

LEGAL NOTICES SUPPLEMENT

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THE CONSTITUTION (INTEGRATION OF ICT INTO THE
ADJUDICATION PROCESSES FOR COURTS OF JUDICATURE)
(PRACTICE) DIRECTIONS, 2019

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The Constitution (Integration of ICT into the Adjudication Process for Courts of Judicature) (Practice) Directions, 2019
(Under Article 133 (1) (b) of the Constitution)

IN EXERCISE of the powers conferred upon the Chief Justice by Article 133 (1) (b) of the Constitution, these Practice Directions are issued this 25th day of January, 2019.

PART I—PRELIMINARY

1. Title.

These Practice Directions may be cited as the Constitution (Integration of ICT into the Adjudication Process for Courts of Judicature) (Practice) Directions, 2019.

2. Application.

These Practice Directions apply to all courts of judicature.

3. Objectives.

The objectives of these Practice Directions are to guide the integration of ICT in the court adjudication process with specific emphasis on—

- (a) providing for electronic filing and electronic service of court documents;
- (b) providing for the exchange of electronic versions of documents, including pleadings and statements;
- (c) emphasising the power of court to exercise the use of technology in particular cases or circumstances in order to provide efficiency;
- (d) guiding on the matters to be taken into account by parties in deciding how to make use of technology; and

- (e) offering examples and suggesting standards to assist parties in agreeing upon the extent and manner in which to use technology to exchange information.

4. Interpretation.

In these Practice Directions, unless the context otherwise requires—

“approved media device” includes USB flash drives (pen-drives), CD-R (Compact Disc-Recordable), write-once discs and DVD-R (Digital Video Disc-Recordable/Digital Versatile Disk-Recordable);

“approved media storage” means media for submitting attachments or exhibits that exceed the approved file size limit;

“court” includes all Courts of Judicature in Uganda;

“CPR” means the Civil Procedure Rules S.I. 71-1;

“database” means a collection of electronic data that is organised so that its contents can easily be accessed, managed and updated;

“e-filer” means an individual who is authorised to file documents electronically through the electronic filing system;

“electronic data” means information that has been translated into an electronic form that is more convenient to move or process;

“electronic filing” means the electronic transmission to the court of a document using the court’s electronic filing system, together with the transmission from the court of a notice of electronic filing containing an electronic hyperlink to the filed document;

“ESI” means electronically stored information and includes emails, webpages, word processing files, images, sound recordings, videos and databases stored in any device;

“electronic signature” means data in an electronic form affixed to or logically associated with a data message, which may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message, and includes an advance electronic signature and the secure signature;

“field” means a column of data within a database including each record that makes up a number of pieces of information and may consist of a number of fields which may be displayed as a box to enter or display data in a form or report;

“ICT” means information communications technology;

“image” means a picture or photograph that has been created or copied and stored in electronic format;

“judicial officer” means a Judge, Registrar or Magistrate;

“medium” means a mechanism through which a message is communicated;

“notification of court processing” means a notice automatically generated by the electronic filing system indicating that an e-filed document has been processed by the clerk and indicating whether the filing has been accepted or rejected;

“notice of electronic filing” means a notice automatically generated by the electronic filing system at the time a document is filed with the system, containing the date and time of filing in the standard time of Uganda and an electronic hyperlink to the document filed;

“portable document format” or PDF means a file format that allows a document to be read by the court using a PDF reader;

“protocol” means a specified mode of operation;

“virus” means a computer program designed to replicate itself, usually having some unexpected and undesirable result for its targets and which can be transmitted by downloading programs from infected sites or which may be present on a storage device received from an infected system; and

“XML” means extensible mark-up language used to facilitate the transfer of documents between computer systems.

PART II—E- JUSTICE

5. Use of technology in courtrooms.

(1) In every judicial proceeding, the court and the parties to the case may, as much as possible, use technology to expedite the proceedings and make them more efficient and effective.

(2) The technology referred to in subparagraph (1) includes—

- (a) an e-filing system and service of documents electronically;
- (b) digital display devices;
- (c) real time transcript devices;
- (d) video and audio conferencing; and
- (e) computers at the bar table.

(3) Nothing in these Practice Directions is intended to preclude practitioners from using their own electronic devices at the bar table during hearings.

(4) A judicial officer who approves the use of technology shall request the registry to make all necessary arrangements for the efficient use of the technology required.

(5) The court reserves the power to direct the parties to use information technology in appropriate cases.

(6) The parties shall comply with any directions issued by the court in relation to the use of technology and any requirements published by the court in relation to issues concerning the use of technology, including as document formats.

6. ICT partially enabled or ICT un-enabled courtroom.

(1) In a courtroom that is not ICT enabled or that is partially ICT enabled, the presiding judicial officer shall approve the use of any technology before is installed or used in the courtroom.

(2) The request for installation or use of technology under subparagraph (1) may be—

- (a) by oral application;
- (b) with leave of court; or
- (c) in a prescribed form, issued by the Chief Registrar.

7. Electronic exchange of court documents.

(1) All parties shall, at all stages of the court process and during trial, use technology for purposes of information exchange.

(2) In preparing a case for trial, the parties shall be specifically encouraged—

- (a) to exchange electronic versions of documents such as pleadings and statements;
- (b) to consider the use of electronic data at trial in accordance with the applicable laws and the requirements of the court; and
- (c) to serve documents electronically through email, instant messaging applications and any other widely used electronic communications service.

(3) Where a party serves a pleading, an affidavit, statement, list of documents or interrogatory on another party in hard copy, the recipient may request the party serving it to also provide a copy in electronic format.

(4) The court shall require parties to accede to reasonable requests for copies of court documents in electronic format.

(5) Before the copies in subparagraph (4) are provided, the parties shall make all reasonable efforts to agree on the following—

- (a) the word-processing or other format in which electronic versions will be provided;
- (b) the methods by which electronic versions will be exchanged; and
- (c) any other terms and conditions of electronic exchange.

(6) A court document provided by a party in electronic format shall contain the same text as the paper copy and where a court document contains an annexure, the text of the annexure shall be contained within the electronic copy.

(7) At any time during or after court proceedings, the court may deliver a decision electronically, by transmitting a copy of the judgment to the parties by using e-mail, instant messaging applications or any other widely used electronic communication method.

8. Signing up for use of ICT.

(1) All parties in judicial proceedings shall sign up for the use of ICT with the court registry by providing an electronic address to which service of documents may be effected.

(2) The format for signing up shall be in the form prescribed in the First Schedule to these Directions.

9. Case entries in e-filing system.

(1) A clerk receiving an electronic filing through the court e-filing software shall create a case entry using the information provided by the e-filer to record the document filed and where errors in the filing or case entry are discovered by the clerk, the clerk may-

- (a) make minor corrections to the case entry, with or without notifying the parties;
- (b) notify the e-filer of the error and advise the e-filer of what further action, if any, is required to address the error; or
- (c) disregard the error, if minor.

(2) Where an e-filer is notified of an error by the clerk through the court notification procedure, the e-filer shall make corrections within two working days of receiving the notification to be saved the original time stamp indicated on the notice of electronic filing.

(3) Where the e-filer fails to make corrections as notified by the clerk, the clerk shall reject the filing, resulting in failure to comply with the applicable deadline.

10. Proposed or tendered documents.

(1) Where the filing of an electronically submitted document requires leave of court, including an amended complaint or a document to be filed out of time, the e-filer shall attach the proposed document as an attachment to the application requesting leave to file.

(2) Where the court grants the motion and allows the filing of a document out of time under subparagraph (1), the e-filer shall re-file the proposed document as part of the record and the document shall have the word "proposed" preceding the name of the document.

(3) Where an e-filer is submitting a proposed order or other proposed or tendered document, including but not limited to,

judgments, findings of fact and conclusions of law, the order or other document may be submitted in PDF or PDF/A format as well as in an editable format in doc-format capable of being read by Microsoft word.

(4) All audio and video recordings shall be submitted to court on an approved media device.

11. Attachments and exhibits.

(1) Any attachment or exhibit which cannot be scanned and converted to a PDF or PDF/A such as a video or audio recording or large map shall be filed in the traditional manner, with electronic notice to all parties.

(2) A party shall serve the traditionally filed document or material on the other party as though they were not subject to the electronic filing procedures.

12. Format of electronically filed documents.

(1) An electronic document shall be filed in the PDF format and shall be formatted in accordance with the applicable rules governing formatting of paper documents, including page and word limits.

(2) Color coding shall not be required for electronic documents.

(3) Electronic documents that form part of the official court record shall be self-contained and shall not contain hyperlinks.

(4) For the convenience of court, an electronic document filed under these Practice Directions shall not exceed 500 megabytes and where the electronic document exceeds that limit, a party shall submit to the court a copy of the electronic document on an approved media device.

(5) The device in paragraph (4) shall be provided to the other party or self-represented party.

(6) An adhesive label shall be affixed onto each media device legibly identifying-

- (a) the caption of the case;
- (b) the party filing the device;
- (c) the media device number such as disc 1 of 2; and
- (d) that the device has been scanned for viruses and that it is virus-free.

(7) An electronic document shall be submitted in text searchable PDF, except that the document may also include hyperlinks to the complete text of any authorities cited in the document and to any document or other material contained in the record of appeal.

(8) In order for the hyperlinks to function properly, the record or the cited portions of the record and authorities shall be included on the same disc as the electronic document.

(9) An electronic document requiring signature shall be signed with an original signature, stamped signature or an electronic graphic representation of a signature.

13. Filing fees.

(1) Where a fee is payable upon the filing of a document with court, the party shall, before filing the document, pay the requisite fee at an authorised bank which shall issue a code which the registered user shall enter in the e-filing system or provide a fee payment account number.

(2) The fee payable may also be paid through a court authorised mobile money account number, credit card or debit card which the party has authority to use to pay the applicable fee and the party shall authorise the court to charge the applicable fee to that account or card number.

14. Electronic filing.

(1) Where a registered user believes that the unavailability of the electronic filing system prevented the timely filing to the party's prejudice, the registered user may, by notice of motion, inform the court within five days of the user's first unsuccessful attempt to file the document.

(2) The registered user referred to in subparagraph (1) shall state in the application, the date and time of the first unsuccessful attempt to file the document electronically and why the delay was prejudicial.

(3) Electronic filing is permitted at all times when the electronic filing system is available and where the electronic filing system is unavailable at the time the user attempts to file a document, the registered user shall make reasonable efforts to file the document as soon as the electronic filing system becomes available.

(4) Where the court determines that the unavailability of the electronic filing system prevented the court from receiving the filed documents, the court shall deem the document to have been filed on the day that the user initially attempted to file the document.

(5) The filing deadline for any document filed electronically shall be 11:59:59 p.m. in the standard time of Uganda.

(6) A document is submitted for filing when the electronic filing system receives the document and sends a confirmation receipt, including the date and time of filing to the e-filer.

(7) Where the registry accepts a document for filing, the registry shall enter in the case management system, the date and time of the electronic filing.

(8) E-mailing a document to the registry or to the presiding judicial officer does not constitute filing of the document.

(9) A document will not be considered as filed until the e-filing system generates a notice of electronic filing with a hyperlink to the electronically filed document.

15. Electronic exchange of discovery lists and documents.

(1) Where parties have discoverable ESI and efficiency dictates that any discovery and production of such information, if given electronically, shall avoid the need to convert it to a paper format, the court shall, in such cases, as a general rule, require the parties—

- (a) to create electronic lists of their discoverable ESI material;
- (b) to give for inspection, databases containing copies of discoverable ESI created in accordance with an agreed protocol, but the host and attachment documents shall not be separated in the process; and
- (c) to change the original file names to document identification numbers.

(2) The court shall, as a general rule, require the parties in court proceedings to use ICT to discover and inspect hard copy documents along with any ESI to better inform the parties identifying, early in the proceedings, the scope of discovery and the categories of documents likely to be discovered.

(3) A party shall advise the opposite party at an early stage of the proceedings of potentially discoverable electronically stored information and the parties shall meet to agree upon matters which shall include—

- (a) the format of the electronic database for the electronic discovery, noting that metadata, mark-up or other “hidden” data will be automatically discovered if native format is used;
- (b) the protocol to be used for the electronic discovery, including ESI;
- (c) the type and extent of the ESI that is to be discovered;
- (d) how legacy or deleted data is to be dealt with and the existence of ESI that is not reasonably or readily accessible

shall be disclosed between the parties, but the court shall not expect it to be retrieved except where it is necessary for the conduct of the proceedings;

- (e) whether ESI is to be discovered on an agreed basis without prejudice and without the need to go through the information in detail to categorise it into privileged and non-privileged information.

(4) Without prejudice to an entitlement to subsequently claim privilege over any information that has been discovered and is claimed to be privileged under sections 118 and 119 of the Evidence Act, or at common law, such ESI shall be produced separately on a CD-ROM or DVD and appropriately marked to enable the court to determine any privilege issues relating to the information.

(5) Where there is a substantial amount of ESI, the parties shall consider producing the material in its searchable native format, rather than by production of document images.

(6) Where a party chooses to produce document images rather than originals of ESI, the costs of providing access to hardware, software or other resources to enable the inspection of original electronic material shall be agreed upon by the parties.

16. Agreement by written protocol.

(1) In any case where there is to be discovery given by production of databases containing discoverable ESI, the parties shall, early in the proceedings but not later than the day for scheduling or at any other time allowed by court—

- (a) endeavour to reach an agreement on the protocol to be used and the scope of that protocol; or
- (b) seek either a consent order or direction from the court, if agreement is not reached, concerning the terms of the protocol.

- (2) The protocol shall deal with the following matters—
- (a) the format of the electronic database for the electronic discovery;
 - (b) the protocol and data format to be used for the electronic discovery;
 - (c) the type and extent of the ESI that is to be discovered and whether ESI is to be discovered on an agreed basis without prejudice and without the need to go through the information in detail to categorise it into privileged and non-privileged information;
 - (d) whether the document is to be produced in native or image format, but for cost reasons, forensic examination of hard drives shall only be done when the court makes specific orders to that effect; and
 - (e) any other terms and conditions for electronic discovery.

17. Verification of electronic lists.

(1) Each party shall consider the manner in which lists of documents shall be verified where data on those documents is to be exchanged electronically.

(2) Where an agreement is not reached, the verification of lists of documents shall be done by a verifying affidavit indicating what documents have been exchanged electronically.

18. Order to dispense with verifications by affidavit.

Where a party is of the belief that it is appropriate to dispense with verification of a hard copy list, the party shall seek court's direction.

19. Verification by reference to method of service.

As an alternative to verification of a hard copy list, the parties may seek court's direction for a verifying affidavit to identify the documents by reference to a medium by which the data was served and the date of service.

20. Risk of computer viruses.

It shall not be taken as unreasonable for a party to provide documents in electronic format, subject to a condition that it is the responsibility of the recipient to test it for viruses.

SCHEDULE

Para 8(2)

FORM FOR SIGNING UP FOR USE OF THE COURT E-FILING SYSTEM

Case Ref. No:

.....

Parties:

.....

Accused/Defendant's Name:.....

.....

Particulars of the Advocate:

.....

Particulars of state Prosecutor:

.....

Email address/Fax:

Preferred Date for AVL:

Your client's next date of appearance.....

Deadline: The deadline for any document filed electronically shall be 11:59:59 p.m. in the standard time of Uganda.

Once all the necessary documents are attached, please send to official e-mail:

.....

Confirmation of filing

FOR REGISTRAR'S USE ONLY •

Filing/submission received?

Yes

No

Confirmation to Advocate/Prosecutor

Yes

No

Date:..... day of.....20.....

BART .M. KATUREEBE,
Chief Justice and Chairperson, Rules Committee.

Cross References

Constitution of the Republic of Uganda

Civil Procedure Act, Cap. 71

Civil Procedure Rules, S.I. 71-1

Computer Misuse Act, No. 2/2011

Electronic Signature Act, No. 7/2011

Electronic Transactions Act, No. 8/2011

Evidence Act, Cap. 6

Judicature Act, Cap. 13

Judicature (Visual-Audio Link) Rules, 2016 (SI No. 26 of 2016)