

ICTR 12<sup>th</sup> Plenary Session, 5-6 July 2002

Amendments adopted at the Plenary Session of the Judges

**I. Rules of Procedure and Evidence**

**Rule 11 *bis*: Suspension of Indictment in case of Proceedings before National Courts**

(A) Where, on application by the Prosecutor or *proprio motu*, it appears to the Trial Chamber that:

- (i) the authorities of the State in which the accused was arrested (the arresting State) are prepared to prosecute the accused in their own courts; or
- (ii) the authorities of another State (the receiving State) are prepared to do so, and the authorities of the arresting State do not object; and
- (iii) it is appropriate in the circumstances for the courts of the arresting or receiving State, as the case may be, to exercise jurisdiction over the accused;

the Trial Chamber, after affording the opportunity to an accused already in the custody of the Tribunal to be heard, may order that the indictment against the accused be suspended, pending the proceedings before the national courts.

(B) If an order is made under this Rule:

- (i) the accused, if in the custody of the Tribunal, shall be transferred to the authorities of the State concerned;
- (ii) the Prosecutor may transmit to the authorities of the State concerned such information relating to the case, as the Prosecutor considers appropriate;
- (iii) the Prosecutor may direct trial observers to monitor proceedings before the national courts on the Prosecutor's behalf.

(C) At any time after the making of an order under this Rule and before the accused is convicted or acquitted by a national court, the Trial Chamber may, upon the Prosecutor's application and after affording an opportunity to the authorities of the State concerned to be heard, rescind the order and issue a formal request for deferral under Rule 10.

(D) If an order under this Rule is rescinded by the Trial Chamber, the Trial Chamber may formally request the State concerned to transfer the accused to the seat of the Tribunal, and the State shall comply without undue delay in accordance with Article 28 of the Statute. The Trial Chamber or a Judge may also issue a warrant for the arrest of the accused.

### **Rule 17: 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 Presiding Judges of the Chambers shall take precedence according to the dates of their election or appointment as judges, after the President and the Vice-President. Presiding Judges elected or appointed on the same date shall take precedence according to age.
- (C) Judges elected or appointed on different dates shall take precedence according to the dates of their election or appointment; Judges elected or appointed on the same date shall take precedence according to age.
- (D) In case of re-election, the total period of service as a Judge of the Tribunal shall be taken into account.

### **Rule 45: *Quater***

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 65: Provisional Release**

- (A) Once detained, an accused may not be provisionally released except upon an order of a Trial Chamber.
- (B) Provisional release may be ordered by a Trial Chamber only in exceptional circumstances, after hearing the host country 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.
- (C) The Trial Chamber may impose such conditions upon the provisional 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 at trial and the protection of others.
- (D) Any decision rendered under this Rule shall be subject to appeal in cases where leave is granted by a bench of three Judges of the Appeals Chamber, upon good cause being shown. Subject to paragraph (F) below, applications for leave to appeal shall be filed within seven days of filing of the impugned decision. Where such decision is rendered orally, the application shall be filed within seven 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 Trial Chamber has indicated that a written decision will follow, in which case, the time-limit shall run from filing of the written decision.

(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 or her 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 or her 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 application for leave to appeal by the Prosecutor has expired, and no such application is filed;

ii) a bench of three Judges of the Appeals Chamber rejects the application for leave to appeal;

iii) the Appeals Chamber dismisses the appeal; or

iv) a bench of three Judges of the Appeals Chamber or 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 provisionally released or is for any other reason at large. The provisions of Section 2 of Part Five shall apply *mutatis mutandis*.

(I) Without prejudice to the provisions of Rule 107, 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 65 bis: Status Conferences**

(A) A status conference may be convened by a Trial Chamber or a Judge thereof. Its purpose is to organise exchanges between the parties so as to ensure expeditious trial proceedings.

(B) The Appeals Chamber or an Appeals Chamber Judge may convene a status conference.

#### **Rule 69: Protection of Victims and Witnesses**

(A) In exceptional circumstances, either of the parties may apply to a 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 Chamber decides otherwise.

(B) In the determination of protective measures for victims and witnesses, the Trial Chamber may consult the Victims and Witness Support Unit.

(C) Subject to Rule 75, 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 72: Preliminary Motions**

(A) Preliminary motions by either party shall be brought within thirty days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66 (A) (i).

(B) Preliminary motions by the accused are:

(i) Objections based on lack of jurisdiction;

(ii) Objections based on defects in the form of the indictment;

(iii) Applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Rule 82 (B);

(iv) Objections based on the denial of request for assignment of counsel.

(C) The Trial Chamber shall dispose of preliminary motions *in limine litis*.

(D) Decisions on preliminary motions are without interlocutory appeal, save in the case of dismissal of an objection based on lack of jurisdiction, where an appeal will lie as of right.

(E) Notice of appeal envisaged in Sub-Rule (D) shall be filed within fifteen days from the impugned decision.

(F) Failure to comply with the time limits prescribed in this Rule shall constitute a waiver of the rights. The Trial Chamber may, however, grant relief from the waiver upon showing good cause.

(G) Objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by a Trial Chamber.

(H) For purposes of Rule 72(B)(i) and (D) an objection based on lack of jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to:

(i) any of the persons indicated in Articles 1, 5, 6 and 8 of the Statute;

(ii) the territories indicated in Articles 1, 7 and 8 of the Statute;

(iii) the period indicated in Articles 1, 7, and 8 of the Statute, or

(iv) any of the violations indicated in Articles 2, 3, 4 and 6 of the Statute.

(I) An appeal brought under Rule 72 (D) may not be proceeded with if a bench of three Judges of the Appeals Chamber, assigned by the presiding Judge of the Appeals Chamber, decides that the appeal is not capable of satisfying the requirements of paragraph (H), in which case the appeal shall be dismissed.

#### **Rule 77: Contempt of the Tribunal**

(A) Subject to the provisions of Rule 90 (E), a witness who refuses or fails contumaciously to answer a question relevant to the issue before a Chamber may be found in contempt of the Tribunal. The Chamber may impose a fine not exceeding USD 10,000 or a term of imprisonment not exceeding six months.

(B) The Chamber may, however, relieve the witness of the duty to answer, for reasons which it deems appropriate.

(C) Any person who attempts to interfere with or intimidate a witness may be found guilty of contempt and sentenced in accordance with Sub-Rule (A).

(D) Any decision rendered under this Rule shall be subject to appeal within fifteen days of the impugned decision.

(E) Payment of a fine shall be made to the Registrar to be held in a separate account.

#### **Rule 91: False Testimony under Solemn Declaration**

(A) A Chamber, on its own initiative 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 has strong grounds for believing that a witness may have knowingly and wilfully given false testimony, the Chamber may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony.

(C) The Rules of Procedure and Evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.

(D) The maximum penalty for false testimony under solemn declaration shall be a fine of USD10,000 or a term of imprisonment of twelve months, or both. The payment of any fine imposed shall be made to the Registrar to be held in the separate account referred to in Rule 77(E).

(E) Paragraphs (B) to (D) shall apply *mutatis mutandis* to a person who knowingly and willingly makes a false statement in a written statement taken in accordance with Rule 92 *bis* which the person knows or has reason to know may be used as evidence in proceedings before the Tribunal.

(F) In the case of decisions under this Rule, an application to appeal may be submitted in writing to the Appeals Chamber within fifteen days of the impugned decision.

#### **Rule 92 *bis*: Proof of Facts Other Than by Oral Evidence**

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement 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 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 include 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 Tribunal 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 or she 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) A written statement not in the form prescribed by paragraph (B) may nevertheless be admissible if made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally, if the Trial Chamber:

- (i) is so satisfied on a balance of probabilities; and
- (ii) finds from the circumstances in which the statement was made and recorded that there are satisfactory *indicia* of its reliability.

(D) A Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused.

(E) Subject to any order of the Trial Chamber to the contrary, a party seeking to adduce a written statement or transcript shall give fourteen days notice to the opposing party, who may within seven days object. The Trial Chamber shall decide, after hearing the parties, whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination.

### **Rule 98 bis: Motion for Judgement of Acquittal**

If after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber, on motion of an accused filed seven days after the close of the Prosecutor's case-in-chief, unless the Chamber orders otherwise, or *proprio motu*, shall order the entry of judgement of acquittal in respect of those counts.

### **Rule 108: Notice of Appeal**

A party seeking to appeal a judgement or sentence shall, not more than thirty days from the date on which the judgement or the sentence was pronounced, 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 108 bis: 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.

(C) The Pre-Appeal Judge shall record the points of agreement and disagreement between the parties on matters of law and fact. In this connection, he or she may order the parties to file further written submissions with the Pre-Appeal Judge or the Appeals Chamber.

(D) In order to perform his or her functions, the Pre-Appeal Judge may *proprio motu*, where appropriate, hear the parties without the convicted or acquitted person being present. The Pre-Appeal Judge may hear the parties in his or her office, in which case minutes of the meeting shall be taken by a representative of the Registry.



(E) A motion made in the course of the proceedings shall be determined before the hearing unless the Pre-Appeal Judge, for good cause, orders that it be deferred for determination by the Appeals Chamber. Failure by a party to raise objections or to make requests which can be made prior to the hearing shall constitute waiver thereof, but the Pre-Appeal Judge for good cause may grant relief from the waiver.

(F) The Pre-Appeal Judge shall keep the Appeals Chamber regularly informed, particularly where issues are in dispute and may refer such disputes to the Appeals Chamber.

(G) Upon a report of the Pre-Appeal Judge, the Appeals Chamber shall decide, should the case arise, on appropriate sanctions to be imposed on a party which fails to perform its obligations pursuant to the present Section of the Rules.

(H) The Appeals Chamber may *proprio motu* exercise any of the functions of the Pre-Appeal Judge.

#### **Rule 111: Appellant's Brief**

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 108.

#### **Rule 112: Respondent's Brief**

A Respondent's brief of argument and authorities shall be filed within forty days of the filing of the Appellant's brief.

#### **Rule 114: Date of Hearing**

After the expiry of the time-limits for filing the briefs provided for in Rules 111, 112 and 113, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the parties.

#### **Rule 116: Extension of Time Limits**

(A) The Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause.

(B) Where the ability of the accused to make full answer and defence depends on the availability of a decision in an official language other than that in which it was originally issued, that circumstance shall be taken into account as a good cause under the present Rule.

#### **Rule 117: Expedited Appeals Procedure**

(A) An appeal under Rule 65, Rule 72 (D), Rule 77 or Rule 91 shall 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 109 to 114 shall not apply to such appeals.

(C) The Presiding Judge, after consulting the members of the Appeals Chamber, may decide not to apply Rule 118 (D).

## **II. Code of Professional Conduct for Defence Counsel**

### **Article 5 *bis*: Fee Splitting**

1. Fee-splitting arrangements, including but not limited to financial arrangements, between Counsel and their clients, relatives and/or agent of their clients are not permitted by the Tribunal.
2. Where Counsel are being requested, induced or encouraged by their clients to enter into fee splitting arrangements, they shall advise their clients on the unlawfulness of such practice and shall report the incident to the Registrar forthwith.
3. Counsel shall inform the Registrar of any alleged fee splitting arrangement by any member of his Defence team.
4. Following receipt of information regarding possible fee splitting arrangements between Counsel and their clients, the Registrar shall investigate such information in order to determine whether it is substantiated.
5. Where Counsel is found to have engaged in a practice of fee splitting or to have entered into a fee splitting arrangement with his client, the Registrar shall take action in accordance with Article 19 (A) (iii) of the Directive on assignment of Defence Counsel.
6. In exceptional circumstances, and only where the Registrar has granted leave, Counsel may provide their clients with equipment and materials necessary for the preparation of their defence.