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S T A T U T O R Y I N S T R U M E N T S

2016 No. 40.

**THE JUDICATURE (HIGH COURT) (INTERNATIONAL CRIMES
DIVISION) RULES, 2016**

ARRANGEMENT OF RULES

PART I—PRELIMINARY

Rule

1. Title.
2. Application.
3. Interpretation.
4. Sitting of the Division.
5. Performance of functions under the ICC Act, 2010.

PART II—PRE-TRIAL PROCEEDINGS

6. Pre-trial Judge and conference.
7. Procedure before pre-trial Judge.
8. Non-appearance at pre-trial conference.
9. Pre-trial order.
10. Pre-trial hearing.
11. Change of date of pre-trial hearing.

Pre-Trial Hearing

12. Proceedings at pre-trial hearing.
13. Amendment of charges.
14. Orders for alteration of indictment.

Rule

15. Procedure when indictment altered.
16. Presence of accused person during trial.
17. Waiver of right to be present at pre-trial hearing.
18. Notification of decision on pre-trial hearing.

PART III—DISCLOSURES

19. Disclosure in relation to exculpatory evidence.
20. Disclosure at pre-trial
21. Disclosure by Prosecution.
22. Restrictions on disclosure.

PART IV—TRIAL PANEL

23. Constitution of Trial Panel.
24. Record of proceedings transmitted by pre-trial Judge.
25. Functions and powers of Trial Judge or Trial Panel.
26. Commencement of trial.
27. Plea of guilty to offence other than that charged.
28. Pre-trial agreements and admissions to be in writing.
29. Preliminary hearing.
30. Appointment of assessors.
31. Status conference and date of trial.
32. Prior recorded evidence.
33. Submissions by the parties.
34. Witness and victim protection measures at trial stage.
35. General principles relating to victims, witnesses and press.
36. Protective measures.
37. Evidence to be given on oath.
38. Order of examination.
39. Refractory witness.
40. Self-incrimination by witnesses.
41. Incrimination by spouses.
42. Powers of Trial Judge or Trial Panel.

Rule

43. Case for the Defence.
44. Closure of evidence and closing statements.
45. Deliberations and decisions by Trial Judge or Trial Panel.
46. Judgment and sentencing.
47. Determination of sentence.
48. Reparation and compensation.
49. Protective measures after trial.

Functions and Powers of Registrar

50. Functions of Registrar at pre-trial and trial stage.
51. Functions of Registrar in relation to victims and witnesses
52. Responsibilities of Registrar in relation to rights of Defence.
53. Appeals.

PART VI—MISCELLANEOUS

54. Bail.
55. Curtailing delay.
56. Extension of time.
57. Hours for lodging documents.

SCHEDULES

SCHEDULE 1 EVIDENCE OATH

SCHEDULE 2 OATH OF ASSESSORS

S T A T U T O R Y I N S T R U M E N T S

2016 No. 40.

The Judicature (High Court) (International Crimes Division) Rules, 2016

(Under section 41 (1) of the Judicature Act, Cap. 13)

IN EXERCISE of the powers conferred upon the Rules Committee by section 41 (1) of the Judicature Act, these Rules are made this 14th day of April, 2016.

PART I—PRELIMINARY

1. Title.

These Rules may be cited as the Judicature (High Court) (International Crimes Division) Rules, 2016.

2. Application.

(1) These Rules apply to all matters and proceedings under the jurisdiction of the International Crimes Division of the High Court.

(2) Where no express provision is made in these Rules, the practice of the High Court in its ordinary criminal jurisdiction shall apply to the practice of the Division in its jurisdiction with necessary modifications.

(3) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the Division to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of the Division.

3. Interpretation.

In these Rules, unless the context otherwise requires—

“accused person” means a person who has been committed for trial before the Division;

“Act” means the International Criminal Court Act, 2010;

“disclosure” means disclosure of evidence or material on which evidence will be based for purposes of trial;

“Division” means the International Crimes Division of the High Court of Uganda;

“Head of the Division” means the head of the International Crimes Division designated by the Principal Judge;

“victim” means persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute crimes under the jurisdiction of the Division and may include-

- (a) the immediate family or dependents of the direct victim or persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation or organisations; or
- (b) institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes;

“witness” means a person who has made a statement or who has given or agreed to give evidence in relation to an offence or criminal proceedings before the Division and includes a person who may require protection due to their relationship or association with the witness.

4. Sitting of the Division.

The Head of the Division may constitute more than one trial panel for the efficient management of the workload of the Division.

5. Performance of functions under the ICC Act, 2010.

Where, under the International Criminal Court Act, 2010, a national Judge or the High Court is required to carry out a function, a Judge of the Division may perform the function.

6. Pre-trial Judge and conference.

(1) The Head of the Division shall designate a Judge of the Division to preside over the pre-trial proceedings.

(2) The Division shall, after an accused person has been committed for trial before the Division, hold a pre-trial conference to consider—

- (a) the facts of the case;
- (b) the markings for identification of the evidence of the parties;
- (c) any waiver of objections to admissibility of evidence;
- (d) the settlement of some or all of the issues;
- (e) the status of victims and witnesses and any special needs of the witnesses, the accused person and the Defence witnesses, if any;
- (f) the necessary orders and directions to ensure that the case is ready for trial, and that the trial proceeds in an orderly and efficient manner, and the obtaining of such orders;
- (g) the modification of the pre-trial order if the accused admits the charge but interposes a lawful defence; and
- (h) any other matters that will promote a fair and expeditious trial of the case.

(3) A Judge who presides over the pre-trial proceedings shall not be part of the Trial Panel in the same case.

7. Procedure before pre-trial Judge.

(1) A pre-trial Judge may—

- (a) consider and rule on issues relating to witness protection and any application for special measures by the parties made in accordance with rule 36 (10);

- (b) consider and rule on issues relating to disclosure of evidence by both the Prosecution and the Defence;
- (c) at the request of the Prosecution or on his or her own initiative, issue orders for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of the accused and the protection of national security information;
- (d) confirm the case for trial by the Trial Panel; and
- (e) preside over and rule on any other preliminary issue that may arise at the pre-trial stage or that may be referred to the pre-trial Judge by the Trial Panel.

8. Non-appearance at pre-trial conference.

Where the Defence or Prosecution does not appear at the pre-trial conference and does not offer any reasonable explanation for not appearing, the pre-trial Judge may impose appropriate sanctions and penalties.

9. Pre-trial order.

(1) The pre-trial Judge shall, after the pre-trial conference, issue an order stating the actions taken.

(2) An order issued under subrule (1) shall bind the parties, limit the trial to matters not disposed of and control the course of the action during the trial, unless modified by the pre-trial Judge to prevent manifest injustice.

10. Pre-trial hearing.

The pre-trial Judge shall, after a pre-trial conference has been held, fix a date for a pre-trial hearing for the purpose of confirming the charges.

11. Change of date of pre-trial hearing.

(1) The Prosecution or the Defence may request the pre-trial Judge to postpone the date of the pre-trial hearing.

(2) The pre-trial Judge may, on his or her own motion, postpone the date of the pre-trial hearing.

Pre-Trial Hearing

12. Proceedings at pre-trial hearing.

(1) At the commencement of the pre-trial hearing, the pre-trial Judge shall request the Registrar to read out the charges as presented by the Prosecution and the accused shall not be required to make a plea.

(2) The accused may object to the form of charges presented by the Prosecution.

(3) The pre-trial Judge shall determine the manner in which the hearing is to be conducted.

(4) The pre-trial Judge shall, before hearing a matter on the merits, ask the Prosecution and the accused person, whether they intend to raise objections or make observations concerning any issue related to the proper conduct of the proceedings.

(5) At no subsequent point may the objections and observations made under subrule (4) be raised or made again in the pre-trial hearing.

(6) Where objections or observations made under subrule (4) are presented, the pre-trial Judge shall invite the parties to present their arguments, in the order which the pre-trial Judge shall determine.

(7) The accused shall have the right to reply objections or observations made under subrule (4).

(8) Where the objections raised or observations made are related to the proper conduct of the proceedings prior to the pre-trial hearing, the pre-trial Judge shall decide whether to join the objections or observations raised with the examination of the charges or to separate them.

(9) Where the pre-trial Judge decides to separate the issues from the examination of the charges, the pre-trial Judge shall adjourn the hearing and make a decision on the objections or observations raised.

(10) In making an objection or observation a party may rely on the summary of evidence but shall not call the witnesses expected to testify at the trial.

13. Amendment of charges.

(1) Where the Prosecution, during the pre-trial hearing, seeks to amend charges already confirmed before the trial begins, the Prosecution may make a written request to the pre-trial Judge, and the pre-trial Judge shall notify the accused.

(2) Where the pre-trial Judge determines that the amendments proposed by the Prosecution constitute additional or more serious charges, the pre-trial Judge may allow or disallow the proposed amendments.

14. Orders for alteration of indictment.

(1) At the pre-trial hearing, the pre-trial Judge shall, in considering the summary of the case, determine whether it justifies the indictment.

(2) After the charges are confirmed, and before the trial begins, the Prosecution may, with the permission of the pre-trial Judge, and after notice to the accused, move to amend the indictment in accordance with this rule.

(3) Every objection to an indictment due to a formal defect on the face of the indictment shall be made immediately after the indictment has been read over to the accused person and not later.

(4) Where before a trial upon indictment or at any stage of the trial it appears to the Court that the indictment is defective or otherwise requires amendment, the Court may make such order for the alteration of the indictment by way of its amendment or by substitution or addition of a new count, as the Court deems necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required alterations cannot be made without injustice.

(5) No alteration to an indictment shall be permitted by the Court under subrule (4) to charge the accused person with an offence which, in the opinion of the Court, is not disclosed by the evidence set out in the summary of evidence prepared under section 168 of the Magistrates Courts Act.

(6) Where an indictment is altered under subrule (4), a note of the order for alteration shall be endorsed on the indictment, and the indictment shall be treated for the purposes of all proceedings in connection therewith, as having been filed in the altered form.

15. Procedure when indictment altered.

(1) Where an indictment is altered under rule 14—

- (a) the court shall call upon the accused person to plead to the altered indictment;
- (b) the accused may demand that the witnesses for the prosecution or any of them be recalled and be further cross-examined by the accused person or his or her advocate, and the prosecution shall have the right to re-examine the witnesses on matters arising out of the further cross-examination; and
- (c) the accused person shall have the right to give or to call further evidence on his or her behalf as he or she may wish.

(2) Where an indictment is altered under rule 14, the court shall, if it is of the opinion that the accused person has been thereby prejudiced, adjourn the trial for such period as may be reasonably necessary.

(3) The court shall inform the accused person of his or her right to demand the recall of witnesses under subrule (1) and that he or she may apply to the court for an adjournment under subrule (2).

(4) Where an indictment is altered under rule 14, the Court may make such order as to the payment by the Prosecution of any costs incurred owing to the alteration of the indictment as it deems fit.

16. Presence of accused person during trial.

(1) The accused person is entitled to be present in court for the duration of the trial so long as he or she conducts himself or herself properly.

(2) If an accused does not conduct himself or herself properly, the court may, in its discretion, direct him or her to be removed and kept in custody, and proceed with the trial in his or her absence, making such provision as in its discretion appears sufficient for his or her being informed of the proceedings of the trial and for the making of his or her defence.

17. Waiver of right to be present at pre-trial hearing.

(1) Where the accused person is available to the Court but wishes to waive his or her right to be present at the pre-trial hearing, the accused person shall submit a written request to the pre-trial Judge, who may hold consultations with the Prosecution and the accused person, assisted or represented by counsel.

(2) A pre-trial hearing shall only be held when the pre-trial Judge is satisfied that the accused person understands the right to be present at the hearing and the consequences of waiving the right.

(3) The pre-trial Judge may authorise and provide for the accused person to observe the hearing from outside the courtroom through the use of communications technology, if requested by the accused person.

(4) The waiving of the right to be present at the hearing does not prevent the pre-trial Judge from receiving written observations on issues presented before the pre-trial Judge by the accused person.

18. Notification of decision on pre-trial hearing.

The Registrar shall notify the Prosecution, the accused person and his or her counsel and the community where the case originates, of the decision of the pre-trial Judge on the pre-trial hearing and the committal of the accused person to the Trial Panel.

19. Disclosure in relation to exculpatory evidence.

(1) The Prosecution may request, as soon as practicable, a hearing on an *ex parte* basis before the Trial Panel for the purpose of obtaining a ruling on disclosure to the Defence of evidence in the Prosecution's possession or control which the Prosecution believes shows or tends to show the innocence of the accused person or to mitigate the guilt of the accused person, or which may affect the credibility of the Prosecutions evidence.

(2) In case of doubt as to the applicability of subrule (1), the Trial Panel shall make a decision on the matter.

20. Disclosure at pre-trial.

The pre-trial Judge shall make the necessary decisions regarding disclosure between the Prosecution and the accused person.

21. Disclosure by Prosecution.

(1) Subject to rule 22, the Prosecution shall provide to the pre-trial Judge and to the accused person for the purpose of the pre-trial hearing, no later than 15 days before the date of the pre-trial hearing, any relevant evidence or material which the Prosecution intends to present at the hearing.

(2) The Director of Public Prosecutions may, subject to rule 22, disclose to the Defence, evidence in the possession or control of the Prosecution which he or she believes shows or tends to show the innocence of the accused person or to mitigate the guilt of the accused person or which may affect the credibility of the Prosecutions evidence.

(3) Disclosure under this rule shall be done sufficiently in advance to enable the adequate preparation of the Defence.

(4) The Prosecution shall, subject to the restrictions on disclosure in rule 22, permit the Defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecution, which are intended for use by the Prosecution as evidence for the purposes of the pre-trial hearing or at trial.

22. Restrictions on disclosure.

(1) Reports, memoranda or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure.

(2) Where evidence or material on which evidence will be based is in the possession or control of the Prosecution which must be disclosed in accordance with these Rules, but disclosure of which may prejudice further or ongoing investigations, the Prosecution may, not later than 15 days from the date of the Trial, apply to the pre-trial Judge for a ruling as to whether the material or information must be disclosed to the Defence and the matter shall be heard *ex parte* by the pre-trial Judge.

(3) The pre-trial Judge, Trial Judge or Trial Panel dealing with a matter shall, on its own motion or at the request of the Prosecution or the Defence take the necessary steps to ensure the confidentiality of information disclosed, to protect the safety of witnesses, victims, and members of their families, including by authorising—

- (a) the non-disclosure of the identity of witnesses prior to the commencement of the trial;
- (b) disclosure in summary form;
- (c) redacted disclosure; where the witness statement and related materials are disclosed to the other party in a form where all information that would lead to the identification of a particular witness is redacted;
- (d) delayed disclosure; to permit disclosure at an exceptionally late time as opposed to full disclosure immediately prior to either the start of the trial or commencement of the testimony of the witness;
- (e) non-disclosure to the accused person but disclosure only to certain members of the Defence team with strict instructions against disclosure outside the permitted group;

- (f) specific instructions for handling information, including by keeping a log of persons handling the information or limiting the number of people able to access information within the trial team; or
- (g) in exceptional circumstances, the monitoring of non-privileged communications of an accused person.

(4) The Prosecution may not introduce material or information referred to in subrule (2) in evidence during the pre-trial hearing or the trial without adequate prior disclosure to the Defence.

(5) Where steps have been taken to ensure the confidentiality of information and to provide for the safety of witnesses and victims and members of their families under these Rules, the information shall not be disclosed, except in accordance with these Rules or a decision of the pre-trial Judge, Trial Judge or Trial Panel.

(6) Where the disclosure of information may pose a risk to the safety of a witness, the Registrar shall advise the witness in advance and ensure that appropriate witness or victim protective measures under these Rules are put in place.

(7) Where material or information in possession or control of the Prosecution may lead to the grave endangerment of the security of a witness or victim or his or her family, the Prosecution shall not disclose the material or information to the Defence and the material or information may not be subsequently introduced into evidence during the trial without adequate prior disclosure to the Defence.

PART IV—TRIAL PANEL

23. Constitution of Trial Panel.

(1) The Head of the Division shall, on receiving the decision and the record of proceedings of the pre-trial Judge, depending on the nature of the crime—

- (a) assign the case to a single Trial Judge or to a duly constituted Trial Panel of three Judges for trial; and
- (b) transmit the decision and record of proceedings of the pre-trial Judge to the single Trial Judge or Trial Panel constituted under paragraph (a).

(2) The Head of the Division may also refer the case to a previously constituted Trial Panel.

24. Record of proceedings transmitted by pre-trial Judge.

(1) The Registrar shall maintain the record of the proceedings transmitted the pre-trial Judge under these Rules.

(2) Subject to any restrictions concerning confidentiality, the protection of national security information and victims, witness protection, the record of proceedings transmitted by the trial Judge may be consulted by the Prosecution, the Defence, the victims or their counsel participating in the proceedings and any other person to whom the Registrar may grant access.

(3) The Registrar shall notify opposite counsel of any application to consult the record.

25. Functions and powers of Trial Judge or Trial Panel.

(1) In conducting the trial, the Trial Judge or Trial Panel shall—

- (a) ensure that the trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims, witnesses, children, women and other vulnerable persons;
- (b) in consultation with the Parties, adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;
- (c) hear and rule on issues relating to joinder or severance of charges or joinder or severance of accused person;

- (d) receive and record facts agreed to by the Parties, if any;
- (e) provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of trial to enable adequate preparation for trial;
- (f) rule on the admission of the prior recorded testimony of a witness and ensure that the Defence has the opportunity to cross-examine that witness, if not already done;
- (g) appoint assessors on such terms and conditions as the Trial Judge or Trial Panel, may determine;
- (h) take judicial notice of facts of common knowledge and facts not contested by the Parties; and
- (i) rule on any other relevant matter.

(2) The Trial Judge or Trial Panel may, if necessary, appoint one or more *amicus curiae*.

(3) The Trial Judge or Trial Panel may, if necessary for effective and fair functioning, refer preliminary issues to a pre-trial Judge.

26. Commencement of trial.

(1) At the commencement of trial, the Registrar or other officer of the Division shall read out each of the charges to the accused person and the Trial Judge or the Chairperson of the Trial Panel shall request the accused to plead to each charge read.

(2) If the accused pleads guilty, the plea shall be recorded and he or she may be convicted on it.

(3) If the accused person pleads not guilty to the charges, the Trial Judge or Trial Panel shall enter the plea of not guilty in the records and shall proceed to appoint assessors and invite the Prosecution to present its case.

(4) If the accused does not plead either as guilty or not guilty or remains silent, or if the accused utters words that are not relevant, a plea of not guilty shall be entered and the Prosecution shall be invited to present its case.

27. Plea of guilty to offence other than that charged.

Where the accused is arraigned on an indictment for any offence and can lawfully be convicted on that indictment of some other offence not charged in the indictment, he or she may plead not guilty to the offence charged in the indictment, but guilty of that other offence; but the Court shall not accept a plea of guilty under this rule without the consent of the prosecutor.

28. Pre-trial agreements and admissions to be in writing.

(1) Any agreement entered into or admission made during the pre-trial conference shall be reduced in writing and signed by the accused person or his or her counsel or it may not be used against the accused person.

(2) An agreement entered into or admission made under subrule (1) shall be approved by the pre-trial Judge.

29. Preliminary hearing.

(1) If an accused person who is legally represented pleads not guilty, or if a plea of not guilty is entered, the Court shall, as soon as is convenient, hold a preliminary hearing in open court in the presence of the accused person and his or her advocate and the Prosecution to consider such matters as will promote a fair and expeditious trial.

(2) At the conclusion of a preliminary hearing held under subrule (1), the Court shall prepare a memorandum of the matters agreed; and the memorandum shall be read over and explained to the accused person in a language that he or she understands, signed by the accused person or his or her counsel and the Prosecution, and filed.

(3) Any fact or document admitted or agreed, in a memorandum under subrule (2), whether the fact or document is mentioned in the summary of evidence or not, shall be deemed to have been duly proved;

but if, during the course of the trial, the court is of the opinion that the interests of justice so demand, the court may direct that any fact or document admitted or agreed in a memorandum filed under this rule be formally proved.

30. Appointment of assessors.

(1) At the commencement of the trial and after the preliminary hearing has been concluded, the Trial Judge or Trial Panel may appoint a maximum of three assessors to assist the Court with the trial.

(2) An assessor shall take the oath prescribed in Schedule 1 and shall undertake to advise the Court to the best of his or her knowledge, skill and ability on the issues of facts pending before the Court.

(3) If, in the course of the trial, at any time before the verdict, one assessor is, for sufficient cause, prevented from attending throughout the trial, or absents himself or herself and it is not practicable immediately to enforce his or her attendance, the trial shall proceed with the aid of the assessors present.

31. Status conference and date of trial.

(1) The Trial Judge or Trial Panel shall, within seven days after it is constituted, hold a status conference in order to set the date of the trial.

(2) The Trial Judge or Trial Panel may, on its own motion, or at the request of the Prosecution or the Defence, postpone the date of the trial.

(3) The Trial Judge or Trial Panel shall—

(a) give notice of the trial date to all participants in the proceedings;
and

(b) ensure that the trial date and any postponements are made public by the Registrar.

(4) The Trial Judge or Trial Panel may, in order to facilitate the fair and expeditious conduct of the proceedings, confer with the Parties by holding status conferences as often as is necessary.

32. Prior recorded evidence.

Subject to the Evidence Act, the Trial Judge or Trial Panel may allow the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony provided that—

- (a) though the witness who gave the previously recorded testimony is not present before the Trial Judge or Trial Panel, there is proof that both the Prosecution and the Defence had the opportunity to examine the witness during the recording; or
- (b) the witness who gave the previously recorded testimony is present before the Trial Judge or Trial Panel and he or she does not object to the submission of the previously recorded testimony at the hearing and the Prosecution, the Defence and the Trial Panel have the opportunity to examine the witness during the proceedings.

33. Submissions by the parties.

(1) The Prosecution and the accused person may lodge written submissions with the Trial Judge or Trial Panel on points of fact and law, including grounds for excluding criminal responsibility due to insanity, intoxication, self defence, duress or any other ground the Trial Judge or Trial Panel may consider reasonable, not later than three days before the date of the hearing.

(2) A copy of the submissions referred to in subrule (1) shall be transmitted immediately to the Prosecution or the accused person for the purpose of the hearing, as the case may be.

34. Witness and victim protection measures at trial stage.

(1) The Trial Judge or Trial Panel may, at the request of the Prosecution or the Defence, hold a status conference to review the witness protection measures ordered by the pre-trial Judge in the interest of the victims and witnesses proposed to appear before the Trial Judge or Trial Panel.

(2) The Trial Judge or Trial Panel may, on its own motion, or at the request of the Prosecution or the Defence, order the relevant Government authorities to ensure the protection, privacy and well-being of the witnesses and victims proposed to appear before the Trial Panel.

(3) The Registrar may, in consultation with relevant Government authorities—

- (a) arrange accommodation for witnesses and victims;
- (b) assist in obtaining medical, psychosocial and other appropriate assistance for witnesses and victims;
- (c) provide witnesses, victims and their family members who are at proven risk as a result of their relationship with the witnesses or victims, with adequate protective and security measures and formulate long term and short-term plans for their protection;
- (d) take necessary measures to provide physical security to the witness and escort the witnesses and victims to the courtroom;
- (e) make available to the Court, the Prosecution and the Defence, training in the management of trauma, impact of sexual violence, security and confidentiality; and
- (f) advise the Trial Judge or Trial Panel and the Parties on gender sensitive measures to adopt in order to facilitate the testimony of victims of sexual violence at all stages of the proceedings.

35. General principles relating to victims, witnesses and press.

(1) The Court shall, in making any direction or order, take into account the best interest, rights and needs of the victims and witnesses and in particular, of children, elderly persons, persons with disabilities and victims of sexual or gender violence.

(2) The Trial Judge or Trial Panel may place restrictions on the presence of the media and the public during proceedings and access to information in the interest of victims and witness protection, security and confidentiality.

36. Protective measures.

(1) The Trial Judge or Trial Panel may, on the motion of the Prosecution or the Defence, or at the request of a witness or a victim or his or her counsel, or on its own motion, order measures to protect a victim, a witness or another person at risk on account of any proceedings before the court.

(2) The Trial Judge or Trial Panel shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measures are sought, prior to ordering the protective measures.

(3) A motion or request made under subrule (1) may be submitted *ex parte*.

(4) A request by a witness or by a victim or his or her counsel, shall be served on both the Prosecution and the Defence, each of whom shall have the opportunity to respond.

(5) A motion or request affecting a particular witness or victim shall be served on that witness or victim or his or her counsel, in addition to the other party, each of whom shall have the opportunity to respond.

(6) When the Trial Judge or Trial Panel proceeds on its own motion, under subrule (1), notice and opportunity to respond shall be given to the Prosecution and the Defence, and to any witness or victim, or his or her counsel, who would be affected by the protective measure.

(7) A motion or request may be filed under seal, and, if so filed, shall remain sealed until otherwise ordered by the Trial Judge or Trial Panel.

(8) Responses to motions or requests filed under seal shall also be filed under seal.

(9) The Trial Judge or Trial Panel may, on a motion or request under subrule (1), hold a hearing, which shall be conducted *in camera*, to determine whether to order measures to prevent the release to the public, the press or information agencies, information on the identity or the location of victim, witness or other person at risk on account of testimony given by a witness by ordering—

- (a) that the name and address of the victim, witness or other person at risk be expunged from the public records of the Division;
- (b) that the Prosecution, the Defence or any other participant in the proceedings be prohibited from disclosing that information to a third party;
- (c) that testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voices, the use of audio-visual technology, in particular vide oconferencing and closed-circuit television, and the exclusive use of sound media;
- (d) that a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by that witness or other person; or
- (e) that a Trial Panel conducts all or part of its proceedings *in camera*.

(10) The Trial Judge or Trial Panel may, in addition to the requirements under this rule, on a motion by the Prosecution or the Defence, or on the request of a witness or a victim or his or her counsel or on its own motion, taking into account the views of the victim, witness, a psychologist or expert appointed by the Division, order special measures including—

- (a) measures to facilitate the testimony of traumatised victims or witnesses, children, elderly persons, persons with disability or victims of sexual violence;
- (b) an order that counsel, a psychologist or a family member be permitted to attend during the testimony of the victim or the witness;
- (c) the possibility of the Judges sitting closer to the victim;
- (d) counsel not wearing gowns;
- (e) limiting the number of persons present;

- (f) holding the hearing in less formal surroundings;
- (g) providing separate waiting rooms and facilities for Defence and Prosecution witnesses to ensure that they are not exposed to potentially distressing encounters during the trial; and
- (h) any other order as the Court deems necessary.

37. Evidence to be given on oath.

(1) Prior to testifying before a pre-trial Judge, Trial Judge or Trial Panel, a witness shall take the oath prescribed in Schedule 2 and the Court shall have full power and authority to administer the oath in accordance with the Oaths Act and the Trial on Indictments Act.

(2) Any witness, upon objecting to being sworn, and stating as the grounds for that objection either that he or she has no religious belief or that the taking of an oath is contrary to his or her religious belief, shall be permitted to make a solemn affirmation instead of taking an oath in accordance with section 8 of the Oaths Act and, the affirmation shall be of the same effect as if he or she had taken the oath.

(3) Where, in any proceedings, a child of tender years called as a witness does not, in the opinion of the Court, understand the nature of an oath, the child's evidence may be received, though not given upon oath, if, in the opinion of the Court, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(4) Where it appears to the Court that a witness is unable to take the oath as a result of a disability, the Court may allow him or her to take the oath in any other manner in which he or she can make it intelligible, including by writing or by signs; but the writing must be done, and the signs made, in open court.

38. Order of examination.

(1) At the commencement of the case for the Prosecution, the Prosecution may make an opening statement before calling the first witness for the Prosecution.

(2) The Prosecution may call its witnesses in the order determined by the Prosecution and proceed to lead the evidence-in-chief.

(3) The Defence shall have the right to cross examine each Prosecution witness.

(4) The cross-examination shall be strictly limited to the subject matter of the examination-in-chief of a witness but the Defence shall be at liberty to cross-examine the witness on his credibility and on any contradiction in the evidence given by the witness.

(5) The Prosecution may then re-examine any of the Prosecution witnesses.

(6) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if any new matter is, by permission of the Trial Judge or Trial Panel, introduced in re-examination, the Defence may further cross-examine on that matter.

(7) The provisions of subrules (4) to (6) apply, with the necessary modifications, to evidence by a Defence witness.

(8) Evidence produced by the Prosecution or the Defence shall be suitably identified, proved by the respective party and marked with consecutive numbers as exhibits.

39. Refractory witness.

(1) Where any person, appearing either in obedience to a summons or by virtue of a warrant, or being present in Court and being verbally required by the Court to give evidence—

- (a) refuses to be sworn;
- (b) having been sworn, refuses to answer any question put to him or her; or
- (c) refuses or neglects to produce any document or thing which he or she is required to produce, without giving sufficient excuse for the refusal or neglect,

the Court may adjourn the case for any period not exceeding eight days, and may, in the meantime, commit that person to prison, unless he or she sooner consents to do what is required of him or her.

(2) Where the person referred to in subrule (1), upon being brought before the Court at or before the adjourned hearing, again refuses to do what is required of him or her, the Court may, if it deems fit, again adjourn the case and commit him or her to prison for eight days, and so again from time to time until the person consents to do what is so required of him or her.

(3) Nothing in this rule shall affect the liability of any person to any other punishment or proceeding for refusing or neglecting to do what is so required of him or her, or shall prevent the Court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

40. Self-incrimination by witnesses.

(1) A witness shall not be excused from answering a question as to any matter relevant to the issue in any proceedings before the Division upon the ground that the answer to the question—

- (a) will incriminate, or may tend directly or indirectly to incriminate the witness;
- (b) will expose or tend directly or indirectly to expose the witness to a penalty or forfeiture of any kind; or
- (c) may establish or tend to establish that he or she owes a debt or is otherwise subject to a civil suit.

(2) where a witness is compelled to give an answer under subrule (1), the answer shall by the witness, shall not subject him or her to any arrest or prosecution, or be used against him or her in any subsequent criminal proceeding, except a prosecution for giving false evidence by that answer.

41. Incrimination by spouses.

(1) A witness appearing before the Court, who is a spouse of an accused person, shall not be required to make any statement that may tend to incriminate the accused person.

(2) Without prejudice to subrule (1), the witness may choose to make such a statement.

(3) In evaluating the testimony of a witness under this rule, the Trial Judge or Trial Panel may take into account that the witness, objected to reply to a question which was intended to contradict a previous statement made by the witness or that the witness was selective in choosing which questions to answer.

42. Powers of Trial Judge or Trial Panel.

(1) The Trial Judge or Trial Panel may, at any stage of the trial, summon any person as a witness or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined.

(2) The Trial Judge or Trial Panel may summon and examine or re-call and re-examine any person if his or her evidence appears to the Trial Judge or Trial Panel to be essential to the just decision of the case.

(3) Where a Trial Judge or Trial Panel considers that the production of any document or other thing is necessary or desirable for the purpose of investigation or trial or other proceedings under these Rules, the Trial Judge or Trial Panel may issue a summons, or an order to the person in whose possession or power the document or thing is believed to be, requiring him or her to attend and produce it at the time, place and date stated in the summons or order.

(4) Subject to the Evidence Act, the Trial Judge or Trial Panel may, when handling war crimes, admit any evidence, oral or documentary, print or electronic including books, reports and photographs published in newspapers, periodicals and magazines, films and tape recording, reports or findings or reputable non-governmental and civil society organisations and other materials as may be tendered before it; and may exclude any evidence which it deems irrelevant.

(5) If the pre-trial Judge dies or is for any reason not available, the Trial Judge or Trial Panel may consider the confession of an accused person or the statement of a witness recorded by the pre-trial Judge if the confession is confirmed by the Trial Judge or any other judicial officer who is acquainted with the signature or writing of the pre-trial Judge who is dead or not available.

(6) No fact of which the Trial Judge or Trial Panel will take judicial notice need to be proved.

(7) When the Prosecution or the Defence proposes to give evidence of any fact, the Trial Judge or Trial Panel may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant.

(8) The Trial Judge or Trial Panel may regulate the manner of time management as and when necessary, for ensuring an effective and expeditious trial.

(9) Subject to the Evidence Act, the Trial Judge or Trial Panel may, in special circumstances while handling war crimes, accord due consideration to hearsay evidence, and its reliability and probative value shall be assessed and weighed separately at the end of the trial.

(10) Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of a pre-trial Judge or a Trial Judge or Trial Panel to make such orders as may be necessary to meet the ends of justice or to prevent the abuse of process.

43. Case for the Defence.

(1) On the close of the case for the Prosecution, the Defence may apply for time to prepare a submission of “No case to answer”.

(2) The Defence shall file its written submission of “no case to answer within the time granted by Court and the Prosecution may respond to the submission.

(3) The Trial Judge or Trial Panel may fix a date for the Parties to make their oral submissions.

(4) The Trial Judge or Trial Panel may adjourn and deliberate on the submissions made under subrule (3).

(5) Where the Trial Judge or Trial Panel rules that the Prosecution has established a prima facie case and the accused has a case to answer, the Defence may apply to the Trial Judge or Trial Panel for time to prepare the case for the Defence.

(6) The Defence shall file a summary of the case for the Defence within the time given by the Trial Judge or Trial Panel under subrule (5).

(7) The Defence may make its opening statement after the close of the case for the Prosecution and the ruling of the Trial Judge or Trial Panel that the accused person has a case to answer.

(8) Where the accused person is not represented by counsel in the trial or where counsel abandons the accused person, the Registrar shall appoint counsel to defend the accused person at the expense of the Government.

(9) The Trial Judge or Trial Panel may, on its own initiative or on a motion by the Defence, order protective measures for witnesses for the Defence.

(10) Where the Defence intends to summon additional witnesses, the Defence shall disclose to the Prosecution, the names and particulars of the witnesses.

44. Closure of evidence and closing statements.

(1) The Trial Judge or Trial Panel shall declare when the submission of evidence is closed.

(2) The Trial Judge or Trial Panel shall invite the Prosecution to prepare and submit its closing brief within a period specified by the Trial Judge or Trial Panel.

(3) The Defence shall respond to the Prosecution's submission under subrule (2) within a period specified by the Trial Judge or Trial Panel.

(4) After the submission by the Prosecution and response by the Defence, the Trial Judge or Trial Panel shall fix a date on which the oral submissions by the Parties to highlight their respective closing briefs shall be heard.

(5) The Registrar shall inform the community from which the case originates, of the hearing date fixed under subrule (4).

(6) The Defence shall have the opportunity to speak last.

45. Deliberations and decisions by Trial Judge or Trial Panel.

(1) After the closing statements, the Trial Judge or Trial Panel shall adjourn to deliberate, *in camera*.

(2) The Trial Judge or Trial Panel shall inform all persons who participated in the proceedings of the date on which the Trial Judge or Trial Panel will pronounce its decision.

(3) The decision of the Trial Judge or Trial Panel shall be made within 60 days after the Trial Judge or Trial Panel has retired to deliberate, or within such other reasonable time.

(4) Where there is more than one charge, the Trial Judge or Trial Panel shall decide separately on each charge.

(5) Where there is more than one accused person, the Trial Judge or Trial Panel shall decide separately on the charges against each accused person.

46. Judgment and sentencing.

(1) The Registrar shall notify the victims and witnesses who have indicated their desire to participate in the proceedings and the community where the crime was committed, of the date fixed for judgment.

(2) The Trial Judge or Trial Panel may, after delivering judgment, adjourn for sentencing.

(3) The Registrar shall notify the victims and witnesses who have indicated their desire to participate in the proceedings and the community where the crime was committed, of the date fixed for sentencing.

(4) The Trial Judge or Trial Panel may, where there are several victims, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registrar, to choose a common counsel or representatives and to produce evidence in accordance with the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 issued by the Chief Justice.

(5) Counsel for a victim is entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Trial Judge or Trial Panel.

47. Determination of sentence.

(1) The Trial Judge or Trial Panel may pass any sentence authorised by law against the accused person.

(2) The Trial Judge or Trial Panel shall, in determining the sentence—

- (a) bear in mind that the totality of any sentence of imprisonment and fine, as the case may be, must reflect the culpability of the convicted person;
- (b) balance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime;
- (c) in addition to any other factors, give consideration, *inter alia*, to—
 - (i) the extent of the damage caused, in particular, the harm caused to the victims, their families, the community where the case originates, the nature of the unlawful behavior and the means employed to execute the crime;
 - (ii) the degree of participation of the convicted person;
 - (iii) the degree of intent; and
 - (iv) the circumstances relating to the manner, time and location.

(3) The Trial Judge or Trial Panel shall, in addition to the factors under subrule (2), take into account, as appropriate—

- (a) mitigating circumstances; including—
 - (i) the circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress; or

- (ii) the convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court;
- (b) aggravating circumstances; including—
 - (i) any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;
 - (ii) abuse of power or official capacity;
 - (iii) commission of the crime where the victim is particularly vulnerable; or
 - (iv) commission of the crime with particular cruelty or where there were multiple victims; and
- (c) the report of the Probation and Social Welfare Officer on the social background of the accused.

(4) The Trial Judge or Trial Panel may direct the Defence to file a mitigation statement on oath.

(5) Where the Defence files a mitigation statement, the Trial Judge or Trial Panel may adjourn to enable the Prosecution to file a response to the mitigation statement.

48. Reparation and compensation.

(1) When any accused person is convicted by the Division of any offence and it appears from the evidence that some other person, whether or not he or she is the victim or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed, the Court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the Court deems fair and reasonable.

(2) The Trial Judge or Trial Panel may, proportionate to the gravity of the crime, in sentencing the accused person, impose a fine and any reparation order deemed fit and proper against the convicted person.

(3) The Trial Judge or Trial Panel shall, in determination of any fine or reparation order, take into account the views of the victim on reparation.

(4) At the time of awarding any compensation or reparation in any subsequent civil suit relating to the same matter, the court hearing the civil suit shall take into account any sum paid or recovered as compensation or reparation under this rule.

(5) An appeal shall lie to the Court of Appeal against any order awarding compensation under this rule.

49. Protective measures after trial.

(1) The Trial Judge or Trial Panel may, on its own motion or on application by the Prosecution or Defence, after sentencing the accused, order protective measures for victims, witnesses and members of their families at risk as a result of their testimonies or participation in proceedings.

(2) The Registrar shall liaise with the relevant Government authorities and other organisations responsible for victims and witness protection to implement the order under subrule (1) and to provide counsel for victims with assistance, information and adequate support, including such facilities as may be necessary for the direct performance of counsel's duty and for the purpose of protecting the rights of victims during all stages of the proceedings.

(3) The Registrar shall in addition, refer any agreements or other arrangements on relocation and provision of support services for traumatised or threatened victims, witnesses and other persons who are at risk on account of testimony given by such witnesses to the relevant Government authorities responsible for witness protection and the agreement or arrangements shall remain confidential.

Functions and Powers of Registrar

50. Functions of Registrar at pre-trial and trial stage.

(1) The Registrar shall—

- (a) maintain a full and accurate record of all proceedings before the Pre-Trial Judge, Trial Judge or Trial Panel, including all documents transmitted to the Pre-Trial and Trial Panel under these Rules;
- (b) maintain a register of all cases, in which shall be entered the particulars of every case filed in the registry and the Register shall indicate the case, the number of the proceedings in the Court, the names of the parties, the date when the essential steps in the proceedings were taken and the result of the case;
- (c) liaise with the police to ensure the internal security of the Division;
- (d) serve as the channel of communication for the Division; and
- (e) take all reasonable steps to keep the community from where the case originates, informed of the status of the trial.

(2) Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecution, the accused person and victims or their counsel participating in the proceedings under these Rules.

51. Functions of Registrar in relation to victims and witnesses.

(1) The Registrar shall, in relation to victims, perform the following functions—

- (a) provide notice or notification to victims or their counsel;
- (b) assist victims to obtain legal advice and organise their legal representation;
- (c) assist victims in participating in the different phases of the proceedings; and
- (d) take gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.

(2) In relation to victims, witnesses and other persons who are at risk on account of testimony given, the Registrar shall perform the following functions—

- (a) inform them of their rights under these Rules;
- (b) ensure that victims and witnesses are aware, in a timely manner, of the relevant decisions of the Court that may have an impact on their interests, subject to provisions on confidentiality; and
- (c) provide arrangements with any relevant Government authorities or other organisations for the implementation of any protective order issued by the Trial Judge or Trial Panel after sentencing.

(3) The Registrar shall, keep a special register for victims who have participated in any proceedings before the Court and a bail register for accused persons who have been granted bail by the Court.

52. Responsibilities of Registrar in relation to rights of Defence.

(1) The Registrar is responsible for the non-judicial aspects of the administration and servicing of the Court.

(2) Without prejudice to the general effect of subrule (1), the Registrar shall organise the staff of the Registry in a manner that promotes the rights of the Defence, consistent with the principle of fair trial.

(3) For the purpose of subrule (2), the Registrar, where possible, shall—

- (a) ensure adequate time and facilities for the preparation of the Defence and the right of the accused person to communicate freely with counsel of the accused person's choosing in confidence;
- (b) assign a duty counsel, at state expense where the case is committed, to participate during the pre-trial and trial proceedings;

- (c) provide support, assistance, and information to all Defence counsel appearing before the Court and, as appropriate, support for professional investigators necessary for the efficient and effective conduct of the defence;
- (d) be responsible for the practical organisation and management of the disclosure of evidence;
- (e) upon receiving the record of committal proceedings, assist the accused person in obtaining legal advice and the assistance of Government paid legal counsel;
- (f) inform the Prosecution and the Judges, as necessary, on relevant defence-related issues;
- (g) provide the Defence with such facilities as may be necessary for the direct performance of the duties of the Defence;
- (h) enforce any orders of the Court which affect the welfare of the accused; and
- (i) facilitate the dissemination of information and case law of the Court to Defence counsel.

53. Appeals.

An appeal shall lie to the Court of Appeal from a conviction or sentence by the Division in the exercise of its jurisdiction.

PART VI—MISCELLANEOUS

54. Bail.

(1) In accordance with section 14 of the Trial on Indictments Act, the Trial Judge or Trial Panel may, at any stage in the proceedings, release an accused person on bail, on taking from him or her a recognisance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before the Court on such a date and at such a time as is named in the bond.

(2) The Trial Judge or Trial Panel may, on remand, admit the accused person to bail subject to such conditions as may seem appropriate.

(3) Notwithstanding subrule (1), in any case where accused person has been released on bail, the Court may, if it is of the opinion that for any reason the amount of the bail should be increased—

- (a) issue a warrant for the arrest of the person released on bail directing that he or she should be brought before it to execute a new bond for an increased amount; and
- (b) commit the person to prison if he or she fails to execute a new bond for an increased amount.

(4) The Trial Judge or Trial Panel may refuse to grant bail to an accused person in accordance with section 15 of the Trial on Indictment Act.

(5) The Trial Judge or Trial Panel may cancel the bail of an accused person who violates the conditions of the bail.

55. Curtailing delay.

The Division shall exercise its inherent powers—

- (a) to prevent abuse of process of the Court by curtailing delays, in trials and delivery of judgment including the power to limit and discontinue delayed prosecutions;
- (b) to make orders for expeditious trials; and
- (c) to ensure that substantive justice is administered without undue regard to technicalities.

56. Extension of time.

The Division may, for sufficient reason, extend the time prescribed by these Rules or by any decision of the Division for doing any act or taking any proceedings under these Rules and the Division may extend the time upon such terms, if any, as the justice of the case may require, and the extension may be ordered although the application for it is not made until after the expiration of the time appointed or allowed.

57. Hours for lodging documents.

The Head of the Division may, from time to time, direct during what hours the Registry of the Court shall be open for the receipt of documents lodged under these Rules.

SCHEDULES

SCHEDULE 1

Rule 30 (2)

OATH OF ASSESSORS.

I, _____, swear by Almighty God that I will well and truly try the issue joined between the Republic of Uganda and the prisoner at the bar and a true opinion give according to the evidence.

SCHEDULE 2

Rule 37 (1)

EVIDENCE OATH

I, _____, swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

Cross References

The Constitution (Sentencing Guidelines for Courts of Judicature)
(Practice) Directions, 2013

The Evidence Act, Cap.6

The International Criminal Court Act, 2010, Act No. 11 of 2010

The Judicature Act, Cap. 13

The Magistrates Courts Act, Cap. 16

The Trial on Indictments Act, Cap.23

BART MAGUNDA KATUREEBE,
Chief Justice,
Chairperson, Rules Committee.