



International Residual Mechanism for Criminal Tribunals

MICT/40

26 November 2019

Original: English

**PRACTICE DIRECTION ON THE PROVISION OF SUPPORT AND
PROTECTION SERVICES TO VICTIMS AND WITNESSES**

(MICT/40)

PREAMBLE

I, the Registrar of the International Residual Mechanism for Criminal Tribunals;

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

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

Taking into consideration the principles, policies, and procedures governing victim and witness-related matters at the ICTR, the ICTY, and the Mechanism thus far;

Considering that in providing services to witnesses, the Mechanism will also protect and support victims;

Having consulted the President; and

Acting pursuant to Rule 31(C) of the Rules of Procedure and Evidence of the Mechanism;

Issue this Practice Direction setting out common principles for the provision of witness-related services by the Witness Support and Protection Unit at each branch of the Mechanism, which supersedes the Policy for the Provision of Support and Protection Services to Victims and Witnesses as revised on 4 January 2019.


Olufemi Elias
Registrar

Dated this 26th day of November 2019
At The Hague,
The Netherlands

I. INTRODUCTION

Article 1 Definitions

For the purposes of this Practice Direction, the following definitions shall apply:

- Branch:** The relevant branch of the Mechanism in Arusha or The Hague.
- Chamber(s):** Trial Chamber(s) and/or the Appeals Chamber, a Judge, a Single Judge, or the President of the Mechanism, as appropriate.
- Designated Official:** An official of the United Nations authorised by the President, the Prosecutor or the Registrar of the Mechanism to undertake specific responsibilities.
- External entity:** A Judge or bench in another jurisdiction or parties in another jurisdiction.
- Gender sensitivity:** Allowing women's as well as men's concerns and experiences to be an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally.
- 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.
- Mechanism:** The International Residual Mechanism for Criminal Tribunals established by Security Council resolution 1966 of 22 December 2010.
- Party:** The Prosecutor, the Defence, or an *Amicus Curiae* appointed by the Registrar upon the direction of a Single

Judge in accordance with Rule 90(C)(ii) of the Rules.

President:	The President of the Mechanism appointed pursuant to Article 11 of the Statute or an authorised Designated Official.
Prosecutor:	The Prosecutor of the Mechanism appointed pursuant to Article 14 of the Statute, or an authorised Designated Official.
Registrar:	The Registrar of the Mechanism appointed pursuant to Article 15 of the Statute or an authorised Designated Official.
Rules:	The Rules of Procedure and Evidence of the Mechanism, adopted on 8 June 2012, and as subsequently amended.
Statute:	The Statute of the Mechanism annexed to Security Council resolution 1966 of 22 December 2010, and as subsequently amended.
Transitional Arrangements:	The Transitional Arrangements of the Mechanism annexed to Security Council resolution 1966 of 22 December 2010.
Victim:	A person against whom a crime over which the Mechanism has jurisdiction has allegedly been committed.
WISP:	The Witness Support and Protection Unit of the Mechanism in accordance to Rule 32 of the Rules.
Witness:	A person who provides testimony (oral or written) in a case before the Mechanism, or who has provided testimony in a case before the ICTY or the ICTR. A Witness may also be a Victim.

Article 2 General Purpose

This Practice Direction governs the provision of support and protection services by the WISP to victims and witnesses, taking into account specific elements such as the nature of the conflict, the geographical location, the gender of victims and witnesses, and the cultural setting in which the WISP operates.

Article 3
Entry into Force

This Practice Direction enters into force on 26 November 2019 for both Branches of the Mechanism.

Article 4
Amendment

1. The Registrar, after consultation with the President, may amend this Practice Direction pursuant to Rules 31(C) and 32 of the Rules.
2. Any such amendment shall enter into force on the date determined by the Registrar.

II. GENERAL PROVISIONS

Article 5
Mandate

1. Pursuant to Article 20 of the Statute, Article 5 of the Transitional Arrangements, and Rule 32 of the Rules, the Mechanism shall be responsible for the protection and support of victims and witnesses, and for carrying out all related functions, in relation to the completed cases of the ICTY and the ICTR, and cases for which the Mechanism has competence.
2. In accordance with Rule 32 of the Rules, the WISP shall be set up under the authority of the Registrar in order to recommend protective measures in accordance with Article 20 of the Statute, and to provide counselling and support to victims and witnesses, in particular in cases of rape and sexual assault. The WISP shall adopt a gender sensitive approach to protective and support measures to all victims and witnesses.
3. Each Branch is responsible for the protection and support of victims and witnesses connected with cases over which that Branch has competence. The WISP at each Branch may have staff located in the Mechanism's Field Offices.

Article 6
Responsibilities of the WISP

1. The WISP shall provide witness support and protection services prior to, during, and after testimony.
2. The WISP shall operate with the highest levels of integrity, impartiality, gender sensitivity, and confidentiality, and ensure that all witnesses have equitable access to its services.
3. The WISP shall develop and implement its principles, policies, and procedures in a gender sensitive manner to ensure that all witnesses can testify in safety and security.

4. The WISP shall, to the extent possible, ensure that the experience of testifying does not result in any re-traumatisation of the witness.
5. The WISP shall operate with full respect for any relevant administrative and/or financial rules and regulations of the United Nations, and shall establish policies and procedures to ensure strict financial accountability.
6. The WISP shall keep the Registrar regularly informed of operations carried out by the WISP, and measures taken to implement its mandate.
7. The Registrar shall inform the President periodically of the operations carried out by the WISP, and measures taken to implement its mandate.
8. The WISP offices of both Branches shall communicate regularly in order to share experiences and incorporate best practices, for the purpose of improving the services provided and streamlining services across Branches.

Article 7 **Information Management**

1. The WISP shall create and maintain an accurate and comprehensive record of information pertaining to witnesses.
2. All records kept by the WISP shall be considered sensitive and classified as strictly confidential, and shall be managed in accordance with the Mechanism's and the United Nations' record keeping policies. Procedures shall be in place to ensure the security of the information and to prevent unauthorised access to the WISP records.
3. Any unauthorised disclosure of a protected witness' identifying information may lead to contempt proceedings pursuant to Rule 90 of the Rules.
4. Any use of a witness' public testimony for Mechanism-produced or Mechanism-facilitated documentaries should be with the express consent of the concerned witness.

III. SUPPORT FUNCTIONS

Article 8 **Contact and Communication with Witnesses**

1. The WISP shall establish and maintain contact with witnesses during the Mechanism's competence, for purposes of providing support and protection services. Such contact shall not cease upon the completion of the witness' testimony.
2. The WISP shall be responsible for informing witnesses of their rights, obligations, and entitlements, and their roles in the proceedings before the Mechanism.

Article 9
Well-being of Witnesses

The WISP shall be responsible for providing services, to the extent possible, to ensure the psychosocial and physical well-being of all witnesses.

Article 10
Travel and Movements of Witnesses

The WISP shall be responsible for witnesses' travel and movements for the purpose of its mandate including, but not limited to, facilitating the appearance of witnesses in proceedings before the Mechanism.

Article 11
Allowances

Witnesses may be eligible for allowances as considered reasonable and necessary in accordance with the applicable policies and practices, and the relevant administrative and/or financial rules of the United Nations. Such allowances are intended to cover expenses and/or loss of wages incurred by the witness as a result of the witness' testimony. The Registrar may require supporting documentation in order to grant these allowances.

IV. PROTECTION

A. Protective Measures ordered by a Chamber

Article 12
Role of the Registrar and the WISP

1. The Registrar is responsible for the implementation of any protective measure ordered by a Chamber of the ICTY, the ICTR, or the Mechanism, as applicable.
2. Pursuant to Rule 32(A)(i) of the Rules, the WISP shall make recommendations regarding any requests for protective measures or requests for rescission, variation, or augmentation of existing protective measures made pursuant to Rule 86 of the Rules. The Registrar will thereafter decide if a submission pursuant to Rule 31(B) of the Rules is to be made to the relevant Chamber.
3. Any request from an external entity to rescind, vary, or augment protective measures ordered in proceedings before the ICTY, the ICTR, or the Mechanism shall be addressed pursuant to Rule 86 of the Rules and in accordance with the 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.

Article 13
Breaches of Protective Measures ordered by a Chamber

The WISP shall report any breach of protective measures ordered by a Chamber to the Registrar, for transmission to the relevant Chamber. The WISP shall also take appropriate action in respect of the witness(es) in question as deemed necessary.

B. Protective measures not ordered by a Chamber

Article 14
Request for Extrajudicial Protective Measures

1. The Parties or a witness may submit a request to the WISP for the provision of protective measures not ordered by a Chamber (extrajudicial protective measures). Such a request may be for:
 - a) local protective measures;
 - b) temporary relocation; and/or
 - c) permanent relocation.
2. A request for extrajudicial protective measures shall contain as much of the following information as possible:
 - (a) information on the risk to the witness, including details of any direct threat received;
 - (b) information on the content and importance of the witness' evidence;
 - (c) information on other possible sources of threat as well as any other information that may be relevant to the WISP;
 - (d) any information or commitments provided to the witness by a Party regarding extrajudicial measures; and
 - (e) information on whether any interim protection measures have been implemented by any governmental agency to address the threat to the witness.
3. The WISP may request any other information it deems necessary for the purpose of considering the request for extrajudicial protective measures.
4. The WISP shall review the request for extrajudicial protective measures and assess the level of risk, and may decide to implement extrajudicial protective measures to address the assessed risk in order to ensure the safety and security of the witness.
5. The WISP shall consider all requests for extrajudicial protective measures independently and in a timely manner.

Article 15
Local Protective Measures

In instances where the WISP has assessed a relatively low level of risk for a witness, suitable risk reduction strategies may include:

- (a) providing the witness with advice regarding the management of the witness' personal security;
- (b) providing basic devices to assist the witness in managing the witness' security;
- (c) seeking the assistance of local authorities, governmental agencies, or other interlocutors, where appropriate, to address the witness' concerns and to take measures to protect the witness, with regard to the witness' specific needs.

Article 16
Temporary Relocation

1. Temporary relocation is an interim measure, and should not be considered as automatic acceptance into any permanent relocation plan.
2. Depending on the timeframes involved in considering the situation of the witness, the WISP may provide services that are commensurate with the immediate needs of the witness.
3. The responsibilities and obligations of both the Mechanism and the witness in relation to the temporary relocation shall be clearly stated in a memorandum of understanding signed by the Mechanism and the witness.
4. In cases where a witness refuses to accept such responsibilities and obligations, the matter shall be referred to the Registrar, who will decide whether the temporary relocation will proceed, giving due consideration to the risk to the witness.

Article 17
Permanent Relocation

1. Where no other reasonable alternatives exist to address the assessed level of risk, the WISP will consider the need to permanently relocate a witness to another State.
2. The WISP shall ensure that the witness is fully informed and understands the timeframe to implement permanent relocation and the likely impact of the relocation process.
3. The responsibilities and obligations of both the Mechanism and the witness in relation to the permanent relocation shall be clearly stated in a memorandum of understanding signed by the Mechanism and the witness.

4. In cases where a witness refuses to accept such responsibilities and obligations, the matter shall be referred to the Registrar, who will decide whether the permanent relocation will proceed, giving due consideration to the risk to the witness.
5. Until such time as the witness is relocated, the WISP shall continue to provide services that are commensurate with the immediate needs of the witness, and will give due consideration to additional services that may assist the witness with the witness' psychological/social integration.

Article 18
Review of Extrajudicial Protective Measures

1. The WISP shall undertake a regular review of previously implemented extrajudicial protection measures.
2. The WISP shall recommend to the Registrar any continuation, variation, or removal of the extrajudicial protective measures which might be needed in accordance with its regular review.
3. The WISP shall report to the Registrar any breaches of extrajudicial protective measures in place, which may require reconsideration.