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Panel 1: Strategies for Streamlining Cases and
Case Management at the International Level

Streamlining Case Management at the ICTR Appeals Chamber

by

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1. Introduction

With the delivery of three Appeal Judgements at the end of September 2014, the ICTR Appeals Chamber has rendered a total of 44 Appeal Judgements concerning 55 persons to date. The Appeals Chamber has reached a point where only one case remains on its docket, the *Butare* case which concerns six convicted persons and is comprised of appeals by each of them and the prosecution.¹ This paper outlines how the work of the Appeals Chamber has been organized and how the tribunal has supported the final aspect of its judicial activity. It concludes with a discussion of key elements of efficient case management at the Appeals Chamber.

2. Structure and output of the Appeals Chamber

The Appeals Chamber is composed of twelve judges, six of whom were elected to the ICTR and six to the ICTY. Once assigned to the Appeals Chamber of one tribunal, ICTR or ICTY, each judge is sworn in as a judge of the other tribunal as well and serves as a judge in both Appeals Chambers. The Presiding Judge of the given Appeals Chamber then assigns a bench of five judges to each appeal from judgement.

Over the years, Appeal Judges have each been assigned to as many as ten or more cases of appeals from judgement proceeding simultaneously before the ICTR and ICTY Appeals Chambers. Looking only at the ICTR caseload, for example, last year, and also in 2012, the Appeals Chamber had before it appeals concerning 17 persons which, depending on briefing, it considered in parallel.

Since the first ICTR Appeal Judgement, delivered in the year 2000 in the case of *Serushago*,² the ICTR Appeals Chamber has delivered between one and six judgements per year, completing on average appeals from judgement of four persons per year.

¹ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-A (“*Butare* case”).

² *Serushago v. Prosecutor*, Judgement, Case No. ICTR-98-39-A, A.Ch., 14 February 2000.

3. Resources

The Appeals Chamber is supported in its judicial function by the Appeals Chamber Support Section located in The Hague. The number of staff directly allocated to Appeals Chamber support has varied with the workload and the respective budgets over the years, ranging from just a handful of legal officers and other registry staff to a maximum allocation in chambers of 24 legal officer posts. Some of the legal officer posts were earmarked for assistance to individual Appeal Judges, with one Associate Legal Officer being assigned to each of the ICTR-funded judges at the Appeals Chamber, while the remainder of the posts was allocated to drafting teams.

The legal officers assigned to individual judges have assisted the respective judges with all of their cases, both before the ICTR and the ICTY Appeals Chambers. The core of the work of these legal officers has been conducting research and drafting and providing legal advice to the judges to whom they were assigned. In this capacity, the legal officers have assisted in reviewing appeal submissions and drafts of decisions and judgements and assisted in the judges' preparation for hearings, deliberations, and in their review of judicial drafts. When needed, and workload permitting, the Associate Legal Officers directly supporting individual Appeal Judges have also joined drafting teams.

Under the direction of the Presiding Judge in each case, drafting teams have been formed to assist the benches of judges on the various cases pending before the Appeals Chamber. The function of the teams has been to carry out focused research and drafting in individual appeal cases. In each case, the team has assisted the Presiding and/or Pre-Appeal Judge in monitoring the pre-appeal activity in the case, in researching issues arising, and in drafting pre-appeal orders and decisions. The drafting team would also assist the bench in preparing for hearing the appeal or appeals in the case and in preparing for deliberations. An important part of this process has been assisting the judges in preparing a compendium of all submissions and issues arising in an appeal, compiling all

relevant jurisprudence, and in analyzing the submissions and issues in the appeal in light of the applicable law. Finally, following the judges' initial deliberations after hearing the oral arguments, the drafting team would assist the bench in the judgement drafting process. In this respect, at the direction of the judges, members of the drafting team would research specific points of fact from the record of the case or particular points of law to facilitate the judges' consideration of the issues presented. Further, the drafting team would incorporate the judges' individual positions on the various aspects of the appeal in successive drafts of the appeal judgement, facilitating the judges' consideration of any remaining issues and any further deliberations.

The practice at the ICTR Appeals Chamber has been to keep the drafting teams as lean as possible. Experience has shown that this has contributed to consistently meeting short timelines and producing drafts of high quality. This is perhaps because on small teams the working relationships are close and dynamic and every team member feels ownership of the work in the case and also the urgency of every assignment. In a typical case concerning one convicted person and two appeals, the drafting team would be normally comprised of one coordinating legal officer working with one or two junior legal officers. Usually, these legal officers would also be working on other cases in parallel, which, hopefully, would be at different stages of briefing or preparation. When needed to meet a timeline, additional legal officers would be assigned to the given team to complete a task, such as carrying out specific research, drafting, or cite-checking. The ultimate supervision of staff and review of drafts in every case has been the responsibility of the Senior Legal Officer who, as the Chief of the Appeals Chamber Support Section, has also been responsible for the overall coordination of the Appeals Chamber support and case management under the direction of the Presiding Judge of the Appeals Chamber.

4. Factors for efficient case management

The Appeals Chamber support has been underpinned by the uniform application of working methods which include forecasting and dynamic team management as well as preparation of a compendium and close attention to translation issues.

The foundation of efficient Appeals Chamber support has been the making of projections that forecast the overall caseload and within it, the various stages of individual case preparation and judgement drafting in terms of months, indicating the staffing level needed for each stage, for each month. As circumstances evolved, for example as projected trial judgement delivery dates changed, or as briefing deadlines within a case were adjusted, the projected appeal schedule was updated to reflect a current and realistic forecast, keeping in mind the lean and flexible staffing model. These projections served as the basis of budget requests, ultimately leading to allocation of posts, recruitment, and staff on board.

Once adequate resources for Appeals Chamber support were ensured, staff were deployed to assist individual judges and drafting teams, with drafting team staff working on multiple cases at a time, redeploying between cases and assignments as case management required. This has helped ensure compliance with time lines and also that staff members have had an even workload. In general, Appeals Chamber support has been organized in such a way that legal officers assigned to a case at the judgement drafting stage were also assigned to another case in the pre-appeal stage, so that, for example, the drafting team or the individual legal officers could turn to pre-appeal work in one case when awaiting comments on a judgement draft in the other case. This dynamic team management was predicated on the continuous monitoring of developments and progress in every case.

Another key element in streamlining case management at the Appeals Chamber has been the elaboration of a compendium of submissions and applicable law and analysis for the judges' use in

preparing for a hearing of appeal submissions, eventual deliberations, and judgement drafting. The preparation of such a compendium, or extensive bench memorandum, or preparatory document, as it has been called, has highlighted for the bench in a given case all issues raised by the parties as well all relevant jurisprudence. It has also identified in advance of the hearing of the appeal issues needing clarification from the parties. In addition, following the hearing, the preparatory document has facilitated the judgement drafting process as it has provided a streamlined presentation of the issues and applicable law with full references to the parties' written and oral submissions, case record, and applicable law. This has expedited the judges' consideration of the issues presented in the given appeal as well as judgement drafting, enabling the Appeals Chamber to deliberate and deliver a judgement within a short timeframe. For example, in the recently concluded cases of *Nzabonimana* and *Nizeyimana* the Appeals Chamber delivered its judgements within five months of hearing the appeals.³

Finally, the indispensable role of timely translations in the efficiency of the appeal process must be emphasized. With the tribunal having two official working languages, the Appeals Chamber has frequently received and granted requests to vary the briefing timelines to allow for translations to be prepared and filed. The Language Section was seized of translation requests not only for trial judgements and parties' submissions that were necessary for appeal briefing to proceed, but also for other translations. It has therefore been vital to closely coordinate with colleagues in the Language Section to indicate and periodically review the level of priority for the various translation requests and also to keep the Language Section fully apprised of developments in the projected schedules of the various appeals.

³ See *Nzabonimana v. Prosecutor*, Judgement, Case No. ICTR-98-44D-A, A.Ch., 29 September 2014, Ann. A, Para. 11; *Nizeyimana v. Prosecutor*, Judgement, Case No. ICTR-00-55C-A, A.Ch., 29 September 2014, Ann. A, Para. 10.

This brief overview has sought to outline the organization of ICTR Appeals Chamber support, highlighting some of the key elements that have by this point enabled the Appeals Chamber to fully complete all but the last case before the ICTR.