



CODE OF PROFESSIONAL CONDUCT
FOR THE JUDGES OF THE MECHANISM

(MICT/14/Rev. 1)

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Preamble

The judges of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

Recalling that judges shall be persons of high moral character, impartiality, and integrity as required by Article 9(1) of the Statute of the Mechanism (“Statute”);

Noting the solemn declaration required by Rule 17 of the Rules of Procedure and Evidence of the Mechanism (“Rules”);

Recognizing that the independence and impartiality of judges is fundamental to ensuring public confidence in a fair and transparent international judicial process;

Recognizing that judges are members of a collegial body, with each judge pursuing the same objective of ensuring the achievement of international criminal justice;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary (1985) and other international and national rules and standards relating to judicial conduct and the right to a fair trial;

Mindful that the Mechanism shall continue the material, territorial, temporal and personal jurisdiction of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda;

Considering that the principles set forth in this Code shall contribute to judicial independence, impartiality and transparency of the judicial process and shall enhance the public confidence in the Mechanism;

Considering that adoption of an appropriate mechanism by which violations of this Code may be addressed reflects respect for the principle of accountability and for the principles set forth in this Code and shall further enhance the public confidence in the Mechanism;

Have agreed as follows:

General

Article 1. Adoption of the Code

1. This Code has been adopted by the judges pursuant to Rule 26 of the Rules and shall be read subject to the Statute and the Rules.
2. The Complaints Procedure set forth in Articles 11-16 of the Code shall enter into effect upon adoption thereof by the judges and shall be applicable to all conduct arising thereafter.

Governing Principles

Article 2. Independence

1. In the exercise of their judicial functions, judges shall be independent of all external authority or influence.
2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

Article 3. Impartiality

1. Judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions.
2. Judges shall avoid any conflict of interest as well as situations which might reasonably be perceived as giving rise to a conflict of interest.

Article 4. Integrity

1. Judges shall conduct themselves with probity and integrity in accordance with their judicial office, thereby enhancing public confidence in the judiciary.
2. Judges shall not directly or indirectly accept, offer, or provide any gift, advantage, privilege or reward that can reasonably be perceived as being intended to influence the performance of their judicial functions or the independence of their office.
3. Judges shall treat other judges and staff members with dignity and respect, and shall not engage in any form of discrimination, harassment, including sexual harassment, and abuse of authority.

Article 5. Confidentiality

Judges shall respect the confidentiality of consultations which relate to their judicial functions, the secrecy of deliberations, and the confidentiality of information acquired in the course of their duties, other than in public proceedings.

Article 6. Diligence

1. Judges shall give precedence to their judicial duties over all other activities.

2. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for judicial office.
3. Judges shall perform their judicial duties efficiently. These duties extend to the delivery of decisions fairly and with reasonable promptness.

Article 7. Conduct during proceedings

1. In conducting judicial proceedings, judges shall maintain order, act in accordance with commonly accepted decorum, remain attentive, patient, dignified, and courteous towards all participants and members of the public present and require them to act likewise.
2. Judges shall exercise vigilance in controlling the manner of questioning of witnesses, particularly when they are victims, in accordance with the Rules and give special attention to the right of participants to equal protection and benefit of the law.
3. Judges shall avoid conduct or comments which are racist, sexist or otherwise degrading and, to the extent possible, ensure that any person participating in the proceedings refrains from such comments or conduct.

Article 8. Public expression and association

1. Judges shall exercise their freedom of expression and association in a manner that is compatible with their office and that does not affect or appear to affect judicial independence or impartiality.
2. While judges are free to participate in public debate on matters pertaining to legal subjects, the judiciary or the administration of justice, they shall not comment on pending cases, shall ensure that nothing in their conduct evidences disrespect for the views of another judge or staff member, and shall avoid expressing views which may undermine the standing and integrity of the Mechanism.

Article 9. Other activities

Judges shall not engage in any activity that is incompatible with their judicial function or the efficient and timely functioning of the Mechanism, or that may affect or may reasonably appear to affect their independence or impartiality.

Article 10. Observance of the Code

1. Judges shall observe the principles embodied in this Code, which shall serve as guidelines on the essential ethical standards required of judges in the performance of their duties.
2. Nothing in this Code is intended in any way to limit or restrict the judicial independence of the judges.

Complaints Procedure

Article 11. Complaint of misconduct or incapacity

1. Allegations regarding misconduct or incapacity of a judge (“complaint”) should be made, in writing, directly to the President of the Mechanism (“President”). In order to protect the interests of

the Mechanism, the President may also initiate the complaints procedure *proprio motu*. In the event that a complaint is against the President or the President brings a complaint *proprio motu*, it shall be addressed to the judge who assumes the President's functions in accordance with Rule 24 of the Rules ("receiving judge").

2. For purposes of the Complaints Procedure,

(a) misconduct refers to conduct that constitutes a violation of the standards set forth in this Code; and

(b) incapacity refers to either a physical or a mental condition that would prevent a judge from performing his or her judicial functions and that cannot be addressed by a reasonable accommodation of such condition or other measure.

3. Consistent with the principles of the independence of the administration of justice and judicial independence, judicial decisions are not matters of conduct and shall not be the subject of a complaint under this Complaints Procedure. The disqualification of a judge shall not be addressed under this Complaints Procedure. A complaint is not an appeal.

4. A complaint shall not be receivable unless it is received within 60 days of the date on which the alleged misconduct or incapacity took place or good cause is shown for the delay.

5. A complainant may be represented by another person throughout the proceedings provided for in the Complaints Procedure, at the complainant's expense.

6. Complaints shall contain:

(a) the name and address of the complainant;

(b) the name of the judge against whom the complaint is made;

(c) a detailed description of the alleged misconduct or incapacity, including the date on which it took place and the location where it occurred;

(d) any other relevant information, including the names and contact details of witnesses, if any, to the event complained of, and documentary evidence if available; and

(e) the signature of the complainant and date of submission.

7. The complainant shall receive a written acknowledgement of receipt of the complaint.

Article 12. Preliminary examination

1. Upon receipt of a complaint, the President or receiving judge shall examine it in order to determine what action, if any, is warranted. All complaints, including complaints relating to a pending case, shall be dealt with promptly, unless, in the discretion of the President or the receiving judge, a complaint related to a pending case should be deferred until such time as the case is disposed of. The President or the receiving judge may consult other judges, as appropriate, in reaching a determination to defer a complaint. Complaints that are manifestly unsubstantiated or otherwise unreceivable shall be summarily dismissed. The complainant shall be informed of the reasons for the summary dismissal or deferral of a complaint.

2. If the President or receiving judge does not summarily dismiss the complaint, he or she shall provide the judge against whom the complaint was made ("judge concerned") with a copy of the complaint and any supporting documentation thereto and invite him or her to provide comments in

writing within two weeks of receipt of the complaint, unless the President or receiving judge grants an extension of time for the judge concerned to do so.

3. If, following receipt of the comments of the judge concerned, the President or receiving judge decides that no further action in relation to a complaint is appropriate, he or she will so inform the complainant in writing, within seven days of receipt of the comments of the judge concerned, providing reasons for the decision and sending a copy thereof to the judge concerned.

4. If, following receipt of the comments of the judge concerned, the President or receiving judge decides that there is a reasonable and sufficient basis to proceed with further action in relation to the complaint, the complainant and the judge concerned will be so advised.

5. The judge concerned may be represented by another person throughout the proceedings provided for in the Complaints Procedure, at the expense of the judge concerned.

6. Following notification of the submission of a complaint, the judge concerned shall not communicate or act in any fashion that might be reasonably perceived as exerting any form of inappropriate pressure or influence in relation to the complaint.

7. If the complaint is informally resolved to the satisfaction of the complainant and the judge concerned at any time during its pendency before the President or receiving judge, the complainant will inform the President or receiving judge accordingly and the complaint will be closed unless, in exceptional circumstances, the President or receiving judge decides to pursue the complaint *proprio motu*. In the event of such a decision, the President or receiving judge shall inform the complainant and the judge concerned.

8. In exceptional circumstances, and pending completion of the proceedings provided for in the Complaints Procedure, the President or the receiving judge may take measures to provisionally suspend the judge concerned from the conduct of his or her functions. The President or the receiving judge may consult other judges, as appropriate, in reaching a determination to take measures in this regard.

Article 13. Formal investigation

1. If the President or receiving judge decides that there is a reasonable and sufficient basis to proceed with further action in relation to the complaint, he or she shall establish a panel of outside experts to investigate the allegations and report its conclusions and recommendations to the President or receiving judge.

2. The panel of outside experts shall comprise three members who shall be judges, former judges or other eminent jurists. When appointing the panel of outside experts, the President or receiving judge shall take into account geographical distribution and gender balance.

3. The President or receiving judge shall establish the terms of reference for the panel of outside experts. Such terms of reference shall contain provisions ensuring respect for the procedural rights of the complainant and the judge concerned.

4. The panel of outside experts shall complete its investigation and report in writing to the President or receiving judge within three months of the date of referral of the complaint to the panel of outside experts, unless the President or receiving judge grants an extension of time upon good cause therefor being shown.

Article 14. Disposition of the complaint

1. Upon receipt of the report of the panel of outside experts, the President or receiving judge shall transmit it to all judges, with the exception of the judge concerned.
2. All judges of the Mechanism, with the exception of the judge concerned and any judge who recuses him- or herself from consideration of the matter, shall review the report of the panel of outside experts and each shall indicate whether, in his or her view:
 - (a) the complaint is well founded; and, if so,
 - (b) whether the matter is of sufficient severity to suggest that the removal of the judge concerned is warranted.
3. Upon receipt of the views of the judges concerning the report, the President or receiving judge shall take one of the following courses of action:
 - (a) if a majority of the judges are of the opinion that the complaint is not well founded, the complaint shall be closed and the President or receiving judge shall advise the judge concerned in writing;
 - (b) if a majority of the judges are of the opinion that the complaint is well founded but the matter is not of sufficient severity to suggest that the removal of the judge concerned is warranted or, alternatively, a majority of the judges are of the opinion that the complaint is well founded and a majority, but less than a two-thirds majority, of the judges are of the opinion that the matter is of sufficient severity to suggest that the removal of the judge concerned is warranted, the President or receiving judge shall advise the judge concerned in writing and shall take such corrective action as he or she deems appropriate. The judge concerned shall be given an opportunity to make final written representations regarding the possible corrective action prior to its imposition; or
 - (c) if a two-thirds majority of the judges are of the opinion that the complaint is well founded and the matter is of sufficient severity to suggest that the removal of the judge concerned is warranted, the President or receiving judge shall report the matter to the Secretary-General to request the removal of the judge concerned. The judge concerned shall be advised of the judges' two-thirds majority opinion as soon as possible by the President or receiving judge.
4. When the process described in Article 14(3) is complete, the complainant will be advised in writing of the disposition of his or her complaint, including the reasons therefor.
5. Corrective action taken pursuant to Article 14(3)(b) may include an oral or written reprimand, written censure, temporary suspension, or other appropriate sanction.
6. Following the disposition of the complaint, the President or receiving judge shall transmit to the Registry for the purposes of filing relevant records in relation to the complaint and its disposition as well as, where possible, public redacted versions of these same records.

Article 15. Confidentiality

The complaint as well as the process set forth in Articles 12, 13 and 14 shall be confidential except as provided in this Complaints Procedure. If the final disposition of the complaint is that set forth in Articles 12(1), 12(3) or 14(3)(a), the name of the judge concerned shall continue to remain confidential following completion of the process.

Article 16. Reporting

The President shall include information concerning the disposition of complaints, if any, pursuant to this Complaints Procedure in his or her annual report submitted pursuant to Article 32(1) of the Statute.

