

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

MICT/17

12 August 2016

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**ACCESS POLICY FOR THE RECORDS HELD BY
THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS**

(MICT/17)

PREAMBLE

The Registrar of the Mechanism for International Criminal Tribunals;

Considering the Statute of the Mechanism as adopted by the Security Council under resolution 1966 (2010) of 22 December 2010;

Considering also the Rules of Procedure and Evidence as adopted pursuant to Article 13 of the Statute of the Mechanism;


Considering also ST/SGB/2012/3, the Secretary-General's bulletin on International Criminal Tribunals: information sensitivity, classification, handling and access, promulgated on 20 July 2012 and ST/SGB/2007/6, the Secretary General's bulletin on Information sensitivity, classification and handling, promulgated on 12 February 2007;

Taking into consideration that, in providing access to its records, the Mechanism will also ensure the security of classified information; and

Having consulted the President and Prosecutor;

Issues this Policy setting out common principles for the provision of access to records maintained by the Mechanism.

Done this 12th day of August 2016,
At Arusha, Tanzania.



John Hocking
Registrar



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Article 1 Definitions

Access: The right, opportunity or means of finding, using or retrieving information.

Access Focal Point: The Registry or OTP staff member designated with the responsibility of responding to requests for access to the Mechanism's records.

Branches: ICTR branch and ICTY branch of the Mechanism, seated in Arusha and The Hague, respectively, in accordance with Article 3 of the Statute.

Chamber: A Trial Chamber and/or Appeals Chamber of the Mechanism or a Single Judge, in accordance with Article 12 of the Statute.

Classified records: Records whose access and distribution have been restricted in order to protect information contained therein. Classified records include those which have been assigned a security classification level of confidential or strictly confidential pursuant to ST/SGB/2012/3.

Declassification: The process of making previously restricted materials available for general consultation.

Designated Officer: The individual appointed by the Principal to act on his or her behalf in matters related to the application of this Policy.

Disclosure: The process of making restricted materials available to a specific user for a designated purpose.

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.

Judicial records: Records which form part of the official case record of the ICTR, ICTY or Mechanism, including but not limited to filings made in the cases, transcripts and audio and video recordings of hearings and exhibits admitted in the cases.

Mechanism: The International Residual Mechanism for Criminal Tribunals established by Security Council resolution 1966 of 22 December 2010.

MICT/7: Practice Direction on Filings Made before the Mechanism for International Criminal Tribunals, adopted on 14 December 2012, and as further revised.

MICT/8: Practice Direction on Procedure for the Variation of Protective Measures Pursuant to Rule 86(H) of the Mechanism's Rules of Procedure and Evidence for Access to Confidential ICTY, ICTR and Mechanism Material Applications filed pursuant to Rule 86(H) of the Rules of Procedure and Evidence, adopted on 23 April 2013, and as further revised.

Non-judicial records: Records managed by the Mechanism which were not created or received as a direct result of the judicial activity associated with a case before the ICTR, ICTY or Mechanism.

Organ: One of the three primary organizational parts of the Mechanism as defined in Article 4 of the Statute: the Chambers, the OTP and the Registry.

OTP: The Office of the Prosecutor, pursuant to Article 14 of the Statute.

Policy: The present Access Policy for the Records held by the Mechanism for International Criminal Tribunals (MICT/17).

Practice Directions: Documents issued by the President addressing detailed aspects of the conduct of proceedings of the Mechanism in accordance with Rule 23 of the Rules, or by the Registrar addressing particular aspects of the practice and procedure in the Registry in accordance with Rule 31 of the Rules.

Predecessor: The particular office of the ICTR or ICTY for which an office or Organ of the Mechanism has taken over, or shall take over, the responsibility of the performance of its functions.

Principal: The head of each of the three Organs of the Mechanism: the President, the Prosecutor and the Registrar.

Record: Any data or information, regardless of form or medium, maintained by the Mechanism as evidence of a transaction.

Redaction: The removal of classified or sensitive information from a record.

Registry: The Organ of the Mechanism responsible for the administration and servicing of the Mechanism, pursuant to Article 15 of the Statute.

Requester: Any individual, organization or entity that has submitted a request for access to records to the Mechanism.

Rules: The Rules of Procedure and Evidence adopted by the Mechanism pursuant to Article 13 of the Statute.

Statute: The Statute of the Mechanism annexed to Security Council resolution 1966 of 22 December 2010.

ST/SGB/2007/6: The Secretary General's Bulletin Information sensitivity, classification, handling, promulgated on 12 February 2007.

ST/SGB/2012/3: The Secretary General's Bulletin International Criminal Tribunals: information sensitivity, classification, handling and access, promulgated on 20 July 2012.

Unclassified: The security classification level applied to records and information whose unauthorized disclosure could reasonably be expected not to cause damage to the work of the Mechanism.

Article 2 Mandate

In accordance with Article 27 of the Statute, the Mechanism is mandated to manage the records of long-term to permanent value generated as a result of the work of the ICTR and ICTY, as well as the records generated as a result of the work of the Mechanism. Such management includes ensuring the records' preservation and facilitating their accessibility.

Article 3
Purpose

1. In accordance with Article 27(3) of the Statute, the Policy sets forth general principles related to the management and control of external access rights and restrictions.
2. This Policy shall guide the development of standards, guidelines, procedures and work practices on access.

Article 4
Scope

1. This Policy shall apply to all records created, maintained or managed by the Organs of the Mechanism, at both Branches, regardless of source.
2. All provisions of this Policy should be interpreted in a manner consistent with the Statute, Rules, relevant Practice Directions and judicial rulings. In case of discrepancy with this Policy, provisions of the Statute, Rules and relevant Practice Directions and judicial rulings shall prevail.
3. The provisions of this Policy shall not be interpreted as imposing any limitations or requirements on the judicial decision-making process.
4. Requests received from national authorities in relation to investigations, prosecutions and trials pursuant to Article 28(3) of the Mechanism Statute are outside the scope of the present Policy.

Article 5
Entry into Force

This Policy shall enter into force on 12 August 2016.

Article 6
Amendment

1. The Registrar, after consultation with the President and Prosecutor, may amend this Policy.
2. An amendment shall enter into force on such date as determined by the Registrar.

Article 7
Basic Principles

1. The overall approach to the provision of access to the records and information managed by the Mechanism is based on the principle that the work of the Mechanism shall be open and transparent, except where the nature of the records and information concerned is deemed classified.
2. In determining access, the general principles of openness and transparency shall be balanced with the obligation to maintain the confidentiality of classified records and information, in the interest of preventing harm or damage to the United Nations or harm, damage or violations of privacy to individuals.
3. The Mechanism shall provide public access to unclassified judicial records while ensuring that access to classified judicial records and information is restricted.
4. The Mechanism shall facilitate public access to unclassified non-judicial records.

Article 8
Responsibilities

1. The Principals shall promote compliance with this Policy. The Principal of each Organ or their Designated Officer shall determine the security levels of, and shall be responsible for the application of this Policy to, records created or received by their respective Organ, and its Predecessor.
2. Access Focal Points within the Registry and OTP shall be designated by the Principal of the respective Organ. In accordance with Article 12, the Access Focal Points shall be responsible for handling requests for records managed by the Registry and OTP, respectively. The Access Focal Point within the Registry shall also be responsible for handling requests for access to unclassified judicial records. The Access Focal Points, following appropriate consultation, shall implement any decisions for redaction or changes to classification levels of records.
3. The Principals of the Registry and the OTP shall ensure that any Designated Officers assigned to review decisions, under Articles 13(2) and 13(3), are separate and independent from those persons involved in responding to the initial access request.

Article 9
Provision of Access to Unclassified Records

1. Access to unclassified records shall be provided pursuant to ST/SGB/2012/3 and Article 7(3) of this Policy. Unclassified judicial records shall be made accessible on the Mechanism's website.
2. Physical access to unclassified records shall be provided at either Branch of the Mechanism according to all relevant procedures.
3. The Mechanism shall strive to enhance accessibility to unclassified records through other methods, which may include exhibitions at the Branches of the Mechanism, publications and third party partnerships, within the limits of the Mechanism budgetary and resource constraints and in accordance with relevant procedures.

Article 10
Access Rights and Restrictions

1. Access to unclassified judicial records managed by the Mechanism shall not be restricted. Access to classified judicial records shall only be granted pursuant to a judicial order for declassification or disclosure. Access to non-judicial records that contain information classified by judicial authority may be granted only pursuant to a judicial order for the declassification or disclosure of that information or after the redaction of the information classified by judicial authority from the non-judicial record and following the procedure described in Articles 10(2) and 10(3) and subject to Article 10(5).
2. Access to non-judicial records that do not contain information classified by judicial authority shall be authorized based on the principles of openness and transparency balanced with the exemptions listed in Article 10(3). The Mechanism may impose conditions on the disclosure of access to records that fall within the exemptions listed in Article 10(3), including that they may not be disseminated, reproduced or published, or may only be reproduced or published in part.
3. Consistent with Article 4(2) of ST/SGB/2012/3 and Article 1(2) of ST/SGB/2007/6, the following information shall be exempt from disclosure:

- (a) Records and information received or transmitted on a confidential basis or with the expectation of confidentiality, including any confidential information from or sent to third parties;
 - (b) Records and information whose disclosure is likely to endanger the safety or security of any individual, violate his or her rights or invade his or her privacy. This shall include records and information related to the protection of witnesses, victims and other vulnerable individuals referred to in the evidence presented before the ICTR, ICTY or Mechanism or otherwise related to the judicial process, including records which contain information which, if disclosed without appropriate authorization, would reveal the identity and location of protected witnesses, victims and other vulnerable individuals. This shall also include personal information related to persons, or families of such persons, who have been or are currently detained by the ICTR, ICTY or Mechanism;
 - (c) Records and information whose disclosure is likely to endanger the security of Member States or prejudice the security or proper conduct of any operation or activity of the United Nations;
 - (d) Records and information covered by legal privilege or related to internal investigations, including judicial records classified by the submitting party or by order or decision of Chambers as “confidential” or “strictly confidential” and all information related to the deliberations of Chambers, as well as the records and information of the OTP which, if disclosed without appropriate authorization, would jeopardize investigations or prosecutions;
 - (e) Internal inter-office or intra-office documents, including draft documents, if disclosure would undermine the Mechanism’s free and independent decision-making process;
 - (f) Commercial records and information, if disclosure would harm either the financial interests of the Mechanism or those of other parties involved;
 - (g) Other kinds of records and information, which because of their content or the circumstances of their creation or communication must be deemed confidential.
4. Requests for access to records and information originating from a third party and classified in accordance with Rules 56 or 76 of the Rules or their ICTR or ICTY equivalents shall not be granted without the express consent of the originating source.
 5. Requests for access to records and information related to witnesses or exhibits subject to protective measures ordered by the ICTR, ICTY or Mechanism cannot be granted absent a judicial order. Requests made by national authorities for variations of protective measures shall be handled in accordance with Rule 86 of the Rules and the relevant Practice Directions.
 6. Nothing in or relating to this Policy shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs. Nor will a disclosure of information or provision of access to records held by the Mechanism pursuant to this Policy be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

Article 11
Procedure for Requesting Access to Records

1. The Mechanism shall respond to external requests for access to records.

2. Requests for the variation of protective measures submitted pursuant to Rule 86 of the Rules shall be handled in accordance with the procedures described in MICT/8. Requests for access to classified judicial records shall be made by filing a request in accordance with the procedures described in MICT/7 and pursuant to applicable Rules and Practice Directions.
3. Requests for access to records other than those submitted pursuant to Article 11(2) above shall be submitted to the Registry or OTP Access Focal Points listed on the Mechanism's website. When in doubt, requests may be submitted to the Registry Access Focal Point, who shall be responsible for the onward transmission of requests in accordance with the procedures described in Article 12 and MICT/7. Requests for access to records may also be made in person at the seat of each Branch in accordance with established procedures.
4. Requests may be submitted in English or French.
5. Requests for access to non-judicial records which do not contain information classified by judicial authority shall be acknowledged within two working days of their receipt by the Access Focal Point. Acknowledgements of requests shall include timeframes for notification of a response either granting or denying the request:
 - (a) When a request is granted, a copy of the records or the information shall be transmitted electronically, where possible.
 - (b) When a request for access to non-judicial records is denied, the requester shall be provided with the reason for the denial. Requesters may submit a request for review of any decision on a request for access to non-judicial records through the relevant Access Focal Point. Requests for review shall be handled in accordance with Article 13.
 - (c) Decisions for access to classified judicial records shall be made pursuant to Article 10(1).
6. The Mechanism reserves the right to reject requests *inter alia* on the following grounds:
 - (a) The request is submitted using abusive language, or is vexatious, trivial or frivolous in nature;
 - (b) The information requested is already or will soon be publically available;
 - (c) The information requested is non-specific, overly broad or does not exist, or is not held by the Mechanism, or despite reasonable efforts to locate it, cannot be found;
 - (d) The information requested cannot be made available without substantial collation or research.
7. The ordinary administrative costs of processing requests for access to records shall be borne by the Mechanism, and expenses of a substantial or extraordinary nature shall be borne by the requester. The Mechanism shall obtain the consent of the requester to bear the costs in question before continuing to process the request.
8. Unclassified Mechanism records may be reproduced provided that the source is acknowledged, and the materials are not distorted. If Mechanism records contain material for which copyright is held by a third party, the requester may not reproduce or transmit such material without obtaining the permission of the copyright holder. The grant of an access request by the Mechanism shall not be construed as copyright clearance.

Article 12
Procedures for Handling Requests

1. The Access Focal Point within the Registry or OTP shall receive requests and handle them in accordance with the applicable procedures developed by the Registry and OTP, respectively. Requests for access shall be granted or denied, pursuant to Article 10.
2. Requests initially received by the Registry Access Focal Point related to records managed by the OTP shall be transmitted to the OTP Access Focal Point. Requests initially received by the Registry Access Focal Point for records classified by judicial authority shall be transmitted to the Immediate Office of the Registrar, which shall be responsible for liaising with the requester regarding the submission of the request and for the onward transmission of the request to the President or Chambers. Such requests shall be treated as judicial filings and handled in accordance with MICT/7. The Registry Access Focal Point's submission of a request to either the OTP or the Immediate Office of the Registrar shall not be construed as a denial for purposes of any subsequent request for review of a decision pursuant to Article 13.
3. The Registry shall be responsible for developing and implementing procedures for transmitting requests for access to classified judicial records to the President or designated Chamber, pursuant to MICT/7.

Article 13
Procedures for Handling Reviews of Decisions on Access Requests

1. Pursuant to Article 11(5)(b), a requester may submit a request for review of a decision rendered in relation to a request for access to non-judicial records.
2. Requests for review shall be submitted to the Access Focal Point for onward transmission to the Principal of the Organ that created or received the records, or their Designated Officer.
3. Responses to requests for review of decisions shall be handled in accordance with Article 10 of this Policy. Decisions made by the Principal or their Designated Officer in relation to requests for review of decisions on access requests to non-judicial records shall be final.
4. Appeals of a decision from a Chamber to deny access to information classified by judicial authority are governed by the Rules.

Article 14
Redaction and Declassification

1. A decision to declassify or redact judicial records made by the designated Chamber in response to an access request shall be implemented by the Registry.
2. The decision to declassify or redact non-judicial records shall be made by the Organ that created or received the record and the records of its Predecessor.
3. All redacted and declassified records shall be assigned a security level of unclassified and managed accordingly.
4. Redacted versions of classified records shall be retained as separate records from the classified records.
5. The appropriately marked version of a declassified record shall be considered the authoritative version of the record for the purpose of granting access.

6. A decision to disclose a classified record in relation to a particular access request shall not result in a change to its security classification level. Any future request for access to the disclosed record shall be considered a new access request, and handled in accordance with this Policy.