



**PRACTICE DIRECTION
ON REQUIREMENTS AND PROCEDURES FOR APPEALS**

(MICT/10/Rev.1)

INTRODUCTION

1. In accordance with Rule 23(B) of the Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals (“Rules”), and having consulted with the Registrar and the Prosecutor, I hereby issue this revised Practice Direction related to appeals from judgment, motions filed during appeals from judgment, interlocutory appeals, and appeals from decisions pursuant to Rule 14, Rule 90 or Rule 108 of the Rules.¹

APPEALS FROM JUDGMENT

A. The Appellant’s Notice of Appeal

2. A party seeking to appeal from a judgment of a Trial Chamber (“Appellant”) shall file, in accordance with the Statute of the Mechanism (“Statute”), in particular Article 23 of the Statute, and the Rules, a Notice of Appeal containing, in the following order:

- (a) the date of the judgment;
- (b) the specific provision of the Rules pursuant to which the Notice of Appeal is filed;
- (c) the grounds of appeal, clearly specifying in respect of each ground of appeal:
 - (i) any alleged error on a question of law invalidating the decision, and/or
 - (ii) any alleged error of fact which has occasioned a miscarriage of justice;
 - (iii) an identification of the finding or ruling challenged in the judgment, with specific reference to the page number and paragraph number;
 - (iv) an identification of any other order, decision or ruling challenged, with specific reference to the date of its filing, and/or transcript page; and
 - (v) the precise relief sought; and
- (d) if relevant, the overall relief sought.

¹ This Practice Direction supersedes, in relevant part, the Practice Direction Related to Appeals (MICT/4).

B. Variation of the Grounds of Appeal

3. Any party applying to vary the grounds of appeal must do so by way of motion in accordance with the Rules, setting out:

(a) the specific Rule under which the variation is sought; and

(b) the arguments in support of the request to vary the grounds of appeal as required by that Rule.

4. If leave is granted to vary the grounds of appeal then the varied grounds of appeal shall comply with the requirements of this Practice Direction *mutatis mutandis*.

C. The Appellant's Brief

5. After having filed a Notice of Appeal, the Appellant shall file, in accordance with the Statute and the Rules, an Appellant's Brief containing, in the following order:

(a) an introduction with a concise summary of the relevant procedural history including the date of the judgment as well as the case number and date of any interlocutory filing or decision relevant to the appeal;

(b) the arguments in support of each ground of appeal, including, but not limited to:

(i) legal arguments, giving clear and precise references to the judgment, the relevant provisions of the Statute, the Rules, the jurisprudence of the Mechanism, the International Criminal Tribunal for the former Yugoslavia ("ICTY"), or the International Criminal Tribunal for Rwanda ("ICTR"), or other legal authorities relied upon;

(ii) factual arguments and, if applicable, arguments in support of any objections as to whether a fact has been sufficiently proven or not, with precise reference to any relevant exhibit, transcript page, decision or paragraph number in the judgment;

(iii) arguments demonstrating why any alleged error on a question of law invalidates the decision and/or any alleged error of fact has occasioned a miscarriage of justice; and

(iv) the precise relief sought; and

(c) the arguments in support of any overall relief sought.

The grounds of appeal and the arguments must be set out and numbered in the same order as in the Appellant's Notice of Appeal, unless otherwise varied with leave of the Appeals Chamber.

D. The Respondent's Brief

6. The opposing party ("Respondent") shall file, in accordance with the Statute and the Rules, a Respondent's Brief, containing for each ground of appeal, in the following order:

(a) a statement on whether or not the relief sought by the Appellant is opposed;

(b) a statement on whether or not the ground of appeal is opposed; and

(c) arguments in support of these statements, containing:

(i) legal arguments, including clear and precise references to the judgment, the relevant provisions of the Statute, the Rules, the jurisprudence of the Mechanism, the ICTY, or the ICTR, or other legal authorities relied upon;

(ii) factual arguments including, if applicable, the arguments in support of the assertion that a fact has been sufficiently proven or not, with precise reference to any relevant exhibit, transcript page, decision or paragraph number in the judgment; and

(iii) arguments responding to the Appellant's arguments demonstrating why any alleged error on a question of law invalidates the decision and/or any alleged error of fact has occasioned a miscarriage of justice.

The statements and the arguments must be set out and numbered in the same order as in the Appellant's Brief and shall be limited to arguments made in response to that brief. However, if an Appellant relies on a particular ground to reverse an acquittal, the Respondent may support the acquittal on additional grounds.

E. The Appellant's Brief in Reply

7. An Appellant may file, in accordance with the Statute and the Rules, an Appellant's Brief in Reply, limited to arguments in reply to the Respondent's Brief, set out and numbered in the same order as in previous briefs.

F. The Book of Authorities

8. If a Book of Authorities is submitted, it must be attached to the Appellant's Brief or the Respondent's Brief and contain a separate compilation setting out clearly all authorities relied upon.

9. The Book of Authorities shall include a table of contents describing each document and exhibit including the date and reference.

10. Authorities of the Mechanism, the ICTY, and the ICTR need not be provided. All other authorities shall be provided in an authorized version of the authority in question, complete with an English or French translation, if the original is not in one of the languages of the Mechanism.

11. A party may object to a translation by filing a motion no later than fifteen days from the distribution of the Book of Authorities containing the translation challenged.

G. Additional Evidence

12. Any party applying to present additional evidence pursuant to Rule 142 of the Rules shall do so by way of a motion filed, in accordance with the Statute and the Rules, containing, in the following order:

(a) a precise list of the evidence the party is seeking to have presented;

(b) an identification of each ground of appeal to which the evidence relates and, where applicable, a request to submit any additional grounds of appeal based on such evidence;

(c) arguments in relation to the requirements of non-availability at trial, relevance and credibility;

- (d) arguments in relation to whether the evidence could have been a decisive factor in reaching the decision at trial and/or whether the exclusion of the evidence would lead to a miscarriage of justice, in that if it had been admitted at trial, it would have affected the verdict; and
- (e) an appendix with copies of the evidence the party is applying to present before the Appeals Chamber.

The relevant documents and exhibits, where applicable, shall be translated into one of the languages of the Mechanism.

13. If a party is authorized to present additional evidence then the requirements of this Practice Direction apply *mutatis mutandis*.

MOTIONS FILED DURING APPEALS FROM JUDGMENT

14. Where an appeal has been filed from a judgment, a party wishing to move the Appeals Chamber for a specific ruling or relief shall file, in accordance with the Rules, a motion containing:

- (a) the precise ruling or relief sought;
- (b) the specific provision of the Rules under which the ruling or relief is sought; and
- (c) the grounds on which the ruling or relief is sought.

15. The opposing party shall file a response within ten days of the filing of the motion or, in the event of a motion pursuant to Rule 142 of the Rules, within 30 days of the filing of the motion. This response shall clearly state whether or not the motion is opposed and the grounds therefor.

16. The moving party may file a reply within four days of the filing of the response, or, in the event of a motion pursuant to Rule 142 of the Rules, within 14 days of the filing of the response.

17. Where filings are related to a Rule 142 motion, rebuttal material may be presented by any party affected by the motion within the time specified by the Appeals Chamber. Parties are permitted to file supplemental briefs on the impact of the additional evidence within 15 days of the expiry of the time-limit for the filing of rebuttal material, if no such material is filed, or, if rebuttal material is filed, within 15 days of the decision on the admissibility of that material.

APPEALS FROM DECISIONS WHERE APPEAL LIES AS OF RIGHT

18. A party wishing to appeal from a decision of a Single Judge or Trial Chamber where an interlocutory appeal lies as of right shall file, in accordance with the Rules, an interlocutory appeal containing:

- (a) the precise title and date of filing of the appealed decision;
- (b) a summary of the proceedings before the Single Judge or Trial Chamber relating to the appealed decision, including an identification of all relevant documents in those proceedings, clearly stating the title and date of filing of each document or the page number of a transcript;
- (c) the specific provision of the Rules pursuant to which the appeal is filed;
- (d) a concise statement as to why it is contended that the provision relied upon is applicable to the appeal;
- (e) the grounds on which the appeal is made; and
- (f) the precise relief sought.

19. The opposing party shall file a response within ten days of the filing of the interlocutory appeal. Such a response shall clearly state whether or not the interlocutory appeal is opposed and the grounds therefor. It shall further set out any objection to the applicability of the provision of the Rules relied upon by the appellant as the basis for the interlocutory appeal.

20. The appellant may file a reply within four days of the filing of the response. The Appeals Chamber may thereafter decide the interlocutory appeal without further submissions from the parties.

APPEALS FROM RULE 14, RULE 90 AND RULE 108 DECISIONS²

21. A party wishing to appeal from a decision of a Single Judge or Trial Chamber pursuant to Rule 14, Rule 90 or Rule 108 of the Rules shall file a notice of appeal within 15 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.

22. An appellant shall file the appeal brief within 15 days of the filing of the notice of appeal. The appeal brief shall contain:

- (a) the precise title and date of filing of the appealed decision;
- (b) a summary of the proceedings before the Single Judge or Trial Chamber relating to the appealed decision, including an identification of all relevant documents in those proceedings, clearly stating the title and date of filing of each document or the page number of a transcript;
- (c) the grounds on which the appeal is made; and
- (d) the precise relief sought.

23. The opposing party shall file a response within ten days of the filing of the appeal brief.

24. The appellant may file a reply within four days of the filing of the response. The Appeals Chamber may thereafter decide the appeal without further submissions from the parties.

APPEALS FROM DECISIONS WHERE CERTIFICATION HAS BEEN GRANTED BY A SINGLE JUDGE OR TRIAL CHAMBER

25. Where certification has been granted by a Single Judge or Trial Chamber, a party shall, within seven days of the filing of the decision to certify, file an interlocutory appeal containing:

- (a) the precise title and date of filing of the appealed decision and of the decision of the Single Judge or Trial Chamber granting certification;

² Appeals from judgments rendered pursuant to Rule 90 or Rule 108 of the Rules shall be subject to the provisions applicable to appeals from Rule 90 and Rule 108 decisions.

- (b) a summary of the proceedings before the Single Judge or Trial Chamber relating to the appealed decision;
- (c) the specific provision of the Rules pursuant to which the appeal is filed;
- (d) the grounds on which the appeal is made; and
- (e) the precise relief sought.

26. The opposing party shall file a response within ten days of the filing of the interlocutory appeal. This response shall clearly state whether or not the interlocutory appeal is opposed and the grounds therefor.

27. The appellant may file a reply within four days of the filing of the response. The Appeals Chamber may thereafter decide the appeal without further submissions from the parties.

CALCULATION OF TIME

28. Any time-limits prescribed under this Practice Direction shall run from, but shall not include, the day upon which the relevant document is filed. Should the last day of a time prescribed fall upon a non-working day of the Mechanism it shall be considered as falling on the first working day thereafter.

GENERAL REQUIREMENTS FOR WRITTEN SUBMISSIONS

29. Where filings of the parties refer to passages in a judgment, decision, transcripts, exhibits or other authorities, they shall indicate precisely the date, exhibit number, page number and paragraph number of the text or exhibit referred to.

30. Any abbreviations or designations used by the parties in their filings shall be uniform throughout. Pages and paragraphs shall be numbered consecutively from the beginning to the end.


VARIATION OF PROCEDURE

31. The provisions of this Practice Direction are without prejudice to any orders or decisions that may be made by the Pre-Appeal Judge or the Appeals Chamber. In particular, the Pre-Appeal Judge or the Appeals Chamber may vary any time-limit or recognize as validly done any act done after the expiration of a time-limit prescribed in this Practice Direction.

NON-COMPLIANCE WITH THIS PRACTICE DIRECTION

32. Where a party fails to comply with the requirements laid down in this Practice Direction, or where the wording of a filing is unclear or ambiguous, the Pre-Appeal Judge or the Appeals Chamber may, within its discretion, decide upon an appropriate remedy, which can include an order for clarification or re-filing. The Pre-Appeal Judge or Appeals Chamber may also reject a filing or dismiss submissions therein.

Done this 20th day of February 2019,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]