



**RULES OF PROCEDURE AND EVIDENCE**

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(Adopted on 8 June 2012)

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(Amended on 18 April 2016)

(Amended on 26 September 2016)

(Amended on 9 April 2018)



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## PART ONE – General Provisions

### 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;
- 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**

(Amended 26 September 2016)

- (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.

**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.

**Rule 5**  
**Non-compliance with Rules**  
(Amended 26 September 2016)

- (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 non-compliance 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.

**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 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.

## **PART TWO – Primacy of the Mechanism**

### **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.

### **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.

### **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**

(Amended 26 September 2016)

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**

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.

**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.

## **PART THREE – Organisation of the Mechanism**

### **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 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 decide the application or, if necessary, 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 President or 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.
- (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.

### **Rule 19**

#### **Absence of Judges**

(Amended 26 September 2016)

- (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 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.

**Rule 20**  
**Reserve Judge**

- (A) In accordance with Article 12, paragraph 5, of the Statute, 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.
- (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 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.

## **Rule 24**

### **Replacement**

(Amended 18 April 2016)

- (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 Coordination Council**

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

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.

### **Rule 32**

#### **Witness Support and Protection Unit**

(Amended 9 April 2018)

- (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 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.

## PART FOUR – Investigations and Rights of Suspects

### 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**

(Corrected 17 August 2012)

- (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 thirty days from the date of the transfer of the suspect to the respective branch of the Mechanism. At 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.

**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.

**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 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 audio-recorded 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**  
(Amended 26 September 2016)

- (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 all Judges who are assigned to cases being heard by the Mechanism at the time of the adoption of the Directive.
- (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.

### **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. Such assignments shall be treated in accordance with the procedure established in a Directive set out by the Registrar and approved by the President.
- (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.

**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 such Counsel or Co-Counsel or the refusal of audience by the Mechanism by the Chamber concerned.

#### **Rule 46**

##### **Assignment of Counsel in the Interest 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.

#### **Rule 47**

##### **Misconduct of Counsel**

(Amended 26 September 2016)

- (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.

## PART FIVE – Pre-Trial Proceedings

### 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 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.

#### **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.

#### **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.

### **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.
- (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.

**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.

**Rule 54**  
**Service of Indictment**

- (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.

**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).

- (ii) An appeal under paragraph (i) shall be filed within seven days of 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. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless:
  - (a) 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
  - (b) the Judge or 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) (i) Except in cases where a decision has been taken pursuant to paragraph (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).

**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 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 Provisions**

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.

### **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

- (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.

**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 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.

### **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 audio-recorded 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.

**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 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*.

**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 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 seized 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 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 pre-trial 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.

**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.
- (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.

## **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 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.

### **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 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.

#### **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 its disclosure obligations pursuant to the Rules and/or appropriate remedies for the prejudiced Party.

#### **Rule 75**

#### **Protection of Victims and Witnesses**

(Amended 9 April 2018)

- (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.

**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 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.

**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**  
(Amended 26 September 2016)

- (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 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 paragraphs (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.

## **Rule 79**

### **Preliminary Motions**

(Amended 26 September 2016)

- (A) Preliminary motions, being motions which:
- (i) challenge jurisdiction;
  - (ii) allege defects in the form of the indictment;
  - (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.

## **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.

**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.

## **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.

## **PART SIX – Proceedings before Trial Chambers**

### **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.

### **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.

### **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**  
(Amended 9 April 2018)

- (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;
    - (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 the 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”.

### **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.

- (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 in Proceedings Not Pending Before the Mechanism**

- (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, 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 instigating 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, 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.

## **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 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.

**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.
- (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**  
**Records 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.

**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.

**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.

**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.

**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 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.

**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.

**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.
  - (iii) The Chamber may, in the exercise of its discretion, permit enquiry into additional matters.

### **Rule 107**

#### **Transfer of Detained Witness**

- (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 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, 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 instigating 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.

### **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 and voluntary unless the contrary is proved.

### **Rule 110** **Admission of Written Statements and Transcripts** **in Lieu of Oral Testimony**

- (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.

### **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.

### **Rule 113**

#### **Admission of Statements and Transcripts of Persons Subjected 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 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.

**Rule 116**  
**Testimony of Expert Witness**

- (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.

**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.

**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.

**Rule 120**  
**Powers of Chambers 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.

**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.

**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.

**Rule 123**  
**Status of Acquitted Person**

- (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.

**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 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.

**Rule 126**  
**Status of Convicted Person**

- (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 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.

**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.

**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 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.

## **PART SEVEN – Appellate Proceedings**

### **Rule 131 General Provision**

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.

**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 grounds of appeal.

**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.

**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.

**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.

### **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).

### **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.

**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.

## **PART EIGHT – Review Proceedings**

### **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.

### **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 after hearing the Parties.

### **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.

**PART NINE – Pardon, Commutation of Sentence, and Early Release**

**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**  
(Amended on 9 April 2018)

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 at least two other Judges.

**Rule 151**  
**General Standards for Granting Pardon, Commutation of Sentence, 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.

**PART TEN - Time**

**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 Responses to Motions**

- (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.

**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 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.

## PART ELEVEN – Declassification Proceedings

### Rule 155

#### **Declassification of Non-public Records of Proceedings and Evidence**

(Amended 26 September 2016)

- (A) After the close of a case, the Registrar shall notify the President and the Security Council that the case is ready for declassification proceedings.
- (B) After notification pursuant to paragraph (A), the President may assign a Single Judge to review the records of proceedings and evidence for the purpose of considering whether the disclosure of all or part of the records or evidence should be ordered. In determining the order in which closed cases are to be assigned, the President shall take into account all relevant circumstances, including the specific needs of judiciaries in the former Yugoslavia and Rwanda.
- (C) The Single Judge shall order disclosure of all or part of the records of proceedings and evidence when the reasons for ordering the non-disclosure no longer exist. A decision taken under this sub-paragraph shall come into force four months from the date of its filing.
- (D) The Single Judge shall not issue an order under paragraph (C) unless it is satisfied that all reasonable efforts—through the Registrar, if necessary—have been made to contact:
  - (i) victims, witnesses, or persons related to or associated with a victim or witness; and
  - (ii) States or organisations pursuant to whose request an order under Rules 56 or 76, or their ICTY or ICTR equivalent, was made,in order to obtain information relevant to the declassification proceedings.
- (E) When applying this Rule, the Single Judge:
  - (i) shall have due regard for the protection of victims and witnesses;
  - (ii) shall not disturb any orders issued in the closed case pursuant to Rules 56 or 76, or their ICTY or ICTR equivalent, absent the express consent of the relevant provider, or otherwise order disclosure of material that was provided under the understanding that it was covered by Rule 76, or its ICTY or ICTR equivalent; and

- (iii) may request any submissions from the Parties of the closed case or from third parties, where necessary and appropriate.
- (F) For purposes of this Rule, a “third party” may include a State or organisation pursuant to whose request an order under Rules 56 or 76, or their ICTY or ICTR equivalent, was made and victims, witnesses, or persons related to or associated with a victim or witness.
- (G) A party or third party directly affected by a decision under paragraph (C) of this Rule may, within four months of the date of filing of the decision, file a request for review of the decision by the Appeals Chamber. The Appeals Chamber may apply the provisions of Rule 134 *mutatis mutandis* to requests for review under this Rule.
- (H) The Registrar shall be responsible for the implementation of any order for the declassification of records. The Registrar shall also be responsible for the appropriate marking of all declassified records to indicate the change in security level, the date of declassification, and under which authority the record was declassified.