosis have been recommended, and that such examinations are currently not

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[1367] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision of the President on Request for Pardon or Transfer to Another Enforcement State* (7 September 2016) at para. 57; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request to Transfer to Another Enforcement State* (19 December 2017) at para. 21
[1368] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision of the President on Request for Pardon or Transfer to Another Enforcement State* (7 September 2016) at para. 53
[1369] *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request to Transfer to Another Enforcement State* (19 December 2017) at para. 27; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Renewed Request to Transfer to Another Enforcement State* (12 June 2017) at para. 42
[1370] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Requests for Transfer* (3 December 2020) at paras. 36-37; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request for Transfer* (12 February 2021) at para. 32
[1371] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision of the President on Request for Pardon or Transfer to Another Enforcement State* (7 September 2016) at para. 68; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request for Transfer* (12 February 2021) at para. 80; *Prosecutor v Dragomir Milosevic*, No.. MICT-16-98-ES, *Decision on Request for Transfer* (24 December 2020) at para. 71
[1372] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision on Request for Transfer to Another Enforcement State* (23 January 2018) at para. 44; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on Request to Transfer to Another Enforcement State* (19 December 2017) at para. 22
[1373] *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on Hasan Ngeze's Request for Temporary Medical Evacuation* (28 April 2026) at p. 3

available in Benin, the prisoner's condition is not of such a serious and urgent nature as to constitute an emergency necessitating evacuation and transfer.[1374]

medical examination prior to transfer

Independent medical examination prior to transfer to enforcement State was not required where adequate information was provided by UNDU medical officer and prior medical examinations.[1375]

oral hearing

Request for oral hearing on designation of enforcement State was unnecessary where prisoner's medical condition could adequately be evaluated through medical evaluations and written submissions, as well as in meetings with the enforcement State prior to transfer.[1376]

serving sentence in former Yugoslavia

In his report on the establishment of the ICTY, the then-United Nations Secretary-General expressed the view, that "given the nature of the crimes in question and the international character of the tribunal, the enforcement of sentences should take place outside the territory of the former Yugoslavia". Indeed from the very beginning of their establishment, the ICTY would only enter such agreements with States other than those where crimes within the tribunals' jurisdiction were alleged to have been committed. These policy considerations and practice have since remained in place. Accordingly, Serbia would not be a viable option for the enforcement of a sentence entered by the Mechanism.[1377]

Rule 128—supervision of imprisonment

All sentences of imprisonment shall be supervised by the Mechanism during the period of its functioning. The Security Council may designate a body to assist it and to proceed to supervise the sentences after the Mechanism legally ceases to exist.

National prison authorities retain jurisdiction over the day-to-day conditions in their prisons and over the regulations that govern detention of convicted persons.[1378]

[1374] *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on Hasan Ngeze's Request for Temporary Medical Evacuation* (28 April 2026) at p. 3
[1375] *Prosecutor v Stanisic*, No. MICT-15-96-ED.2, *Decision on Jovica Stanisic's Renewed Urgent Motion for a Hearing and Accommodations to Ensure a Safe Transfer* (7 October 2024) at p. 3
[1376] *Prosecutor v Stanisic*, No. MICT-15-96-ED.2, *Decision on Stanisic's Motion for a Hearing* (10 July 2024) at pp. 2-3; *Prosecutor v Stanisic*, No. MICT-15-96-ED.2, *Decision on Jovica Stanisic's Renewed Urgent Motion for a Hearing and Accommodations to Ensure a Safe Transfer* (7 October 2024) at p. 3
[1377] *Prosecutor v Mladic*, No. IT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (10 May 2024) at para. 17
[1378] *Prosecutor v Lukic*, No. MICT-13-52-ES.1, *Decision of the President on Motion for Reconsideration and Review of Sentence of Milan Lukic* (28 January 2016) at para. 24

A prisoner must exhaust domestic remedies when claiming that the State authorities are acting in contravention of Beninese law. It is not for the Mechanism, in the first instance, to interpret domestic legislation, regulations, or polices or assess the legality of their implementation by the Prison authorities based on domestic law.[1379]

Rule 53 of the Mandela Rules requiring that "prisoners shall have access to, or be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings, was not violated by seizure of prisoners' electronic devices where they were not denied continuing access to the legal documents contained on those devices.[1380]

Whether any convicted persons can possess within their prison cells electronic devices such as computers, USB sticks, SIM cards, mobile telephonic devices, and related equipment is a matter falling within the day-to-day oversight of the individual enforcement State and the relevant prison authorities.[1381]

If access to legal materials on the seized electronic devices cannot be granted, the Registrar shall take all reasonable and necessary measures to facilitate the release of the seized items to Counsel for the Applicants, or, for individuals unrepresented by Counsel for post-conviction matters to the Registry.[1382]

Where the Beninese authorities had: (i) decided to allow the Convicted Persons to retrieve their data from the seized devices; (ii) acknowledged that computers were made available to the Convicted Persons for their respective post-conviction work; and (iii) made arrangements for the seized devices to be collected by Counsel or family members following the data retrieval, this was a suitable arrangement and periodic reports on the situation by the Registrar were no longer necessary.[1383]

Persons released in Mali after service of their sentence are not entitled to financial compensation above the $1000 they receive upon their release, and the costs of relocation should they find a country to accept them.[1384]

Registrar ordered to engage with Malian authorities to facilitate released person's ability to work, perform administrative and banking functions, and to have a travel

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[1379] *In re Akayesu*, No, MICT-25-134, *Consolidated Decision concerning the Seizure of Electronic Devices* (20 January 2025) at fn. 58
[1380] *In re Akayesu*, No, MICT-25-134, *Consolidated Decision concerning the Seizure of Electronic Devices* (20 January 2025) at para. 24
[1381] *In re Akayesu*, No, MICT-25-134, *Consolidated Decision concerning the Seizure of Electronic Devices* (20 January 2025) at para. 25
[1382] *In re Akayesu*, No, MICT-25-134, *Consolidated Decision concerning the Seizure of Electronic Devices* (20 January 2025) at para. 27
[1383] *In re Akayesu*, No. MICT-25-134, *Order Terminating Reporting Regime in relation to the Seizure of Electronic Devices* (12 November 2025) at p. 2
[1384] *In the matter of Ferdinand Nahimana*, No. MICT-23-127, *Decision on an Appeal of a Decision on Request for Temporary Humanitarian Aid* (2 August 2023) at para. 7; *In the matter of Emmanuel Rukundo*, MICT-23-128, *Decision on an Appeal of a Decision on Request for Temporary Humanitarian Aid* (15 August 2023) at para. 12

document while temporarily residing in Mali.[1385]

The Mechanism has the duty to ensure the welfare of acquitted or released persons pending their relocation, and to that extent enquire whether their life or liberty would be at risk upon relocation. However, this duty neither continues indefinitely nor dictates what the obligation entails – the extent of the enquiry is limited to the circumstances at hand and the applicable legal framework.[1386]

Rule 129—restitution of property

(A) After a judgement of conviction containing a specific finding as provided in Rule 122(B), the Trial Chamber shall, at the request of the Prosecutor, or may, proprio motu, hold a special hearing to determine the matter of the restitution of the property or the proceeds thereof, and may in the meantime order such provisional measures for the preservation and protection of the property or proceeds as it considers appropriate.
(B) The determination may extend to such property or its proceeds, even in the hands of third parties not otherwise connected with the crime of which the convicted person has been found guilty.
(C) Such third parties shall be summoned before the Trial Chamber and be given an opportunity to justify their claim to the property or its proceeds.
(D) Should the Trial Chamber be able to determine the rightful owner on the balance of probabilities, it shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate.
(E) Should the Trial Chamber not be able to determine ownership, it shall notify the competent national authorities and request them so to determine.
(F) Upon notice from the national authorities that an affirmative determination has been made, the Trial Chamber shall order the restitution either of the property or the proceeds.
(G) The Registrar shall transmit to the competent national authorities any summonses, orders and requests issued by a Trial Chamber pursuant to paragraphs (C), (D), (E), and (F).

Rule 130—compensation to victims

(A) The Registrar shall transmit to the competent authorities of the States concerned the judgement finding the accused guilty of a crime which has caused injury to a victim.
(B) Pursuant to the relevant national legislation, a victim or persons claiming

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[1385] *In the Matter of Ferdinand Nahimana*, No. MICT-23-127, *Decision on Ferdinand Nahimana's Request for Temporary Humanitarian Aid* (20 April 2023) at para. 12; *In the Matter of Emmanuel Rukundo*, No. MICT-23-128, *Decision on Emmanuel Rukundo's Request for Temporary Humanitarian Aid* (20 April 2023) at para. 14
[1386] *In the matter of Ferdinand Nahimana*, No. MICT-23-127, *Decision on an Appeal of a Decision on Request for Temporary Humanitarian Aid* (2 August 2023) at para. 19; *In the matter of Emmanuel Rukundo*, MICT-23-128, *Decision on an Appeal of a Decision on Request for Temporary Humanitarian Aid* (15 August 2023) at para. 22

through the victim may bring an action in a national court or other competent body to obtain compensation.
(C) For the purposes of a claim made under paragraph (B) the judgement of the Mechanism shall be final and binding as to the criminal responsibility of the convicted person for such injury.

Rule 131—general provisions

The rules of procedure and evidence that govern proceedings in the Trial Chambers and before the Single Judge shall apply mutatis mutandis to proceedings in the Appeals Chamber.

Rule 132—interlocutory appeals

(A) Subject to paragraph (C) and Rule 68(F), a Party wishing to appeal from a decision where an appeal lies as of right shall file an appeal within seven days of the filing of the impugned decision. The opposing Party shall file a response within ten days of the filing of the appeal. The appellant may file a reply within four days of the filing of the response.
(B) Where certification has been granted pursuant to Rules 79(C) or 80(B), the Party granted certification shall file an appeal within seven days of the filing of the decision to certify. The opposing Party shall file a response within ten days of the filing of the appeal. The appellant may file a reply within four days of the filing of the response.
(C) In case
(i) the accused was not present or represented when the decision was pronounced, the time-limits prescribed under this Rule for filing an appeal or a notice of appeal shall run from the date on which the accused is notified of the decision;
(ii) the Trial Chamber or the Single Judge has indicated that a written decision will follow, the time-limits prescribed under this Rule for filing an appeal or a notice of appeal shall run from filing of the written decision.

Appeal of pro se defendant released from sentence in Mali and appealing decision on financial support would be heard notwithstanding its late filing because he is *pro se* and to ensure closure of the matter.[1387]

Rule 133—notice of appeal

A Party seeking to appeal a judgement shall, not more than thirty days from the date on which the written judgement was filed, file a notice of appeal, setting forth the grounds. The appellant should also identify the order, decision, or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought. The Appeals Chamber may, on good cause being shown by motion, authorise a variation of the

[1387] *In the matter of Emmanuel Rukundo*, MICT-23-128, *Decision on an Appeal of a Decision on Request for Temporary Humanitarian Aid* (15 August 2023) at para. 8

grounds of appeal.

Suspension of legal assistant does not constitute good cause for extension of time to file appeal brief.[1388]

15-day extension to file notice of appeal granted based upon volume of trial record and length of the trial judgement.[1389]

60-day extension to file notice of appeal granted based upon complexity of trial proceedings.[1390]

Good cause existed for a second, 30-day extension to file notice of appeal where Registry had delayed funding defence team in complex case.[1391]

Rule 134—State request for review

(A) A State directly affected by an interlocutory decision of a Trial Chamber may, within fifteen days from the date of the decision, file a request for review of the decision by the Appeals Chamber.
(B) The Party upon whose motion the Trial Chamber issued the impugned decision shall be heard by the Appeals Chamber. The other Party may be heard if the Appeals Chamber considers that the interests of justice so require.
(C) The Appeals Chamber may at any stage suspend the execution of the impugned decision.

Rule 135—Pre-Appeal Judge

(A) The Presiding Judge of the Appeals Chamber may designate from among its members a Judge responsible for the pre-hearing proceedings (the "Pre- Appeal Judge").
(B) The Pre-Appeal Judge shall ensure that the proceedings are not unduly delayed and shall take any measures related to procedural matters, including the issuing of decisions, orders, and directions with a view to preparing the case for a fair and expeditious hearing.

Pre-Appeal Judge lacks authority to order temporary provisional release in the absence of a full Appeals Chamber bench.[1392]

[1388] *Ngirabatware v Prosecutor*, MICT-12-29-A, *Decision on Defence Motion for Stay of Deadline to File Notice of Appeal…* (14 March 2013) at para. 14
[1389] *Ngirabatware v Prosecutor*, MICT-12-29-A, *Decision on Defence Motion for Stay of Deadline to File Notice of Appeal…* (14 March 2013) at para. 19
[1390] *Prosecutor v Karadzic*, MICT-13-55-A, *Decision on Motion for Extension of Time to file Notice of Appeal* (21 April 2016)
[1391] *Prosecutor v Karadzic*, MICT-13-55-A, *Decision on a Motion for a Further Extension of Time to File a Notice of Appeal* (15 June 2016)
[1392] *Prosecutor v Ngirabatware*, No. 12-29-R, *Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay* (31 January 2017) at para. 17

Rule 136—record on appeal

The record on appeal shall consist of the trial record, as certified by the Registrar.

Rule 137—copies of record

The Registrar shall make a sufficient number of electronic copies of the record on appeal for the use of the Judges of the Appeals Chamber and of the Parties.

Rule 138—appellant's brief

(A) An Appellant's brief setting out all the arguments and authorities shall be filed within seventy-five days of filing of the notice of appeal pursuant to Rule 133. Where limited to sentencing, an Appellant's brief shall be filed within thirty days of filing of the notice of appeal pursuant to Rule 133.
(B) Where the Prosecutor is the Appellant, the Prosecutor shall make a declaration in the Appellant's brief that disclosure has been completed with respect to the material available to the Prosecutor at the time of filing the brief.

Rule 139—respondent's brief

(A) A Respondent's brief of argument and authorities shall be filed within forty days of filing of the Appellant's brief. Where limited to sentencing, a Respondent's brief shall be filed within thirty days of filing of the Appellant's brief.
(B) Where the Prosecutor is the Respondent, the Prosecutor shall make a declaration in the Respondent's brief that disclosure has been completed with respect to the material available to the Prosecutor at the time of filing the brief.

Rule 140—brief in reply

An Appellant may file a brief in reply within fifteen days of filing of the Respondent's brief. Where limited to sentencing, a brief in reply shall be filed within ten days of filing of the Respondent's brief.

Rule 141—date of hearing

After the expiry of the time-limits for filing the briefs provided for in Rules 138, 139, and 140, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the Parties.

The Appeals Chamber has the discretion to allow persons other than counsel and co-counsel to make representations before it.[1393]

[1393] *Prosecutor v Karadzic,* No. MICT-13-55-A, *Decision on Karadzic's Request to Participate in the Appeal Hearing* (27 February 2018) at p. 2

Oral hearing on appeal from judgement of contempt under Rule 90 will not be held in accordance with the Practice Direction on Appeals and because written briefs were adequate for a decision on the appeal.[1394]

Rule 142—additional evidence

(A) A Party may apply by motion to present additional evidence before the Appeals Chamber. Such motion shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed, and must be served on the other Party and filed with the Registrar not later than thirty days from the date for filing of the brief in reply, unless good cause or, after the appeal hearing, cogent reasons are shown for a delay. The opposing Party shall file a response within thirty days of the filing of the motion. The moving Party may file a reply within fourteen days of the filing of the response.
(B) Rebuttal material may be presented by any Party affected by the motion. Parties are permitted to file supplemental briefs on the impact of the additional evidence within fifteen days of the expiry of the time limit set for the filing of rebuttal material, if no such material is filed; or if rebuttal material is filed, within fifteen days of the decision on the admissibility of that material.
(C) If the Appeals Chamber finds that the additional evidence was not available at trial and is relevant and credible, it will determine if it could have been a decisive factor in reaching the decision at trial. If it could have been such a factor, the Appeals Chamber will consider the additional evidence and any rebuttal material along with that already on the record to arrive at a final judgement in accordance with Rule 144. Where the Appeals Chamber finds that the evidence was available at trial, it may still allow it to be admitted provided that the moving Party can establish that the exclusion of it would amount to a miscarriage of justice.
(D) The Appeals Chamber may decide the motion prior to the appeal hearing, or at the time of the hearing on appeal. It may decide the motion with or without an oral hearing.
(E) If several defendants are parties to the appeal, the additional evidence admitted on behalf of any one of them will be considered with respect to all of them, where relevant.

credibility

The applicant must also show that the additional evidence is credible.[1395]

Evidence is credible if it appears to be reasonably capable of belief.[1396]

[1394] *Prosecutor v Fatuma et al*, No. MICT-18-116-A, *Decision on a Joint Motion for an Oral Appeal Hearing* (4 February 2022) at p. 2
[1395] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 6
[1396] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 9

Evidence consisting of official documents containing stamps and signatures disclosed from an official website or the testimony or publication of a credible person satisfies the credibility standard.[1397]

The witness' sworn testimony in a proceeding before the ICTY was sufficiently credible for admission as additional evidence on appeal.[1398]

Judgements of Dutch and British courts denying requests for extradition to Rwanda were sufficiently credible for admission as additional evidence on appeal.[1399]

A book written by a participant in the Dayton negotiations was sufficiently credible since the prosecution had not contended that the author was not present.[1400]

decisiveness

Decisions of national jurisdictions denying extradition to Rwanda could not have been a decisive factor in the decision whether to revoke the referral of an ICTR case to Rwanda because referral is different than extradition, principally due to ongoing monitoring and ability to revoke the referral.[1401]

Report critical of defence qualification, funding, and procedures in genocide cases in Rwanda could not have been a decisive factor in decision not to revoke referral to Rwanda where much of the underlying information was before the Trial Chamber and the author's opinions were somewhat equivocal. [1402]

Various pleadings, decisions, and provisions relating to the case of the appellant and other cases before Rwandan courts could not have been a decisive factor in the Impugned Decision.[1403]

Admission of testimony of witness who refuted what was said at meeting relied upon by Trial Chamber to establish the appellant's knowledge of the crimes denied where

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[1397] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 9
[1398] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Admit Additional Evidence on Appeal* (2 March 2018) at para. 11
[1399] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on Requests for Admission of Additional Evidence on Appeal* (22 September 2016) at para. 13
[1400] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Decision on Jovica Stanisic's Motion for Admission of Additional Evidence* (21 December 2022) at para. 10
[1401] *Prosecutor v Uwinkindi*, MICT-12-25-AR14.1, *Decision on Requests for Admission of Additional Evidence on Appeal* (22 September 2016) at para. 18
[1402] *Prosecutor v Uwinkindi*, MICT-12-25-AR14.1, *Decision on Requests for Admission of Additional Evidence on Appeal* (22 September 2016) at para. 35
[1403] *Prosecutor v Uwinkindi*, MICT-12-25-AR14.1, *Decision on Requests for Admission of Additional Evidence on Appeal* (22 September 2016) at paras. 49, 54, 58, 63, 69

evidence did not directly refute existence of meeting or what was said, and in fact corroborated many aspects of the meeting.[1404]

Prosecution witness' statement made in House of Lords about the delivery of humanitarian aid would not have had an impact on the judgement where findings in the judgement were based on an abundance of evidence.[1405]

Statements of person who participated in Dayton negotiations as to the accused's positive contributions to peace and return of hostages was cumulative to evidence already considered by trial chamber and would not have had an impact on the judgement or sentence.[1406]

Documents were cumulative to other evidence in the record and therefore could not have had an impact on the judgement.[1407]

deferral

Appeals Chamber decided to defer motions for admission of additional evidence until after appeals hearing pursuant to Rule 142(D).[1408]

investigation

An appeal is not a trial de novo. The Appeals Chamber will only facilitate a party's investigations at the appeal stage in exceptional circumstances.[1409]

orders

The Appeals Chamber may, in exceptional circumstances, facilitate investigations at the appeal stage if the moving party demonstrates, for instance, that it is in possession of specific information that needs to be further investigated to avoid a miscarriage of justice and that this specific information was not available at trial and could not have been discovered at trial through the exercise of due diligence.**[1410]**

[1404] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Admit Additional Evidence on Appeal* (2 March 2018) at paras. 14-16
[1405] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 22
[1406] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Decision on Jovica Stanisic's Motion for Admission of Additional Evidence* (21 December 2022) at paras. 14-15
[1407] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at paras. 39, 46
[1408] *Ngirabatware v Prosecutor*, MICT-12-29-A, *Decision Deferring Consideration of Ngirabatware's Motions for the Admission of Additional Evidence on Appeal* (26 June 2014)
[1409] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for a Binding Order pursuant to Article 28 and on Related Requests* (18 February 2019) at p. 4
[1410] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Order the Prosecution to Obtain and Disclose Subsequent Statements* (10 May 2016) at p. 2

Fact that prosecution witnesses may have given testimony or statements in national proceedings following requests for disclosure of their ICTY statements and testimony to national authorities, and that the defence was unaware of such statements due to the *ex parte* nature of the requests did not identify specific information which needs to be investigated to avoid a miscarriage of justice to constitute exceptional circumstances warranting the Appeals Chamber's intervention.**1411**

relevance

The applicant must also show that the additional evidence is relevant to a material issue at trial.[1412]

Proposed additional evidence was relevant to material issues at trial, where it contradicted evidence that the Trial Chamber relied upon, in part, to find that the appellant agreed to the expanded common criminal purpose of killing Bosnian Muslim males.[1413]

requirements

The applicant must demonstrate that the additional evidence was not available at trial in any form, or discoverable through the exercise of due diligence.[1414]

For additional evidence to be admitted on appeal, it must be relevant, credible, not available at trial through the exercise of due diligence and could have been a decisive factor in the Impugned Decision.[1415]

Once it has been determined that the additional evidence meets the conditions of relevance and credibility, the Appeals Chamber will determine whether it *could* have been a decisive factor in reaching the verdict.[1416]

[1411] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Order the Prosecution to Obtain and Disclose Subsequent Statements* (10 May 2016) at p. 2
[1412] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 6
[1413] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Admit Additional Evidence on Appeal* (2 March 2018) at para. 11
[1414] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 6; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Decision on Jovica Stanisic's Motion for Admission of Additional Evidence* (21 December 2022) at para. 6
[1415] *Prosecutor v Uwinkindi*, MICT-12-25-AR14.1, *Decision on Requests for Admission of Additional Evidence on Appeal* (22 September 2016) at para. 5; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Admit Additional Evidence on Appeal* (2 March 2018) at para. 7; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Decision on Jovica Stanisic's Motion for Admission of Additional Evidence* (21 December 2022) at para. 6
[1416] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 6; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Decision on Jovica Stanisic's Motion for Admission of Additional Evidence* (21 December 2022) at para. 6

Where evidence was available, it can be admitted if it can be shown that it would have been a decisive factor in the Impugned Decision and that a miscarriage of justice would occur if the evidence was excluded.[1417]

An applicant must identify with precision the finding in the Impugned Decision to which the additional evidence relates and must specify the impact the additional evidence could or would have had on the Decision.[1418]

timeliness

Failure to obtain written statements from witnesses within 30 days of filing of reply brief warranted denial of motion for Registrar to certify will-say statements that had been obtained at that time.[1419]

Reconsideration of motion for additional evidence not warranted where applicant did not show that United States would have refused to allow witness to testify had his evidence been sought earlier.[1420]

unavailability

The mere assertion that proposed evidence was found only after the rendering of the Trial Judgement is not sufficient to demonstrate that due diligence had been exercised.[1421]

For additional evidence to have been unavailable in the first instance, it must not have been available at trial in any form whatsoever. A report that contained the author's opinion, as well as facts that were available at the trial, was unavailable and could be admitted as additional evidence if the other criteria were met.[1422]

[1417] *Prosecutor v Uwinkindi*, MICT-12-25-AR14.1, *Decision on Requests for Admission of Additional Evidence on Appeal* (22 September 2016) at para. 6; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Admit Additional Evidence on Appeal* (2 March 2018) at para. 7; *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 6; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Decision on Jovica Stanisic's Motion for Admission of Additional Evidence* (21 December 2022) at para. 6

[1418] *Prosecutor v Uwinkindi*, MICT-12-25-AR14.1, *Decision on Requests for Admission of Additional Evidence on Appeal* (22 September 2016) at para. 7; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Admit Additional Evidence on Appeal* (2 March 2018) at para. 8; ; *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 7; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Decision on Jovica Stanisic's Motion for Admission of Additional Evidence* (21 December 2022) at para. 7

[1419] *Ngirabatware v Prosecutor*, MICT-12-29-A, *Decision on Augustin Ngirabatware's Motion for Certification of Statements and for Stay of Deadline* (5 March 2014)

[1420] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Reconsideration* (13 February 2019) at pp. 5-6

[1421] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at paras. 10, 112

[1422] *Prosecutor v Uwinkindi*, MICT-12-25-AR14.1, *Decision on Requests for Admission of Additional Evidence on Appeal* (22 September 2016) at para. 27

Decisions in extradition cases that had not been made at the time of the proceedings before the Trial Chamber constituted judicial determinations that were not available to the appellant, even though the underlying facts may have been known.[1423]

Evidence received after closing arguments and before the delivery of the Trial Judgement may be considered available for the purposes of admission on appeal.[1424]

Where statement of Prosecution witness in public proceeding in UK House of Lords was made two months prior to delivery of trial judgement, it was not unavailable through the exercise of due diligence.[1425]

Where Prosecution had disclosed reports prior to the trial judgement on the Electronic Disclosure Suite, difficulties in searching that database were no excuse for the failure to locate and offer those reports into evidence before the Trial Chamber.[1426]

Although book was published just two weeks before the trial judgment, given the fact that the accused knew the author participated in the Dayton negotiations, his potential evidence was available at the time of the trial.[1427]

waiver

Fact that accused decided not to call witness at trial whose evidence was now being offered on appeal did not categorically prevent the admission of the additional evidence. While there may be situations where a party may attempt to use Rule 142 of the Rules for the purpose of remedying tactical errors or oversights at trial, in this instance, the heightened standard for admission sufficiently protects the interests of justice.[1428]

Rule 143—expedited appeals procedure

(A) An appeal, other than an appeal against a judgement, may be heard expeditiously on the basis of the original record of the Trial Chamber. Appeals may be determined entirely on the basis of written briefs.
(B) Rules 136 to 141 shall not apply to such appeals.
(C) The Presiding Judge, after consulting the members of the Appeals Chamber, may decide not to apply Rule 144(D).

[1423] *Prosecutor v Uwinkindi*, No. MICT-12-25-AR14.1, *Decision on Requests for Admission of Additional Evidence on Appeal* (22 September 2016) at para. 14
[1424] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 10
[1425] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 17
[1426] *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision on Motions for Admission of Additional Evidence on Appeal* (11 March 2020) at para. 37
[1427] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Decision on Jovica Stanisic's Motion for Admission of Additional Evidence* (21 December 2022) at para. 11
[1428] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Admit Additional Evidence on Appeal* (2 March 2018) at para. 12

Rule 144—judgement on appeal

(A) The Appeals Chamber shall pronounce judgement on the basis of the record on appeal together with such additional evidence as has been admitted by it.
(B) The judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.
(C) In appropriate circumstances the Appeals Chamber may order that the accused be retried before a Trial Chamber designated by the President.
(D) The judgement shall be pronounced in public by the Appeals Chamber or a Judge thereof, on a date of which notice shall have been given to the Parties and Counsel and at which they shall be entitled to be present.

post-hearing submissions

The Appeals Chamber may consider post-hearing submissions if they relate to a variation of the grounds of appeal or if it has made a specific request to the parties for further information.[1429]

Post-hearing submissions based on recent U.S. decision on aiding and abetting would not be considered where they related to existing grounds of appeal and since the Appeals Chamber was not bound by decisions of domestic courts.[1430]

retrial

binding effect of earlier decisions

The principle of *res judicata* does not bar the prosecution from re-litigating issues at the retrial that it did not appeal.[1431]

new evidence

While the Prosecution may adduce evidence in a retrial that was not adduced in the original trial, the Trial Chamber has a continuing duty to apply fair trial principles and be particularly mindful of any potential prejudice that the admission of new evidence may cause to the fair trial rights of the accused.[1432]

The Trial Chamber did not err in restricting new evidence at the retrial considering the particular length of the proceedings that preceded the retrial, the vast

[1429] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-A, *Decision on Jovica Stanisic's Motion for Consideration of Recent Domestic Jurisprudence* (30 May 2023) at p. 2
[1430] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-A, *Decision on Jovica Stanisic's Motion for Consideration of Recent Domestic Jurisprudence* (30 May 2023) at p. 2
[1431] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Stanisic's Request for Stay of Proceedings* (2 February 2017) at para. 13
[1432] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 583

scope and complexity of the case to be retried, the health of the accused, as well as the significant amount of new evidence that the prosecution sought to introduce.[1433]

While a retrial inherently includes the possibility of hearing evidence that was not presented during the original proceedings, a Trial Chamber has the discretion under the Rules to limit evidence and allegations to ensure the proper conduct of the case.[1434]

Where the order for retrial effectively granted the prosecution a second chance to make its case, in such circumstances, it is particularly important to safeguard the rights of the accused by imposing a limitation on the new evidence that the prosecution may adduce at the retrial.[1435]

The Trial Chamber limited the prosecution's evidence primarily to that presented during the original trial. However, the prosecution may be allowed to present new evidence where evidence from the first trial has become unavailable or was unavailable at the first trial despite the exercise of due diligence.[1436]

The factors to be considered when deciding to admit new evidence at a retrial includes prejudice to the defence, and whether the defence has had disclosure of the material at the time of the original trial. However, the mere fact that information was disclosed does not make it usable in the retrial.[1437]

Witness testimony at retrial excluded where witness did not testify at original trial and was not shown to be unavailable at the first trial, substituted for evidence that was no longer available, or in the interests of justice.[1438]

Where the Prosecution did not demonstrate that the witness' evidence could not have been discovered through the exercise of due diligence during the first trial, his testimony would not be admitted at the retrial.[1439]

[1433] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 586
[1434] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Stanisic's Request for Stay of Proceedings* (2 February 2017) at para. 14
[1435] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Stanisic's Request for Stay of Proceedings* (2 February 2017) at para. 22
[1436] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Stanisic's Request for Stay of Proceedings* (2 February 2017) at para. 23
[1437] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Prosecution Submission in relation to the Chamber's Limitation on New Evidence* (31 May 2017) at paras. 14-15
[1438] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Prosecution Motions for Admission of Jeri Laber's Evidence…*(1 June 2017) at p. 2; *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Motion for Admission of Evidence of Witness RFJ-013…*(12 June 2017) at p.2; *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Prosecution Motion for Admission of Evidence of Ambassador Geert Ahrens…*(12 June 2017) at p. 2; *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Prosecution Fourth Omnibus Motion for Admission of Evidence pursuant to Rule 111* (26 September 2018) at p. 2
[1439] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of Juraj Jerneic…* (13 July 2017) at p. 2

At retrial, new witness would be allowed to testify where the Prosecution made good faith attempt to present the original evidence, but witness declined to testify. Prosecution does not necessarily need to resort to seeking a subpoena unless one was utilized in the original trial to secure the attendance of the witness.[1440]

At retrial, witness would be allowed to testify to events not included in original trial where they were relevant for background and context.[1441]

At retrial, new witness would not be allowed to testify in place of deceased witness where defence agreed to admission of transcript deceased's witness' testimony at the first trial.[1442]

At retrial, the Prosecution would be allowed to substitute a demographic expert, even when its former expert was not shown to be unavailable, where there would be minimal prejudice to the accused.[1443]

At retrial, the Prosecution would be allowed to call a military expert who did not testify at the first trial where his information was relevant, and the defence would not be prejudiced since it had received disclosure of his report more than a year before his proposed testimony.[1444]

Where the Prosecution seeks admission of documents relied upon in a new or an updated expert report, a measure of flexibility should be applied and documents that meet the requirements for admission of documents from the bar table, irrespective of whether they were admitted in the original trial, will be admitted.[1445]

At retrial, statements of witnesses who did not testify at the first trial would not be admitted under Rule 111 where the witnesses did not testify during the first trial.[1446]

Documents not admitted during original trial would not be admitted on re-trial where it was not critical to the Prosecution's case or cumulative of other evidence already on the record.[1447]

[1440] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Prosecution Motions for Admission of Evidence of John Wilson…*(1 June 2017) at para. 10
[1441] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Defence Oral Motion Requesting the Exclusion of Portions of John Wilson's Evidence* (3 July 2017) at paras. 8-9
[1442] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Evidence of RFJ-070 pursuant to Rule 111* (31 January 2018) at p. 2
[1443] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Urgent Prosecution Supplemental Submission regarding the Testimony of Expert Witness Jakub Bijak* (22 September 2017) at paras. 10-11
[1444] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Prosecution Supplemental Submission regarding Expert Witness Christian Nielsen* (17 October 2017) at paras. 11-12
[1445] *Prosecutor v Stanisic and Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents from the Bar Table (Expert Reports)*(11 February 2019) at para. 9
[1446] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-T, *Decision on Prosecution First, Second, and Third Omnibus Motion for Admission of Evidence pursuant to Rule 111* (19 September 2018) at p. 2
[1447] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-T, *Decision on Prosecution Motion for Admission of Documents and Videos from the Bar Table* (11 February 2019) at p. 2

scope

It is for the Appeals Chamber to specify the scope of the retrial in a particular instance.[1448]

Restrictions on the scope of the retrial must be made explicit.[1449]

In any retrial, the new trial chamber is vested with the discretion to determine the scope of the evidence to be admitted, subject to the Rules and jurisprudence concerning the admission of evidence, as well as any additional restrictions imposed by the Appeals Chamber.[1450]

Rule 145—status of defendant following appeal

(A) A sentence pronounced by the Appeals Chamber shall be enforced immediately.
(B) Where the defendant is not present when the judgement is due to be delivered, either as having been acquitted on all charges or as a result of an order issued pursuant to Rule 68, or for any other reason, the Appeals Chamber may deliver its judgement in the absence of the defendant and may order the arrest or surrender of the defendant to the Mechanism.

Rule 146—request for review

(A) Where a new fact has been discovered which was not known to the moving Party at the time of the trial or appeal proceedings of the ICTY, the ICTR, or the Mechanism; which could not have been discovered through the exercise of due diligence; and which could have been a decisive factor in reaching the decision, the convicted person or, within one year after the final judgement has been pronounced, the Prosecutor, may make a motion to the President for review of the judgement.
(B) The President shall compose a bench with the same number of Judges as the original bench to decide the motion. To the extent possible, the Judges who constituted the original Chamber shall be appointed.
(C) Any brief in response to a request for review shall be filed within forty days of the filing of the request.
(D) Any brief in reply shall be filed within fifteen days after the filing of the brief in response.

Appeals Chamber

[1448] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Stanisic's Request for Stay of Proceedings* (2 February 2017) at para. 11
[1449] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Decision on Stanisic's Request for Stay of Proceedings* (2 February 2017) at para. 11; *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Motion for Partial Reconsideration of Decision on Stanisic's Request for Stay of Proceedings* (7 April 2017) at para. 8
[1450] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-A, *Judgement* (31 May 2023) at para. 583

Petitions for review from a final judgement would be decided by Appeals Chamber of the Mechanism where the final judgement at the ICTY was issued by the Appeals Chamber.[1451]

Review proceedings should be decided by a bench which, to the extent possible, is composed of the same Judges who constituted the original Chamber[1452]

Since review proceedings are limited to a final judgement, a motion for review must be directed at the Appeals Chamber judgement if the conviction was affirmed on appeal.[1453]

assignment of counsel

As a matter of principle, it is not for the Mechanism to assist a convicted person whose case has reached finality.[1454]

Where motion for review granted, applicant was entitled to the assignment of counsel.[1455]

An applicant is only entitled to assistance of counsel at the expense of the Mechanism if the Appeals Chamber authorizes the review or before such authorization, if it deems it necessary to ensure the fairness of the proceedings.[1456]

[1451] *Prosecutor v Lukic*, No. MICT-13-52-R.1, *Order Assigning Judges to a case before the Appeals Chamber* (24 February 2014); *Prosecutor v Lukic*, No. MICT-13-52-R.1, *Decision on Prosecution's Motion to Strike Milan Lukic's Notice of Appeal of Decision on Application for Review* (13 November 2015) at fn. 5

[1452] *Prosecutor v Nzuwonemeye*, No. MICT-13-43, *Decision on Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye* (4 August 2015) at para. 15

[1453] *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 8

[1454] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Niyitegeka's Request for Assignment of Counsel* (6 November 2014) at para. 7; *Ntabakuze v Prosecutor*, No. MICT-14-77-R, *Decision on Ntabakuze's Pro Se Motion for Assignment of an Investigator and Counsel in Anticipation of his Request for Review* (19 January 2015) at para. 9; *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 8; *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on a Request for Assignment of Counsel* (4 July 2018) at para. 5; *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 20; *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 14; *Prosecutor v Kanyarukiga,* No. MICT-22-126-R, *Decision on Motion for Legal Aid* (30 June 2022) at p. 1

[1455] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Ngirabatware's Motion for Review* (19 June 2017), at p. 3; *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at p. 7

[1456] *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 8; *Prosecutor v Ngeze*, No. MICT-13-37, *Decision on Hassan Ngeze's Request for Legal Aid in relation to a Potential Request for Review* (13 April 2017) at p. 2; *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on a Request for Assignment of Counsel* (4 July 2018) at para. 5; *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at

An applicant is only entitled to assigned counsel at the expense of the Mechanism if the Appeals Chamber deems it necessary to ensure the fairness of the proceedings and, in general, where it cannot exclude the likelihood of success of a potential ground of review.[1457]

It is only in exceptional circumstances that a convicted person will be granted legal assistance after a final judgement has been entered against him.[1458] This also applies to a person who has had a final judgement of acquittal.[1459]

Exceptional circumstances warranting assignment of counsel has been held to exist where the Appeals Chamber was unable to exclude that the potential grounds for review may have a chance of success and where the particular complexity of the matter justified the granting of legal assistance to ensure the fairness of the proceedings.[1460]

complex issues and likely to succeed

Exceptional circumstances warranting assignment of counsel did not exist where the issue presented was not complex, nor likely to succeed.[1461]

Where the circumstances surrounding the potential ground of review, including the need to contact witnesses and pursue new leads, arc common features in the context of the preparation of a review request and are not, per se, particularly complex, it was not

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para. 20; *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 14; *Prosecutor v Kanyarukiga,* No. MICT-22-126-R, *Decision on Motion for Legal Aid* (30 June 2022) at p. 2

[1457] *Prosecutor v Popovic*, No. MICT-15-85-R.1, *Decision on a Request for Assignment of Counsel* (23 September 2016) at p. 2; *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 20

[1458] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Request for Protection of Fundamental Rights of Applicant Eliezer Niyitegeka and for an Order to Assign Counsel to Represent his Interest* (17 January 2014) at para. 9; *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Niyitegeka's Request for Assignment of Counsel* (6 November 2014) at para. 7; *Ntabakuze v Prosecutor*, No. MICT-14-77-R, *Decision on Ntabakuze's Pro Se Motion for Assignment of an Investigator and Counsel in Anticipation of his Request for Review* (19 January 2015) at para. 9; *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 8; *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on Ntawukulilyayo's Request for Legal Aid* (12 June 2018) at para. 9; *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on a Request for Assignment of Counsel* (4 July 2018) at para. 5; *Prosecutor v Kanyarukiga*, No. MICT-12-26, *Decision on Request for Legal Aid* (14 April 2023) at p. 2

[1459] *Prosecutor v Nzuwonemeye,* No. MICT-13-43, *Decision on the Appeal of the Single Judge's Decision of 22 October 2018* (17 April 2019) at para. 22

[1460] *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 8; *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on a Request for Assignment of Counsel* (4 July 2018) at para. 5; *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 20

[1461] *Prosecutor v Nzuwonemeye,* No. MICT-13-43, *Decision on the Appeal of the Single Judge's Decision of 22 October 2018* (17 April 2019) at paras. 23-24

in the interests of justice to assign counsel.[1462]

Exceptional circumstances for assignment of counsel did not exist where potential grounds for review had been raised before and rejected in prior requests for review and where argument for review based upon failure to prosecute other persons implicated by same witnesses had no chance of success.[1463]

Exceptional circumstances for assignment of counsel did not exist where the potential grounds for review specified had no chance of success.[1464]

duration

Where Appeals Chamber ordered assignment of counsel to person seeking to file motion for review, interim assignment ordered to take place pending Registrar's conflict of interest investigation.[1465]

Assignment of counsel for application for review of conviction would be for the equivalent of three months of work.[1466]

In authorizing three months of legal assistance at the expense of the Mechanism, the Appeals Chamber did not intend to limit the duration of counsel's mandate or the time frame for filing the request for review, but rather set only the total amount of funds available at this stage for remunerating counsel at the equivalent of three months of work.[1467]

Allocation of three months of legal assistance for preparation of motion to review only set the outer limit of remuneration and the Registrar was empowered to grant fewer hours after review of the work plan of defence counsel.[1468]

Unspecified claims that alleged false testimony by additional prosecution witnesses could form the basis for the request for review did not warrant remuneration more than the three months' funding granted by the Appeals Chamber for claims related

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[1462] *Ntabakuze v Prosecutor*, No. MICT-14-77-R, *Decision on Ntabakuze's Pro Se Motion for Assignment of an Investigator and Counsel in Anticipation of his Request for Review* (19 January 2015) at para. 13
[1463] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Niyitegeka's Request for Assignment of Counsel* (6 November 2014) at paras. 8-10
[1464] *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 14
[1465] *Niyitegeka v Prosecutor*, No. MICT-12-16, *Decision on Niyitegeka's Submissions concerning the Appeals Chamber Decision of 13 July 2015* (28 October 2015)
[1466] *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 22
[1467] *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Order Lifting ex Parte Status of Niyitegeka's Motion Request an Extension of the Assignment of his Counsel* (23 February 2016) at p. 2
[1468] *Prosecutor v Ntakirutimana,* No. MICT-12-17-R, *Decision on Registrar's Submission of 25 July 2018* (9 October 2018), p. 2

to a single witness.[1469]

ex parte applications

Since the requirement that an applicant provide information as to the potential grounds for review in the context of a request for the assignment of counsel or for an extension of such assignment, necessarily involves revealing certain aspects of 'the applicant's strategy in connection with the eventual request for review, this does not on its own to justify *ex parte* status of the request.[1470]

recanting witnesses

Where witness whose uncorroborated testimony was relied upon by Trial Chamber subsequently gave inconsistent testimony in a domestic proceeding, the complexity of the matter warranted the assignment of counsel for three months to assist in evaluating the potential grounds for review and preparing a focused request for review.[1471]

Where witness whose testimony was relied upon by the Trial Chamber subsequently recanted his testimony, the chance of success on review could not be excluded and combined with the complexity of the matter, warranted assignment of counsel for three months.[1472]

Exceptional circumstances for assignment of counsel did not exist where convicted person alleged that witness had recanted his ICTR testimony in national proceedings in Canada. However, Trial Chamber ordered Registrar to forward request for transcript of testimony to Canadian court on behalf of convicted person.[1473]

Exceptional circumstances existed warranting the assignment of counsel where the four witnesses upon whose testimony the conviction rested had indicated that their trial testimony was false.[1474]

removal of counsel

Appeals Chamber declined to vacate counsel's appointment to represent a

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[1469] *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Motion for the Extension of the Assignment of his Counsel* (27 May 2016) at para. 9
[1470] *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Order Lifting ex Parte Status of Niyitegeka's Motion Request an Extension of the Assignment of his Counsel* (23 February 2016) at p. 2
[1471] *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at paras. 12-14.
[1472] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on a Request for Assignment of Counsel* (4 July 2018) at paras. 7-8
[1473] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Request for Protection of Fundamental Rights of Applicant Eliezer Niyitegeka and for an Order to Assign Counsel to Represent his Interest* (17 January 2014) at para. 15
[1474] *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 22

convicted person for purposes of review proceedings where counsel's meeting with a protected prosecution witness was inadvertent.[1475]

specificity

Where the potential grounds for review are not set forth, an application for assignment of counsel cannot be granted.[1476]

At the preliminary examination stage of a request for review, counsel will be assigned only if necessary to ensure the fairness of the proceedings. This necessity is, to a great extent, assessed considering the potential grounds for review put forward by the applicant.[1477]

Convicted person not entitled to appointment of counsel for petition for review of conviction where information he wanted counsel to pursue did not constitute new facts.[1478]

burden of proof

The burden of showing that the information amounts to a "new fact" lies with the moving party.[1479]

At review hearing, the defence did not discharge its burden of proving the new fact where the recantations of prosecution witnesses appeared to have been procured by payments to the witnesses.[1480]

[1475] *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 26
[1476] *Prosecutor v Popovic*, No. MICT-15-85-R.1, *Decision on a Request for Assignment of Counsel* (23 September 2016) at p. 2; *Prosecutor v Ngeze*, No. MICT-13-37, *Decision on Hassan Ngeze's Request for Legal Aid in relation to a Potential Request for Review* (13 April 2017) at p. 2; *Prosecutor v Kanyarukiga,* No. MICT-22-126-R, *Decision on Motion for Legal Aid* (30 June 2022) at p. 2
[1477] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Niyitegeka's Request for Assignment of Counsel* (6 November 2014) at para. 7; *Ntabakuze v Prosecutor*, No. MICT-14-77-R, *Decision on Ntabakuze's Pro Se Motion for Assignment of an Investigator and Counsel in Anticipation of his Request for Review* (19 January 2015) at para. 9; *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 8; *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Order Lifting ex Parte Status of Niyitegeka's Motion Request an Extension of the Assignment of his Counsel* (23 February 2016) at p. 1; *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 14
[1478] *Karera v Prosecutor*, No. MICT-12-24-R, *Decision on Request for Assignment of Counsel* (3 December 2012) at para. 13; *Ntabakuze v Prosecutor*, No. MICT-14-77-R, *Decision on Ntabakuze's Pro Se Motion for Assignment of an Investigator and Counsel in Anticipation of his Request for Review* (19 January 2015) at para. 12
[1479] *Prosecutor v Lukic*, No. MICT-13-52-R.1, *Decision on Milan Lukic's Application for Review* (7 July 2015) at para. 14
[1480] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Review Judgement* (27 September 2019) at para. 44

At review hearing, the defence did not discharge its burden of proving the new fact where two prosecution witnesses who had recanted their trial testimony in statements to the defence and prosecution testified at the review hearing that they had been pressured to recant and that their trial testimony was true.[1481]

In review proceedings, the burden is on the convicted person to demonstrate that there is sufficient evidence capable of belief to prove the existence of the new fact.[1482]

When the sole witness used to convict the defendant of a crime recants, the defendant has the burden of showing that the recantation is sufficiently credible and reliable.[1483]

Defendant failed to meet his burden of proof where recanting witness had accepted payments from family members of person he exonerated in another case, and where he had not consistently confirmed his recantations.[1484]

The Appeals Chamber will not lightly disturb a Trial Chamber's credibility finding based on a witness' subsequent conduct years after their testimony. To do so would provide incentives to convicted persons, or persons close to them, to interfere with susceptible witnesses with the hope that it would not be discovered and that the convicted person will be released, or, if discovered, then the convicted person will be released because the witnesses will have been so thoroughly discredited that their original testimony cannot be trusted.[1485]

depositions

Prosecution request to depose recanting witnesses was premature where motion for review had not yet been filed.[1486]

diligence

Failure to seek disclosure of diplomatic cables allegedly relied upon to support prosecution expert testimony that accused had control over incendiary radio broadcasts until 7 years after trial concluded did not constitute due diligence.[1487]

Since the purported recantations were only made after the conclusion of the trial and appeal proceedings, the new fact was neither known to the defence nor could have

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[1481] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Review Judgement* (27 September 2019) at para. 58
[1482] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Review Judgement* (22 November 2024) at para. 55
[1483] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Review Judgement* (22 November 2024) at para. 55
[1484] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Review Judgement* (22 November 2024) at para. 61
[1485] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Review Judgement* (27 September 2019) at para. 63
[1486] *Prosecutor v Ngirabatware*, No. MICT-12-29, *Decision on Prosecution's Motion regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) at para. 29
[1487] *Prosecutor v Nahimana*, No MICT-13-37-R.1, *Decision on Nahimana's Request for Review* (16 November 2015) at para. 14

been discovered through the exercise of due diligence.[1488]

The accused had the burden to exhaust all measures afforded by the Statute and Rules to obtain the presentation of this evidence, even during the appeals proceedings.[1489]

Delay in seeking the admission of a witness' uncorroborated additional evidence was not justified by the emergence of corroborative evidence after the filing deadline.[1490]

Evidence of witness was available at trial through the exercise of due diligence as, upon denial of subpoena to Chief of US Intelligence Balkans Task Force, defence should have identified and sought to interview his deputy.[1491]

Gacaca statements reflecting admissions from accomplices in the killing for which the defendant was convicted stating that he was killed in a different location, in a different manner, and not by the defendant, as determined at trial and upheld on appeal would not be allowed as "new facts" since they were in existence at the time of trial and appeal.[1492]

disclosure

Defence would not be required to disclose statements of its witnesses at review hearing before Prosecution was required to submit its own witness list, but would be required to provide a detailed summary.[1493]

health

The deterioration of the convicted person's health after the proceedings concluded is not a new fact but is more appropriately considered by the President in a request for early release.[1494]

hearing

Review is an exceptional procedure, limited in scope, and not intended to be a

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[1488] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Ngirabatware's Motion for Review* (19 June 2017) at p. 2; *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at p. 5
[1489] *Prosecutor v Nahimana*, No MICT-13-37-R.1, *Decision on Nahimana's Request for Review* (16 November 2015) at para. 14
[1490] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Second Motion to Admit Additional Evidence on Appeal* (18 July 2018) at fn. 17
[1491] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Second Motion to Admit Additional Evidence on Appeal* (18 July 2018) at pp. 4-5
[1492] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Gerard Ntakirutimana's Motion for Reconsideration of Decision on Request for Review* (18 September 2024) at p. 7
[1493] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Prosecution Motion for Disclosure and Suspension of Deadline* (14 June 2024) at pp. 2-3
[1494] *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 11

trial de novo.[1495]

Review hearing granted on one count as to one prosecution who recanted his trial testimony.[1496]

Scope of review hearing limited to testing the credibility of the witness' recantations and evidence of witness interference was relevant to that issue.[1497]

After ordering hearing on motion for review, Appeals Chamber ordered parties to file list of witnesses and evidence and description of relevance of each witness and piece of evidence.[1498]

Prosecution ordered to disclose identity of protected witnesses it intends to call at review hearing 30 days prior to hearing, and to disclose all evidence it intends to rely on at the hearing two weeks before the hearing.[1499]

Once a request for review is granted, it is inherent that the applicant would be prepared to prove the existence of the new fact within a reasonable time. The parties may seek the presentation of additional evidence after the review hearing if necessary to prevent a miscarriage of justice. Review hearing postponed for nine months to give defence time to receive and review material from related contempt prosecution.[1500]

Where a review hearing has been granted, there is no final judgement until the review proceedings are completed.[1501]

Articles 18(1) and 19(4)(c) require the Appeals Chamber to ensure that review proceedings are conducted expeditiously.[1502]

Prosecution motion to postpone review hearing to allow contempt proceedings to go forward first denied where alleged contempt was relevant but not decisive for the review proceedings and prosecution had adequate time to investigate alleged witness

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[1495] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Order regarding the Scope of the Review Hearing* (30 July 2019) at p. 2
[1496] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at p. 7
[1497] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Order regarding the Scope of the Review Hearing* (30 July 2019) at p. 2
[1498] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Ngirabatware's Motion for Review* (19 June 2017), at p. 4
[1499] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Motion for Disclosure* (5 September 2018)
[1500] *Prosecutor v Ngirabatware*, No, MICT-12-29-R, *Decision in Relation to Review Hearing* (7 December 2018) at p. 2
[1501] *Prosecutor v Ngirabatware*, No, MICT-12-29-R, *Decision on Prosecution Request to Postpone the Review Hearing* (20 August 2019) at p. 2
[1502] *Prosecutor v Ngirabatware*, No, MICT-12-29-R, *Decision on Prosecution Request to Postpone the Review Hearing* (20 August 2019) at p. 2

tampering.[1503]

new facts

A "new fact" consists of new information of an evidentiary nature of a fact that was not in issue during the trial or appeal proceedings.[1504]

It is irrelevant whether the new fact already existed before the original proceedings or during such proceedings. What matters is whether the deciding body knew about the fact or not in reaching its decision.[1505]

The requirement that the new fact was not in issue during the proceedings means that it must not have been among the factors that the deciding body could have considered in reaching its verdict.[1506]

There is a critical distinction between material submitted in support of a fact that was not in issue or considered in the original proceedings, and material, which consists of additional evidence relating to a fact that was previously in issue.[1507]

[1503] *Prosecutor v Ngirabatware*, No, MICT-12-29-R, *Decision on Prosecution Request to Postpone the Review Hearing* (20 August 2019) at p. 3

[1504] *Prosecutor v Lukic*, No. MICT-13-52-R.1, *Decision on Milan Lukic's Application for Review* (7 July 2015) at para. 6; *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 6; *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 7; *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at para. 13; *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 10; *Prosecutor v Ngirabatware*, No. 12-29-R.2, *Decision on Augustin Ngirabatware's Second Request for Review* (10 October 2023) at para. 13; *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at p. 5

[1505] *Prosecutor v Lukic*, No. MICT-13-52-R.1, *Decision on Milan Lukic's Application for Review* (7 July 2015) at para. 6; *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 6; *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 7; *Prosecutor v Nahimana*, No MICT-13-37-R.1, *Decision on Nahimana's Request for Review* (16 November 2015) at para. 7; *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at para. 13; *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 10; *Prosecutor v Ngirabatware*, No. 12-29-R.2, *Decision on Augustin Ngirabatware's Second Request for Review* (10 October 2023) at para. 13

[1506] *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 7; *Prosecutor v Nahimana*, No MICT-13-37-R.1, *Decision on Nahimana's Request for Review* (16 November 2015) at para. 7; *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at para. 13; *Prosecutor v Ngirabatware*, No. 12-29-R.2, *Decision on Augustin Ngirabatware's Second Request for Review* (10 October 2023) at para. 13; *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at p. 5

[1507] *Prosecutor v Ngirabatware*, No. 12-29-R.2, *Decision on Augustin Ngirabatware's Second Request for Review* (10 October 2023) at para. 13; *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at p. 5

Witness statements and documents were additional evidence of issues considered during the original proceedings, rather than "new facts" and could not be the basis of review.[1508]

Lack of mention of the accused's participation in the attack in a brief statement taken during a trial of a different person does not constitute a new fact.[1509]

Information from diplomatic cables that contradicted prosecution expert witness testimony that the accused had intervened to stop incendiary RTLM radio broadcasts and that the broadcasts stopped because of his intervention was a new fact.[1510]

Conditions of provisional release akin to imprisonment was not a new fact where the Appeals Chamber, in ruling against credit for time served on provisional release, had been presented with material showing the conditions.[1511]

change in the law

Finding in a subsequent case that population transfer from Kosovo to Montenegro did not cross a State boundary necessary for a conviction for deportation was not a "new fact" that would justify review. The Appeals Chamber does not have the power to reconsider a final judgement considering the legal analysis on the elements of a crime adopted by a subsequent Appeals Chamber judgement.[1512]

credibility

Newly discovered information related to witness credibility may amount to a new fact.[1513]

Purported recantations of Prosecution Witnesses contained new information of an evidentiary nature that related to the witnesses' credibility that could not have been considered at trial or on appeal and therefore constitute a new fact, which, if proved, could have been a decisive factor in reaching the original decision since the findings,

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[1508] *Prosecutor v Lukic*, No. MICT-13-52-R.1, *Decision on Milan Lukic's Application for Review* (7 July 2015) at paras. 17,23,31,37; *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 18; *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at paras. 21, 36

[1509] *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at para. 30

[1510] *Prosecutor v Nahimana*, No MICT-13-37-R.1, *Decision on Nahimana's Request for Review* (16 November 2015) at para. 13

[1511] *Prosecutor v Coric*, No. MICT-17-112-R.1, *Decision on a Request for Review* (16 March 2018) at para. 9

[1512] *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 22

[1513] *Ntabakuze v Prosecutor*, No. MICT-14-77-R, *Decision on Ntabakuze's Pro Se Motion for Assignment of an Investigator and Counsel in Anticipation of his Request for Review* (19 January 2015) at fn. 43

based primarily on these witnesses' evidence, underpin all the convictions.[1514]

The purported recantations of a prosecution witness contain new information of an evidentiary nature relating to the witness's credibility that were not considered at trial or on appeal, and therefore constitute a new fact.[1515]

The provision of a materially inconsistent statement in a domestic proceeding, which was unavailable at the time of trial or appeal, could impact the credibility of an uncorroborated witness and thus the verdict.[1516]

The Appeals Chamber is not bound by findings and credibility assessments by other courts - domestic, international, or hybrid.[1517]

Purported materially inconsistent evidence provided by a prosecution witness to investigators and an investigating judge in domestic proceedings was adequately clarified and corrected by the witness and as such does not constitute a new fact.[1518]

New information alleging a campaign of collusion involving prosecution witnesses amounts to additional evidence of credibility issues previously considered, and therefore does not amount to a new fact.[1519]

Testimony at contempt trial indicating that prosecution witnesses lied during their trial testimony was additional evidence of matters that were in issue during the first review hearing, albeit stronger, but did not constitute new facts that could warrant a second review proceeding.[1520]

The fact that the new evidence tends to confirm what the Appeals Chamber already considered as a possibility during the review hearing does not alter the conclusion that the new evidence is not a "new fact". This is the case even if the new evidence is stronger than what was presented during the review hearing and may indicate that the witnesses perjured themselves.[1521]

[1514] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Ngirabatware's Motion for Review* (19 June 2017) at p. 2
[1515] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at p. 5
[1516] *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 12
[1517] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for*
[1518] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Gerard Ntakirutimana's Motion for Reconsideration of Decision on Request for Review* (18 September 2024) at p. 5
[1519] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at pp. 6-7
[1520] *Prosecutor v Ngirabatware*, No. 12-29-R.2, *Decision on Augustin Ngirabatware's Second Request for Review* (10 October 2023) at para. 30
[1521] *Prosecutor v Ngirabatware*, No. 12-29-R.2, *Decision on Augustin Ngirabatware's Second Request for Review* (10 October 2023) at para. 30

evidentiary value

Indictment and plea agreement materials from another case were not materials of evidentiary value such that they could be admitted as new facts in a review proceeding.[1522]

The decision of the Prosecution of Bosnia and Herzegovina to name only 26 victims in a domestic indictment for the same event as the ICTY conviction does not constitute new information of an evidentiary nature for the purposes of review proceeding.[1523]

Where a domestic judgement of another person for the same event as the ICTY conviction did not make a conclusive finding as to the number of victims, it was not new information of an evidentiary character sufficient to constitute a new fact.[1524]

impact of new fact

New fact that the diplomatic telegrams did not support prosecution's expert witness' evidence that the incendiary broadcasts ceased due to the accused's intervention was not of such strength that it would affect the verdict and ignoring it would lead to a miscarriage of justice where there the telegrams showed that the accused represented himself as having the authority to stop the broadcasts.[1525]

Prosecution witness' recantation, if proved, could have been a decisive factor in reaching the original decision, since his evidence exclusively underpins one of the defendant's convictions.[1526]

However, where another witness also underpinned defendant's convictions for other crimes, the new fact could not have been a decisive factor in reaching the original decision and a review hearing would not be held on those convictions.[1527]

novelty of legal issue

The novelty of a legal issue does not per se constitute a ground to review an

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[1522] *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at paras. 23, 28; *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 11

[1523] *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 11

[1524] *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 12

[1525] *Prosecutor v Nahimana*, No MICT-13-37-R.1, *Decision on Nahimana's Request for Review* (16 November 2015) at paras. 17-19

[1526] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at p. 6

[1527] *Prosecutor v Ntakirutimana*, No. MICT-12-17-R, *Decision on Request for Review* (21 May 2024) at p. 6

appellate decision on that issue.[1528]

rebuttal evidence

Prosecution motion to postpone notice of its rebuttal evidence at review hearing until it had heard the defence evidence at the hearing denied where defence had provided list of witnesses to be called at the review hearing and summaries of their testimony.[1529]

reconsideration

Allegations of witness corruption did not warrant reconsideration of the decision granting review of a conviction and could be tested at the review hearing.[1530]

Decisions on requests for review are final decisions closing the proceedings and thus are not subject to reconsideration.[1531]

repeated requests for review

Second request for review would not be summarily dismissed where it was based on events that took place after the first review proceedings had concluded.[1532]

scope of review hearing

Where review hearing had been granted on basis of Prosecution witness recantations, convicted person would not be allowed to offer evidence that corroborated the truth of the recantations where such evidence concerned events that had previously been litigated.[1533]

standard

A request for review of a final judgement will be granted if the moving party shows that the following conditions are met: (i) there is a new fact; (ii) the new fact was not known to the moving party at the time of the trial or appeal proceedings; (iii) the new

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[1528] *Prosecutor v Coric*, No. MICT-17-112-R.1, *Decision on a Request for Review* (16 March 2018) at fn. 27

[1529] *Prosecutor v Ngirabatware*, No. 12-29-R, *Decision on Motion to Postpone Submission of Rebuttal Evidence* (21 July 2017) at p. 2

[1530] *Prosecutor v Ngirabatware*, No. 12-29-R, *Decision on Prosecution Motion for Reconsideration of Decision on Ngirabatware's Motion for Review* (7 September 2018) at p. 2

[1531] *Prosecutor v Niyitegeka*, No. MICT-12-16, *Decision on Niyitegeka's Request for Assignment of Counsel* (6 November 2014) at paras. 8-10

[1532] *Prosecutor v Ngirabatware*, No. 12-29-R.2, *Decision on Augustin Ngirabatware's Second Request for Review* (10 October 2023) at para. 24

[1533] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Prosecution's Motion to Exclude Evidence* (10 October 2017) at p. 2; *Prosecutor v Ntakirutimana*, No, MICT-12-17-R, *Order on Scheduling and Scope of the Review Hearing* (18 September 2024) at p. 4

fact could not have been discovered through the exercise of due diligence; and (iv) the new fact **could** have been a decisive factor in reaching the original decision.[1534]

A review of a final judgement is an exceptional procedure and not an additional opportunity for a party to re-litigate arguments that failed during the course of the proceedings.[1535]

In wholly exceptional circumstances, the Appeals Chamber may grant review, even where the second or third criteria are not satisfied, if ignoring the new fact **would** result in a miscarriage of justice.[1536]

In wholly exceptional circumstances, review may still be permitted even though the new fact was known to the moving party or was discoverable by it through the exercise of due diligence, if a Chamber is presented with a new fact that is of such strength that it **would** have affected the verdict and determines that review of its judgement was necessary because the impact of the new fact on the decision is such that to ignore it would lead to a miscarriage of justice.[1537]

Article 24 and Rule 146 offer a convicted person the ability to seek review of an appeal judgement on fulfilment of certain criteria, which have been interpreted broadly where a miscarriage of justice would otherwise result.[1538]

Review would not be entertained to correct the factual record of the number of victims killed in an incident where the new information would not have resulted in a

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[1534] *Prosecutor v Lukic*, No. MICT-13-52-R.1, *Decision on Milan Lukic's Application for Review* (7 July 2015) at para. 5; *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 5; *Niyitegeka v Prosecutor*, MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 6; *Prosecutor v Nahimana*, No MICT-13-37-R.1, *Decision on Nahimana's Request for Review* (16 November 2015) at para. 6; *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Decision on Ngirabatware's Motion for Review* (19 June 2017), at p. 2; *Prosecutor v Coric*, No. MICT-17-112-R.1, *Decision on a Request for Review* (16 March 2018) at para. 4; *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at para. 12; *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 9; *Prosecutor v Ngirabatware*, No. 12-29-R.2, *Decision on Augustin Ngirabatware's Second Request for Review* (10 October 2023) at para. 12

[1535] *Prosecutor v Ngirabatware*, No. 12-29-R.2, *Decision on Augustin Ngirabatware's Second Request for Review* (10 October 2023) at para. 12

[1536] *Niyitegeka v Prosecutor*, No. MICT-12-16-R, *Decision on Niyitegeka's Request for Review and Assignment of Counsel* (13 July 2015) at para. 6

[1537] *Prosecutor v Lukic*, No. MICT-13-52-R.1, *Decision on Milan Lukic's Application for Review* (7 July 2015) at para. 7; *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 7; *Prosecutor v Nahimana*, No MICT-13-37-R.1, *Decision on Nahimana's Request for Review* (16 November 2015) at para. 8; *Prosecutor v Coric*, No. MICT-17-112-R.1, *Decision on a Request for Review* (16 March 2018) at para. 6; *Semanza v Prosecutor*, No. MICT-13-36-R, *Decision on a Request for Access and Review* (9 April 2018) at para. 14; *Prosecutor v Ngirabatware*, No. 12-29-R.2, *Decision on Augustin Ngirabatware's Second Request for Review* (10 October 2023) at para. 14

[1538] *Prosecutor v Seselj*, No. MICT-16-99, *Decision on Vojislav Seselj's Appeal Against the Decision Denying Request to Appeal the Appeal Judgement* (5 February 2019) at p. 2

reduction in the sentence.[1539]

Rule 147—preliminary examination

If a majority of Judges of the Chamber constituted pursuant to Rule 146 agree that the new fact, if proved, could have been a decisive factor in reaching a decision, the Chamber shall review the judgement, and pronounce a further judgement considering the Parties' written submissions and, in exceptional circumstances, holding a hearing

Rule 148—appeals

The judgement of a Trial Chamber or Single Judge on review may be appealed in accordance with the provisions of Part Seven.

Where review petition is decided by Appeals Chamber in first instance, there is no appeal from its decision.[1540]

Rule 149—notification by States

If, according to the law of the State of imprisonment, a convicted person is eligible for pardon, commutation of sentence, or early release the State shall, in accordance with Article 26 of the Statute, notify the Mechanism of such eligibility.

Rule 150—determination by the President

The President shall, upon such notice, or upon receipt of a direct petition from the convicted person, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with two other Judges.

At the Mechanism, as at the ICTY and the ICTR, it has been the general practice that the President will grant early release where, *inter alia*, considering the President's own views and those of the Judges consulted pursuant to Rule 150, a majority are in favour of granting early release. Conversely, the President will deny early release where, inter alia, considering the President's own views and those of the Judges consulted pursuant to Rule 150, a majority are opposed, absent compelling circumstances requiring otherwise.[1541]

[1539] *Prosecutor v Lukic*, No. MICT-13-52-R1, *Decision on Milan Lukic's Request for Review and for Assignment of Counsel* (15 December 2020) at para. 13

[1540] *Prosecutor v Lukic*, No. MICT-13-52-R.1, *Decision on Prosecution's Motion to Strike Milan Lukic's Notice of Appeal of Decision on Application for Review* (13 November 2015) at p. 3

[1541] *Prosecutor v Miletic*, No. MICT-15-95-ES.5, *Decision of the President on the Early Release of Radivoje Miletic* (23 October 2018) at para. 44

While the convicted person completed two-thirds of his sentence and has shown some signs of rehabilitation, the very high gravity of his crimes and the strong objections of the remaining Judges of the sentencing Chamber who are Judges of the Mechanism, considered considering the general practice of the ICTY, the ICTR, and the Mechanism militate against granting early release.[1542]

Rule 151—general standards for granting commutation, pardon, or early release

In determining whether pardon, commutation of sentence, or early release is appropriate, the President shall take into account, inter alia, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor.

age and health

Health problems and advanced age were not so exceptional to warrant early release before serving 2/3 of the sentence.[1543]

Health problems did not rise to the level of warranting early release, even after service of 2/3 of sentence.[1544]

Susceptibility to coronavirus due to age and health conditions did not warrant an "expedited" decision on early release motion as Mechanism was monitoring conditions in the enforcement state and would decide the early release motion in the regular course.[1545]

assignment of counsel

The Statute, Rules and Early Release Practice Direction do not provide for assignment of counsel to convicted persons following issuance of final judgements against them, or to assist a convicted person with early release proceedings.[1546]

[1542] *Prosecutor v Miletic*, No. MICT-15-95-ES.5, *Decision of the President on the Early Release of Radivoje Miletic* (23 October 2018) at para. 45

[1543] *Prosecutor v Munyakazi*, No. MICT-12-18-ES.1, *Decision of the President on the Early Release of Youssouf Munyakazi* (22 July 2015) at para. 24; *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Decision of the President on the Early Release of Aloys Simba* (2 February 2016) at para. 33; *Prosecutor v Semanza*, No. 13-36-ES, *Decision of the President on the Early Release of Laurent Semanza* (9 June 2016) at para. 35; *Prosecutor v Krstic*, No. MICT-13-46-ES.1 (13 December 2016) at para. 38; *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision of the President on the Early Release of Stanisic Galic* (18 January 2017) at para. 39

[1544] *Prosecutor v Semanza*, No. MICT-13-26-ES.2, *Decision on Laurent Semanza's Application for Early Release* (18 September 2020) at para. 93; *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 84

[1545] *Prosecutor v Lukic*, No. MICT-14-67-ES.4, *Decision on Motion for Immediate Provisional Release or Early Release of 1 May 2020* (14 August 2020) at p. 4

[1546] *Prosecutor v Semanza,* No. MICT-13-36-ES.2, *Decision on Laurent Semanza's Supplemental Request for Legal Aid* (19 February 2019) at para. 7; *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision on*

While a convicted person is not generally entitled to Legal Aid for counsel absent exceptional circumstances, such circumstances were present where person convicted of contempt was arrested and was serving her 7-day sentence in detention. Legal Aid of 15 hours was authorized for early release request.[1547]

A convicted person is not entitled to legal aid at the expense of the Mechanism to assist with the early release process. Legal aid will only be granted in exceptional circumstances pursuant to a judicial order.[1548]

A convicted person will only be entitled to legal aid at the expense of the Mechanism if it is deemed necessary to ensure the fairness of the proceedings involving pardon, commutation of sentence, or early release.[1549]

A convicted person will only be entitled to legal aid at the expense of the Mechanism for early release proceedings in exceptional circumstances, if such assistance is deemed necessary to ensure the fairness of the proceedings.[1550]

Convicted person was not entitled to legal aid for early release petition as his indigence and the need for his counsel to travel to visit him in prison to prepare the petition did not constitute exceptional circumstances.[1551]

Submissions relating to the merit of a proposed motion for early release were not sufficient to constitute exceptional circumstances warranting the assignment of counsel.[1552]

Early release applicant entitled to 15 hours of legal aid considering the gravity of the crime for which he was convicted and the complexity of the legal and procedural

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Motions related to Valentin Coric's Request for Variation of Early Release Decision (21 February 2020) at para. 11

[1547] *In the Case Against Florence Hartmann*, No. MICT-15-57, *Decision of the President on the Urgent Request for Legal Aid* (29 March 2016) at para. 15

[1548] *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on Ntawukulilyayo's Request for Legal Aid* (12 June 2018) at para. 11; *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision on Motions related to Valentin Coric's Request for Variation of Early Release Decision* (21 February 2020) at para. 12; *Prosecutor v Kanyarukiga*, No. MICT-12-26, *Decision on Request for Legal Aid* (14 April 2023) at p. 2

[1549] *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on Ntawukulilyayo's Request for Legal Aid* (12 June 2018) at para. 11

[1550] *Prosecutor v Semanza,* No. MICT-13-36-ES.2, *Decision on Laurent Semanza's Supplemental Request for Legal Aid* (19 February 2019) at para. 8; *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision on Motions related to Valentin Coric's Request for Variation of Early Release Decision* (21 February 2020) at para. 12; *Prosecutor v Ndahimana*, No. MICT-13-59-ES, *Decision on Gregoire Ndahimana's Application for Legal Aid* (22July 2025) at p. 1

[1551] *Prosecutor v Ndahimana*, No. MICT-13-59-ES, *Decision on Gregoire Ndahimana's Application for Legal Aid* (22 July 2025) at p. 2

[1552] *Prosecutor v Kanyarukiga,* No. MICT-22-126-ES.1, *Decision on Gaspard Kanyarukiga's Application for Legal Aid* (23 July 2025) at p. 2

issues considering the filings made by Rwanda to which he was expected to reply.[1553]

Payment of costs of travel for counsel to visit early release applicant in prison denied where (a) time for the applicant's submissions had not yet arisen; (b) it was not shown that in person meeting was necessary; and (c) considerations of rehabilitation and conditional release were not new and existed when the original legal aid decision was made.[1554]

Counsel's work in drafting submissions in response to materials obtained from the enforcement State and in challenging the Registrar's refusal to disclose information received from the enforcement State was not unforeseen and defence counsel would not be remunerated for the 44 hours of additional time expended on the case.[1555]

The very premise of assigning counsel *pro bono* implies that legal assistance is provided without remuneration. Legal aid in post-conviction matters is not granted as of right.[1556]

Assignment of counsel to challenge early release condition that the convicted person not discuss his case denied where the challenge to the condition arose from a desire to comply with an order in a separate domestic proceeding.[1557]

Assignment of counsel to a terminally ill defendant serving his sentence at the UN Detention Unit denied where the work of counsel related to clearly delineated factual and legal circumstances not amounting to exceptional circumstances.[1558]

Funding of visit by pro bono counsel to client suffering in prison from psychiatric and cognitive disorders denied where the application failed demonstrate that these matters significantly elevate what is ordinarily required for legal assistance with regard to an early release process.[1559]

[1553] *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on Ntawukulilyayo's Request for Legal Aid* (12 June 2018) at paras. 13-14; *Prosecutor v Semanza*, No. MICT-13-36-ES.2, *Decision on Laurent Semanza's Request for Assignment of Counsel* (2 August 2018) at paras. 10-11; *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on Alfred Musema's Request for Assignment of Counsel* (14 August 2018) at para. 13

[1554] *Prosecutor v Semanza,* No. MICT-13-36-ES.2, *Decision on Laurent Semanza's Supplemental Request for Legal Aid* (19 February 2019) at paras. 10-13

[1555] *Prosecutor v Semanza*, No. MICT-13-36-ES.2, *Decision on Laurent Semanza's Motions and Request for Supplemental Legal Aid* (17 September 2020) at para. 20

[1556] *Prosecutor v Semanza*, No. MICT-13-36-ES.2, *Decision on Laurent Semanza's Motions and Request for Supplemental Legal Aid* (17 September 2020) at para. 20

[1557] *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision on Motions related to Valentin Coric's Request for Variation of Early Release Decision* (21 February 2020) at para. 13

[1558] *Prosecutor v Simatovic*, No. MICT-15-96-ES.1, *Decision on Franko Simatovic's Applications for Provisional Release and Legal Aid* (29 September 2023) at p. 3

[1559] *Prosecutor v Kanyarukiga*, No. MICT-12-26, *Decision on Gaspard Kanyarukiga's Application for Limited Legal Aid* (5 February 2026) at p. 1

commutation

Commutation of sentence is a distinct legal concept from that of pardon and early release and, accordingly, has a different impact on the character of the sentence.[1560]

A request for commutation of sentence is treated as a request for early release by the Mechanism.[1561]

A pardon sets aside the sentence imposed for a crime, while commutation changes the nature of the sentence, by reducing it or otherwise making it less severe. Early release, on the other hand, means that a prisoner is freed before the end of his sentence, either with or without conditions. Thus, regarding the latter, the sentence does not change, and the breach of any conditions imposed upon early release can result in the person being transferred back to the Mechanism to serve the rest of his or her sentence.[1562]

The two-thirds eligibility threshold applies not only to early release, but to applications for commutation of sentence before the Mechanism.[1563]

conditional release

The President has the authority to impose conditions of release by virtue of his discretion to grant early release conferred in Article 26.[1564]

Although early release was warranted due to convicted person's terminal illness, the gravity of the crimes coupled with the limited amount of time already served made it appropriate to grant only conditional early release, with the possibility to revoke it should the convicted person's condition improve.[1565]

The willingness to abide by conditions of early release weighs in favour of

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[1560] *Prosecutor v Kanyarukiga*, No. MICT-12-26, *Decision on the Applications for Early Release and Commutation of Sentence of Gaspard Kanyarukiga* (9 June 2023) at p. 4
[1561] *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on Alfred Musema's Request for Assignment of Counsel* (14 August 2018) at para. 10; *Prosecutor v Nchamihigo*, No, MICT-12-19-ES-1, *Decision on Simeon Nchamahigo's Application for Commutation of Sentence* (31 December 2020) at pp. 3-4
[1562] *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Sentence Remission and Early Release of Milomir Stakic* (31 December 2020) at para. 34; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 99; *Prosecutor v Kanyarukiga*, No. MICT-12-26, *Decision on the Applications for Early Release and Commutation of Sentence of Gaspard Kanyarukiga* (9 June 2023) at p. 4
[1563] *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Sentence Remission and Early Release of Milomir Stakic* (31 December 2020) at para. 35
[1564] *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019) at para. 39
[1565] *Prosecutor v Popovic et al*, No. MICT-15-85-ES.3, *Decision of the President on the Early Release of Ljubisa Beara* (7 February 2017) at para. 48

granting early release.[1566]

Convicted person released on conditions that (1) he have no contact whatsoever, directly or indirectly try to harm, intimidate or otherwise interfere, with victims or witnesses who testified at his trial or the trial of other ICTR-convicted persons, or otherwise interfere in any way with the proceedings of the Mechanism, or the administration of justice; (2) he conduct himself honourably and peacefully in the community to which he is released, and not engage in secret meetings intended to plan civil unrest or engage in any political activities; (3) he not discuss his case with anyone, including the media, other than pro bono counsel, if any, nor make any statement concerning the events in Rwanda or former Yugoslavia; (4) he not purchase, possess, use, or handle any weapons; and (5) he not commit any offence.[1567]

Convicted person released on conditions including that he not discuss his case, including any aspect of the events in the former Yugoslavia that were the subject of his case, with the media, through social media, or with anyone other than legal counsel recognised by the Mechanism; (2) not make any statement denying the crimes over which the ICTY had jurisdiction, and over which the Mechanism retains jurisdiction, that were committed during the conflict in the former Yugoslavia; (3) not directly or indirectly express publicly any agreement with, or otherwise contribute in any way to, the glorification of persons convicted by the ICTY or the Mechanism; (4) under no circumstances visit Kosovo; (5) not actively engage in any political activities except for voting; and (6) continue to make efforts to contribute to his rehabilitation and resocialization.[1568]

Convicted person released on conditions including that he (1) not leave his home except for medical appointments, (2) not discuss his case, including any aspect of the events in the former Yugoslavia that were the subject of his case, with the media, through social media, or with anyone other than legal counsel recognised by the Mechanism; (3) not make any statement denying the crimes over which the ICTY had jurisdiction, and over which the Mechanism retains jurisdiction, that were committed during the conflict in the former Yugoslavia; and (4) not directly or indirectly express publicly any agreement with, or otherwise contribute in any way to, the glorification of persons convicted by the ICTY or the Mechanism.[1569]

Convicted person released on conditions including that he not discuss his case, including any aspect of the events in the former Yugoslavia that were the subject of his

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[1566] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 78

[1567] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 78; *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019) at paras. 78

[1568] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at Annex

[1569] *Prosecutor v Simatovic*, No. MICT-15-96-ES.1, *Decision on the Application for Early Release of Franko Simatovic* (29 August 2023) at pp. 6-7

case, with the media, through social media, or with anyone other than legal counsel recognised by the Mechanism; (2) not make any statement denying the crimes over which the ICTY had jurisdiction, and over which the Mechanism retains jurisdiction, that were committed during the conflict in the former Yugoslavia; (3) not directly or indirectly express publicly any agreement with, or otherwise contribute in any way to, the glorification of persons convicted by the ICTY or the Mechanism; and (4) continue to make efforts to contribute to his rehabilitation and resocialization. [1570]

It would be appropriate to also impose conditions on the early release of ICTY-convicted persons, in line with the UN Security Council Resolution, as well as to harmonise the approach to early release across both branches of the Mechanism.[1571]

The President takes very seriously the recommendation that conditional early release would be a good way forward to adequately prepare a convicted person for his final release from prison and to enable the relevant local authorities to take part in his reintegration into society.[1572]

Pursuing a lawsuit against a witness would violate the condition that the convicted person have no contact whatsoever, intimidate or otherwise interfere, with victims or witnesses who testified at his trial or the trial of other ICTY-convicted persons, or otherwise interfere in any way with the proceedings of the Mechanism, or the administration of justice.[1573]

conditions of release—administration

Conditional early release does not amount to a return to the life of an ordinary citizen.[1574]

A request to travel outside of the state of residence is considered exceptional and will not be granted as a matter of course.[1575]

Request by person on early release to visit relatives and the graves of deceased relatives in Bosnia denied where there was no showing that such a visit was necessary before the defendant served his entire sentence in three more years.[1576]

[1570] *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at Annex
[1571] *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019) at para. 73
[1572] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 58
[1573] *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision on Motions related to Valentin Coric's Request for Variation of Early Release Decision* (21 February 2020) at para. 42
[1574] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision related to Sreten Lukic's Request pursuant to Paragraph 3(K) of the Conditional Early Release Agreement* (30 November 2023) at p. 3
[1575] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision related to Sreten Lukic's Request pursuant to Paragraph 3(K) of the Conditional Early Release Agreement* (30 November 2023) at p. 3
[1576] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Notification regarding the Possible Travel of Sreten Lukic Outside Serbia* (19 April 2023) at pp. 2-3

Request by person on early release to travel out of the country to celebrate a first birthday with family members was not sufficiently exceptional and was denied. [1577]

Prosecution has standing to make submissions on request for travel by person on conditional release. [1578]

conduct in detention

All detainees have a right to submit complaints regarding their conditions of detention and no adverse inference can be drawn for filing any such complaint.[1579]

Good behaviour in prison is evidence of some signs of rehabilitation and entitled to some positive consideration.[1580]

While good behaviour in prison may generally be a positive indicator of rehabilitation in a national context, given the particular nature and scope of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, such behaviour cannot on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.[1581]

[1577] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision related to Sreten Lukic's Request pursuant to Paragraph 3(K) of the Conditional Early Release Agreement* (30 November 2023) at p. 4
[1578] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision related to Sreten Lukic's Request pursuant to Paragraph 3(K) of the Conditional Early Release Agreement* (30 November 2023) at p. 3
[1579] *In the Case Against Florence Hartmann*, No. MICT-15-57, *Decision of the President on the Early Release of Florence Hartmann* (29 March 2016) at para. 27
[1580] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision of the President on Request for Pardon or Transfer to Another Enforcement State* (7 September 2016) at para. 35
[1581] *Prosecutor v Semanza*, No. MICT-13-26-ES.2, *Decision on Laurent Semanza's Application for Early Release* (18 September 2020) at para. 45; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 48; *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 42; *Prosecutor v Bagosora*, No. MICT-12-26-ES.1, *Decision on the Early Release of Theoneste Bagosora* (1 April 2021) at para. 42; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Early Release of Radivoje Miletic* (5 May 2021) at para. 51; *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 51; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 46; *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 40; *Prosecutor v Brdanin*, No. MICT-13-48-ES , *Decision on the Application of Radislav Brdanin for Early Release* (1 April 2022) at para. 37; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 44; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 117; *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 51; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 44; *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at para. 37; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 49; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 52; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 46; *Prosecutor v Zupljanin*,

Convicted person's very good behaviour in prison, while commendable, was not of itself sufficient to merit early release.[1582]

Convicted person's good behaviour in prison, while normally not entitled to minimal weight, was positively considered considering its reflection on mental state, personality, and the risk of reoffending.[1583]

The convicted person's successful integration in a multi-cultural environment in prison is entitled to little or no weight.[1584]

A detainee's poor conduct in detention over a several-year period during which he was serving his sentence demonstrated that he was not sufficiently rehabilitated to be granted early release after serving 2/3 of his sentence.[1585]

Prisoner who attempted to contact organised crime figure in prison and was moved to a higher-level security prison weighs against the conclusion that he has been rehabilitated.[1586]

Good behaviour in prison is the very minimum to be expected of a convicted person while serving his or her sentence.[1587]

No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 46; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 50; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 49; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (3 February 2015) at para. 31; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 45; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 52; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 46

[1582] *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on the Application for Early Release of Alfred Musema* (12 January 2026) at para. 49

[1583] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 59

[1584] *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 77

[1585] *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision of the President on the Early Release of Dragoljub Kunarac* (2 February 2017) at para. 68; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at paras. 53, 81; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 128

[1586] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 54

[1587] *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 52; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 46; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (3 February 2015) at para. 31; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for*

Evaluation of prisoner as quick-tempered and not easily accepting decisions that he disagrees with was an indication that the prisoner is not genuinely motivated to rehabilitate himself.[1588]

consultation with other judges

It has been the general practice that the President will grant early release where, inter alia, considering the President's own views and those of the Judges consulted pursuant to Rule 150, a majority are in favour of granting early release, and, conversely, that the President will deny early release where, inter alia, considering the President's own views and those of the Judges consulted pursuant to Rule 150, a majority are opposed, absent compelling circumstances requiring otherwise.[1589]

President consulted with judges who imposed sentence on appeal, as well as judge who imposed longer sentence at trial.[1590]

contempt

Person serving 7-day sentence for failing to pay fine in contempt case was entitled to release after serving 2/3 (6 days).[1591]

cooperation with prosecution

Person who cooperated extensively with prosecution granted release before having served 2/3 of his sentence.[1592]

Less than substantial cooperation is nevertheless entitled to some consideration on early release[1593]

Entry of a guilty plea constitutes cooperation with the prosecution and may be considered for an early release application, even if it was taken into consideration at the sentencing.[1594]

Early Release of Jadranko Prlic (7 March 2025) at para. 45; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 49

[1588] *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 52

[1589] *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019) at para. 59

[1590] *Prosecutor v Nchamihigo*, No, MICT-12-19-ES-1, *Decision on Simeon Nchamahigo's Application for Commutation of Sentence* (31 December 2020) at p. 5

[1591] *In the Case Against Florence Hartmann*, No. MICT-15-57, *Decision of the President on the Early Release of Florence Hartmann* (29 March 2016)

[1592] *Prosecutor v Nikolic*, No. MICT-14-65-ES, *Decision on Early Release of Momir Nikolic* (12 October 2015) at para. 35

[1593] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 76; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 69

The entry of a guilty plea constitutes a degree of cooperation with the Prosecution, as such pleas beneficially impact the efficient administration of justice. However, while the President has at times considered that a guilty plea weighs in favour of early release, it was only in cases where the convicted person had significantly cooperated with the Prosecution that the cooperation was found to be substantial. In the absence of such substantial cooperation, other Presidents have found this factor to be neutral.[1595]

Convicted person's guilty pleas have already been considered as a mitigating factor in the determination of his sentence, which was reduced accordingly. Where the convicted person now denies responsibility for some of his crimes, the President did not consider it appropriate to attach additional weight to his guilty pleas.[1596]

Guilty plea is a neutral factor when considering cooperation with the prosecution in the context of early release, absent other evidence of cooperation.[1597]

Where convict cooperated with the prosecution by testifying in two cases, but refused to testify in three others, he would nonetheless be given consideration for having cooperated with the prosecution.[1598]

Submitting to interviews with the prosecution and providing documents constitutes cooperation with the prosecution.[1599]

Submitting to interviews with the prosecution upon arrival in The Hague and a year later constituted cooperation for the purposes of early release due to the impact such cooperation has on the administration of justice.[1600]

Voluntarily submitting to a suspect interview indicates a degree of cooperation with the Prosecution, as it may assist the efficient administration of justice.However, this single instance of cooperation cannot be deemed "substantial". It is not appropriate to attach any weight to the convicted person's cooperation with the Prosecution in the assessment of the application for early release.[1601]

[1594] *Prosecutor v Bisengimana*, No. MICT-12-07, *Decision of the President on Early Release of Paul Bisengimana…*(11 December 2012) at para, 30; *Prosecutor v Cesic*, No. MICT-14-66-ES, *Decision of the President on Early Release of Ranko Cesic* (28 May 2014) at para. 18
[1595] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 72
[1596] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 73
[1597] *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 67
[1598] *Prosecutor v Serushago*, No. MICT-12-28-ES, *Decision of the President on Early Release of Omar Serushago* (13 December 2012) at para. 30
[1599] *Prosecutor v Lazarevic*, No. MICT-14-67-ES3, *Decision of the President on the Early Release of Vladimir Lazarevic* (3 December 2015) at para. 22
[1600] *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision of the President on the Early Release of Dragoljub Kunarac* (2 February 2017) at para. 59

Cooperation taken into consideration by the sentencing court can also be considered in an application for early release.[1602]

Prisoner would be given consideration for having voluntarily surrendered and having provided two statements to the prosecution.[1603]

Voluntary surrender and giving statements to the prosecution would not be considered as cooperation where no subsequent cooperation was forthcoming.[1604]

Prisoner who reached out to prosecution during his appeal and offered to cooperate would be given some credit for his cooperation, even where the prosecution deemed that his information would not be of value.[1605]

An accused person is under no obligation to plead guilty or in the absence of a plea agreement to cooperate with the prosecution. Therefore, the accused's lack of cooperation was a neutral factor for early release.[1606]

Testifying as a defence witness does not constitute cooperation with the prosecution.[1607]

Testifying in one's own defence and otherwise participating in one's own proceedings does not constitute cooperation with the prosecution.[1608]

[1601] *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 67

[1602] *Prosecutor v Lazarevic*, No. MICT-14-67-ES3, *Decision of the President on the Early Release of Vladimir Lazarevic* (3 December 2015) at para. 23; *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 73

[1603] *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 74

[1604] *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 72

[1605] *Prosecutor v Lukic,* No. MICT-13-52-ES.1, *Decision of the President on Request for Pardon or Transfer to Another Enforcement State* (7 September 2016) at para. 38

[1606] *Prosecutor v Pandurevic*, No. MICT-15-85-ES.1, *Decision of the President on the Early Release of Vinko Pandurevic* (10 April 2015) at para. 28; *Prosecutor v Munyakazi*, No. MICT-12-18-ES.1, *Decision of the President on the Early Release of Youssouf Munyakazi* (22 July 2015) at para. 21; *Prosecutor v Nikolic,* No. MICT-15-85-ES.4, *Decision of the President on the Application for Early Release and Other Relief of Drago Nikolic* (13 October 2015) at para. 28; *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 49; *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019) at para. 55; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), paras. 80-82

[1607] *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision of the President on the Early Release of Stanisic Galic* (18 January 2017) at para. 33; *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Early Release of Stanislav Galic* (26 June 2019) at para. 40

[1608] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 81

delay in decision

Although the former Practice Direction provided that the President should issue a decision on an early release application at least 7 days prior to the service of 2/3 of the convicted person's sentence where possible, this did not confer a right of a convicted person to a decision at that time.[1609]

Delay in decision that was issued 18 months after convicted person had served 2/3 of his sentence and 26 months after he had filed his request for early release was due to need for President to be fully informed before making his decision.[1610]

Request for immediate early release denied where efforts to ascertain the prisoner's medical condition were ongoing and his condition was not shown to be life-threatening.[1611]

The mere passage of time cannot constitute sufficient grounds for early release.[1612]

double counting

The Mechanism's legal framework and practice explicitly allow for factors taken into account at the sentencing stage to also be considered when determining whether early release is appropriate.[1613]

earlier than 2/3

Release prior to having served two-thirds of his sentence requires the establishment of compelling or exceptional circumstances.[1614]

[1609] *Prosecutor v Semanza*, No. MICT-13-36-ES.2, *Decision on Laurent Semanza's Motions and Request for Supplemental Legal Aid* (17 September 2020) at para. 12

[1610] *Prosecutor v Semanza*, No. MICT-13-36-ES.2, *Decision on Laurent Semanza's Motions and Request for Supplemental Legal Aid* (17 September 2020) at para. 12

[1611] *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on the Urgent Request for an Early Release Decision* (12 February 2024) at p. 4

[1612] *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 30; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 33; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 30; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 30; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 31; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 32

[1613] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 75

[1614] *Prosecutor v Sreten Lukic*, No. MICT-14-67-ES.4, *Decision of the President on the Early Release of Sreten Lukic* (17 September 2018) at para. 18; *Prosecutor v Krstic*, No. MICT-13-46-ES.1, *Decision on the Early Release of Radislav Krstic* (10 September 2019) at para. 25; *Prosecutor v Munyakazi*, No. MICT-12-18-ES.2, *Decision on the Application of Yusuf Munyakazi for Early Release* (28 November 2019) at p. 3; *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on the Application of Dominique*

Eligibility for early release upon having served two-thirds of the sentence is essentially a pre-condition,[1615] or admissibility factor,[1616] or an admissibility threshold.[1617]

Ntawukulilyayo for Early Release (8 January 2020) at p. 6; *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on the Early Release of Milan Martic* (7 August 2020) at p. 4; *Prosecutor v Nchamihigo*, No, MICT-12-19-ES-1, *Decision on Simeon Nchamahigo's Application for Commutation of Sentence* (31 December 2020) at p. 4; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on Sentence Remission and Early Release of Goran Jelesic* (11 March 2021) at para. 44; *Prosecutor v Nyiramasuhuko,* No. MICT-15.90-ES.3, *Decision on the Application for Early Release of Pauline Nyiramasuhuko* (10 November 2021) at p. 4; *Prosecutor v Ndayambaje,* No. MICT-15.90-ES.1, *Decision on the Application for Early Release of Elie Ndayambaje* (15 November 2021) at p. 4; *Prosecutor v Milan Lukic*, No. MICT-13-52-ES.1, *Decision on the Application for Early Release of Milan Lukic* (24 June 2022) at p.4; *Prosecutor v Popovic*, No, MICT-15-85-ES.2, *Decision on the Application for Early Release of Vujadin Popovic* (30 January 2023) at p. 4; *Prosecutor v Kanyarukiga*, No. MICT-12-26, *Decision on the Applications for Early Release and Commutation of Sentence of Gaspard Kanyarukiga* (9 June 2023) at p. 5; *Prosecutor v Ngirumpatse*, No. MICT-14-73-ES.2, *Decision on the Application for Commutation of Sentence or Early Release of Mathieu Ngirumpatse* (9 October 2024) at para. 23

[1615] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 21; *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on the Application of Dominique Ntawukulilyayo for Early Release* (8 January 2020) at p. 5; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 29

[1616] *Prosecutor v Martic*, No. MICT-14-82-ES, *Decision on the Early Release of Milan Martic* (7 August 2020) at p. 4

[1617] *Prosecutor v Popovic*, No, MICT-15-85-ES.2, *Decision on the Early Release of Vujadin Popovic* (30 December 2020) at p. 4; *Prosecutor v Nchamihigo*, No, MICT-12-19-ES-1, *Decision on Simeon Nchamahigo's Application for Commutation of Sentence* (31 December 2020) at p. 3; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on Sentence Remission and Early Release of Goran Jelesic* (11 March 2021) at para. 41; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Early Release of Radivoje Miletic* (5 May 2021) at para. 29; *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 39; *Prosecutor v Nyiramasuhuko,* No. MICT-15.90-ES.3, *Decision on the Application for Early Release of Pauline Nyiramasuhuko* (10 November 2021) at p. 3; *Prosecutor v Ndayambaje,* No. MICT-15.90-ES.1, *Decision on the Application for Early Release of Elie Ndayambaje* (15 November 2021) at p. 3; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 32; *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Sentence Remission and Early Release of Milomir Stakic* (22 December 2021) at para. 29; *Prosecutor v Petkovic*, No. MICT-17-112-ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 26; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 28; *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 32; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 29; *Prosecutor v Milan Lukic*, No. MICT-13-52-ES.1, *Decision on the Application for Early Release of Milan Lukic* (24 June 2022) at p.3; *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at para. 20; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 28; *Prosecutor v Popovic*, No, MICT-15-85-ES.2, *Decision on the Application for Early Release of Vujadin Popovic* (30 January 2023) at p. 3; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 29; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 27; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 26; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 25; *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the*

Reconsideration of denial of early release denied where convicted person had not yet served 2/3 of his sentence and failed to present compelling or exceptional circumstances, rendering it unnecessary to obtain all the information set forth in the Practice Direction.[1618]

The two-thirds threshold applies irrespective of where a convicted person serves his or her sentence and whether an early release matter is brought before the President through a notification from the relevant enforcement State or a direct petition by the convicted person.[1619]

It is only necessary to seek information on an application for early release or commutation from the enforcement state and other stakeholders when the applicant has reached 2/3 of his sentence.[1620]

Application for Release of Ratko Mladic (10 May 2024) at para. 27; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 26; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 31; *Prosecutor v Galic,* No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (4 December 2024) at p. 3; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 28; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 29; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 30

[1618] *Prosecutor v Musema,* No. MICT-12-15-ES.1, *Decision on the Request for Reconsideration of the Decision Denying Early Release* (10 January 2020) at pp. 2-3; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Early Release of Dragomir Milosevic* (29 July 2020) at p. 4; *Prosecutor v Prlic*, No. MICT-17-112-ES.3, *Decision on the Early Release of Jdranko Prlic* (23 March 2021); *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Early Release of Stanislas Galic* (24 March 2021) at para. 34; *Prosecutor v Nyiramasuhuko,* No. MICT-15.90-ES.3, *Decision on the Application for Early Release of Pauline Nyiramasuhuko* (10 November 2021) at p. 3; *Prosecutor v Ndayambaje,* No. MICT-15.90-ES.1, *Decision on the Application for Early Release of Elie Ndayambaje* (15 November 2021) at pp. 3-4; *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (17 June 2022) at p. 5; *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (6 November 2023) at p. 3; *Prosecutor v Galic,* No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (4 December 2024) at p. 4; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 28

[1619] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 22; *Prosecutor v Nchamihigo*, No, MICT-12-19-ES-1, *Decision on Simeon Nchamahigo's Application for Commutation of Sentence* (31 December 2020) at p. 3; *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Sentence Remission and Early Release of Milomir Stakic* (31 December 2020) at para. 42; *Prosecutor v Galic,* No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (4 December 2024) at p. 4

[1620] *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Sentence Remission and Early Release of Milomir Stakic* (31 December 2020) at para. 43; *Prosecutor v Nyiramasuhuko,* No. MICT-15.90-ES.3, *Decision on the Application for Early Release of Pauline Nyiramasuhuko* (10 November 2021) at p. 3; *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Sentence Remission and Early Release of Milomir Stakic* (22 December 2021) at para. 30; *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (17 June 2022) at p. 3; *Prosecutor v Milan Lukic*, No. MICT-13-52-ES.1, *Decision on the Application for Early Release of Milan Lukic* (24 June 2022) at p.3; *Prosecutor v Popovic*, No, MICT-15-85-ES.2, *Decision on the Application for Early Release of Vujadin Popovic* (30 January 2023) at p. 3; *Prosecutor v Kanyarukiga*, No. MICT-12-26, *Decision on the*

Compelling humanitarian grounds are often due to a prisoner's health condition.[1621]

"Advanced age" and "chronic illnesses", on their own, would usually be insufficient to satisfy the high threshold of commutation of sentence or early release on the basis of compelling humanitarian grounds.[1622]

The possible transfer to Rwanda as a new enforcement State does not constitute a compelling or exceptional circumstance in relation to whether a convicted person should be released early.[1623]

equality

For purposes of early release, all prisoners of the mechanism should be treated equally regardless of whether they were convicted at the ICTR, ICTY, or by the Mechanism itself.[1624]

All convicts of the Mechanism shall be eligible for release after serving 2/3 of the sentence.[1625]

Applications for Early Release and Commutation of Sentence of Gaspard Kanyarukiga (9 June 2023) at p. 5; *Prosecutor v Galic,* No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (4 December 2024) at p. 4; *Prosecutor v Ngirabatware*, No. MICT-12-29-ES.1, *Decision on the Application for Commutation of Sentence or Early Release of Augustin Ngirabatware* (11 August 2026) at p. 3

[1621] *Prosecutor v Ngirumpatse*, No. MICT-14-73-ES.2, *Decision on the Application for Commutation of Sentence or Early Release of Mathieu Ngirumpatse* (9 October 2024) at para. 23

[1622] *Prosecutor v Ngirumpatse*, No. MICT-14-73-ES.2, *Decision on the Application for Commutation of Sentence or Early Release of Mathieu Ngirumpatse* (9 October 2024) at para. 25

[1623] *Prosecutor v Kamuhanda*, No. MICT-13.33-ES.1, *Decision on the Application for Early Release of Jean de Dieu Kamuhanda* (23 July 2026) at p. 3; *Prosecutor v Kambanda*, No. MICT-13-52-ES.1, *Decision on the Application of Early Release of Jean Kambanda* (23 July 2026) at p. 4

[1624] *Prosecutor v Bisengimana*, No. MICT-12-07, *Decision of the President on Early Release of Paul Bisengimana…*(11 December 2012) at para, 17; *Prosecutor v Serushago*, No. MICT-12-28-ES, *Decision of the President on Early Release of Omar Serushago* (13 December 2012) at para. 16; *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 31; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 28; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 28; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 29

[1625] *Prosecutor v Bisengimana*, No. MICT-12-07, *Decision of the President on Early Release of Paul Bisengimana…*(11 December 2012) at para, 20; *Prosecutor v Serushago*, No. MICT-12-28-ES, *Decision of the President on Early Release of Omar Serushago* (13 December 2012) at para. 29; *Prosecutor v Ruzindana*, No. MICT-12-10-ES, *Decision of the President on Early Release of Obed Ruzindana* (13 March 2014) at para. 14; *Prosecutor v Pandurevic*, No. MICT-15-85-ES.1, *Decision of the President on the Early Release of Vinko Pandurevic* (10 April 2015) at para. 20; *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on Ntawukulilyayo's Request for Legal Aid* (12 June 2018) at fn. 25; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 29; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 39

Early release should be exceptional.[1626]

Rule 151 mandates consistency of treatment of similarly situated prisoners by the ICTR and ICTY, not as a matter of convenience, but insofar as it is necessary in the interests of justice. A proper exercise of the President's discretion would require consistency with past practice and adherence to the terms of Rule 151.[1627]

The Mechanism has inherited a long-standing practice of granting requests for early release upon completion of two-thirds of a sentence absent particular circumstances that warrant against it.[1628]

The President considers comparison with the cases of other persons similarly situated to be "distinctly unhelpful" and "inconsequential". Each case presents unique circumstances that must be considered on their own merits.[1629]

[1626] *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 33; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 34; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 32; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 29; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 31; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 31; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 34; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 31; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 32

[1627] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 33; *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019) at para. 41

[1628] *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019) at para. 38

[1629] *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 46; *Prosecutor v Semanza*, No. MICT-13-26-ES.2, *Decision on Laurent Semanza's Application for Early Release* (18 September 2020) at para. 43; *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 40; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Early Release of Radivoje Miletic* (5 May 2021) at para. 42; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 44; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 42; *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at para. 35; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 44; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 41; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 41; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 45; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 43; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 43; *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on the Application for Early Release of Alfred Musema* (12 January 2026) at para. 39

family support

The fact that the convicted person has family to support him weighs in favour of his early release.[1630]

fugitive status

Fact that convicted person evaded arrest for six years provided serious concerns that he could be trusted to obey the conditions of early release.[1631]

gravity of the offence

The gravity of the offence is a factor of fundamental importance.[1632]

It is permissible to consider the gravity of the offence as a factor for early release even where this factor was used as an aggravating factor when determining the sentence. Likewise, it is permissible to consider cooperation with the prosecution and expressions of remorse for early release even where they were used as mitigating factors at sentencing.[1633]

[1630] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 77; *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 69

[1631] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 55

[1632] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 36; *Prosecutor v Brdanin*, No. MICT-13-48-ES , *Decision on the Application of Radislav Brdanin for Early Release* (1 April 2022) at para. 24; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 33; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 105; *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 37; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 34; *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at para. 24; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 34; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 35; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 41; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 32; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 35; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 32; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 33; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 34

[1633] *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 38; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 32

Extremely high gravity of these crimes weighs very strongly against granting early release.[1634]

The graver the criminal conduct in question, the more compelling a demonstration of entitlement to early release should be. In other words, while the gravity of the crimes by itself cannot be seen as depriving a convicted person of an opportunity to argue his or her case for early release, it may be said to determine the threshold that the arguments in favour of an early release must reach.[1635]

The graver the criminal conduct in question the more compelling a demonstration of rehabilitation should be.[1636]

guilty plea

The entry of a guilty plea indicates a degree of cooperation with the prosecution, as it beneficially impacts the efficient administration of justice. This factor has however generally been deemed "neutral" in the assessment of early release applications absent a demonstration of substantial cooperation with the prosecution.[1637]

[1634] *Prosecutor v Bagosora*, No. MICT-12-26-ES.1, *Decision on the Early Release of Theoneste Bagosora* (1 April 2021) at para. 38

[1635] *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Early Release of Radivoje Miletic* (5 May 2021) at para. 39; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 36; *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 30; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 33; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 105; *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 37; *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at para. 24; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 34; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 35; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 33; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 30; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 32; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 32; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 35; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 32; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 32; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 33; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 34

[1636] *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (3 February 2015) at para. 55

[1637] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 80

health conditions

Health conditions may be properly considered as a factor in favor of early release.[1638]

The condition of a convicted person's health may be considered in the context of an application for early release especially when the seriousness of the condition makes it inappropriate for the person to remain in prison any longer.[1639]

humanitarian emergencies

It is only in exceptional circumstances, such as extraordinary cooperation with the prosecution or humanitarian emergencies, that release earlier than after serving 2/3 of one's sentence will be granted.[1640]

It is essential that the Mechanism show compassion and deference to the highest humanitarian principles.[1641]

Early release on humanitarian grounds denied where convicted person, albeit seriously ill, had only served less than ½ of his sentence.[1642]

[1638] *Prosecutor v Nikolic,* No. MICT-15-85-ES.4, *Decision of the President on the Application for Early Release and Other Relief of Drago Nikolic* (13 October 2015) at para. 29

[1639] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 51; *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Early Release of Stanislav Galic* (26 June 2019) at para. 42; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 90; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 156; *Prosecutor v Milan Lukic*, No. MICT-13-52-ES.1, *Decision on the Application for Early Release of Milan Lukic* (24 June 2022) at p.4; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application for Early Release of Radoslav Brdjanin* (3 September 2022) at p. 2; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 94; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 73; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 79; *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (10 May 2024) at para. 28

[1640] *Prosecutor v Nikolic,* No. MICT-15-85-ES.4, *Decision of the President on the Application for Early Release and Other Relief of Drago Nikolic* (13 October 2015) at para. 14; *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on Ntawukulilyayo's Request for Legal Aid* (12 June 2018) at fn. 25; *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on Alfred Musema's Request for Assignment of Counsel* (14 August 2018) at para. 12; *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Sentence Remission and Early Release of Milomir Stakic* (22 December 2021) at para. 32; *Prosecutor v Simatovic*, No. MICT-15-96-ES.1, *Decision on the Application for Early Release of Franko Simatovic* (29 August 2023) at pp. 3-4

[1641] *Prosecutor v Nikolic,* No. MICT-15-85-ES.4, *Decision of the President on the Application for Early Release and Other Relief of Drago Nikolic* (13 October 2015) at para. 34

[1642] *Prosecutor v Nikolic,* No. MICT-15-85-ES.4, *Decision of the President on the Application for Early Release and Other Relief of Drago Nikolic* (13 October 2015) at para. 35

Early release for health reasons before serving 2/3 of the sentence will only be granted when the person's health has deteriorated to the extent that it cannot be managed by the prison authorities.[1643]

Early release denied where prisoner had not served 30 years on life sentence and no compelling exigent circumstance existed for release before serving 2/3 of the sentence.[1644]

Where convicted person suffered from a terminal illness and had a life expectancy of only a few weeks, continuing enforcement of his sentence would be tantamount to a violation of his internationally guaranteed right not to be subjected to degrading or inhuman treatment or punishment.[1645]

Compelling humanitarian reasons existed for granting early release to prisoner who had served more than 2/3 of his sentence and whose health had seriously deteriorated.[1646]

Compelling humanitarian reasons existed for granting early release to prisoner who had served 90% of his sentence and suffered from physical and mental conditions that could not be humanely managed in a prison setting.[1647]

While compelling humanitarian circumstances existed in case of prisoner who was in the last days of his life due to a combination of illnesses, early release would be denied where the prison environment, including robust medical treatment and care and facilitation of family visits, could adequately provide for the notorious prisoner in the last days of his life.[1648]

If a particular situation requires the release of a convicted person based on compelling humanitarian grounds, it is immaterial whether any of the factors set out in

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[1643] *Prosecutor v Sreten Lukic*, No. MICT-14-67-ES.4, *Decision of the President on the Early Release of Sreten Lukic* (17 September 2018) at para. 36; *Prosecutor v Ngirabatware*, No. MICT-12-29-ES.1, *Decision on the Application for Commutation of Sentence or Early Release of Augustin Ngirabatware* (11 August 2026) at pp. 3-4

[1644] *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on the Application of Alfred Musema related to Early Release* (7 August 2019), p. 4; *Prosecutor v Milan Lukic*, No. MICT-13-52-ES.1, *Decision on the Application for Early Release of Milan Lukic* (24 June 2022) at p. 6; *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (6 November 2023) at p. 3

[1645] *Prosecutor v Popovic et al*, No. MICT-15-85-ES.3, *Decision of the President on the Early Release of Ljubisa Beara* (7 February 2017) at para. 45

[1646] *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application for Early Release of Radoslav Brdjanin* (3 September 2022) at p. 3; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Reasons for the 3 September 2022 Decision on the Application for Early Release of Radoslav Brdjanin* (26 September 2022) at para. 54; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Reasons for the…Decision on the Application for Early Release of Nebojsa Pavkovic* (8 October 2025) at para. 27

[1647] *Prosecutor v Ntawukulilyayo*, No. MICT-13-34, *Decision on the Application for Early Release of Dominique Ntawukulilyayo* (18 February 2026) at para. 59

[1648] *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (14 May 2026) at para. 44; *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Early Release of Ratko Mladic* (20 August 2026) at para. 29

Rule 151 of the Rules weigh in favour of or against the convicted person's early release. Indeed, Early release based on the existence of compelling humanitarian grounds is not dependent on the convicted person's demonstration of rehabilitation or an assessment of the gravity of his or her crimes, for example. In such a scenario it is not the behaviour of the convicted person, but rather the specific and prevailing circumstances, often due to his or her health condition, that will dictate whether the person should be released in accordance with the Mechanism's legal framework.[1649]

Compelling humanitarian reasons existed for granting early release to prisoner who had served less than 2/3 of his sentence, but whose health had seriously deteriorated.[1650]

An application for early release of a prisoner who has served more than 2/3 of his sentence would be considered solely on the issue of compelling humanitarian issues related to the prisoner's health where that was the basis of the application and the references in the submissions to his good behaviour and rehabilitation were too unsubstantiated to be considered.[1651]

Early release denied where the prisoner's medical needs, whilst serious, could be accommodated in a prison setting.[1652]

Early release to Serbia was ordered when it was the only option that would ensure the convicted person could benefit from a final chance to improve his fatal condition, even if only slightly.[1653]

Where convicted person was receiving high-quality medical treatment, his advanced age or health condition was not are serious as to constitute exceptional and compelling circumstances that warrant his release before reaching the eligibility threshold to be considered for early release.[1654]

[1649] *Prosecutor v Simatovic*, No. MICT-15-96-ES.1, *Reasons for the* 29 August 2023 *Decision on the Application for Early Release of Franko Simatovic* (11 September 2023) at para. 38; *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (10 May 2024) at para. 29; *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (29 July 2025) at para. 25; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Reasons for the…Decision on the Application for Early Release of Nebojsa Pavkovic* (8 October 2025) at para. 24

[1650] *Prosecutor v Simatovic*, No. MICT-15-96-ES.1, *Decision on the Application for Early Release of Franko Simatovic* (29 August 2023) at p. 4; *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on the Application for Early Release of Dominic Ntawukulilyayo* (15 July 2024) at para. 28

[1651] *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on the Application for Early Release of Dominic Ntawukulilyayo* (15 July 2024) at para. 27

[1652] *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on the Application for Early Release of Dominic Ntawukulilyayo* (15 July 2024) at para. 39

[1653] *Prosecutor v Simatovic*, No. MICT-15-96-ES.1, *Reasons for the* 29 August 2023 *Decision on the Application for Early Release of Franko Simatovic* (11 September 2023) at para. 49

[1654] *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Early Release of Stanislav Galic* (26 June 2019) at para. 46; *Prosecutor v Ngirumpatse*, No. MICT-14-73-ES.2, *Decision on the Application for Commutation of Sentence or Early Release of Mathieu Ngirumpatse* (9 October 2024) at para. 25; *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (29 July 2025) at para. 40

Applications premised solely on the combination of advanced age and poor health, without further demonstrating the existence of an acute crisis or a life-threatening medical condition, do not meet the threshold of compelling humanitarian grounds.[1655]

83-year old prisoner who had served more than 2/3 of his sentence would not be released on humanitarian grounds where, although State authorities stated that early release was justified, taking into account the patient's age and chronic health conditions, those conditions were not life-threatening and were being adequately treated in the prison.[1656]

Convicted person's health problems did not rise to the level of compelling or exceptional circumstances warranting early release before serving 2/3 of one's sentence.[1657]

Imprisonment in a country where family visits were impossible due to the distance and cost was not an exceptional circumstance warranting early release where, although the journey may be expensive and inconvenient, this difficulty does not rise to the level of constituting a violation of the right to maintain family ties.[1658]

innocence

Submissions which challenge the final judgement are irrelevant to showing that any exceptional or compelling circumstances exist warranting early release before having served two-thirds of a sentence.[1659]

Convicted person who had served more than 30 years of a life sentence, had condemned the genocide and been a model prisoner would nevertheless not be granted early release because he continued to maintain his innocence and therefore was not sufficiently rehabilitated.[1660]

[1655] *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (5 December 2025) at p. 4; *Prosecutor v Ngirabatware*, No. MICT-12-29-ES.1, *Decision on the Application for Commutation of Sentence or Early Release of Augustin Ngirabatware* (11 August 2026) at p. 4

[1656] *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (5 December 2025) at p. 4

[1657] *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Early Release of Stanislas Galic* (24 March 2021) at para. 30; *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (10 May 2024) at para. 38; *Prosecutor v Ngirumpatse*, No. MICT-14-73-ES.2, *Decision on the Application for Commutation of Sentence or Early Release of Mathieu Ngirumpatse* (9 October 2024) at para. 27

[1658] *Prosecutor v Milan Lukic*, No. MICT-13-52-ES.1, *Decision on the Application for Early Release of Milan Lukic* (24 June 2022) at p. 5

[1659] *Prosecutor v Milan Lukic*, No. MICT-13-52-ES.1, *Decision on the Application for Early Release of Milan Lukic* (24 June 2022) at p. 4

[1660] *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on the Application for Early Release of Alfred Musema* (12 January 2026) at para. 78

life sentences

A person convicted by the ICTR, the ICTY, or the Mechanism and sentenced to a term of life imprisonment may be considered eligible for early release. Such release will generally be considered after service of 30 years.[1661]

It would be unjust for someone sentenced to life imprisonment to be considered eligible for early release before a person sentenced to a fixed term of years.[1662]

The 47-year sentences handed down in the *Nyiramasuhuko et al*. Appeal Judgement is of no relevance to the case of a person's whose 2/3 threshold had previously been fixed by reference to a sentence of 45 years of imprisonment. The consequences of the *Nyiramasuhuko et al* sentence as it may impact future applications for early release of persons serving a sentence of life imprisonment will be discussed if required.[1663]

The President does not intend to depart from the decision making a person serving a life sentence eligible for early release after serving 30 years.[1664] However, this decision is case-specific and does not set a precedent for other persons serving a life sentence.[1665]

Where the 30 year eligibility for early release of the convicted person (2/3 of 45 years) had been set in his previous application for early release, that would be maintained despite the fact that a 47-year sentence was now the longest sentence.[1666]

post-release plans

Rehabilitation involves indicators of readiness and preparedness to reintegrate into society. For convicted persons who are eligible to be considered for pardon,

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[1661] *Prosecutor v Galic*, No. MICT-14-83-ES, *Reasons for the President's Decision to Deny the Early Release of Stanisic Galic…*(23 June 2015) at para. 24

[1662] *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Early Release of Stanislav Galic* (26 June 2019) at para. 32

[1663] *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Early Release of Stanislav Galic* (26 June 2019) at para. 33; *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on the Application of Alfred Musema related to Early Release* (7 August 2019), p. 4; *Prosecutor v Popovic*, No, MICT-15-85-ES.2, *Decision on the Early Release of Vujadin Popovic* (30 December 2020) at p. 4; *Prosecutor v Popovic*, No, MICT-15-85-ES.2, *Decision on the Application for Early Release of Vujadin Popovic* (30 January 2023) at p. 4

[1664] *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (17 June 2022) at p. 4; *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (6 November 2023) at p. 3; *Prosecutor v Galic,* No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (4 December 2024) at p. 3

[1665] *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Application for Early Release of Stanislas Galic* (6 November 2023) at p. 4

[1666] *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on the Application for Early Release of Alfred Musema* (12 January 2026) at para. 17

commutation of sentence, or early release, the President will therefore generally consider the convicted person's post-release plans, including the envisaged place of residence.[1667]

If the convicted person intends to return to the region where his or her crimes were committed, extra scrutiny will be called for, keeping in mind that the ICTR, the ICTY, and the Mechanism were established to contribute to the restoration and maintenance of peace and security. It is generally not appropriate to enable convicted persons to return to the affected regions before they have served their full sentence, without having demonstrated a certain degree of rehabilitation, including that their release will not endanger peace and security in the envisaged place of residence.[1668]

A convicted person who intends to return to the region where his or her crimes were committed before having served his or her full sentence will ordinarily have to demonstrate a greater degree of rehabilitation.[1669]

[1667] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 40; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 50; *Prosecutor v Semanza*, No. MICT-13-26-ES.2, *Decision on Laurent Semanza's Application for Early Release* (18 September 2020) at para. 47; *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 44; *Prosecutor v Bagosora*, No. MICT-12-26-ES.1, *Decision on the Early Release of Theoneste Bagosora* (1 April 2021) at para. 44; *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 53; *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 42; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 46; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 119; *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at para. 39

[1668] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 40; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 50; *Prosecutor v Semanza*, No. MICT-13-26-ES.2, *Decision on Laurent Semanza's Application for Early Release* (18 September 2020) at para. 47; *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 44; *Prosecutor v Bagosora*, No. MICT-12-26-ES.1, *Decision on the Early Release of Theoneste Bagosora* (1 April 2021) at para. 44; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Early Release of Radivoje Miletic* (5 May 2021) at para. 46; *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 53; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 46; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 119; *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 53; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 46; *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at para. 39

[1669] *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 50; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 53; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 47; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 47; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 51; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July

Fact that it has been indicated that the convicted person may face furtherr domestic charges weighs against whether convicted person can be trusted to comply with conditions of early release.[1670]

While the convicted person has demonstrated some level of rehabilitation and has offered some cooperation to war crimes prosecution entities, the high gravity of crimes militates very strongly against his early release. Moreover, there are serious concerns as to whether he has been sufficiently rehabilitated such that, if released early, he could be trusted to comply with any necessary conditions. The importance of this consideration becomes particularly acute considering the heightened risk to witnesses should he be released early.[1671]

The convicted person has not proffered any evidence of actions aimed at fostering reconciliation in Rwanda. Moreover, his statement is ambiguous in this respect, as it both pledges to take every opportunity to promote reconciliation in Rwanda while simultaneously committing to refrain from engaging with Rwanda and its ongoing reconciliation process. Although it is not a precondition for early release to take action to foster reconciliation in Rwanda or otherwise seek forgiveness, it does not escape notice that his first efforts towards such activity arose only on account of the application for early release.[1672]

The convicted person's close family ties will facilitate his attempts to reintegrate into society, as will the extent to which he has evidently contemplated and prepared himself for what exactly he would do following his release. I also take into consideration reports of his exemplary behaviour in prison, as well as his community-oriented activity while incarcerated, as further evidencing his prospects of reintegration. Consequently, I believe, if released, he would have good prospects of8reintegrating into society successfully.[1673]

President ordered early release applicant to supplement application by indicating where he intended to live if released.[1674]

2024) at para. 48; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 50; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 47

[1670] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 78; *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 42

[1671] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 97

[1672] *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 65

[1673] *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 68

[1674] *Prosecutor v Ndayambaje*, No. MICT-15-90-ES.1, *Order for Information regarding the Application for Early Release of Elie Ndayambaje* (3 July 2026)

provisional release

Time on provisional release is not counted towards fulfilling the requirement of serving 2/3 of a sentence.[1675]

public filings

Early release petitions should be filed publicly, with redactions as necessary to maintain confidentiality of the prisoner's personal circumstances and medical information.[1676]

re-application

Convicted person whose early release after 2/3 was denied was encouraged to reapply two years after the decision, and to engage in the meantime in violence training and psychotherapy while in prison, to return to good behaviour, any other action that demonstrates a critical reflection on his crimes and the victims of his crimes.[1677]

rehabilitation

The convicted person has the burden to convince the President that he or she can be considered rehabilitated, and that the President should exercise his discretion responsibly to release him or her before the full sentence is served.[1678]

[1675] *Prosecutor v Lazarevic*, No. MICT-14-67-ES3, *Decision of the President on the Early Release of Vladimir Lazarevic* (3 December 2015) at para. 17; *Prosecutor v Miletic*, No.MICT-15-85-ES.5, *Decision of the President on the Early Release of Radivoje Miletic* (27 July 2017) at para. 22; *Prosecutor v Miletic*, No. MICT-15-95-ES.5, *Decision of the President on the Early Release of Radivoje Miletic* (23 October 2018) at para. 24

[1676] *Prosecutor v Miletic*, No. MICT-14-85-ES.5, *Decision on Prosecution Request for a Public Redacted Version of Radovoje Miletic's Early Release Application* (31 July 2019); *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on Prosecution Request for Public Redacted Version of Early Release Application* (13 August 2019); *Prosecutor v Lukic*, No. MICT-14-67-ES.4, *Decision on Prosecution Request for Public Redacted Versions of Early Release Application and Related Documents* (13 August 2019)

[1677] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at paras. 49,61,64,84

[1678] *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 49; *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 43; *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 52; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 47; *Prosecutor v Brdanin*, No. MICT-13-48-ES , *Decision on the Application of Radislav Brdanin for Early Release* (1 April 2022) at para. 38; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 118; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 48; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 45; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 45; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 49; *Prosecutor v Prlic*, No.

It is not appropriate to look at the rehabilitation of perpetrators of genocide, crimes against humanity, or war crimes through the same paradigm as rehabilitation of perpetrators of ordinary domestic crimes.[1679]

The claim that the assessment of his rehabilitation should rest with the prison authorities in the enforcement State overlooks the fact that it is for the President to address such matters, in accordance with the Mechanism's framework, which takes into account the unique nature of international crimes.[1680]

Rehabilitation is typically a lengthy process that begins after the commission of crimes and often only after a final conviction. Therefore, a convicted person's efforts to prevent crimes during the conflict is not relevant to rehabilitation.[1681]

Rehabilitation entails that a convicted person can be trusted to successfully and peacefully reintegrate into a given society. Consequently, in the context of these crimes, good behaviour in prison cannot, on its own, demonstrate rehabilitation. This would require an analysis of the conditions in the community he intends to live in and of the potential impact that his return may have.[1682]

MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 43

[1679] *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Early Release of Radivoje Miletic* (5 May 2021) at para. 44; *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 51; *Prosecutor v Brdanin*, No. MICT-13-48-ES , *Decision on the Application of Radislav Brdanin for Early Release* (1 April 2022) at para. 37; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 44; *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at para. 37; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 48; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 51; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 45; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 45; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 49; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 47; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 48; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 45; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (3 February 2015) at para. 30; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 43; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 47; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 44

[1680] *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 60

[1681] *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 54

[1682] *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Early Release of Stanislav Galic* (26 June 2019) at para. 38; *Prosecutor v Krstic*, No. MICT-13-46-ES.1, *Decision on the Early Release of Radislav Krstic* (10 September 2019) at para. 30; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early*

Indicators of rehabilitation include the acceptance of responsibility for the crimes a person was convicted for or for actions which enabled the commission of the crimes; signs of critical reflection of the convicted person upon his or her crimes; public or private expressions of genuine remorse or regret; actions taken to foster reconciliation or seek forgiveness; evidence that a convicted person has a positive attitude towards other nationalities, bearing in mind the discriminative motive of some of the crimes; participation in rehabilitation programmes in prison; a person's mental health status; and/or a positive assessment of a convicted person's prospects to successfully reintegrate into society.[1683]

Rehabilitation is a process, rather than a definite result. It is also just one factor that the President will consider alongside the other factors set out in this decision.

Release of Miroslav Bralo (31 December 2019) at para. 38; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 48

[1683] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 39; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 49; *Prosecutor v Semanza*, No. MICT-13-26-ES.2, *Decision on Laurent Semanza's Application for Early Release* (18 September 2020) at para. 46; *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 43; *Prosecutor v Bagosora*, No. MICT-12-26-ES.1, *Decision on the Early Release of Theoneste Bagosora* (1 April 2021) at para. 43; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Early Release of Radivoje Miletic* (5 May 2021) at para. 47; *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 52; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 47; *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 41; *Prosecutor v Brdanin*, No. MICT-13-48-ES , *Decision on the Application of Radislav Brdanin for Early Release* (1 April 2022) at para. 38; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 45; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 118; *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 52; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 45; *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at para. 38; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 47; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 50; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 44; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 44; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 48; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 46; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 47; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 44; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (3 February 2015) at para. 29; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 42; *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at para. 46; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 43

Conversely, there may be instances where, despite a lack of sufficient evidence of rehabilitation, he may consider a pardon, commutation of sentence, or early release to be appropriate considering the prevalence of other factors.[1684]

Statements from persons who know the convicted person for a long time were not entitled to much weight where they expressed the sentiments in identical language, calling into question whether they accurately reflect the views of each individual.[1685]

Completion of a course devoted to preventing aggression and violence was a positive indicator of rehabilitation.[1686]

Insufficient evidence of rehabilitation existed where prisoner was involved in altercations with prison staff and other inmates, possessed narcotics, and viewed himself as a victim in these incidents.[1687]

Failure to accept responsibility, and, in fact, minimizing his responsibility for the crimes, indicated that the prisoner was insufficiently rehabilitated to integrate into society.[1688]

Convicted person's expressions of apology during the proceedings were inadequate to demonstrate true remorse where prison authorities reported that he distanced himself from the past and spoke reluctantly about his crimes.[1689]

[1684] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 41; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 51; *Prosecutor v Semanza*, No. MICT-13-26-ES.2, *Decision on Laurent Semanza's Application for Early Release* (18 September 2020) at para. 48; *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 45; *Prosecutor v Bagosora*, No. MICT-12-26-ES.1, *Decision on the Early Release of Theoneste Bagosora* (1 April 2021) at para. 45; *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 54; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 49; *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 43; *Prosecutor v Brdanin*, No. MICT-13-48-ES , *Decision on the Application of Radislav Brdanin for Early Release* (1 April 2022) at para. 40; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 47; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 120; *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 54; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 47; *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at para. 40

[1685] *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 76

[1686] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 63

[1687] *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 65

[1688] *Prosecutor v Bagosora*, No. MICT-12-26-ES.1, *Decision on the Early Release of Theoneste Bagosora* (1 April 2021) at para. 46; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 140

Being mindful of disturbing instances of public glorifications of persons convicted by the ICTY and/or the Mechanism in the region of the former Yugoslavia, I accord particular importance to the issue of whether a person who publicly denies his crimes may successfully reintegrate into society.[1690]

Prisoner who acknowledged genocide and expressed his sympathy to the victims, but did not admit his own crimes, showed insufficient signs of rehabilitation and was not suitable for early release.[1691]

Showing some signs of critical reflection, apologising publicly during the appeal hearing, unqualified praise from prison authorities, denouncing politicians who engage in the glorification of persons convicted by the ICTY, refusing to discuss his case with the media, voluntarily enrolling and completing a, rehabilitation programme, maintaining close ties with his family, and has affirming his commitment to comport with all reasonable conditions and to uphold demonstrates a fair level of rehabilitation.[1692]

remorse

Remorse requires acceptance of some measure of moral blameworthiness for personal wrongdoing, even if it falls short of the admission of criminal responsibility or guilt.[1693]

A letter sent to the President in support of an early release application should not be interpreted in isolation. Any such letter should be substantiated by positive actions taken by the convicted person which indicate that he or she has critically reflected upon his or her crimes.[1694]

There is a strong incentive for statements to be made opportunistically by convicted persons for the purpose of supporting applications for early release. The fact remains that words are just that—words—and their sincerity must be judged by analysing the overall context in which they were said, assessing whether they are reflected in concrete and verifiable actions taken by the convicted person, and considering the timing

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[1689] *Prosecutor v Stanisic*, No. MICT-13-53-ES.2, *Decision on the Application for Early Release of Mico Stanisic* (17 July 2025) at paras. 55-57
[1690] *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 64
[1691] *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 133
[1692] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 63
[1693] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 60
[1694] *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 61; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 62

of such actions.[1695]

A statement made or referred to in support of an early release application should not be considered in isolation from its greater context. The content of any such statement should be corroborated by positive actions taken by the convicted person, which indicate that he or she has critically reflected upon his or her crimes and is genuinely remorseful. Evidencing the rehabilitation process is indeed a crucial aspect, which helps to differentiate genuine expressions of remorse or regret from more opportunistic ones.[1696]

Determining the degree of rehabilitation of a convicted person, especially when convicted for international crimes which additionally have ideological and political dimensions, is a complex task.[1697]

A convicted person is aware that his interactions with prison authorities are monitored for the purposes of early release.[1698]

In attempting to assess the sincerity of a convicted person's expressions of remorse and regret, the evaluations provided by psychological and psychiatric prison services in enforcement States can play an important role, both due to their expertise in analysing a person's mental state and having had the opportunity to observe a convicted person for several years.[1699]

The professional evaluation and assessments of the prison's psychological and psychiatric services concerning the defendant's efforts at rehabilitation are remarkable. These professionals have been engaging with him for a number of years in his processing of his past criminal conduct and have had an insider view of his rehabilitation process. Their expertise on the subject of rehabilitation, coupled with the detailed reporting and explanations provided in this regard, warrant considerable deference in the assessment of the defendant's rehabilitation.[1700]

[1695] *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (3 February 2015) at para. 46; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 56

[1696] *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 53; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 57; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 53; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (3 February 2015) at para. 38; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 49

[1697] *Prosecutor v Stojic,* No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (3 November 2025) at para. 45

[1698] *Prosecutor v Stojic,* No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (3 November 2025) at para. 45

[1699] *Prosecutor v Stojic,* No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (3 November 2025) at para. 45

[1700] *Prosecutor v Stojic,* No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (3 November 2025) at para. 49

not a requirement

While there is limited case law of the ICTY which provides for remorse as a primary requirement for commutation of sentence specifically, remorse is not generally considered as such. It is mainly considered as just one of several factors that may be considered.[1701]

Acceptance of responsibility does not constitute a legal requirement to demonstrate rehabilitation, let alone serve as a precondition for early release.[1702]

The acceptance of responsibility for one's own crimes, while not a legal requirement, is an important factor in assessing a convicted person's progress towards rehabilitation. Even where the convicted person maintains his or her innocence, it is still incumbent upon them to convincingly establish that granting early release would be a responsible exercise of discretion.[1703]

Remorse is not a determining factor in determining early release applications. A prisoner's demonstration of rehabilitation does not require that remorse must be present.[1704]

remorse found

Despite continuing to deny that he committed the crimes for which he was convicted, the fact that the prisoner was social, cooperative, and has family to support him upon release suggests that he is capable of reintegrating into society and is not at risk of reoffending if he is released. He does not deny the existence of genocide in Rwanda

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[1701] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 44

[1702] *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 95; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 70; *Prosecutor v Brdanin*, No. MICT-13-48-ES , *Decision on the Application of Radislav Brdanin for Early Release* (1 April 2022) at para. 48; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 62; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 57; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 56; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 59; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 56; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 52; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 56; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 53; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 51

[1703] *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on the Application for Early Release of Alfred Musema* (12 January 2026) at para. 61

[1704] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 44

and condemned the massive slaughter that occurred. This demonstrates some signs of rehabilitation and counts in favour of early release.[1705]

While convicted person may not have admitted to his crimes, the fact that the convicted person presented a critical view of the crimes he was convicted of was considered a positive factor.[1706]

It was considered particularly important that the convicted person had the courage to publicly admit the crimes he committed and to accept the judgements of the ICTY convicting him for them. This approach is not only a very relevant indicator of rehabilitation but can also directly contribute to easing tensions in the former Yugoslavia, countering the revisionism so often fuelled by politicians in the Western Balkans.[1707]

Apology to victims and expression of sorrow for victims' suffering was given positive weight in the application for early release.[1708]

Public expressions of remorse by convicted person during his trial and appeal constituted a positive indicator of rehabilitation.[1709]

remorse not found

The fact that the convicted person appears to have begun to reflect upon his crimes, the circumstances that led to their commission, and the victims of these crimes are positive. However, his statements remain abstract. Further information that can be provided in this regard will be of great importance for future early release applications.[1710]

The convicted person's statements lack depth, offering vague expressions of regret without addressing the specific harm caused to the victims. His expression of remorse appears formulaic, reinforcing the impression that his regret lacks authenticity. This detachment from the consequences of his actions demonstrates a failure to reflect meaningfully on the impact of his crimes and take complete responsibility for them.[1711]

Convicted person's general acceptance of responsibility for his crimes does not

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[1705] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 45
[1706] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 60
[1707] *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 52
[1708] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 61
[1709] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 59
[1710] *Prosecutor v Krstic*, No. MICT-13-46-ES.1, *Decision on the Early Release of Radislav Krstic* (10 September 2019) at para. 33
[1711] *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 59

sufficiently demonstrate critical reflection or genuine remorse. His self-reflection appears incomplete, and his expressions of remorse have not yet been substantiated by tangible evidence of rehabilitation. Although there have been some positive steps in his rehabilitation process, until he can provide clear, concrete indicators of his introspection and progress beyond verbal assertions, his claims remain largely unverified. He is encouraged to continue engaging with the prison authorities in a sustained process of self-examination and rehabilitation, so that his contemporary commitment to substantive change can be more clearly established.[1712]

The generic nature of the statements contained in the convicted person's letter evidences that he has insufficiently engaged in critical reflection upon his crimes and the role he played in relevant events.[1713]

The difference between the passive role the convicted person ascribes to himself and the more active role he was found to have played in the crimes indicates insufficient critical reflection on his role in the crimes.[1714]

It is concerning that the convicted person still relies on his purported "tremendous efforts to prevent and report crimes" during the conflict, even though the Trial Chamber found that he "did not do anything to reassure and protect the non-Serb population, aside from issuing ineffective and general orders, which were not genuinely meant to be effectuated". In my view, the convicted person's continued insistence on his purported "tremendous efforts" reflects a lack of acceptance of his own criminal responsibility.[1715]

While the convicted person expresses regret and compassion for the victims and their families, these expressions are generic and vague, with no reference to his own actions and how they contributed to the specific crimes for which he was convicted, or how his conduct impacted the victims of his crimes. In fact, he explicitly distances himself from the consequences of his conduct by attributing the suffering caused to the "war" rather than his own personal actions. He also expresses the view that he did not have a choice regarding the actions in which he engaged during the conflict, despite the fact that he was a high-level official, whose role in the implementation of the plan of the joint criminal enterprise was found to be "pivotal" and whose contributions to it were "continuous".[1716]

[1712] *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 60

[1713] *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 61; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 64

[1714] *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 63

[1715] *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan Zupljanin* (18 January 2024) at para. 55

[1716] *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 59

The way the statement is crafted suggests that the convicted person is using the mode of liability he was convicted under – superior responsibility – to distance himself from the crimes, without addressing the full extent of the findings concerning his role in those crimes. While crediting him for the matters he accepts, it would demonstrate a fuller reflection if he were to also address the more direct aspects of his participation in the crimes.[1717]

While skilfully crafted, however, the convicted person's submissions do not yet fully convince me that the change in approach towards his culpability is entirely genuine and the result of critical reflection. In this respect, there remains a lingering impression that his public statement and submissions are reflective of his desire for early release, instead of an accurate portrayal of his true feelings.[1718]

A partial acceptance of responsibility for one's crimes will merit positive weight, but any notable difference between the role a convicted person ascribes to himself or herself, and the role he or she actually played, can likewise suggest that the convicted person has not sufficiently engaged in critical reflection upon his or her crimes.[1719]

An important factor in assessing a convicted person's progress towards rehabilitation is the acceptance of responsibility for his or her crimes, even if this does not constitute a legal requirement to demonstrate rehabilitation and is not a precondition for early release.[1720]

Failure of the convicted person to accept responsibility of his crimes resulted in the conclusion that he has not been sufficiently rehabilitated to merit early release.[1721]

[1717] *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 62

[1718] *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 69

[1719] *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 57; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 56; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 59; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 53; *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 56; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 52; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (3 February 2015) at para. 37

[1720] *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 56; *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 52; *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 48

[1721] *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), paras. 80-81; *Prosecutor v Semanza*, No. MICT-13-26-ES.2, *Decision on Laurent Semanza's Application for Early Release* (18 September 2020) at para. 67; *Prosecutor v Bagosora*, No. MICT-12-26-ES.1, *Decision on the Early Release of Theoneste Bagosora* (1 April 2021) at para. 49; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 62

The conspicuous absence of any explicit acknowledgement that he was in a position to act, but did not, undermines the convicted person's submission that he fully accepts the judgements against him.[1722]

Convicted person's emphasis in his statement on failure to control his subordinates as well as his public statements alleging he was wrongfully convicted indicated that he had not sufficiently engaged in critical reflection on his crimes.[1723]

Fact that convicted person only accepted responsibility for failure to act when he was convicted of engaging in a joint criminal enterprise indicated that he has not sufficiently engaged in critical reflection on his crimes.[1724]

Fact that convicted person only accepted responsibility for failure to act when he was convicted of ordering the crimes shows a lack of genuine rehabilitation.[1725]

The weight to be placed on remorsefulness will necessarily be linked to the degree to which the convicted person has accepted responsibility for his or her wrongdoing.[1726]

President not convinced that convicted person was fully rehabilitated where his statement seemed to partially downplayed his responsibility.[1727]

Refusal to fully accept responsibility for the crimes he was convicted of, along with superficial critical reflection and lack of genuine remorse, raises concerns about the demonstration of rehabilitation. The convicted person's focus on the perceived injustices of his sentencing, rather than on the harm inflicted on his victims, reveals a troubling deficiency in empathy and accountability. These factors cast doubt on his readiness for reintegration into society and weigh very strongly against his early release.[1728]

Genuine, public expressions of remorse for the full scope of a convicted person's responsibility will necessarily serve as a weightier consideration than remorse for only a

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[1722] *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (3 February 2015) at para. 50
[1723] *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at paras. 57, 60
[1724] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 70; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 56
[1725] *Prosecutor v Milosevic*, No. MICT-16-98-ES, *Decision on the Application for Early Release of Dragomir Milosevic* (13 December 2024) at para. 58
[1726] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 60
[1727] *Prosecutor v Brdanin*, No. MICT-13-48-ES , *Decision on the Application of Radislav Brdanin for Early Release* (1 April 2022) at para. 53
[1728] *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 63

portion of that responsibility.[1729]

A convicted person's partial acceptance of responsibility for his or her crimes will merit positive weight, however, any notable difference between the role a convicted person ascribes to himself or herself, and the role actually played, can suggest a lack of sufficient critical reflection upon his or her crimes.[1730]

The convicted person's expressions of sympathy are general in nature. The mere recognition of the genocide against the Tutsi is insufficient to demonstrate his rehabilitation. He neither accepts responsibility for the crimes for which he was convicted, nor does he link his expressions of sympathy to the victims of his crimes. He has therefore not engaged in any critical reflection upon his crimes and while he states that he would like to contribute to reconciliation, he has not demonstrated any actions he has taken to that effect, nor has he made any public or private expressions of genuine remorse or regret. In addition, his post-release plans remain vague and other positive indicators of rehabilitation are absent.[1731]

Submissions that convicted person has been trying to exhibit good conduct in prison because of the remorse he feels for the suffering he has inflicted on the victims of his crimes and that he tried to immediately join the rehabilitation and resocialisation process through work and education, although praiseworthy, do not directly support an acceptance of his responsibility, or serve as signs of critical reflection or as expressions of genuine remorse for the crimes he committed.[1732]

Fact that convicted person filed his statement confidentially indicated that his expressions of remorse were not genuine.[1733]

The fact that the convicted person refers to his young age when he committed the crimes for which he was convicted and his perception that he would not be alive had he acted another way, make me doubt that he has truly and fully accepted his personal responsibility.[1734]

Information of informal statements made by the convicted person to prison guards raises considerable doubt as to the genuineness of the convicted person's remorse and acceptance of his crimes that are otherwise reflected in his statements to the psychosocial

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[1729] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 60
[1730] *Prosecutor v Prlic*, No. MICT-17-112-ES.2, *Decision on the Application for Early Release of Jadranko Prlic* (7 March 2025) at para. 48; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 51
[1731] *Prosecutor v Semanza*, No. MICT-13-26-ES.2, *Decision on Laurent Semanza's Application for Early Release* (18 September 2020) at para. 72
[1732] *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 54
[1733] *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Early Release of Radivoje Miletic* (5 May 2021) at paras. 52,56
[1734] *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 56

and psychiatric services of the prison, which are known to be monitoring his rehabilitation and mental and social health and whose findings are expected to be assessed for the purposes of early release.[1735]

A genuine apology to the victims or their families, which would acknowledge his exact conduct and role in their suffering, or actions to foster reconciliation or seek forgiveness would be stronger indications that the convicted person is well on the way towards achieving rehabilitation.[1736]

There is no merit in the submission that accepting responsibility for all the crimes for which he was convicted by the ICTY would prejudice the prisoner in proceedings pending before a court in Bosnia and Herzegovina. Any prosecution of Kunarac for crimes for which he has already been tried before the ICTY would fall foul of the principle of non bis in idem, which protects persons from double jeopardy, and which is explicitly provided for in Article 7(1).[1737]

Where convicted person made his earlier statement public and explained that the perceived deficiency found by the President in the content of that statement was due to his poor skills as a writer and expressed his regret to the victims and acknowledged he has made mistakes, this did not convince the President that he had demonstrated any greater degree of rehabilitation that in his earlier application for early release.[1738]

Statements of convicted person were not convincing that he was remorseful for his crimes and warranted denial of early release for convicted person who had served well over 2/3 of his sentence. [1739]

Although his behavior in prison had been good, where convicted person made no submissions in support of early release, there was no basis to conclude that he had accepted responsibility for his crimes and was sufficiently rehabilitated to warrant early release after serving 2/3 of his sentence.[1740]

Defendant who admitted his crimes and took responsibility for them nevertheless denied early release where President had doubts that he was being fully transparent about his lack of knowledge concerning the locations of mass graves. In any event, irrespective of his level of personal knowledge about the locations of mass graves, When taking into

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[1735] *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 57
[1736] *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 58
[1737] *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 61
[1738] *Prosecutor v Miletic*, No, MICT-15-85-ES,5, *Decision on the Application for Early Release of Radivoje Miletic* (24 June 2022) at paras. 47-48
[1739] *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Early Release of Radivoje Miletic* (5 May 2021) at para. 60; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 64
[1740] *Prosecutor v Martic*, No. MICT-14-82, *Decision on the Application for Early Release of Milan Martic* (4 February 2026) at para. 57

account the involvement of personnel he commanded in executions and burials following the fall of Srebrenica, it is only reasonable to believe that he, at least, possesses some information that identifies or could lead to the identification of those who know the locations of mass graves or where information of this nature might have been kept and potentially accessed today. Considering the importance that this matter carries for the families of the victims of the Srebrenica Genocide, any further clarity would be a solid demonstration of the defendant's respect towards them and a concrete action capable to indicate advancement in his rehabilitation process.[1741]

As the Application is void of any indication that the prisoner accepts responsibility for his crimes, has demonstrated signs of critical reflection, or has expressed genuine remorse or regret, he has not yet reached a level of rehabilitation sufficient to merit early release.[1742]

Although the prisoner has expressed regret for his crimes and apologized, and his behavior in prison showed respect for all ethnicities, the President found that the generic nature of his statement and the clear discrepancy between his account and the Mechanism's judicial findings demonstrated that he has not accepted full responsibility for his crimes, warranting denial of his early release even after serving 2/3 of his sentence.[1743]

Rwandan government

Although not provided for in the IRMCT Rules, President would continue practice from ICTR rules of seeking the views of the government of Rwanda on the early release of ICTR convicts.[1744]

Convicted persons have the right to medical confidentiality, are under no obligation to consent to the release of their medical information, and their consent is required to disclose their medical information to the government of Rwanda. Absent such consent, the Rwandan government's request for access to information submitted by the enforcement State concerning early release was denied.[1745]

specific cases granted

[1741] *Prosecutor v Krstic*, No. MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (6 July 2026) at para. 32

[1742] *Prosecutor v Martic*, MICT-14-82-ES, *Decision on the Early Release Application of Milan Martic* (14 July 2026) at p. 5

[1743] *Prosecutor v Stanisic,* No. 15-96-ES.2, *Decision on the Application for Early Release of Jovica Stanisic* (25 September 2026) at para. 52

[1744] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Request to Republic of Rwanda related to Application for Early Release from Mr. Aloys Simba* (26 April 2018); *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES.1, *Request to Republic of Rwanda related to Application for Early Release from Mr. Dominique Ntawukulilyayo* (26 April 2018); *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 150

[1745] *Prosecutor v Ntawukulilyayo*, *Ngeze, & Simba*, MICT Nos. 13-34, 13-37-ES.2, 14-62-ES.1, *Decision on Supplementary Requests for Documents by the Republic of Rwanda* (12 July 2018) at para. 19

Early release after service of 2/3 of sentence warranted for ICTR convict who had pled guilty, demonstrated rehabilitation in prison, and had health issues.[1746]

Early release after service of 10 months more than 2/3 of 25-year sentence granted where prisoner convicted of genocide showed signs of rehabilitation and had health issues. The fact that he had not pled guilty or cooperated with the prosecution, neither of which were required, was a neutral factor in the early release decision.[1747]

Early release after service of 2 ½ years more than 2/3 of 20-year sentence granted where, despite high gravity of the offense, prisoner showed a fair degree of rehabilitation and had provided some cooperation to the prosecution.[1748]

Early release after service of 2/3 of sentence granted.[1749]

Early release granted over the objection of sentencing Judge.[1750]

standing

Prosecution does not have standing to be heard on early release applications other than to provide information on the cooperation of the applicant.[1751]

[1746] *Prosecutor v Bisengimana*, No. MICT-12-07, *Decision of the President on Early Release of Paul Bisengimana…*(11 December 2012) at para, 35; *Prosecutor v Serushago*, No. MICT-12-28-ES, *Decision of the President on Early Release of Omar Serushago* (13 December 2012) at para. 34

[1747] *Prosecutor v Ruzindana*, No. MICT-12-10-ES, *Decision of the President on Early Release of Obed Ruzindana* (13 March 2014) at para. 21

[1748] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at paras. 93-94

[1749] *Prosecutor v Ntakirutimana*, No. MICT-12-17-ES, *Decision of the President on Early Release of Gerard Ntakirutimana* (24 April 2014); *Prosecutor v Sagahutu*, No. MICT-13-43-ES, *Decision of the President on Early Release of Innocent Sagahutu* (13 May 2014); *Prosecutor v Cesic*, No. MICT-14-66-ES, *Decision of the President on Early Release of Ranko Cesic* (28 May 2014); *Prosecutor v Kordic*, No. MICT-14-68-ES, *Decision of the President on Early Release of Dario Kordic* (6 June 2014); *Prosecutor v Zigic*, No. MICT-14-81-ES.1, *Decision of the President on the Early Release of Zoran Zigic* (23 December 2014); *Prosecutor v Pandurevic*, No. MICT-15-85-ES.1, *Decision of the President on the Early Release of Vinko Pandurevic* (10 April 2015); *Prosecutor v Sainovic*, No. MICT-14-67-ES.1, *Decision of the President on the Early Release of Nikola Sainovic* (27 August 2015); *Prosecutor v Zelenovic*, No. MICT-15-89-ES, *Decision of the President on the Early Release of Dragan Zelenovic* (15 September 2015); *Prosecutor v Lazarevic*, No. MICT-14-67-ES3, *Decision of the President on the Early Release of Vladimir Lazarevic* (3 December 2015); *Prosecutor v Nteziryayo*, No. MICT-15-90, *Decision of the President on the Early Release of Alfonse Nteziryayo* (9 March 2016); *Prosecutor v Borovcanin*, No. MICT-15-85-ES.6, *Decision of the President on the Early Release of Ljubomir Borovcanin* (2 August 2016); *Prosecutor v Nahimana,* No. MICT-13-37-ES.1, *Decision of the President on Early Release of Ferdinand Nahimana* (5 December 2016); *Prosecutor v Rukundo*, No. MICT-13-35-ES, *Decision of the President on Early Release of Emmanuel Rukundo* (5 December 2016); *Prosecutor v Pusic*, No. MICT-17-112-ES.1, *Decision of the President on the Early Release of Berislav Pusic* (24 April 2018); *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 81; *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019); *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 79

[1750] *Prosecutor v Ruzindana*, No. MICT-12-10-ES, *Decision of the President on Early Release of Obed Ruzindana* (13 March 2014) at para. 25

Neither the Rules nor the Practice Direction provides the Prosecution standing to make submissions on whether early release should be granted for purposes of requests for early release.[1752]

While caution needs to be exercised to avoid any unreasonable imbalance to the detriment of the convicted person, the President intends to use his discretion to receive and consider more general comments from the Prosecution on early release applications. He will, however, carefully assess on a case-by-case basis which submissions are of actual relevance in each case, mindful of the rights of the convicted person.[1753]

The President may receive and consider general comments and information from the Prosecution with regard to early release applications. In doing so, the President shall exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person, and carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.[1754]

Where the sole basis for early release is the existence of compelling humanitarian grounds, which if proven would override any eligibility concerns, it is not necessary to receive any submissions from the Prosecution.[1755]

In considering submissions by the Prosecution, caution is required to avoid any unreasonable imbalance to the detriment of the convicted person, as well as a careful assessment on a case-by-case basis of which submissions are of actual relevance in each case, mindful of the rights of the convicted person.[1756]

[1751] *Prosecutor v Nikolic,* No. MICT-15-85-ES.4, *Decision of the President on the Application for Early Release and Other Relief of Drago Nikolic* (13 October 2015) at para. 9; *Prosecutor v Pusic*, No. MICT-17-112-ES.1, *Decision of the President on the Early Release of Berislav Pusic* (24 April 2018) at para. 24; *Prosecutor v Miletic*, No. MICT-15-95-ES.5, *Decision of the President on the Early Release of Radivoje Miletic* (23 October 2018) at para. 20; *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019) at paras. 16-20

[1752] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision of the President on Early Release of Sreten Lukic* (11 August 2017) at para. 17

[1753] *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 69; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 83; *Prosecution v Kunarac,* No. MICT-15-88-ES.1, *Decision on the Early Release of Dragoljub Kunarac* (31 December 2020) at para. 76; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 73; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on the Application for Early Release of Goran Jelesic* (13 August 2025) at para. 69

[1754] *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at para. 71; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (3 February 2015) at para. 63

[1755] *Prosecutor v Mladic*, No. MICT-13-56-ES, *Decision on the Application for Release of Ratko Mladic* (10 May 2024) at para. 19

[1756] *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision on the Application for Early Release by Sreten Lukic* (7 October 2021) at para. 78; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Application for Early Release of Miroslav Bralo* (28 December 2023) at para. 82; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (17 January 2024) at para. 74; *Prosecutor v Zupljanin*, No. MICT-13-53-ES.1, *Decision on the Application for Early Release of Stojan*

Prosecution submissions in opposition to motion to modify conditions of early release would be considered where the Prosecution is well placed to inform the President on issues of compliance with the condition and its effect on prosecution witnesses.[1757]

Prosecution would not be granted access to confidential portions of early release application as the prosecution is not a party to sentencing enforcement proceedings and its submissions on early release issues are only upon request of the President.[1758]

While the President has broad discretion to consider information he deems relevant pursuant to the Practice Direction, neither the existence of such discretion alone nor its exercise in the particular circumstances of the present case in which submissions were sought from State authorities, provides a sufficiently compelling reason to change settled practice by allowing Rwanda or the Prosecution to make submissions on broader issues related to the Application.[1759]

Third parties lack standing to make submissions on whether an application for pardon, commutation of sentence, or early release should be granted. Such submissions will not be considered.[1760]

The fact that the President has broad discretion to consider information he deems relevant pursuant to paragraph 4(d) of the Practice Direction, does not provide a sufficiently compelling reason to allow victims to make submissions on issues related to the Application, or to compel the President to consider them. It has been long standing practice at the ICTR, the ICTY and the Mechanism, not to consult with the victims in making a judicial determination of an application for pardon, commutation of sentence, or early release of convicted persons. Nevertheless, the President took note of the various statements made by the victims, and other individuals.[1761]

Submissions of victims' associations in opposition to early release considered by the President.[1762]

State law

Zupljanin (18 January 2024) at para. 65; *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Application for Early Release of Radivoje Miletic* (18 January 2024) at para. 69

[1757] *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision on Motions related to Valentin Coric's Request for Variation of Early Release Decision* (21 February 2020) at para. 19

[1758] *Prosecutor v Stanisic,* No. MICT-15-96-ES.2, *Decision on Prosecution Motion for Access to Stanisic Confidential Application for Early Release* (2 June 2026) at p. 2

[1759] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 21

[1760] *Prosecutor v Ntawukulilyayo*, *Ngeze, & Simba*, MICT Nos. 13-34, 13-37-ES.2, 14-62-ES.1, *Decision on Supplementary Requests for Documents by the Republic of Rwanda* (12 July 2018) at para. 17

[1761] *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 72

[1762] *Prosecutor v Lukic*, No. MICT-13-52-ES.2, *Decision on the Application for Early Release of Sredoje Lukic* (17 October 2024) at paras. 81-85

In order not to create disparity among ICTR, ICTY, and Mechanism prisoners serving their sentences in various enforcement states with various domestic laws pertaining to eligibility for early release, domestic sentence remissions or other sentencing credits will not count towards determining whether a prisoner has served 2/3 of his sentence and therefore is eligible for early release at the Mechanism.[1763] However, the sentence remissions would be seen as a factor evidencing good behaviour when evaluating early release after the 2/3 mark.[1764]

Sentence remissions granted or claimed under national law could be recognized "provisionally" at the time claimed, but that recognition did not preclude the possibility that the remissions could be "withdrawn at a subsequent time", in connection with the convict's eligibility for early release. This meant that, if sentence remissions granted under national law caused a convict to become eligible for early release under the law of the enforcement State, the national authorities were required to notify the President of the ICTY, who would then decide conclusively whether to take the remissions into account in determining the detainee's eligibility for early release.[1765]

Sentence remissions stemming from the domestic laws of an enforcement State do not amount to commutation of sentence before the Mechanism, but instead equate to commutation of sentence before the enforcement State. While sentence remission decisions taken by an enforcement State may affect the enforcement State's own calculation of the length of a convicted person's sentence, they will not impact the Mechanism's calculation of, inter alia, the end date of the convicted person's sentence.[1766]

Sentence remissions granted under national law would be recognised but would not affect the calculation of the 2/3 mark of a sentence at which a person is eligible to be considered for early release.[1767]

15-month remission as of right and remission of 15 months for which the convicted person has qualified because of his good conduct while in prison would be provisionally recognized, subject to a withdrawal or credit of the remission when

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[1763] *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Sentence Remission and Early Release of Milomir Stakic* (31 December 2020) at para. 33; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on Sentence Remission and Early Release of Goran Jelesic* (11 March 2021) at para. 31

[1764] *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision on Sentence Remission and Early Release of Goran Jelesic* (11 March 2021) at para. 31

[1765] *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision of the President on Sentence Remission of Milomir Stakic* (17 March 2014) at para. 16; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelesic* (11 August 2017) at para. 28

[1766] *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Notification of Sentence Remission* (31 December 2024) at p. 3; *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Notification of Sentence Remission* (21 July 2026) at p. 2

[1767] *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision on Sentence Remission and Early Release of Milomir Stakic* (22 December 2021) at para. 27; *Prosecutor v Dordevic*, No. MICT-14-76, *Decision on Notification of Sentencing Remission* (20 August 2024) at p. 2; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on Notification of Sentencing Remission* (29 August 2025) at p. 2

considering early release later.[1768]

A person who is eligible for release under the laws of the State where he is serving his sentence may apply for release before serving 2/3 of his sentence, but such release will only be granted under exceptional circumstances such as extraordinary cooperation with the prosecution or humanitarian emergencies.[1769]

Release of person who had not served 2/3 of his sentence denied, although domestic law of the State where he is serving his sentence would have allowed release because it credits time on provisional release towards credit for time served.[1770]

Even if a prisoner is eligible for early release under the domestic law of the State in which he is serving his sentence, the early release of persons convicted by the ICTY and ICTR falls exclusively within the discretion of the President.[1771]

Even if a prisoner is not eligible for early release under the laws of the State in which he is imprisoned, the decision on early release rests exclusively within the

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[1768] *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision of the President on Sentence Remission of Milomir Stakic* (17 March 2014) at paras. 30-31; *Prosecutor v Stakic*, No. MICT-13-60-ES, *Decision of the President on Sentence Remission of Milomir Stakic* (6 October 2017) at paras. 31-32

[1769] *Prosecutor v Ruzindana*, No. MICT-12-10-ES, *Decision of the President on Early Release of Obed Ruzindana* (13 March 2014) at fn. 21; *Prosecutor v Munyakazi*, No. MICT-12-18-ES.1, *Decision of the President on the Early Release of Youssouf Munyakazi* (22 July 2015) at fn.18

[1770] *Prosecutor v Miletic*, No.MICT-15-85-ES.5, *Decision of the President on the Early Release of Radivoje Miletic* (27 July 2017) at para. 35

[1771] *Prosecutor v Galic*, No. MICT-14-83-ES, *Reasons for the President's Decision to Deny the Early Release of Stanisic Galic…*(23 June 2015) at para. 13; *Prosecutor v Munyakazi*, No. MICT-12-18-ES.1, *Decision of the President on the Early Release of Youssouf Munyakazi* (22 July 2015) at para. 11; *Prosecutor v Nikolic*, No. MICT-14-65-ES, *Decision on Early Release of Momir Nikolic* (12 October 2015) at paras. 12-13; *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision of the President on the Early Release of Stanisic Galic* (18 January 2017) at para. 13; *Prosecutor v Lukic,* No. MICT-14-67-ES.4, *Decision of the President on Early Release of Sreten Lukic* (11 August 2017) at para. 24; *Prosecutor v Jelesic*, No. MICT-14-63-ES, *Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelesic* (11 August 2017) at para. 23; *Prosecutor v Simba*, No. MICT-14-62-ES.1, *Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba* (7 January 2019) at para. 29; *Prosecutor v Galic*, No. MICT-14-83-ES, *Decision on the Early Release of Stanislav Galic* (26 June 2019) at para. 23; *Prosecutor v Ntawukulilyayo et al*, No. MICT-13-34-ES, 13-37-ES.2, 14-62-ES.1, *Decision on Request for Reconsideration of Decision on Supplementary Request for Documents by the Republic of Rwanda* (1 August 2018) at p. 5; *Prosecutor v Musema*, No. MICT-12-15-ES.1, *Decision on the Application of Alfred Musema related to Early Release* (7 August 2019), p. 3; *Prosecutor v Krstic*, No. MICT-13-46-ES.1, *Decision on the Early Release of Radislav Krstic* (10 September 2019) at para. 24; *Prosecutor v Bralo*, No. MICT-14-78-ES, *Decision on the Early Release of Miroslav Bralo* (31 December 2019) at para. 26; *Prosecutor v Bagosora*, No. MICT-12-26-ES.1, *Decision on the Early Release of Theoneste Bagosora* (1 April 2021) at para. 29; *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 34; *Prosecutor v Ntabakuze*, No. MICT-14-77-ES.1, *Decision on the Application for Early Release of Aloys Ntabakuze* (17 May 2022) at para. 35; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 32; *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 31; *Prosecutor v Kunarac*, No. MICT-15-88-ES.1, *Decision on the Application for Early Release of Dragoljub Kunarac* (22 July 2024) at para. 29

discretion of the President.[1772]

The two-thirds threshold applies irrespective of where a convicted person serves his or her sentence and whether an early release matter is brought before the President through a notification from the relevant enforcement State or a direct petition of the convicted person.[1773]

United Nations Detention Unit

For purposes of early release, prisoners serving their sentence at the UN Detention facilities would be treated the same as those transferred to serve their sentences in a State.[1774]

victims

Victims lack standing to make submissions on whether an application for pardon, commutation of sentence, or early release should be granted. Such submissions will not be considered.[1775]

Considering the information received from WISP, and the views expressed by these two associations of victims, the President was concerned that releasing the convicted person prematurely may endanger the health and safety of witnesses and may negatively impact peace and security in the region of the former Yugoslavia.[1776]

Contacting witnesses too frequently has the potential to negatively impact upon them, particularly if they are trying to move on in their lives and especially if some years have passed since they have heard from the Mechanism or its predecessor Tribunals. It is

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[1772] *Prosecutor v Ntawukulilyayo*, No. MICT-13-34-ES, *Decision on the Application of Dominique Ntawukulilyayo for Early Release* (8 January 2020) at p. 5; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 33; *Prosecutor v Ngeze*, No. MICT-13-37-ES.2, *Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions* (14 April 2022) at para. 103; *Prosecutor v Kambanda*, No. MICT-13-52-ES.1, *Decision on the Application of Early Release of Jean Kambanda* (23 July 2026) at p. 3

[1773] *Prosecutor v Krstic*, No. MICT-13-46-ES.1, *Decision on the Early Release of Radislav Krstic* (10 September 2019) at para. 18; *Prosecutor v Brdjanin*, No. MICT-13-48-ES, *Decision on the Application of Radoslav Brdjanin for Early Release* (28 February 2020), para. 29

[1774] *Prosecutor v Sagahutu*, No. MICT-13-43-ES, *Decision of the President on Early Release of Innocent Sagahutu* (13 May 2014) at paras. 11-12 ; *Prosecutor v Pandurevic*, No. MICT-15-85-ES.1, *Decision of the President on the Early Release of Vinko Pandurevic* (10 April 2015) at para. 11; *Prosecutor v Nikolic,* No. MICT-15-85-ES.4, *Decision of the President on the Application for Early Release and Other Relief of Drago Nikolic* (13 October 2015) at para. 14; *Prosecutor v Lazarevic*, No. MICT-14-67-ES3, *Decision of the President on the Early Release of Vladimir Lazarevic* (3 December 2015) at para. 9; *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019) at para. 35

[1775] *Prosecutor v Coric*, No. MICT-17-112-ES.4, *Decision of the President on the Early Release of Valentin Coric and Related Motions* (16 January 2019) at paras. 22-27

[1776] *Prosecutor v Miletic*, No. MICT-15-85-ES.5, *Decision on the Early Release of Radivoje Miletic* (5 May 2021) at para. 75

not necessary for the Mechanism to disturb former witnesses to solicit further information from them with respect to the application for early release.[1777]

Where seeking the views of victims' organisations would not alter the conclusions on the high gravity of the crimes, on this occasion, and in the interests of judicial economy, it was not necessary to seek the views of any victim's associations.[1778]

video-link

It is unnecessary to hear the convicted person by video-link as he requested before denying his early release for lack of sufficient rehabilitation.[1779]

Rule 152—general provisions

(A) The time limits prescribed herein shall run from, but shall not include, the day upon which the relevant document is filed.
(B) Should the last day of a time prescribed by a Rule or directed by a Chamber or Judge fall upon a day when the Registry of the Mechanism does not accept documents for filing, it shall be considered as falling on the first day thereafter when the Registry does accept documents for filing.

Rule 153—time for filing response to motion

(A) In respect of trial proceedings, unless otherwise ordered by a Chamber or Single Judge either generally or in the particular case, a response, if any, to a motion filed by a Party shall be filed within fourteen days of the filing of the motion. A reply to the response, if any, shall be filed within seven days of the filing of the response, with the leave of the relevant Chamber or Single Judge.
(B) In respect of appeal from judgement proceedings, unless otherwise ordered by the Appeals Chamber either generally or in the particular case, a response, if any, to a motion filed by a Party shall be filed within ten days of the filing of the motion. A reply to the response, if any, shall be filed within four days of the filing of the response.

calculation

The time limits begin to run from the date the document is distributed by the

[1777] *Prosecutor v Djordjevic*, No. MICT-14-76-ES, *Decision on the Applications for Early Release of Vlastimir Djordjevic* (30 November 2021) at para. 88; *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 68; *Prosecutor v Pavkovic*, No. MICT-14-67-ES.2, *Decision on the Application for Early Release of Nebojsa Pavkovic* (18 May 2022) at para. 78
[1778] *Prosecutor v Petkovic*, No. MICT-17-112.ES.5, *Decision on the Early Release of Milivoj Petkovic* (16 December 2021) at para. 69; *Prosecutor v Stojic*, No. MICT-17-112-ES.3, *Decision on the Application for Early Release of Bruno Stojic* (11 April 2022) at para. 80
[1779] *Prosecutor v Krstic,* No, MICT-13-46-ES.1, *Decision on the Application for Early Release of Radislav Krstic* (15 November 2022) at para. 61

Registry.[1780]

leave to reply

Trial Chamber issued practice direction authorizing the filing of replies during the trial without leave.[1781]

replies

The core of the moving party's arguments must be provided in the initial motion and not raised for the first time in reply, so that the opposing party is not deprived of an opportunity to respond. A reply should be limited to arguments contained in the response.[1782]

Judge authorised automatic right of reply without seeking leave for future motions during trial.[1783]

President

Rule 153(A) should likewise be applied mutatis mutandis to proceedings before the President.[1784] [1785]

sur-replies

Before filing a sur-reply, a party is required to seek leave.[1786]

Rule 154—variation of time limits

(A) Save as provided by paragraph (B), a Chamber may, on good cause being shown by motion:
(i) enlarge or reduce any time prescribed by or under these Rules; or
(ii) recognise as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has

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[1780] *Prosecutor v Kabuga,* No. MICT-13-38-AR80.4, *Decision on Felicien Kabuga's Requests for Translation and Extension of Time* (30 December 2025) at p. 2
[1781] *Prosecutor v Stanisic & Simatovic,* No. MICT-15-96-PT, *Order on Procedure for the Conduct of the Trial* (6 December 2016) at para. 1
[1782] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Motion for Access to Prosecution Requests for Assistance and Responses Thereto* (18 April 2019) at fn. 22
[1783] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Order on the Procedure for the Conduct of the Trial* (21 September 2020) at Annex, para. 1
[1784] *Prosecutor v Nikolic*, No. MICT-14-65-ES, *Decision on Ratko Mladic's Requests for Leave to Reply and Reconsideration...*(6 June 2018) at para. 18; *Prosecutor v Semanza*, No. MICT-13-36-ES.2, *Decision on Motion for Provisional Release* (21 April 2020) at p. 5
[1785] *Prosecutor v Semanza*, No. MICT-13-36-ES.2, *Decision on Motion for Provisional Release* (21 April 2020) at p. 3
[1786] *Prosecutor v Ngirabatware*, No. MICT-12-29-A, *Decision on Motion to Quash and Revise a Decision of the Registrar on the Level of Complexity and Seeking Further Relief* (26 February 2014) at para. 13

already expired.
In any case of enlargement of the time prescribed, the total period shall not exceed the maximum reasonable time limit for this type of procedural action.
(B) This Rule shall not apply to the times prescribed in Rule 38.

Appeal brief would be recognized as validly filed where not to do so would result in dismissal of appeal and be unduly prejudicial to the accused.[1787]

Reply brief rejected where it was filed late and no explanation for the late filing was provided.[1788]

OTP Response to provisional release motion rejected where it was filed 10 days after the 14-day deadline and no good cause was shown.[1789]

Directive on Assignment of Counsel

Article 1--purpose and entry into force

(A) In accordance with Rule 43 of the Rules, the Registrar establishes this Directive to regulate the Mechanism's system of assignment of counsel. The Mechanism's system of assignment of counsel seeks to provide legal assistance to indigent suspects and accused in the most efficient, economical and equitable manner in order to safeguard the rights afforded to suspects and accused under the Statute and the Rules. This Directive establishes objective criteria to be used in the Registrar's determination of the eligibility of a suspect or accused for assignment of counsel and regulates the modalities of payment of assigned counsel and their support staff.
(B) This Directive shall enter into force on 14 November 2012.

Article 2--definitions

Under this Directive, the following terms shall mean:
Accused: A person indicted by the ICTY, the ICTR, or the Mechanism, in accordance with Article 1 of the Statute;

Advisory Panel: The body established to assist the President and the Registrar in matters relating to Defence Counsel under Rule 42(D) of the Rules;

Association of Counsel: An Association of Defence Counsel practicing before the Mechanism recognised by the Registrar in accordance with Rule 42(A)(iii);

[1787] *Munyarugarama v Prosecutor*, No. MICT-12-09-AR14, *Decision on Appeal Against the Referral of Phineas Munyarugarama's Case to Rwanda…*(5 October 2012) at para. 12
[1788] *Munyarugarama v Prosecutor*, No. MICT-12-09-AR14, *Decision on Appeal Against the Referral of Phineas Munyarugarama's Case to Rwanda…*(5 October 2012) at para. 15
[1789] *Prosecutor v Semanza*, No. MICT-13-36-ES.2, *Decision on Motion for Provisional Release* (21 April 2020) at p. 4

Code of Conduct: The Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism as promulgated by the Registrar on 14 November 2012;

Counsel: A person representing or eligible to represent an accused pursuant to Rules 42, 43, 44 and 64(D) of the Rules;

Defence Team: Counsel assigned by the Registrar to represent an accused and other persons assigned or approved by the Registrar to assist counsel in this task;

Directive: Directive on the Assignment of Defence Counsel;

ICTR: The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Security Council resolution 955 of8 November 1994;

ICTY: The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993;

Mechanism: The International Residual Mechanism for Criminal Tribunals, established by Security Council resolution 1966 of 22 December 2010;

Officer in Charge: The Registry officer in charge at the seat of each branch of the Mechanism as provided for in Article 15(2) of the Statute;

Parties: The Prosecutor and the Defence Team, including the accused or suspect, collectively;

President: The President of the Mechanism appointed pursuant to Article 11 of the Statute;

Prosecutor: The Prosecutor of the Mechanism appointed pursuant to Article 14(4) of the Statute;

Registrar: The Registrar of the Mechanism appointed pursuant to Article 15(3) of the Statute;

Rules: The Rules of Procedure and Evidence adopted by the Mechanism on 8 June 2012, as subsequently amended;

Rules of Detention: Rules Governing the Detention of Persons Awaiting Trial or

Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, as adopted by the ICTR and ICTY, on 5 June 1998 and 5 May 1994, respectively, as subsequently amended;

Statute: The Statute of the Mechanism adopted by Security Council resolution 1966 of 22 December 2010;

Suspect: A person concerning whom the Mechanism possesses reliable information tending to show that the person may have committed a crime.

In this Directive, the masculine shall include the feminine and the singular the plural, and vice versa. All references in this Directive to suspects or accused shall also be understood to apply to any persons detained on the authority of the Mechanism, the ICTR or ICTY.

Article 3--authentic texts

The English and French texts of the Directive shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute, Rules and the Directive shall prevail.

Article 4--amendment of directive

(A) Proposals for amendments to the Directive may be made by a Judge, the Registrar, the Association of Counsel, or the Advisory Panel. Such proposals shall be directed to the Registrar. Amendments shall be promulgated by the Registrar following the approval of Judges, as provided for in Rule 42(C).
(B) The amendments shall enter into force upon adoption, and shall be rendered public by the Registrar within seven days of adoption.
(C) An amendment shall not operate to prejudice the rights of the accused in any pending case.

Article 5--right to counsel

Without prejudice to the right of a suspect or an accused to conduct his own defence:
(i) a suspect who is to be questioned by the Prosecutor during an investigation;
(ii) an accused upon whom personal service of the indictment has been effected;
(iii) any person detained on the authority of the Mechanism, including any person detained in accordance with Rule 107 shall have the right to be assisted by counsel, provided that he has not expressly waived this right.

Counsel would not be assigned to person filing motion for order to State to take him back following his acquittal where the motion did not have likelihood of success.[1790]

[1790] P*rosecutor v Nzuwonemeye,* No. MICT-13-43, *Decision on Motion for Order pursuant to Article 28 and Other Considerations* (22 October 2018) at para. 13

Article 6--right to assigned counsel

(A) A suspect or accused who lacks the means to remunerate counsel shall have the right to have counsel assigned to him and paid for by the Mechanism in accordance with this Directive. The Registrar shall inform a suspect or accused in a language which he understands of his rights and duties pursuant to this Directive.
(8) A suspect or accused lacks the means to remunerate counsel if he does not have the means which would enable him to cover the costs of his defence as determined by the Registrar in accordance with Part VI of this Directive.
(C) For an accused who has the means to partially remunerate counsel, the Mechanism shall pay that portion of his defence costs which the accused does not have sufficient means to cover, as determined in accordance with the Registry Policy for Determining the Extent to which an Accused is able to Remunerate Counsel.

An accused awaiting the trial judgement in a case in which the Mechanism has jurisdiction on appeal is not entitled to assignment of appellate counsel as it could not be determined at that stage whether there would be an appeal and what scope any such appeal would have.[1791]

The fact that the prosecution had assembled an appeals team in advance of the trial judgement did not entitle the accused to assignment of counsel at that stage.[1792]

The existence of exceptional circumstances must be established by a person seeking funding for counsel following an acquittal.[1793]

Assignment of counsel to appeal decision on acquitted person's motion to compel France to take him back would be granted where there were exceptional circumstances in that the appeal raised complex legal issues.[1794]

Exceptional circumstances did not exist to assign counsel to an acquitted person to seek an invitation to France to take him back following his acquittal, as France could take such a decision on its own initiative if it chose to do so.[1795]

Although the Statute of the Mechanism and the Rules do not provide for the assignment of counsel to assist convicted persons whose cases have reached finality, the Mechanism's jurisprudence provides that legal aid may be granted to persons whose cases

[1791] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Review of Decision on Assignment of Counsel on Appeal* (4 February 2016) at para. 19
[1792] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Review of Decision on Assignment of Counsel on Appeal* (4 February 2016) at para. 27
[1793] *Prosecutor v Nzuwonemeye*, No. MICT-13-43, *Decision on Second Motion for Assignment of Counsel* (19 August 2019) at p. 2
[1794] *Prosecutor v Nzuwonemeye*, No. MICT-13-43, *Decision on a Motion for Assignment of Counsel and for an Extension of Time* (13 December 2018) at p. 2
[1795] *Prosecutor v Nzuwonemeye*, No. MICT-13-43, *Decision on Second Motion for Assignment of Counsel* (19 August 2019) at p. 3

have reached finality, where exceptional circumstances are established, pursuant to a judicial order.[1796]

Where convicted person's prospective appeal raises complex issues related to attorney-client and attorney work-product privilege, exceptional circumstances existed to assign counsel and grant 10 hours legal aid.[1797]

Neither the Statute nor the Rules contemplate the assignment of counsel at the Mechanism's expense for persons who may have an interest in one of its decisions but are otherwise unconnected to the Mechanism. Therefore, counsel would not be assigned to defendant in domestic proceedings whose privileged documents were seized, but he was free to retain counsel to intervene in the appeal on his behalf or obtain the services of counsel *pro bono*.[1798]

Article 7-request for assignment of counsel and declaration of means

(A) Subject to the provisions of Article 19, a suspect or accused who wishes to have counsel assigned to him shall make a request to the Registrar on the form provided by the Registrar. The request shall be lodged with the Registrar, or transmitted to him, by the suspect or accused himself or by a person authorised by him to do so on his behalf.
(B) A suspect or accused requesting the assignment of counsel is required to make a declaration of his means on the form provided by the Registrar.
(C) A declaration must, to the extent possible, be certified by an appropriate authority, either that of the place where the suspect or accused resides or is found, or that of any other place that the Registrar considers appropriate in the circumstances.
(D) The declaration must include an attestation by the suspect or accused that the information contained therein is true and complete to the best of his knowledge.
(E) To ensure that the provisions of Article 8 are met, a suspect or accused must update his declaration of means at any time a change relevant to his declaration of means occurs.

Article 8--burden of proof

(A) The burden of proof lies on the suspect or accused to prove that he is unable to remunerate counsel.
(B) Where the Registrar has opened an inquiry into the means of a suspect or accused pursuant to Article 9, the suspect or accused shall provide or facilitate the production of information required to establish his ability to remunerate counsel.

[1796] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Requests for Extension of Time and Synchronised Briefing Schedule* (22 March 2019) at p. 4
[1797] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Requests for Extension of Time and Synchronised Briefing Schedule* (22 March 2019) at p. 5
[1798] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Requests for Extension of Time and Synchronised Briefing Schedule* (22 March 2019) at p. 5

(C) Where a suspect or accused fails to comply with his obligations under Article 8(A) and (B) to the extent that the Registrar is unable to properly assess the suspect or accused's ability to remunerate counsel, the Registrar may deny the request for the assignment of counsel after warning the suspect or accused and giving him an opportunity to respond.

Article 9--authority to gather information

(A) For the purpose of establishing whether the suspect or accused is able to remunerate counsel, the Registrar may inquire into his means, request the gathering of any information, hear the suspect or accused, consider any representation, or request the production of any document likely to verify the request.
(B) In exercising his authority under Article 9(A), the Registrar may request any relevant information at any time, including after counsel has been assigned, from any person who appears to be able to supply such information.
(C) When communicated confidentially, information forming the basis for the Registrar's determination that an asset forms part of the suspect's or accused's means under Article 10(A), and the value of such asset, will be disclosed to the suspect or accused confidentially. The suspect or accused must be given the opportunity to respond prior to the decision being taken.

Article 10--determination of means

(A) The Registrar shall determine whether and to what extent the suspect or accused is able to remunerate counsel by taking into account means of all kinds of which the suspect or accused has direct or indirect enjoyment or freely disposes, including but not limited to direct income, bank accounts, real or personal property, pensions, and stocks, bonds, or other assets held, but excluding any family or social benefits to which he may be entitled. In assessing such means, account shall also be taken of the means of the immediate family members with whom a suspect or accused habitually resides, provided that it is reasonable to take such means into account.
(B) For the purpose of determining whether a suspect or accused has an ownership interest in any property, the Registrar may consider the apparent lifestyle of a suspect or accused, and his enjoyment of that or other property, and whether or not he derives income from it.

Absence of IRMCT policy on remuneration of Legal Aid did not undermine Registrar's decision on the accused's contribution and he was reasonable in applying the ICTY policy *mutatis mutandis*.[1799]

Article 11--decision by the Registrar

(A) After examining the declaration of means referred to in Article 7 and any

[1799] *In the Case against Florence Hartmann*, No. MICT-15-87-ES, *Decision on the Urgent Appeal to the President to Review and Quash Registry Decision* (4 July 2016) at para. 29

information obtained pursuant to Articles 8 and 9, and having informed the suspect or accused of his findings with respect to those means, the Registrar shall determine whether and to what extent the suspect or accused is able to remunerate counsel, and shall decide, providing reasons for his decision:
(i) without prejudice to Article 20, to assign counsel from the list drawn up in accordance with Rule 43(B) of the Rules and Article 14; or
(H) without prejudice to Article 20, that the suspect or accused possesses the means to partially remunerate counsel, and to assign counsel, in which case the decision shall indicate which costs shall be borne by the Mechanism; or
(iii) not to grant the request for assignment of counsel.
(B) In the interests of justice, to ensure that the right to counsel is not affected while the Registrar examines the declaration of means referred to in Article 7 and the information obtained pursuant to Articles 8 and 9, the Registrar may temporarily assign counsel to a suspect or accused tor a period not exceeding 120 days.
(C) If a suspect or accused:
(i) requests the assignment of counsel but does not comply with the requirements set out above within a reasonable time frame; or
(ii) fails to obtain or to request the assignment of counsel;
(iii) fails to elect in writing that he intends to conduct his own defence;
The Registrar may nevertheless, in the interests of justice, and without prejudice to Article 20, assign him counsel from the list drawn up in accordance with Rule 43(B) of the Rules.
(D) Where the Registrar decides to assign counsel in accordance with this Article, the Registrar shall:
(i) assign the counsel selected by the suspect or accused from the list drawn up in accordance with Rule 43(B) of the Rules, provided that there is no impediment to the assignment of that counsel; or
(ii) if the suspect or accused fails to select a counsel from the list drawn up in accordance with Rule 43(B) of the Rules or if the Registrar determines that there is an impediment to the assignment of the counsel selected, assign other counsel from that list after hearing the suspect or accused.

Registrar's remuneration policy which provides that the Mechanism shall recognize ICTY or ICTR determination of indigence applied only were an accused was found not be indigent and did not apply to findings that an accused was not indigent and could contribute to the cost of his defence.[1800]

Where accused's wife refused to cooperate in liquidating marital property to pay for his defence, the accused was not able to be able to contribute to the costs of his defence and it was error for the Registrar to deduct the cost of his contribution from the legal aid allotment.[1801]

[1800] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Review the Registrar's Decision on Indigence* (24 June 2016) at p. 4
[1801] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Review the Registrar's Decision on Indigence* (24 June 2016) at p. 6

Accused did not show that Registrar's decision that she could contribute towards her legal aid was unreasonable or that her financial situation had deteriorated since the earlier determination of indigence.[1802]

Delay of five weeks in determining amount of accused's contribution to legal aid was not unreasonable.[1803]

Article 12--notification of decision

The Registrar shall notify the suspect or accused of his decision, and shall also notify the counsel so assigned.

Article 13--remedy against the Registrar's decision

(A) The suspect whose request for assignment of counsel has been denied may, within 15 days from the date upon which he is notified of the decision, file a motion before the President for review of that decision. The President may either confirm the Registrar's decision or rule that a counsel should be assigned.
(B) The accused whose request for assignment of counsel has been denied or who has been found to have sufficient means to remunerate counsel in part, may within 15 days from the date upon which he is notified of that decision, file a motion to the Chamber before which he is due to appear for review of the Registrar's decision. The Chamber may:
(i) confirm the Registrar's decision; or
(ii) quash the Registrar's decision and rule that counsel be assigned; or
(iii) direct the Registrar to reconsider the extent to which the accused is able to remunerate counsel.

President has jurisdiction to review decision of Registrar denying assignment of counsel prior to commencement of appeal proceedings.[1804]

President has jurisdiction to review decision of Registrar concerning a person who had already completed her sentence. Although not a person within the language of Article 13, the applicant was entitled to a fair review of the Registrar's decision.[1805]

The burden of proof is on the applicant for legal aid to demonstrate his inability to remunerate counsel. Once the applicant has provided information regarding his inability to do so, the burden shifts to the Registry to prove otherwise based on the balance of

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[1802] *In the Case against Florence Hartmann*, No. MICT-15-87-ES, *Decision on the Urgent Appeal to the President to Review and Quash Registry Decision* (4 July 2016) at para. 31
[1803] *In the Case against Florence Hartmann*, No. MICT-15-87-ES, *Decision on the Urgent Appeal to the President to Review and Quash Registry Decision* (4 July 2016) at para. 32
[1804] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Motion for Review of Decision on Assignment of Counsel on Appeal* (4 February 2016) at para. 13
[1805] *In the Case against Florence Hartmann*, No. MICT-15-87-ES, *Decision on the Urgent Appeal to the President to Review and Quash Registry Decision* (4 July 2016) at para. 11

probabilities.[1806]

Where Registrar erred in finding that he was bound by ICTY decision on the ability of the accused to remunerate the cost of his defence, the Appeals Chamber, in the interests of justice, determined the issue itself.[1807]

Article 14--Qualifications and Standing of Counsel

(A) Any person may be assigned as counsel to a suspect or accused if the Registrar is satisfied that he is admitted to the list of counsel envisaged in Rule 43(B) of the Rules. A person is eligible for admission to the list if:
(i) he is admitted to the practice of law in a State, or is a university professor of law;
(ii) he has written and oral proficiency in one of the two working languages of the Mechanism;
(iii) he possesses established competence in criminal law and/or international criminal law, international humanitarian law, international human rights law;
(iv) he possesses at least seven years of relevant experience whether as a judge, prosecutor, attorney or in some other capacity, in criminal proceedings;
(v) he has not been found guilty or otherwise disciplined in relevant disciplinary proceedings against him in a national or international forum, including proceedings pursuant to the Code of Conduct, unless the Registrar deems that, in the circumstances, it would be disproportionate to exclude such counsel;
(vi) he has not been found guilty in relevant criminal proceedings;
(vii) he has not engaged in conduct whether in pursuit of his profession or otherwise which is dishonest or otherwise discreditable to counsel, prejudicial to the administration of justice, or likely to diminish public confidence in the Mechanism or the administration of justice, or otherwise bring the Mechanism into disrepute;
(viii) he has not provided false or misleading information in relation to his qualifications and fitness to practice and has not failed to provide relevant information;
(ix) he has indicated his availability and willingness to be assigned as counsel by the Registrar any accused who lacks the means to remunerate counsel, under the terms set out in this Directive; and
(x) he is a member in good standing of the Association of Counsel practising before the Mechanism.
(B) A person is eligible for admission to the list of duty counsel, envisaged in Rule 43(C) of the Rules, if he:
(i) fulfils all the requirements of Article 14(A); and
(ii) has informed the Registrar that he is readily available as Duty Counsel for assignment to an accused for the purposes of the initial appearance in accordance with Rule 64 of the Rules.
(C) A person who does not have written or oral proficiency in either of the two

[1806] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Review the Registrar's Decision on Indigence* (24 June 2016) at pp. 5-6
[1807] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Review the Registrar's Decision on Indigence* (24 June 2016) at p. 5

working languages of the Mechanism but who speaks a language spoken in the territory over which the Mechanism has jurisdiction, and who fulfils all other requirements set out in Article 14(A), may be admitted to the list envisaged in Rule 43(B) of the Rules, if the Registrar deems it justified. Such person can be assigned only as co-counsel in accordance with Article 16(D).
(D) The Registrar may, after giving counsel a warning and an opportunity to respond, remove the name of counsel from the lists referred to in Rules 43(B) and (C) of the Rules:
(i) upon a decision by a Chamber under Rule 47(A)(i) of the Rules, after consulting with the Chamber; or
(ii) where counsel has been found to be in contempt pursuant to Rule 90 of the Rules, after consulting with the Chamber; or
(iii) where counsel has been found guilty of a disciplinary offence under the Code of Conduct, after consulting with the Chamber; or
(iv) where the Registrar has determined that counsel has provided false information in relation to his or her qualifications to be admitted to the list, or has failed to provide relevant information.
Counsel may seek review of the Registrar's decision before the President within 15 days from the date upon which he is notified of that decision.
(E) The Registrar shall remove the name of counsel from the lists referred to in Rules 43(B) and (C) of the Rules:
(i) upon a decision by a Chamber under Rule 47(A)(ii) of the Rules;
(ii) upon a final decision of the Disciplinary Panel or Disciplinary Board that counsel is banned from practicing before the Mechanism pursuant to Article 49(C)(vi) of the Code of Conduct;
(Hi) where counsel no longer satisfies the requirements of Article 14(A).
(F) The Registrar may deny a request for the assignment of counsel where a procedure pursuant to Rule 90 of the Rules or Part III of the Code of Conduct has been initiated against that counsel. Counsel may seek review of the Registrar's decision before the President within 15 days from the date upon which he is notified of that decision.
(G) A Counsel admitted to the list referred to in Rules 43(B) and (C) of the Rules shall:
(i) confirm his continued availability and qualification to be assigned to indigent suspects or accused every two years from the date of his admission of the list;
(ii) immediately advise the Registrar if he is no longer available or qualified to represent a suspect or accused for a period of more than 6 months.
If counsel fails to confirm his availability or qualification, the Registrar may, after giving notice to counsel, remove his name from the list.

Article 15--professional certification

(A) An applicant for admission to the lists envisaged in Rules 43(B) and (C) of the Rules shall supply the Registrar with:
(i) a certificate of professional qualification issued by the competent professional or governing body, including a certificate of current practice and good standing;

(ii) for applicants whose native language is not English or French, a certificate from a language institute or other evidence of proficiency in English or French. The Registrar may also require such applicants to demonstrate their language ability by means of a language proficiency test;
(iii) a resume which evidences established competence in criminal law and/or international criminal law, international humanitarian law, international human rights
law and a minimum of seven years of relevant experience in criminal proceedings;
(iv) the names and addresses of two referees, who practice in the fields of criminal law, international humanitarian law, international human rights law or international criminal law and who are in a position to advise the Registrar as to the professional competence of the applicant in these fields;
(v) certification that the applicant has not been found guilty in any criminal proceeding or to indicate the acts for which he has been found guilty;
(vi) certification that the applicant has not been found guilty in any disciplinary proceedings or to indicate the acts for which he has been found guilty; and
(vii) any other documentation that the Registrar may deem necessary.
(B) The Registrar may refer an applicant for admission to the lists referred to in Rules 43(B) and (C) of the Rules to a panel composed of senior legal officers in Chambers, and/or counsel on the Rule 43(B) list who possess a minimum of 15 years of experience in criminal proceedings, to interview the applicant and to make a recommendation to the Registrar on his application.
(C) An applicant who has been denied admission to the lists or who has been removed from the lists pursuant to Article 14(E)(ii) may seek review of the Registrar's decision before the President within 15 days from the date upon which he is notified of that decision.

Article 16--basic principles

(A) A suspect or accused shall be entitled to have one assigned to him. Where suspects or accused are jointly charged or tried pursuant to the same indictment, each shall be entitled to have a separate counsel assigned.
(B) The counsel assigned to represent a suspect or accused shall be referred to as the lead counsel and shall be responsible for all aspects of the defence of the suspect or accused before the Mechanism. Subject to Article 16(C), the lead counsel shall sign all documents submitted to the Mechanism.
(C) In the interests of justice and at the request of lead counsel, the Registrar may assign a second counsel to assist with the defence of the suspect or accused. This counsel shall be called the co-counsel. Acting under the authority of lead counsel, the co-counsel may deal with all stages of the proceedings and all matters arising out of the defence of the suspect or accused. The co-counsel may also be authorised, in writing, to sign documents on behalf of the lead counsel.
(D) At the request of the lead counsel and where the interests of justice so require, the Registrar may assign a co-counsel who does not speak either of the two working languages of the Mechanism but who speaks the native language of the accused. The Registrar may impose such conditions as deemed appropriate.

(E) At the request of the lead counsel, the Registrar may assign other persons such as legal assistants, consultants, investigators and interpreters, as required, to provide support to counsel. Only persons assigned or approved by the Registrar may assist counsel with the defence of the suspect or accused. The lead counsel and the persons assisting him shall be referred to as the defence team. The lead counsel is responsible for selecting and supervising all defence team members, including co-counsel.
(F) Members of the family or close friends of suspects, accused and counsel are not eligible for assignment under the Directive as counsel, expert, legal assistant, investigator, translator or interpreter, unless the Registrar determines that the assignment is in the interests of justice.
(G) No counsel shall be assigned to more than one suspect or accused at a time, unless:
(i) each suspect or accused has received independent legal advice from the Registrar and both. have consented in writing; and
(ii) the Registrar is satisfied that there is no potential or actual conflict of interest or a scheduling conflict, and that the assignment would not otherwise prejudice the defence of either suspect or accused, or the integrity of the proceedings.
(H) Counsel assigned pursuant to Rule 64 of the Rules shall only represent the accused for the purpose of the accused entering a plea, unless the Registrar, deems it appropriate for the duty counsel to perform work which exceeds the mandate of duty counsel but is required to protect the rights of the accused until permanent counsel is assigned by the Registrar or retained by the accused, or the accused elects in writing to conduct his own defence pursuant to Rule 43(F) of the Rules.
(I) Lead counsel shall keep a complete and accurate case file of all documentation related to the case and of all work performed by the defence team during representation of the suspect or accused. Subject to his obligations under the Code of Conduct, lead counsel shall retain the case file for five years after the completion of proceedings relating to the suspect or accused before the Mechanism.

Lead counsel ordered to return confidential material to the Registry after the five-year retention period expires.[1808]

Article 17--applicable law

In the performance of their duties assigned counsel shall be subject to the relevant provisions of the Statute, the Rules, this Directive, the Code of Conduct, the Rules of Detention, any other rules or regulations adopted by the Mechanism, the Host State Agreements entered into by the United Nations on behalf of the Mechanism, and the codes of practice and ethics governing the profession.

Article 18--counsel-client privilege

(A) Notwithstanding counsel-client privilege as defined in Article 13

[1808] *Prosecutor v Stanisic & Simatovic*, No. MICT-15-96-PT, *Decision on Motion for Protective Measures for Victims and Witnesses and Documentary Evidence* (18 February 2016) at para. 8

"Confidentiality" of the Code of Conduct, the Registrar may, if he determines that reasonable cause exists, require assigned counsel to provide information and documentation, including that which is otherwise privileged or confidential, as may be reasonably necessary for the Registrar to determine whether work for which the Mechanism legal aid funds have been claimed or paid, has been performed. For this purpose, counsel shall allow the Registrar to examine, on a strictly confidential basis, any part of the case file, in accordance with Article 18(B). Disclosure of privileged or confidential information or documentation under this article does not negate or constitute waiver of counsel-client privilege.
(B) Counsel-client privilege shall extend to the Registrar in respect of information or documentation obtained under Article 18(A).
(C) The general prohibition on the disclosure of privileged or confidential information and documentation under Articles 18(A) and 18(B) shall not apply to the Registrar where:
(i) the Registrar initiates a disciplinary proceeding against counsel under Part III of the Code of Conduct in connection with the Mechanism's legal aid funds which have been claimed or paid, and to which claimant or payee was not entitled;
(ii) the Registrar initiates proceedings in a national jurisdiction in connection with the administration of the Mechanism's legal aid system, including the misappropriation of the Mechanism's legal aid funds; or
(iii) disclosure is essential to establish a claim for recovery of funds from a person to whom legal aid was granted in accordance with Article 11 .

Article 19--assignment of counsel away from the seat of the Mechanism

(A) Away from the seat of the Mechanism, and in a case of such urgency that the procedure established in Article 7 cannot be followed, a suspect who, during the investigation, requests assignment of counsel, may indicate the name of a counsel whose name does not appear on the list envisaged in Rule 43(B) of the Rules, but who may be assigned in accordance with this Directive.
(B) Where the suspect requesting assignment of counsel is unable to provide the name of a counsel in accordance with Article 19(A), the Prosecutor, or a person authorised by him or acting under his discretion shall obtain the name of a counsel who may be assigned in accordance with the provisions of this Directive, and may contact the local bar association for this purpose.
(C) In the situations envisaged in Articles 19(A) and 19(B), the procedure for assignment of counsel as set out in this Directive shall apply mutatis mutandis but shall be accelerated where necessary.

Article 20--ability of suspects or accused to remunerate counsel

(A) Where counsel has been assigned, the Registrar may withdraw the assignment of counsel if information is obtained which establishes that the suspect or accused has sufficient means to remunerate counsel. In such cases, the Registrar may recover the cost of providing counsel in accordance with Rule 43(E) of the Rules.
(B) Where counsel has been assigned, the Registrar may modify his decision on the

extent to which the suspect or accused is able to remunerate counsel if it is established that the means of the suspect or accused:
(i) have changed since the Registrar issued his decision on the extent to which the accused is able to remunerate counsel; or
(ii) were not fully disclosed, or were otherwise not known to the Registrar, as of the date he issued his decision.
(C) The Registrar's decision shall be reasoned and notified to the suspect or accused, in writing, and to the counsel assigned, and shall take effect from the date of notification.
(D) The provisions of Article 13 shall apply mutatis mutandis where a suspect or accused seeks a review of a decision made pursuant to Articles 20(A) and 20(B).

Given the death of the convicted person and the low likelihood of recovering his assets in legal proceedings through the courts of Croatia, the orders to freeze his assets to recover legal aid funds would be vacated.[1809]

Article 21--withdrawal and suspension of assignment

(A) In the interests of justice or in exceptional circumstances, the Registrar may:
(i) at the request of the accused, or his counsel, withdraw the assignment of counsel;
(ii) at the request of lead counsel withdraw the assignment of co-counsel.
Where the Registrar has withdrawn counsel pursuant to this paragraph, he shall inform the relevant Chamber of his decision.
Where a request for withdrawal has been denied, the person making the request may seek the President's review of the Registrar's decision within 15 days from the date upon which he is notified of that decision.
(B) The Registrar may suspend the assignment of counsel for a reasonable and limited time after consulting with the Chamber if:
(i) a disciplinary procedure under Part III of the Code of Conduct has been initiated against that counsel; or
(ii) contempt proceedings have been initiated against that counsel pursuant to Rule 90 of the Rules.
The counsel may seek the President's review of a decision to suspend within 15 days from the date upon which he is notified of that decision.
(C) The Registrar shall withdraw the assignment of counsel:
(i) upon a decision of a Chamber under Rule 47(A)(ii) of the Rules; or
(ii) where counsel no-longer satisfies the requirements of Article 14(A); or
(iii) where counsel has been found to be in contempt pursuant to Rule 90 of the Rules, unless the Chamber rules that the assignment should continue.
Where the assignment of counsel has been withdrawn pursuant to Article 21 (C)(ii) above, counsel may seek review of the Registrar's decision from the President within 15 days from the date upon which his notified.
(D) In such cases, the withdrawal or suspension shall be notified to the accused, to the counsel concerned, to the Association of Counsel of which he is a member, and

[1809] *Prosecutor v Prlic et al*, No. MICT-17-112, *Order Vacating the Orders in relation to the Recovery of Legal Aid Funds* (28 February 2018) at p. 2

to his professional or governing body.
(E) Where the assignment of counsel is suspended, the Registrar shall immediately assign replacement counsel to suspect or accused. Where the assignment of counsel is withdrawn, the Registrar may, subject to Article 22, assign a replacement counsel. Where the assignment of counsel is withdrawn pursuant to Article 21(C), the Registrar shall assign a replacement counsel.

suspension pending contempt proceedings

A decision to suspend counsel or a defence team member must be taken by the Registrar himself, not a Legal Officer.[1810]

A decision to suspend counsel must be for a limited period and must specify the period when the suspension is to be in effect.[1811]

A decision to suspend counsel can only be taken after consultation with the Chamber to which the case is currently assigned.[1812]

24-hour deadline for submission of response of counsel prior to suspension was unreasonable and unjustified.[1813]

Article 22--duties of counsel upon withdrawal

(A) Assigned counsel shall continue to act until:
(i) a replacement counsel has been assigned by the Registrar; or
(ii) a replacement counsel has been retained by the suspect or accused pursuant to Rule 42 of the Rules; or
(iii) the suspect or accused has elected in writing to conduct his own defence pursuant to Rule 43(F) of the Rules and his election has been accepted by the Chamber.
(B) Where the assignment of counsel is withdrawn by the Registrar or where the services of assigned counsel are discontinued, the counsel must deliver within 15 days of withdrawal all the original documents in the file to the counsel who succeeds him, or otherwise, to his client.
(C) In the case of the withdrawal of the assignment of a co-counsel, such delivery of documents shall be made to the counsel within seven days.
(D) Failure by counsel to comply with the requirements of this Article may result in withholding counsel's fees, notification to the professional body regulating the conduct of counsel in his place of admission and, if he is a professor and not

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[1810] *Prosecutor v Ngirabatware*, No. MICT-12-29-A, *Decision on Motion to Quash Decision of Suspension and to Re-instate Defence Team Legal Assistant* (19 March 2013) at para. 16
[1811] *Prosecutor v Ngirabatware*, No. MICT-12-29-A, *Decision on Motion to Quash Decision of Suspension and to Re-instate Defence Team Legal Assistant* (19 March 2013) at para. 17
[1812] *Prosecutor v Ngirabatware*, No. MICT-12-29-A, *Decision on Motion to Quash Decision of Suspension and to Re-instate Defence Team Legal Assistant* (19 March 2013) at para. 18
[1813] *Prosecutor v Ngirabatware*, No. MICT-12-29-A, *Decision on Motion to Quash Decision of Suspension and to Re-instate Defence Team Legal Assistant* (19 March 2013) at para. 20

otherwise admitted to the profession, to the governing body of his University.
(E) In the interests of justice, and upon consultation with the replacement counsel, where one has been retained or assigned, the Registrar may instruct the previously assigned counsel to continue to act or to assist the replacement counsel. During this period, the costs necessarily and reasonably incurred by both assigned counsel shall be met by the Mechanism.
(F) If lead counsel is withdrawn, co-counsel shall assume responsibility of carrying on the proceedings.

Article 23--payment pro rata temporis

Where an assigned counsel is replaced by another assigned counsel, he and his replacement shall be remunerated pro rata temporis.

Article 24--responsibility for remuneration and expenses

(A) Where counsel has been assigned, the costs of legal representation of the suspect or accused necessarily and reasonably incurred shall be met by the Mechanism in accordance with the Statute, the Rules, this Directive and related policies and subject to the budgetary provisions, rules, regulations, and practice set by the United Nations. All costs are subject to prior authorisation by the Registrar. If authorisation was not obtained, the Registrar may refuse to meet the costs.
(B) The Mechanism shall meet the following costs in so far as those costs are reasonable and necessary in the circumstances to ensure that the rights of the suspect or accused enshrined in Article 19 of the Statute are upheld:
(i) the remuneration of assigned counsel and assigned members of the defence team;
(ii) expenses related to the production of evidence for the defence and the ascertainment of facts;
(iii) expenses related to the temporary consultancy on specific questions;
(iv) expenses related to the production of expert reports, which are paid at the rate established in the remuneration scheme established under Article 25 of this Directive;
(v) expenses related to the accommodation and transportation of witnesses testifying in court in accordance with the Policy for the Provision of Support and Protection Services to Victims and Witnesses; and
(vi) expenses related to travel, travel taxes and similar duties.
(C) Other expenses, such as general office costs, are governed by the remuneration scheme, established pursuant to Article 25.
(D) The Registrar shall pay the costs referred to in Article 24(B) upon approval of a statement of fees or expenses from lead counsel. The statement of fees or expenses must be made out in accordance with the guidelines established by the Registrar and, unless otherwise provided for, must be presented to the Registrar within 90 days from the last day of the month during which work was performed or the expense was incurred.

Although the withdrawal of the Presiding Judge, delaying the issuance of the judgement for three months, was an unforeseeable circumstance beyond the control of the Defence Team, counsel failed to demonstrate that the work he performed during those three months, such as communicating with his client and reviewing newly disclosed material, arose from that unforeseeable circumstance and therefore his claim for remuneration for that three-month period was denied.[1814]

Article 25--remuneration of counsel and members of defence team

(A) Assigned counsel and assigned members of their defence team practicing before the Mechanism shall be remunerated in accordance with the remuneration scheme adopted by the Registrar.
(B) Without prejudice to Article 6(C), assigned counsel and assigned defence team members who receive remuneration from the Tribunal shall not accept remuneration for the assignment from any other source.

Appeals Chamber declined to provide observations, as requested by the Registry, on impact of extension of time for notice of appeal on request for increase of allocation of funds to defence team on appeal, reasoning that the matter may come before it as part of its duty to ensure adequate facilities to an appellant.[1815]

Article 26--remuneration of duty counsel

Duty Counsel assigned pursuant to Rule 64 of the Rules shall be remunerated at a fixed rate pursuant to the remuneration scheme established under Article 25 of this Directive.

Article 27--travel expenses

(A) Subject to prior authorisation by the Registrar, travel expenses of assigned counsel and where applicable, assigned members of the defence team shall be met in accordance with the remuneration scheme established pursuant to Article 25 of this Directive.
(B) Travel expenses of assigned counsel and, where applicable, assigned members of the defence team who do not usually reside in the territory of the host country or in the country where the particular stage of the procedure is being conducted, shall be met by the Registrar on the basis of one economy class standard fixed-date round trip air ticket or one first class train ticket by the shortest route to and from the country where the procedure is being conducted and within the limits set out in the remuneration scheme established pursuant to Article 25 of this Directive.
(C) Travel expenses of assigned counsel and, where applicable, assigned members of the defence team who usually reside in the territory of the host country but not in

[1814] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Request for Review of Remuneration Decision* (26 June 2020) at paras. 26, 33
[1815] *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on the Registry's Request for Observations regarding Preparation of the Notice of Appeal* (4 May 2016), p. 3

the town where they are acting, shall be met by the Registrar on the basis of either first class public transportation tickets or fixed rates as established by the United Nations Schedule of Rates of Reimbursement for Travel by Private Motor Vehicle applicable to different groups of Countries and Territories, per kilometre travelled on the outward and return journeys by the shortest route, within the limits set out in the remuneration scheme established pursuant to Article 25 of this Directive.
(D) All travel authorisation requests and amendments thereof shall be submitted to the Registrar at least seven days before the proposed travel unless it can be demonstrated that circumstances beyond the control of the defence team prevented the traveller from complying with this requirement. The Registrar may refuse to cover additional costs associated with a failure to comply with this requirement. Where such a failure causes the Mechanism to incur additional costs, the Registrar may deduct those costs from payments otherwise due to the traveller.

Article 28--daily subsistence allowances

(A) Subject to prior authorisation by the Registrar, daily subsistence allowance for assigned counsel and where applicable, assigned members of the defence team, shall be paid by the Registrar in accordance with the remuneration scheme established pursuant to Article 25 of this Directive.
(B) Daily subsistence allowance paid to assigned counsel and, where applicable, assigned members of the defence team shall be calculated on the basis of fixed rates as established by the United Nations Schedule of Daily Subsistence Allowance Rates applied to the number of days of work. Neither assigned counsel, nor assigned members of the defence team shall be entitled to daily subsistence allowance while staying at their place of residence.
(C) Daily subsistence allowance shall be paid in accordance with the United Nations rules and regulations on the basis of the current rates applicable in the country where assigned counsel, or where applicable, assigned members of the defence team, are acting.
(D) In accordance with United Nations regulations, the applicable rate shall be lowered by twenty five percent when assigned counsel or, where applicable, assigned members of the defence team have spent more than 60 days in total from the date of their assignment, in a country in which they are acting.
(E) Where appropriate in the circumstances, the Registrar may provisionally pay daily subsistence allowances in advance.

Article 29--translation and interpretation costs

(A) The Mechanism shall provide translation and interpretation services, or meet the cost of such services as reasonably necessary to protect the rights of a suspect or accused enshrined in Article 19 of the Statute.
(B) The Mechanism provides translation of documents and interpretation services to the suspect or accused and his defence team as set out in a Registry translation services policy.
(C) Translation and interpretation services other than those provided by the

Mechanism in accordance with the Registry policy described in Article 29(B) shall be organised by the defence team. The cost of these services shall be met by the resources allocated to the defence team in accordance with the remuneration scheme established pursuant to Article 25 of this Directive.

Article 30--adoption and amendment of policies

The remuneration scheme referred to in Article 25 shall not be adopted or amended by the Registrar without prior consultation with the Association of Counsel, should such association exist.

Registrar failed to comply with Article 30 when he failed to consult association of defence counsel before adopting appeal remuneration policy. Decision refusing to apply Level 2 complexity to appeal proceedings quashed.[1816]

Article 31--responsibility for payments

All sums payable to assigned counsel, and other members of the defence team, where applicable, under the provisions of this Directive shall be paid by the Registry.

Article 32--settlement of disputes over payment

(A) Where a dispute arises over remuneration or reimbursement of expenses and where the sum involved is USD 5,000 (five thousand) or less, an aggrieved party may request the Registrar to review the matter. The Registrar shall decide on the matter personally or assign the Officer in Charge to do so on his behalf. Before reaching his decision, the Registrar or Officer in Charge shall invite submissions from the aggrieved party and the respondent and may consult with the President if necessary. The decision of the Registrar or Officer in Charge shall be final and binding upon the parties.
(B) Where the dispute involves a sum greater than USD 5,000 (five thousand), an aggrieved party may submit a request for review with the Registrar, who shall refer the matter to the President for his determination. Before making a determination the President shall request submissions from the aggrieved party and the respondent. The President's determination shall be final and binding upon the parties.
(C) Requests for review of decisions of the Registrar on the extent to which an accused is able to remunerate counsel shall be brought before the Chamber seised of the case in accordance with Article 13(B).

While in the past the Registrar may have responded to requests for review of remuneration decisions without being requested to do so by the President and this past practice may have resulted in a more efficient and expeditious briefing of such requests,

[1816] *Prosecutor v Ngirabatware*, No. MICT-12-29-A, *Decision on Motion to Quash and Revise a Decision of the Registrar on the Level of Complexity and Seeking Further Relief* (26 February 2014) at para. 38

the Registrar's reliance on Article 32(B) of the Directive in declining to respond to a request for review until the President has requested submissions was proper.[1817]

Counsel cannot aggregate decisions on separate requests for remuneration to exceed the $5,000 threshold for review by the President.[1818]

A request for review of a remuneration decision for a legal assistant should be brought by the counsel and not the legal assistant.[1819]

Request for review was untimely where applicant waited to receive the payment amount rather than appealing the decisions that had reduced that amount.[1820]

Article 33—facilities

Subject to the availability of space and resources, facilities and equipment, such as photocopiers, computer equipment, and other office equipment, and telephone lines, will be provided to assigned counsel

Article 34--advisory panel

(A) An Advisory Panel shall be established, pursuant to Rule 42(D), to assist the President and the Registrar in matters relating to Defence Counsel. An Advisory Panel shall be set up consisting of five persons in total. The following shall each appoint one representative to serve on the Advisory Panel: the President, the Registrar, the International Bar Association, the Union Internationale des Avocats, and Association of Counsel. Each member of the Advisory Panel must have a minimum of ten years legal experience.
(B) Panel members shall be appointed for an initial term of four years, with a possible extension of two years should the mandate of the Mechanism be extended.
(C) Panel members shall appoint a President upon consultation with one another.
(D) The role of the Advisory Panel is to provide advice to the President of the Mechanism and the Registrar, including but not limited to:
(i) those Rules of Procedure and Evidence which affect the rights of suspects and accused and the work of defence counsel before the Mechanism;
(ii) the Directive on the Assignment of Defence Counsel;
(iii) the Code of Conduct; and
(iv) the policies and practice directions of the Mechanism.
(E) The Advisory Panel may be consulted as and when necessary by the President of the Mechanism, the Registrar of the Mechanism, and the President of the Association of Counsel on matters referred to in Article 34(D).

[1817] *Prosecutor v Karadzic*, No. MICT-13-55, *Order for Submissions* (19 June 2019) at p.2
[1818] *Prosecutor v Karadzic*, No. MICT-13-55, *Decision on Request for Review of Remuneration Decision* (26 June 2020) at para. 20
[1819] *Prosecutor v Ngirabatware,* No. MICT-12-29-R, *Decision on Request for Review of Remuneration Decision* (10 July 2020) at p. 3
[1820] *Prosecutor v Ngirabatware,* No. MICT-12-29-R, *Decision on Request for Review of Remuneration Decision* (10 July 2020) at p. 3

(F) The Advisory Panel may also on its own initiative address the President of the Mechanism, the Registrar or the President of the Association of Counsel on the matters referred to in Article 34(D).
Upon the invitation of the Advisory Panel, the President of the Mechanism, the Registrar, or the President of the Association of Counsel, or their representatives, may attend the meetings of the Advisory Panel.

Code of Professional Conduct for Defence Counsel

PART I: DEFINITIONS

Article 1--definitions

For the purpose of this Code, the following definitions shall apply:

Advisory Panel:
The body established to assist the President and the Registrar in all matters relating to Defence Counsel under Rule 42(D).

Association of Counsel:
An Association of Defence Counsel practicing before the Mechanism recognised by the Registrar in accordance with Rule 42(A)(iii).

Chamber:
A Chamber of the Mechanism, or a Single Judge, in accordance with Article 12 of the Statute.

Client:
An accused, suspect, convicted person, detainee, witness or other person who has engaged Counsel or has been assigned Counsel by the Registry for the purposes of legal representation before the Mechanism.

Code:
The present Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism and Other Defence Team Members.

Complainant:
Any person or entity who submits a complaint under the disciplinary regime pursuant to Article 35 of the Code.

Counsel:
A legal professional in communication with a prospective Client or engaged to represent a Client and who is or was assigned, appointed or recognised by the Registrar.

Co-Counsel:

A second counsel, engaged by Lead Counsel, and assigned by the Registrar pursuant to Article 16(C) of the Directive, or otherwise appointed or recognised by the Registrar to assist in the defence of a Client.

Defence Team:
Lead Counsel, Co-Counsel and other persons who perform services for Counsel for the purpose of representing a Client before the Mechanism, or in the case of a self-represented accused, their recognised legal associates and other persons who assist a self- represented accused in their defence.

Directive:
The Directive on the Assignment of Defence Counsel, issued by the Registrar on 14 November 2012, in accordance with Rule 43, and as subsequently amended.

Firm:
A private law firm or a legal services organisation.

ICTR:
The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Security Council resolution 955 of 8 November 1994.

ICTY:
The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993.

Lead Counsel:
A Counsel engaged by a Client and assigned by the Registrar pursuant to Article 16(B) of the Directive, or, in case of appointment or recognition by the Registrar, a person so designated by the Registrar following instruction from the Client.

Mechanism:
The International Residual Mechanism for Criminal Tribunals established by Security Council Resolution 1966 of 22 December 2010.

Parties:
The Prosecution and the Defence Team, including the Client, collectively.

President:
The President of the Mechanism appointed pursuant to Article 11 of the Statute.

Professional Misconduct:
Any conduct defined by Article 29 of the Code.

Prohibited Conduct:
Discrimination, harassment, including sexual harassment, and abuse of authority, as further defined in Article 28 of the Code.

Registrar:
The Registrar of the Mechanism appointed pursuant to Article 15(3) of the Statute.

Respondent:
Counsel or Defence Team member subject to a disciplinary complaint.

Rules:
The Rules of Procedure and Evidence adopted by the Mechanism on 8 June 2012, and as subsequently amended.

Statute:
The Statute of the Mechanism annexed to Security Council resolution 1966 of 22 December 2010, and as subsequently amended.

Tribunals:
The ICTR and the ICTY jointly.

Unrepresented Person:
A person not represented by any legal counsel.

In this Code, the singular shall include the plural, and *vice versa*.

PART II: GENERAL PROVISIONS

Article 1--Application of the Code
(A) The English and French texts of this Code shall be equally authentic. In case of discrepancy, the version that is more consonant with the spirit of the Statute, the Rules, the Directive and this Code shall prevail.
(B) In the event of any inconsistency between this Code and the Statute, the Rules, and/or the Directive, the terms and provisions of the Statute, the Rules, and/or the Directive, respectively, shall prevail.
(C) Any term not defined in this Code has the same meaning given to it by the Statute or by the Rules.
(D) If there is any inconsistency between this Code and any other codes of practice and ethics governing Counsel and Defence Team members, the terms of this Code shall prevail in respect of Counsel and Defence Team members' conduct before the Mechanism.
(E) This Code applies to all Counsel and other Defence Team members representing a Client before the Mechanism, as indicated herein.

Article 2--Entry into Force and Amendment to the Code
(A) Subject to approval by the President, the Registrar may amend this Code, following consultation with the Advisory Panel, the Association of Counsel and the Prosecutor.
(B) Any amendment of this Code shall enter into force upon adoption pursuant to paragraph (A), and shall be rendered public by the Registrar within seven days of adoption. An amendment shall not operate to prejudice the rights of Counsel or Clients in any pending case.

Article 3--Fundamental Principles
This Code is based, in particular, on the fundamental principles that:
(i) the role of Counsel as advocates in the administration of justice requires them to act honestly, independently, fairly, skilfully, diligently, efficiently and courageously;
(ii) Counsel have a duty of loyalty to their Clients consistent with their duty to the Mechanism to act with independence in the administration of justice;
(iii) Counsel and other Defence Team members shall take all necessary steps to ensure that their actions do not bring proceedings before the Mechanism into disrepute;
(iv) Counsel and other Defence Team members shall maintain high standards of professional conduct; and
(v) Counsel and other Defence Team members may be subject to disciplinary proceedings and should be informed of the circumstances under which such proceedings may take place and their rights and obligations in those proceedings.

PART III: OBLIGATIONS OF COUNSEL
Section 1: Obligations of Counsel to Clients
Article 4--Scope of Representation
(A) Counsel shall advise and represent a Client until a final judgement is rendered in their Client's case, or until the representation is terminated by the Client or Counsel or withdrawn by the Registrar.
(B) When representing a Client, Counsel shall:
(i) abide by the Client's decisions concerning the objectives of representation;
(ii) consult with the Client about the means by which those objectives are to be pursued, but is not bound by the Client's views; and
(iii) seek or accept only those instructions which emanate from the Client and which are not given as the result of an inducement from any person, organisation or State.
(C) Counsel shall not advise nor assist a Client to engage in conduct which Counsel knows is criminal or fraudulent, in breach of the Statute, the Rules, this Code or any other applicable law. However, Counsel may discuss the legal consequences of any proposed course of conduct with a Client and may advise or assist a Client in good faith to determine the validity, scope or meaning of the applicable law.

"Counsel" as the term is used in the Code of Conduct means Lead Counsel and Co-Counsel, and does not encompass Legal Consultants, who are considered "Defence Team Members".[1821]

Counsel's failure to personally communicate with client prior to submitting her declaration was inconsistent with the standard of professional competence and ethics expected of defence counsel.[1822]

Counsel warned to strictly adhere to the standards of professional conduct and to desist from behaviour that ultimately compromises the preparation of the defence and the best interests of his clients.[1823]

Article 5--Declining, Terminating or Withdrawing Representation
(A) Counsel shall decline to represent a Client if:
(i) representation will result in conduct which is criminal, fraudulent or in violation of the Statute, the Rules, this Code or any other applicable law; or
(ii) Counsel's physical or mental condition materially impairs Counsel's ability to represent the Client.
(B) Counsel may terminate or, where the Directive is applicable, request withdrawal of their representation of a Client if such termination or withdrawal can be accomplished without material adverse effect on the interests of the Client, or if:
(i) the Client has used Counsel's services to perpetrate a crime or fraud, or persists in a course of action involving Counsel's services that Counsel reasonably believes is criminal or fraudulent;
(ii) the Client insists upon pursuing an objective that Counsel considers repugnant or imprudent;
(iii) the Client fails to substantially fulfil an obligation to Counsel regarding Counsel's services and has been given reasonable warning that Counsel will terminate or request withdrawal of their representation unless the obligation is fulfilled; or
(iv) other good cause for termination or withdrawal exists.
(C) If representation by Counsel is to be terminated or withdrawn, Counsel shall continue to represent the Client until replacement Counsel is engaged by the Client or assigned by the Registrar, or the Client has notified the Registrar in writing of their intention to conduct their own defence, unless the Chamber grants leave for Counsel to discontinue the representation immediately
(D) Upon termination or withdrawal of representation, Counsel shall take steps, to the extent reasonably practicable, to protect the Client's interests, such as giving sufficient notice to the Client, surrendering papers and property to which the Client

[1821] *Prosecutor v Ntakirutimana*, No, MICT-12-17-R, *Decision on Prosecution's Motion for Review of Registrar's Decision Concerning Assignment of a Legal Consultant* (18 September 2024) at p. 3
[1822] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 40
[1823] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 40

or the Mechanism is entitled and refunding any advance payment of fees that has not been earned.

Counsel's representation of applicant seeking unfreezing of assets was terminated where applicant had used counsel to submit false documents in support of his application.[1824]

Article 6--Competence, Integrity and Independence
In the course of providing representation to a Client, Counsel shall:
(i) act with competence, skill, care, honesty and loyalty;
(ii) exercise independent professional judgement and render open and honest advice;
(iii) preserve their own integrity and that of the legal profession as a whole; and
(iv) never permit their independence, integrity and freedom from external pressures to be compromised.

Article 7--Diligence
Counsel shall represent a Client diligently and promptly in order to protect the Client's best interests. Unless the representation is terminated or withdrawn, Counsel shall carry through to conclusion all matters undertaken for a Client within the scope of their legal representation.

Article 8--Communication
Counsel shall keep the Client informed about the status of a matter before the Mechanism in which the Client is an interested party and must promptly comply with all reasonable requests for information.

Article 9--Confidentiality
(A) Whether or not Counsel continues to represent a Client, Counsel shall preserve the confidentiality of the Client's affairs. Counsel shall not reveal to any other person information which has been entrusted to them in confidence, with the exception of members of their Defence Team who need such information for the performance of their duties. Counsel shall not use such information to the Client's detriment or to their own or another Client's advantage.
(B) If other Defence Team members are privy to confidential information in accordance with paragraph (A), such Defence Team members shall be equally bound by the requirements of confidentiality set forth therein.
(C) Notwithstanding paragraph (A), Counsel may reveal information which has been entrusted to them in confidence under the following circumstances:
(i) when the Client has been fully consulted and knowingly consents;
(ii) when the Client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure;
(iii) when essential to establish a claim or defence on behalf of Counsel in a controversy between Counsel and the Client, to establish a defence to a criminal or

[1824] *Prosecutor v Kabuga*, No. MICT-13-38-Misc.1, *Decision on Second Motion Filed by Felicien Kabuga's Family for Return of Frozen Assets and Seized Property* (21 February 2022) at p. 4

disciplinary charge or other claim formally instituted against Counsel based upon conduct in which the Client was involved, or to respond to allegations in any proceeding concerning Counsel's representation of the Client;
(iv) for Counsel assigned by the Registrar pursuant to the Directive, when necessary to comply with that Counsel's obligations under Article 18 of the Directive; or
(v) to prevent an act which Counsel reasonably believes:
(a) is, or may be, criminal within the territory in which it may occur or under the Statute or the Rules; or
(b) may result in death or substantial bodily harm to any person unless the information is disclosed.

Article 10--Conflict of Interest
(A) Counsel and other Defence Team members owe a duty to the Court and the Client to act at all times with independence in the interests of justice. Counsel and other Defence Team members shall put the interests of justice before their own interests or those of any other person, organisation or State.
(B) Counsel shall exercise all care to ensure that no conflict of interest arises.
(C) Counsel shall not represent a Client in connection with a matter in which Counsel participated personally and substantially as an official or staff member of the Tribunals or Mechanism or in any other capacity. However, the Registrar may grant an exception if he determines, after consultation with the Parties and taking into account the views of the Chamber, that there is no real possibility that a conflict exists between the former and present assignment.
(D) Counsel shall not represent a Client with respect to a matter if:
(i) such representation will be, or may reasonably be expected to be, adversely affected by representation of another Client by Counsel or a member of their Firm;
(ii) representation of another Client by Counsel or a member of their Firm will be, or may reasonably be expected to be, adversely affected by such representation;
(iii) the matter is the same or substantially related to another matter in which Counsel or a member of their Firm had formerly represented another Client, and the interests of the Client are materially adverse to the interests of the formerly represented Client; or
(iv) Counsel's professional judgement on behalf of the Client will be, or may reasonably be expected to be, adversely affected by:
(a) Counsel's responsibilities to, or interests in, a third party; or
(b) Counsel's own financial, business, property or personal interests.
(E) Where a conflict of interest could arise, Counsel shall:
(i) promptly and fully inform the Registrar as well as each potentially affected present and former Client of the nature and extent of the possible conflict; and
(ii) either:
(a) take all steps necessary to remove the conflict; or
(b) obtain the full and informed consent of all potentially affected present and former Clients to continue the representation unless such consent is likely to irreversibly prejudice the administration of justice.

(F) Paragraphs (B) to (E) apply equally in connection with Counsel's representation of current and former clients before the Tribunals, the Mechanism and other international or national courts.

The provisions of the Code of Conduct do not require that there be a substantial relationship between matters in which the current clients are represented - what is prohibited is a simultaneous representation that will, or may reasonably be expected to, adversely affect the representation of either client.[1825]

Registrar reasonably determined that there could possibly be a conflict of interest of a counsel who had employed the co-accused as his investigator in another case if the way the co-accused conducted himself as an investigator were ever to be an issue in this case.[1826]

The question is whether there will be or may reasonably be expected to be a conflict of interest. The Registrar's standard of whether it could not exclude the possibility of a conflict of interest, while incorrect, was harmless error.[1827]

Consent provided by a potentially affected client or former client to remove a conflict of interest upon consultation with the counsel should generally be regarded as fully informed in the absence of an indication to the contrary.[1828]

Consent is not conclusive of there being no conflict of interest.[1829]

Consent did not alter the outcome of the decision upholding Registrar's determination not to assign counsel who he believed had a conflict of interest by virtue of his employment of the co-accused as an investigator in an earlier unrelated case.[1830]

Article 11--Sexual Activity with Clients
Counsel shall not:
(i) require or demand any form of sexual activity with a Client as a condition of professional representation;
(ii) employ coercion, intimidation or undue influence in any form of sexual activity with a Client; or

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[1825] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 34
[1826] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 36
[1827] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 38
[1828] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 39
[1829] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 39
[1830] *Prosecutor v Turinabo et al*, No. MICT-18-116-PT, *Decision on Request for Review of Registrar's Decision* (25 January 2019) at para. 39

(iii) represent or continue to represent a Client with whom Counsel has or had any form of sexual activity.

Article 12--Client with Diminished Capacity
When a Client's ability to make adequately considered decisions about their representation reasonably appears to Counsel to be diminished, whether due to minority or mental or other impairment, Counsel shall:
(i) inform the Chamber hearing the matter, if any, of the Client's diminished capacity; and
(ii) take such steps as are necessary to ensure the adequate legal representation of that Client.

Article 13--Fee-splitting
(A) Fee-splitting arrangements, including, but not limited to, financial arrangements between Counsel, or another Defence Team member, and a Client or relatives and/or agents of a Client are prohibited.
(B) Where Counsel or another Defence Team member are requested, induced or encouraged by their Client or relatives and/or agents of a Client to enter into fee-splitting arrangements, they shall advise their Client on the prohibition of such practice and shall report the incident to the Registrar forthwith.
(C) Consistent with Article 30, Counsel and other Defence Team members shall inform the Registrar of any suspected fee-splitting arrangement by any member of their or any other Defence Team.
(D) Following receipt of information regarding possible fee-splitting arrangements between Counsel, or another Defence Team member, and a Client or relatives and/or agents of a Client, the Registrar shall investigate such information in order to determine whether it is substantiated.
(E) Where Counsel or another Defence Team member is found to have entered into a fee-splitting arrangement with a Client or relatives and/or agents of a Client, the Registrar shall consider taking action in accordance with the Disciplinary Regime under Part IV of this Code and the Directive.
(F) It will not be considered fee-splitting where the Registrar has granted leave to Counsel to provide their Client with equipment and materials necessary for the preparation of their defence.

Article 14--Good Faith in Accounting
Counsel shall account in good faith for the time spent working on a case and maintain and preserve detailed records of time spent. This does not alleviate the responsibility of Defence Team members to maintain and preserve in good faith detailed records of time spent.

Article 15--Compensation for Counsel not Assigned by the Registrar
(A) Counsel, other than Counsel assigned by the Registrar, shall provide to a Client, in writing and before Counsel is engaged to represent a Client, a statement of costs of representation, including:
(i) the basis for calculating the costs;

(ii) the billing arrangements; and
(iii) the Client's right to receive a bill of costs.
(B) Counsel, other than Counsel assigned by the Registrar, shall not accept compensation for representing a Client from a source other than that Client unless:
(i) that Client consents in writing after being fully informed by Counsel of the source and any other information relevant to the interests of the Client; and
(ii) there is no interference with Counsel's independence of professional judgement, or with the Client-Counsel relationship
(C) Counsel, if assigned by the Registrar, shall not accept compensation for representing a Client except as provided for under the Directive.

Section 2: Conduct before the Mechanism
Article 16--Rules of the Mechanism
Counsel and other Defence Team members shall at all times comply with the Statute, the Rules, this Code or any other applicable law, including such rulings as to conduct and procedure as may be issued by the Mechanism in its proceedings. Counsel shall at all times have due regard to the fair conduct of proceedings.

Article 17--Communications with Chambers
Unless permitted by the Rules, this Code or the Chamber assigned to hear the matter, neither Counsel nor any other Defence Team member shall:
(i) make contact with a Chamber in relation to the merits of a particular case, except within the proper context of the proceedings in the case;
(ii) submit exhibits, notes and/or documents to a Chamber without transmitting them through the Registry, except in an emergency or when at the same time transmitted to the Registry; or
(iii) submit a judicial filing before a Chamber that has not been assigned to the underlying matter.

Article 18--Candour Toward the Mechanism
(A) Counsel owes a duty of candour to the Mechanism and shall be personally responsible toward the Mechanism for the conduct and presentation of a Client's case.
(B) Counsel shall not knowingly:
(i) make an incorrect statement of material fact or law to the Mechanism; or
(ii) offer evidence which Counsel knows to be incorrect.
(C) Notwithstanding paragraph (B)(i), Counsel will not have made an incorrect statement of material fact or law to another party to the proceedings or to the Mechanism simply by failing to correct an error on any matter stated to Counsel or to the Mechanism during proceedings.
(D) Counsel shall take all necessary steps to correct an incorrect statement of material fact or law by Counsel in proceedings before the Mechanism as soon as possible after Counsel becomes aware that the statement was incorrect.
(E) Counsel may refuse to offer evidence if Counsel makes a reasoned determination that the material in question is irrelevant or lacks probative value.

Evidence was insufficient to make out a *prima facie* case that counsel knew that documents he submitted on behalf of his client were false.[1831]

Counsel reminded to act with greater diligence and care when submitting documents to the Mechanism.[1832]

Article 19--Integrity of Evidence
(A) Counsel and other Defence Team members shall at all times maintain the integrity of evidence, whether in written, oral or any other form, which is or may be submitted to the Mechanism.
(B) If Counsel's representation of a Client terminates for any reason, Counsel shall return evidence and other materials, in accordance with Article 22(B) of the Directive.

Article 20--Frivolous Claims
Counsel shall not make frivolous or vexatious claims, nor submit frivolous or vexatious filings in proceedings before the Mechanism. Further, Counsel shall not make repetitive claims nor submit repetitive filings, without sufficient cause, in proceedings before the Mechanism.

Article 21--Counsel as Witness
Counsel shall not represent a Client in a proceeding in which Counsel is likely to be a necessary witness except where:
(i) the testimony relates to an uncontested issue;
(ii) the testimony relates to the nature and value of legal services rendered in the case; or
(iii) substantial hardship would be caused to the Client otherwise.

The provisions of this article do not apply to legal consultants for defence teams.[1833]

Section 3: Obligations of Counsel and Defence Team members to Others
Article 22--Fairness and Courtesy
(A) Counsel and other Defence Team members shall demonstrate respect, integrity and courtesy for officials and staff members of the Mechanism, and for all other persons who facilitate or participate in the proceedings.
(B) Counsel and other Defence Team members shall recognise the representatives of the Parties as professional colleagues and shall act fairly, honestly and courteously towards them.

[1831] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 33
[1832] *Prosecutor v Kabuga*, No, MICT-13-38-R90.1, *Decision on Allegations of Contempt* (29 April 2024) at para. 33
[1833] *Prosecutor v Ntakirutimana*, No, MICT-12-17-R, *Decision on Prosecution's Motion for Review of Registrar's Decision Concerning Assignment of a Legal Consultant* (18 September 2024) at p. 4

(C) Counsel shall not communicate with the Client of another Counsel without authorisation of the latter unless permitted under the Rules, this Code or any other applicable law.

Article 23--Victims and Witnesses
(A) Counsel or any other Defence Team member shall not use any means that embarrass, delay or unduly burden victims and witnesses, or use coercive or other methods of obtaining evidence that violate the Statute, the Rules, or this Code.
(B) Counsel or any other Defence Team member shall not make any payments in monies or assets to witnesses or potential witnesses for the purpose of influencing or inducing such witnesses or potential witnesses.

Article 24--Unrepresented Persons
(A) Counsel or any other Defence Team member, communicating on behalf of a Client, with an Unrepresented Person, shall not:
(i) knowingly mislead the Unrepresented Person, to the prejudice of that person, concerning the identity and interests of Counsel's Client;
(ii) coerce, harass or threaten the Unrepresented Person or their relatives;
(iii) make other statements prohibited by applicable law;
(iv) fail to disclose information required by applicable law; or
(v) give advice to the Unrepresented Person, except to retain Counsel and in relation to matters specified under paragraph (B), if the interests of that person are or may reasonably be expected to be in conflict with the interests of their Client.
(B) Counsel or any other Defence Team member shall inform the Unrepresented Person of:
(i) the role they play in the matter as a representative of a Client;
(ii) the person's right to Counsel under the Rules, where applicable; and
(iii) the nature of legal representation in general.

Article 25--Prospective Clients
(A) Counsel shall not contact or solicit work from a prospective Client directly or indirectly, unless the prospective Client, their relatives or acquaintances have made known to Counsel a desire to be contacted.
(B) In any contacts made in compliance with paragraph (A), such contact or solicitation may not involve behaviour such as fraud, undue influence, coercion, duress or harassment.
(C) Counsel shall not make false, misleading or deceptive communications to a prospective Client, their relatives or acquaintances about the Counsel or another Counsel's services.

Article 26--Prohibition of Referral Fees
(A) Counsel shall not demand or accept from another Counsel or any other person a fee, commission or any other compensation for referring or recommending the Counsel to a Client.
(B) Counsel shall not pay any person a fee, commission or any other compensation as a consideration for referring a Client to the Counsel.

Section 4: Supervisory and Subordinate Conduct
Article 27--Responsibilities of Counsel for the Defence Team
(A) Lead Counsel has direct supervisory authority over all members of their Defence Team and shall make reasonable efforts to ensure that all such members adhere to this Code.
(B) Counsel shall be responsible for a Defence Team member's violation of this Code if:
(i) Counsel orders or, with knowledge of the specific conduct, approves the conduct involved; or
(ii) Counsel has direct supervisory authority over the Defence Team member, and knew or had reason to know of the conduct at a time when its consequences can be avoided or mitigated, but fails to take reasonable remedial action.
(C) This Article shall not preclude individual responsibility of Defence Team members to adhere to the applicable provisions of this Code.
(D) Members of Defence Teams acting in accordance with a Counsel's reasonable resolution of an arguable question of professional duty shall not be considered to have violated this Code.

Section 5: Maintenance of the Integrity of the Defence
Article 28--Prohibited Conduct
(A) Counsel and other Defence Team members shall not engage in Prohibited Conduct in connection with their work before the Mechanism. Further, Counsel shall have a zero tolerance policy on Prohibited Conduct within their Defence Team and shall take adequate action if faced with allegations of Prohibited Conduct.
(B) In line with paragraph (A), Counsel and other Defence Team members shall not engage in:
(i) Discrimination, i.e., any unfair treatment or arbitrary distinction based on a person's race, sex, gender, sexual orientation, gender identity, gender expression, religion, nationality, ethnic origin, disability, age, language, social origin, or other similar shared characteristic or trait;
(ii) Harassment, i.e., any unwelcome conduct towards any other person that might reasonably be expected or be perceived to cause offence or humiliation to another person, when such conduct interferes with work or creates an intimidating, hostile, or offensive work environment;
(iii)Sexual harassment towards any other person with unwelcome conduct of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile, or offensive work environment; or
(iv)Abuse of their authority against any other person with an improper use of a position of influence, power or authority, particularly with regards to career or employment conditions.

Article 29--Professional Misconduct
It shall be Professional Misconduct for Counsel or another Defence Team member, inter alia, to:

(i) violate or attempt to violate the Statute, the Rules, this Code or any other applicable law, or to knowingly instruct, assist or induce another person to do so, or to do so through the acts of another person;
(ii) commit a criminal act which reflects adversely on their honesty, trustworthiness or fitness to act in their position;
(iii) engage in conduct involving dishonesty, fraud, deceit or misrepresentation related to the proceedings before the Mechanism;
(iv) engage in conduct which is prejudicial to the proper administration of justice before the Mechanism; or
(v) provide inaccurate information or fail to disclose information regarding their qualifications to practice before the Mechanism as set out in the Rules and, where Counsel has been assigned to a Client, the Directive.

Communicating with a client in detention through prohibited means, such as e-mail, is a violation of this Article.[1834]

Article 30--Duty to Report
In accordance with the disciplinary regime set out in Part IV of this Code, Counsel and Defence Team members shall inform the Disciplinary Panel if they know that another Counsel or Defence Team member has breached this Code or has otherwise engaged in Prohibited Conduct and/or Professional Misconduct.

PART IV: DISCIPLINARY REGIME
Article 31--Purposes of Disciplinary Regime
The purposes of this Part are:
(A) to protect Clients and other individuals, particularly witnesses, from Counsel and other Defence Team members who have not discharged, will not discharge or are unlikely to discharge their professional responsibilities appropriately, and to provide every person whose rights or interests could be substantially affected by an alleged misconduct the right to submit a complaint about the conduct of Counsel and other Defence Team members;
(B) to ensure compliance by individual Counsel and other Defence Team members with the necessary standards of professionalism, competence, diligence, and honesty, and to maintain at a significantly high level the ethics and practice of the legal system operated by the Mechanism; and
(C) to guarantee that any disciplinary proceedings against Counsel or any other Defence Team member are procedurally fair.

Article 32--Inherent Powers of the Mechanism
This Part shall not affect the inherent powers of the Mechanism to deal with conduct which interferes with the administration of justice under the Statute, the Rules, or any other applicable law.

[1834] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Allegations of Contempt* (25 February 2025) at para. 37

Article 33--Filings, Decisions and Orders
Unless otherwise provided for in this Part, all filings, decisions and orders in relation to the disciplinary regime shall be submitted confidentially and in a working language of the Mechanism to the Registry (via e-mail, to: DisciplinaryRegime@IRMCT.org), which shall transmit them to the appropriate recipients. The Registry shall maintain all records of this disciplinary regime and may provide decisions of a previous Disciplinary Panel or Board to the current Disciplinary Panel or Board, upon their request.

Article 34--Disciplinary Panel
(A) A Disciplinary Panel shall deal with all matters relating to alleged Prohibited Conduct and Professional Misconduct. The Disciplinary Panel shall consist of:
(i) a member of the Association of Counsel to be appointed in accordance with the Association's statute;
(ii) a member of the Advisory Panel having practised at the Tribunals or the Mechanism to be appointed by the President of the Advisory Panel; and
(iii) the Registrar of the Mechanism, or a senior Registry legal official designated by him or her.
(B) At its first meeting, the members of the Disciplinary Panel shall select a Chairperson from amongst its members. The Chairperson shall be appointed for a term of two years and is eligible for re-election.
(C) Except as otherwise provided by this Code, the Disciplinary Panel may determine its own procedure for the filing of briefs and presentation of argument. Nonetheless, and if a Complainant anonymously submits a complaint, the Disciplinary Panel's anticipated procedure shall respect the intended non-disclosure of the Complainant's identity.

Article 35--Submission of Complaints
(A) A Client, the Registrar, a party to proceedings before the Mechanism, or any other person, organisation or State whose rights or interests could be substantially affected by alleged Prohibited Conduct and/or Professional Misconduct may submit a complaint. Where the Disciplinary Panel itself has reasonable grounds to suspect that Counsel or a Defence Team member has engaged in such conduct, it may commence, proprio motu, an investigation into the matter.
(B) The complaint shall be in writing, shall identify the Counsel or Defence Team member against whom the complaint is made, shall describe in sufficient detail the alleged Prohibited Conduct and/or Professional Misconduct, and may be submitted confidentially or anonymously, as follows:
(i) A Complainant may submit a complaint directly to the Registry of the Mechanism, by way of the e-mail address in Article 33 above; or
(ii) A Complainant may submit a complaint by way of regular mail, to the Registry of the Mechanism at either branch, for the attention of the Disciplinary Panel, as follows: a) Haki Road, Plot No. 486 Block A, Lakilaki Area, Arumeru District, P.O. Box 6016, Arusha, Tanzania; or, b) Churchillplein 1, 2517JW, The Hague, The Netherlands

If a Complainant submits a complaint anonymously, the Complainant is responsible for ensuring that no self-identifying information is included therein. Anonymous Complainants are encouraged to provide as much detail as possible, and to consider providing an anonymised address (electronic or physical) when submitting the complaint, to allow further contact from the Disciplinary Panel, as may be necessary, without the Complainant's identity becoming known. Any Registry official who inadvertently becomes aware of an anonymous Complainant's identity shall not disclose it further, without the consent of the Complainant.
(C) The Complainant shall submit the complaint within twenty-four months after the alleged Prohibited Conduct and/or Professional Misconduct is brought to the attention of the Complainant or within twenty-four months after the Complainant should have reasonably known about the existence or occurrence of the alleged Prohibited Conduct and/or Professional Misconduct. The Disciplinary Panel may, nonetheless, pursue complaints submitted after these deadlines if it considers this to be in the interests of justice.

Article 36--Withdrawal of Complaints
(A) By notice in writing, the Complainant may withdraw a complaint. Any withdrawal shall be transmitted to the Chairperson of the Disciplinary Panel, by the Registry. The withdrawal of a complaint does not impact upon the Disciplinary Panel's competency under Article 35(A) to investigate the matter raised in the complaint proprio motu.
(B) The withdrawal of the complaint does not prevent a further complaint being made under this Part by the same or any other Complainant with respect to the subject matter of the withdrawn complaint.

Article 37--Summary Dismissal of Complaints
(A) The Disciplinary Panel may dismiss a complaint if it is vexatious, misconceived, frivolous, lacking in substance or submitted after the deadline set out in Article 35(C) has expired. Additionally, and where the requested anonymity of a Complainant's identity effectively undermines the ability of the Disciplinary Panel to meaningfully investigate the alleged Prohibited Conduct and/or Professional Misconduct, the complaint may be dismissed, without prejudice.
(B) The Disciplinary Panel shall provide a copy of the summary dismissal to the Registry, in accordance with Article 33, which shall transmit the same to the: i) Respondent; ii) Complainant, where possible; iii) Registrar; and, iv) Association of Counsel.

Article 38--Investigation of Alleged Prohibited Conduct and/or Professional Misconduct
(A) The Disciplinary Panel shall conduct, as soon as possible, an investigation into the alleged Prohibited Conduct specified in Article 28 and/or the Professional Misconduct specified in Article 29. Any such investigation shall have due regard for a Complainant's request that his, her, or its identity remain anonymous.
(B) If the Disciplinary Panel opens an investigation into a Defence Team member, the Disciplinary Panel shall inform Lead Counsel promptly of the existence of a

disciplinary investigation against the Defence Team member. Counsel and Defence Team members shall co-operate with the investigation.
(C) In the investigation of the conduct at issue, the Disciplinary Panel:
(i) shall, in accordance with Article 33, send particulars of the conduct to the Respondent in a language they understand, and invite them to submit a written explanation in response to the complaint;
(ii) may order, by notice served in writing in accordance with Article 33, the Respondent, the Registrar, the Client or other parties to the disciplinary proceedings to:
(a) produce, at any time and place specified in the notice, any books, documents, papers, accounts or records that are in their possession or under their control and that relate to the subject-matter of the complaint; or
(b) otherwise assist in, or co-operate with, the investigation of the complaint in a specified manner; and
(iii) may interview potential witnesses.
(D) The Disciplinary Panel may inspect any book, document, paper, account or record produced in accordance with paragraph (C)(ii)(a) and may retain it for such period as it deems necessary for the purposes of the investigation. For the purpose of investigating an alleged misconduct involving allegations of fee-splitting, the Disciplinary Panel may request the Registrar to provide information on their related inquiries into the financial status of an accused, if any.
(E) The Disciplinary Panel may fine any person who, without reasonable justification or excuse, refuses or fails to comply with any order or requirement of the Disciplinary Panel under this Article with a penalty of up to 10,000 USD

Article 39--Interim Suspension from Practice
(A) If there are reasonable grounds to conclude that the alleged Prohibited Conduct and/or Professional Misconduct is likely to cause immediate and irreparable harm to the interests of justice, a party to the proceedings, a witness, the Client or any other prospective Client, the Disciplinary Panel may issue a reasoned order suspending the Respondent from working on a case before the Mechanism until the charge has been heard and disposed of. The Disciplinary Panel can order such suspension without prior notice to the Respondent, at any time after the filing of a complaint or after the Disciplinary Panel has commenced an investigation proprio motu.
(B) If the Respondent is a Counsel representing a Client at the time the Disciplinary Panel considers an order for suspension, the Disciplinary Panel must obtain approval from the Chamber before which such Counsel appears, before issuing the order.
(C) Counsel suspended by the Disciplinary Panel in accordance with paragraph (B), or by their Client, may apply to the President of the Mechanism for the revocation of the order. The President of the Mechanism shall decide on such application as soon as practicable, or, at the latest, within seven days after it has been received, unless the interests of justice require otherwise.

Article 40--Charges against Counsel or other Defence Team Members and Institution of Proceedings and Hearings
(A) The Disciplinary Panel shall investigate each particularised allegation, and if there are reasonable grounds to conclude that the Respondent has committed Prohibited Conduct and/or Professional Misconduct, formulate charges.
(B) The Disciplinary Panel may order, if it is in the interest of justice, the joinder of:
(i) more than one charge against the same Respondent; or
(ii) a charge against one or more Respondents if all the charges are founded on the same, or closely related, alleged acts or omissions.
(C) During the course of the investigation, the Respondent shall be provided the opportunity to file a response, in accordance with Article 33, to the allegation(s) in the charge.

Article 41--Disciplinary Panel Hearing
(A) If there are any material issues of fact raised in the pleadings or if the Respondent requests the opportunity to be heard in mitigation, the Disciplinary Panel shall hold a public hearing at the seat of the Mechanism unless it decides, proprio motu, or upon application by the Respondent or Complainant, to exclude the public. In the event that a hearing is held, and in the context of a complaint where the Complainant has requested anonymity, the Disciplinary Panel shall implement any appropriate measures to accommodate said request, in the event that the Complainant will participate in said hearing (e.g., hearing from the Complainant, as may be required, by way of video-link with image and voice distortion).
(B) During the hearing, the Respondent shall have the right to be represented by counsel, to examine evidence submitted by the Complainant or gathered by the Disciplinary Panel, cross-examine witnesses and to present evidence. The Complainant, if any, shall be permitted to address the Disciplinary Panel concerning the Respondent's alleged Prohibited Conduct and/or Professional Misconduct and its effect on them.
(C) The Disciplinary Panel may admit any evidence which is relevant or which has probative value, whether oral or written, whether direct or hearsay and whether or not the same would be admissible in a court of law.
(D) Every witness appearing before the Disciplinary Panel shall, before giving evidence, make the solemn declaration as set out in the Rules. The provisions of the Rules relating to false testimony under solemn declaration shall apply, mutatis mutandis, to witnesses appearing before the Disciplinary Panel.

Article 42--Findings and Sanctions
(A) The Disciplinary Panel shall render its findings on each charge by the majority of its members, accompanied by a reasoned opinion in writing, in accordance with Article 33, to which separate or dissenting opinions may be appended.
(B) The Disciplinary Panel may conclude its proceedings without a finding of Prohibited Conduct and/or Professional Misconduct, or dismiss any charge. The Disciplinary Panel may suspend or dismiss a complaint, before, during or after the investigation of the complaint, if the Disciplinary Panel does not find reasonable

grounds to conclude that the Respondent committed the alleged Prohibited Conduct and/or Professional Misconduct.
(C) The Disciplinary Panel may impose the following sanctions upon a Respondent against whom a charge of Prohibited Conduct and/or Professional Misconduct has been found proved beyond a reasonable doubt, either concurrently or cumulatively:
(i) admonition by the Disciplinary Panel;
(ii) advice by the Disciplinary Panel as to their future conduct;
(iii) public reprimand by the Disciplinary Panel;
(iv) a fine payable to the Mechanism of an amount not exceeding 50,000 USD;
(v) suspension from working on a case before the Mechanism for an appropriate fixed period of time not exceeding two years;
(vi) banishment from working on a case before the Mechanism.
(D) In addition to any of the sanctions imposed under paragraph (C), the Disciplinary Panel may order the Respondent to make monetary restitution by reimbursing the Mechanism, or the privately paying Client, in whole or in part, for expended funds or fees paid where the Disciplinary Panel finds, beyond a reasonable doubt, that the Respondent's Prohibited Conduct and/or Professional Misconduct has resulted in:
(i) the loss or misuse of the Mechanism's legal aid funds, or the need to expend additional legal aid funds as a result of such conduct; or
(ii) a financial loss on the part of the Client in the event where the Complainant is a privately paying Client.
In determining the amount to be reimbursed, the Disciplinary Panel shall consider the amount which the Respondent may reasonably retain for services actually rendered.
(E) In determining the sanctions imposed, the Disciplinary Panel must take into account any aggravating and mitigating factors it considers relevant, including, inter alia, the fact that the Respondent was acting pursuant to a provision of another code of practice and ethics which governs their conduct and that such provision is inconsistent with this Code. A sanction must be proportionate in view of the misconduct.
(F) The Disciplinary Panel shall notify its decision, in writing in accordance with Article 33, to the: i) Complainant, where possible; ii) Registrar; and, iii) Respondent.
(G) The decision of the Disciplinary Panel shall be rendered in English or French and provided to the Respondent and Complainant, where possible, in a language that they understand, in accordance with Article 33.
(H) If applicable, the Registry shall provide a copy of the decision to the Association of Counsel as well as the professional body regulating the conduct of the respondent in their State of admission, or to the governing body of the university where Counsel is a law professor.
(I) The Registry shall take such action as may be required to enforce any sanction(s).

Article 43--Disciplinary Board
(A) The Disciplinary Board shall consist of:

(i) three Judges to be appointed by the President of the Mechanism; and
(ii) two members of the Association of Counsel, to be appointed for a two year period, and in accordance with the Association of Counsel's constitution.
(B) No member of the Disciplinary Panel shall be a member of the Disciplinary Board at the same time.
(C) No Judge who sat as a member of the Chamber on a case on which the Respondent worked shall be eligible to sit as a member of the Disciplinary Board on the hearing or determination of any charge against the Respondent for Prohibited Conduct and/or Professional Misconduct.
(D) The members of the Disciplinary Board shall, at its first meeting, select a Chairperson from amongst its members.
(E) Except as otherwise provided by this Code, the Disciplinary Board may determine its own procedure for the filing of briefs and presentation of argument. As is the case with the Disciplinary Panel, and if a Complainant requested anonymity when submitting a complaint, the Disciplinary Board's anticipated procedure shall respect such a request.

Article 44--Appeal to Disciplinary Board
(A) An appeal to the Disciplinary Board may be filed by:
(i) the Respondent, where one or more charges of Prohibited Conduct and/or Professional Misconduct have been proved;
(ii) the Complainant, where one or more charges have not been proved; and/or
(iii) the Registrar, if he or she considers this to be in the interests of justice.
(B) A notice of appeal must be filed within fourteen days of notification of the decision of the Disciplinary Panel. The Disciplinary Board may accept the filing of a notice of appeal after the fourteen day deadline if it considers this to be in the interest of justice.
(C) Notice of an appeal to the Disciplinary Board shall be submitted in accordance with Article 33, and transmitted to the Chairperson of the Disciplinary Panel by the Registry. Upon receipt of a notice of appeal, the Chairperson of the Disciplinary Panel shall, within fourteen days, notify the President and the President of the Association of Counsel of the need to constitute the Disciplinary Board. Once constituted, the Chairperson of the Disciplinary Panel shall forward the notice of appeal, and all relevant material, to the Disciplinary Board.

Article 45--Summary Dismissal of Appeals
(A) The Disciplinary Board may summarily dismiss an appeal if it is vexatious, misconceived, frivolous, lacking in substance or submitted after the deadline as set out in Article 44(B) has expired.
(B) The Disciplinary Board shall provide a copy of the summary dismissal to the Registry, in accordance with Article 33, which shall transmit the same to the: i) Respondent; ii) Complainant, where possible; iii) Registrar; and, iv) Association of Counsel.

Article 46--Review of Appeals
(A) The Disciplinary Board shall not receive nor consider any evidence that was not presented to the Disciplinary Panel, unless it considers that the interests of justice so require.
(B) Any Respondent who, without reasonable justification or excuse, refuses or fails to comply with any order or requirement of the Disciplinary Board may be fined by the Disciplinary Board with a penalty of up to 10,000 USD.
(C) In any case in which the Respondent has given notice of appeal to the Disciplinary Board, the sanctions set out in Article 42(C) and monetary restitution set out in Article 42(D) shall be deferred until the Disciplinary Board has disposed of the appeal with or without a hearing. The Disciplinary Board may at any time after it has been seized of the matter order a measure in accordance with Article 39(A).

Article 47--Findings and Sanctions on Appeal
(A) The Disciplinary Board may affirm, reverse or modify the decision on appeal by the majority of its members. Its decision shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.
(B) The decision of the Disciplinary Board is final. It shall not be subject to any remedy before the President or a Chamber of the Mechanism.
(C) The Disciplinary Board shall notify its decision, in writing, to the: i) Complainant, where possible; ii) Registrar; and, iii) Respondent.
(D) The decision of the Disciplinary Board shall be rendered in English or French and provided to the Respondent and Complainant, where possible, in a language that they understand, in accordance with Article 33.
(E) If applicable, the Registry shall provide a copy of the decision to the Association of Counsel as well as the professional body regulating the conduct of the Respondent in their State of admission, or to the governing body of the university where Counsel is a law professor.
(F) The Registry shall take such action as may be required to enforce any sanction(s).

Article 48--Costs
(A) If the Disciplinary Panel or the Disciplinary Board sanctions a Respondent and those sanctions are final, the Disciplinary Panel or the Disciplinary Board may decide that the Respondent shall bear the costs of the procedure. These costs consist of necessary and reasonable travel costs of the Disciplinary Panel and/or the Disciplinary Board members in accordance with the Mechanism's practice for travel of Defence Counsel, and an office expense lump sum of up to 1,000 USD, to be determined by the Disciplinary Panel or the Disciplinary Board.
(B) If the Disciplinary Panel or the Disciplinary Board dismisses a proceeding or complaint, and that dismissal is final, the Mechanism bears the costs of the proceedings, unless, under exceptional circumstances, the Disciplinary Panel or the Disciplinary Board decides that it is in the interests of justice that the Respondent should bear up to fifty per cent of the costs.
(C) All costs shall be paid to the Registrar.

Article 49--Non bis in idem
Once a complaint has been finally adjudicated no further action shall be taken by the Disciplinary Panel or Disciplinary Board against the Respondent with respect thereto, except as provided in Article 48.