



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

RULES OF PROCEDURE AND EVIDENCE

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Part One

GENERAL PROVISIONS

Rule 1: Entry into Force

These Rules of Procedure and Evidence, adopted pursuant to Article 14 of the Statute of the Tribunal, shall come into force on 29 June 1995.

Rule 2: Definitions

(A) In the Rules, unless the context otherwise requires, the following terms shall mean:

Rules: The Rules referred to in Rule 1;

Statute: The Statute of the Tribunal adopted by Security Council resolution 955 of 8 November 1994;

Tribunal: 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;

Accused: A person against whom one or more counts in an indictment have been confirmed in accordance with Rule 47;

Arrest: The act of apprehending and taking a suspect or an accused into custody pursuant to a warrant of arrest or under Rule 40;

Bureau: A body composed of the President, the Vice-President and the more senior Presiding Judge of the Trial Chambers;

Investigation: All activities undertaken by the Prosecutor under the Statute and the Rules

for the collection of information and evidence, whether before or after confirmation of an indictment;

Transaction: A number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan;

Party: The Prosecutor or the accused;

President: The President of the Tribunal;

Prosecutor: The Prosecutor designated pursuant to Article 15 of the Statute

Regulations: The provisions framed by the Prosecutor pursuant to Rule 37 (A) for the purpose of directing the functions of the Office of the Prosecutor;

Suspect: A person concerning whom the Prosecutor possesses reliable information which tends to show that he may have committed a crime over which the Tribunal has jurisdiction;

Victim: A person against whom a crime over which the Tribunal has jurisdiction has allegedly been committed.

(B) In the Rules, the masculine shall include the feminine and the singular the plural, and vice-versa.

Rule 3: Languages

(A) The working languages of the Tribunal shall be English and French.

(B) The accused or suspect shall have the right to use his own language.

(C) Counsel for the accused may apply to a Judge or a Chamber for leave to use a language other than the two working ones or the language of the accused. If such leave is granted, the expenses of interpretation and translation shall be borne by the Tribunal to the extent, if any, determined by the President, taking into account the rights of the Defence and the interests of justice.

(D) Any other person appearing before the Tribunal, who does not have sufficient knowledge of either of the two working languages, may use his own language.

(E) The Registrar shall make any necessary arrangements for interpretation and translation of the working languages

Rule 4: Sittings away from the Seat of the Tribunal

A Chamber or a Judge may exercise their functions away from the Seat of the Tribunal, if so authorized by the President in the interests of justice.

Rule 5: Non-compliance with Rules

(A) Where an objection on the ground of non-compliance with the Rules or Regulations is raised by a party at the earliest opportunity, the Trial Chamber shall grant relief, if it finds that the alleged

non-compliance is proved and that it has caused material prejudice to that party.

(B) Where such an objection is raised otherwise than at the earliest opportunity, the Trial Chamber may in its discretion grant relief, if it finds that the alleged non-compliance is proved and that it has caused material prejudice to the objecting party.

(C) The relief granted by a Trial Chamber under this Rule shall be such remedy as the Trial Chamber considers appropriate to ensure consistency with fundamental principles of fairness.

Rule 6: Amendment of the Rules

(A) Proposals for amendment of the Rules may be made by a Judge, the Prosecutor or the Registrar and shall be adopted, if agreed to by not less than ten Judges at a Plenary Meeting of the Tribunal convened with notice of the proposal addressed to all Judges.

(B) An amendment of the Rules may be adopted otherwise than as stipulated in Sub-Rule (A) above, provided it is approved unanimously by any appropriate means either done in writing or confirmed in writing.

(C) An amendment shall enter into force immediately, but shall not operate to prejudice the rights of the accused in any pending case.

Rule 7: Authentic Texts

The English and French texts of the Rules shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute and the Rules shall prevail.

Rule 7bis: Non Compliance with Obligations

(A) Except in cases to which Rules 11, 13, 59 or 61 applies, where a Trial Chamber or a Judge is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute relating to any proceedings before that Chamber or Judge, the Chamber or Judge may request the President to report the matter to the Security Council.

(B) If the Prosecutor satisfies the President that a State has failed to comply with an obligation under Article 28 of the Statute in respect of a request by the Prosecutor under Rules 8 or 40, the President shall notify the Security Council thereof.

Rule 7ter: Time limits

A. Unless otherwise ordered by the Chambers or otherwise provided by the Rules, where the time prescribed by or under the Rules for the doing of any act shall run as from the occurrence of an event, that time shall run from the date on which notice of the occurrence of the event has been received in the normal course of transmission by counsel for the accused or the Prosecutor as the case may be.

B. Where a time limit is expressed in days, only ordinary calendar days shall be counted. Weekdays, Saturdays, Sundays and public holidays shall be counted as days. However, should the time limit expire on a Saturday, Sunday or public holiday, the time limit shall automatically be extended to the subsequent working day.

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Part Two

PRIMACY OF THE TRIBUNAL

Rule 8: Request for Information

Where it appears to the Prosecutor that a crime within the jurisdiction of the Tribunal is or has been the subject of investigations or criminal proceedings instituted in the courts of any State, he may request the State to forward to him all relevant information in that respect, and the State shall transmit to him such information forthwith in accordance with Article 28 of the Statute.

Rule 9: Prosecutor's Application for Deferral

Where it appears to the Prosecutor that crimes which are the subject of investigations or criminal proceedings instituted in the courts of any State:

- (i) Are the subject of an investigation by the Prosecutor;
- (ii) Should be the subject of an investigation by the Prosecutor considering, *inter alia*:
 - (a) The seriousness of the offences;
 - (b) The status of the accused at the time of the alleged offences;
 - (c) The general importance of the legal questions involved in the case;
- (iii) Are the subject of an indictment in the Tribunal,

the Prosecutor may apply to the Trial Chamber designated by the President to issue a formal request that such court defer to the competence of the Tribunal.

Rule 10: Formal Request for Deferral

(A) If it appears to the Trial Chamber seized of a request by the Prosecutor under Rule 9 that paragraphs (i), (ii) or (iii) of Rule 9 are satisfied, the Trial Chamber shall issue a formal request to the State concerned that the Court defer to the competence of the Tribunal.

(B) A request for deferral shall include a request that the results of the investigation and a copy of the court's records and the judgement, if already delivered, be forwarded to the Tribunal.

(C) The State to which the formal request for deferral is addressed shall comply without undue delay in accordance with Article 28 of the Statute.

Rule 11: Non-compliance with a Formal Request for Deferral

If, within sixty days after a request for deferral has been notified by the Registrar to the State under whose jurisdiction the investigations or criminal proceedings have been instituted, the State fails to file a response which satisfies the Trial Chamber that the State has taken or is taking adequate steps to comply with the request, the Trial Chamber may invite the President to report the matter to the Security Council.

Rule 12: Determinations of Courts of any State

Subject to Article 9 (2) of the Statute, determinations of courts of any State are not binding on the Tribunal.

Rule 13: *Non Bis in Idem*

When the President receives reliable information to show that criminal proceedings have been instituted against a person before a court of any State for acts constituting serious violations of international humanitarian law under the Statute for which that person has already been tried by the Tribunal, a Trial Chamber shall, following *mutatis mutandis* the procedure provided in Rule 10, issue a reasoned order requesting that court permanently to discontinue its proceedings. If that court fails to do so, the President may report the matter to the Security Council.

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Part III

ORGANIZATION OF THE TRIBUNAL

Section 1: The Judges

Rule 14: Solemn Declaration

(A) Before taking up his duties each Judge shall make the following solemn declaration:

"I solemnly declare that I will perform my duties and exercise my powers as a Judge of 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, honourably, faithfully, impartially and conscientiously."

(B) The text of the declaration, signed by the Judge and witnessed by the Secretary-General of the United Nations or his representative, shall be kept in the records of the Tribunal.

Rule 14 bis

The members of the Tribunal shall continue to discharge their duties until their places have been filled.

Though replaced, they shall finish any cases which they may have begun.

Rule 15: Disqualification of Judges

(A) A Judge may not sit at a trial or appeal in any case in which he has a personal interest or concerning which he has or has had any association which might affect his impartiality. He shall in any such circumstance withdraw from that case. Where the Judge withdraws from the Trial Chamber, the President shall assign another Trial Chamber Judge to sit in his place. Where a Judge withdraws from the Appeals Chamber, the Presiding Judge of that Chamber shall assign another Judge to sit in his place.

(B) Any party may apply to the Presiding Judge of a Chamber for the disqualification of a Judge of that Chamber from a trial or appeal upon the above grounds. After the Presiding Judge has conferred with the Judge in question, the Bureau, if necessary, shall determine the matter. If the Bureau upholds the application, the President shall assign another Judge to sit in place of the disqualified Judge.

(C) The Judge who reviews an indictment against an accused, pursuant to Article 18 of the Statute and Rule 47 or 61, shall not be disqualified from sitting as a member of a Trial Chamber for the trial of that accused.

(D) No member of the Appeals Chamber shall hear any appeal in a case in which another Judge of the same nationality sat as a member of the Trial Chamber.

Rule 15 bis : Absence of a Judge

(A) If

- (i) a Judge is, for illness or other urgent personal reasons, or for reasons of authorised Tribunal business, unable to continue sitting in a part-heard case for a period which is likely to be of short duration, and
- (ii) the remaining Judges of the Chamber are satisfied that it is in the interests of justice to do so,

those remaining Judges of the Chamber may order that the hearing of the case continue in the absence of that Judge for a period of not more than five working days.

(B) If

- (i) a Judge is, for illness or other urgent personal reasons, or for reasons of authorised Tribunal business, unable to continue sitting in a part-heard case for a period which is likely to be of short duration, and
- (ii) the remaining Judges of the Chamber are not satisfied that it is in the interests of justice to order that the hearing of the case continue in the absence of that Judge, then

- (a) those remaining Judges of the Chamber may nevertheless conduct those matters which they are satisfied should be disposed of in the interests of justice, notwithstanding the absence of that Judge, and
- (b) the Presiding Judge may adjourn the proceedings.

(C) If a Judge is, for any reason, unable to continue sitting in a part-heard case for a period which is

likely to be longer than of a short duration, the Presiding Judge shall report to the President who may assign another Judge to the case and order either a rehearing or continuation of the proceedings from that point. However, after the opening statements provided for in Rule 84, or the beginning of the presentation of evidence pursuant to Rule 85, the continuation of the proceedings can only be ordered with the consent of the accused.

(D) In case of illness or an unfilled vacancy or in any other similar circumstances, the President may, if satisfied that it is in the interests of justice to do so, authorise a Chamber to conduct routine matters, such as the delivery of decisions, in the absence of one or more of its members.

Rule 16: Resignation

A Judge who decides to resign shall give notice of his resignation in writing to the President, who shall transmit it to the Secretary-General of the United Nations.

Rule 17: Precedence

(A) All Judges are equal in the exercise of their judicial functions, regardless of dates of election, appointment, age or period of service.

(B) The Presiding Judges of the Chambers shall take precedence according to age after the President and the Vice-President.

(C) Judges elected or appointed on different dates shall take precedence according to the dates of their election or appointment; Judges elected or appointed on the same date shall take precedence according to age.

(D) In case of re-election, the total period of service as a Judge of the Tribunal shall be taken into account.

Section 2: The Presidency

Rule 18: Election of the President

(A) The President shall be elected for a term of two years, or such shorter term as shall coincide with the duration of his term of office as a Judge. The President may be re-elected once.

(B) If the President ceases to be a member of the Tribunal or resigns his office before the expiration of his term, the Judges shall elect from among their number a successor for the remainder of the term.

(C) The President shall be elected by a majority of the votes of the Judges of the Tribunal. If no Judge obtains such a majority, the second ballot shall be limited to the two Judges who obtained the greatest number of votes on the first ballot. In the case of equality of votes on the second ballot, the Judge who takes precedence in accordance with Rule 17 shall be declared elected.

Rule 19: Functions of the President

(A) The President shall preside at all plenary meetings of the Tribunal, co-ordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on him by the Statute and the Rules.

(B) The President may, in consultation with the Bureau, the Registrar and the Prosecutor, issue Practice Directions, consistent with the Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Tribunal.

Rule 20: The Vice-President

(A) The Vice-President shall be elected for a term of two years, or such shorter term as shall coincide with the duration of his term of office as a Judge. The Vice-President may be re-elected once.

(B) Rules 18 (B) and (C) shall apply *mutatis mutandis* to the Vice-President.

Rule 21: Functions of the Vice-President

The Vice-President shall exercise the functions of the President in case the latter is absent or is unable to act.

Rule 22: Replacements

If neither the President nor the Vice-President can carry out the functions of the Presidency, this shall be assumed by the senior Judge of the Trial Chambers, determined in accordance with Rule 17.

Section 3: Internal Functioning of the Tribunal

Rule 23: The Bureau

(A) The Bureau shall be composed of the President, the Vice-President and the Presiding Judges of the Trial Chambers.

(B) The President shall consult the other members of the Bureau on all major questions relating to the functioning of the Tribunal.

(C) A Judge may draw the attention of any member of the Bureau to issues that in his opinion ought to be discussed by the Bureau or submitted to a Plenary Meeting of the Tribunal.

Rule 24: Plenary Meetings of the Tribunal

The Judges shall meet in plenary to:

- (i) Elect the President and Vice-President;
- (ii) Adopt and amend the Rules;
- (iii) Adopt the Annual Report provided for in Article 32 of the Statute;
- (iv) Decide upon matters relating to the internal functioning of the Chambers and the Tribunal;
- (v) Determine or supervise the conditions of detention;
- (vi) Exercise any other functions provided for in the Statute or in the Rules.

Rule 25: Dates of Plenary Meetings

- (A) The dates of the scheduled Plenary Meetings of the Tribunal shall normally be agreed upon in July of each year for the following calendar year.
- (B) Other Plenary Meetings shall be convened by the President if so requested by at least eight Judges, and may be convened whenever the exercise of his functions under the Statute or the Rules so requires.

Rule 26: Quorum and Vote

- (A) The quorum for each Plenary Meeting of the Tribunal shall be ten Judges.
- (B) Subject to Rule 6 (A) and (B) and Rule 18 (C), the decisions of the Plenary Meeting of the Tribunal shall be taken by the majority of the Judges present. In the event of an equality of votes, the President or the Judge who acts in his place shall have a casting vote.

Section 4: The Chambers**Rule 27: Rotation of the Judges**

- (A) Judges shall rotate on a regular basis between the Trial Chambers. Rotation shall take into account the efficient disposal of cases.
- (B) The Judges shall take their places in their assigned Chamber as soon as the President thinks it convenient, having regard to the disposal of pending cases.
- (C) The President may at any time temporarily assign a member of one Trial Chamber to another Trial Chamber.

Rule 28: Duty Judges

Every six months and after consultation with the Judges, the President shall, designate for each month of the next six months one Judge from each Trial Chamber to whom indictments, warrants, and other submissions not pertaining to a case already assigned to a Chamber, shall be transmitted for review. The duty roster shall be published by the Registrar. However, in exceptional circumstances, a Judge on duty may request another Judge of the same Chamber to replace him, after having informed the President and the Registrar.

Rule 29: Deliberations

The deliberations of the Chambers shall take place in private and remain secret.

Section 5: The Registrar**Rule 30: Appointment of the Registrar**

The President shall seek the opinion of the Judges on the candidates for the post of Registrar, before consulting with the Secretary-General of the United Nations pursuant to Article 16 (3) of the Statute.

Rule 31: Appointment of the Deputy Registrar and Registry Staff

The Registrar, after consultation with the President, shall make his recommendations to the Secretary-General of the United Nations for the appointment of the Deputy Registrar and other Registry staff.

32: Solemn Declaration

(A) Before taking up his duties, the Registrar shall make the following declaration before the President:

"I solemnly declare that I will perform the duties incumbent upon me as Registrar of 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, in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the Statute and the Rules of Procedure and Evidence of the Tribunal."

(B) Before taking up his duties, the Deputy Registrar shall make a similar declaration before the President.

(C) Every staff member of the Registry shall make a similar declaration before the Registrar.

Rule 33: Functions of the Registrar

(A) The Registrar shall assist the Chambers, the Plenary Meetings of the Tribunal, the Judges and the Prosecutor in the performance of their functions. Under the authority of the President, he shall be responsible for the administration and servicing of the Tribunal and shall serve as its channel of communication.

(B) The Registrar, in the execution of his functions, may make oral or written representations to Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the parties where necessary.

(C) The Registrar may, in consultation with the President of the Tribunal and the Presiding Judge of the Appeals Chamber, as the case may be, issue Practice Directions addressing particular aspects of the practice and procedure in the Registry of the Tribunal and in respect of other matters within the powers of the Registrar.

Rule 34: Victims and Witnesses Support Unit

(A) There shall be set up under the authority of the Registrar a Victims and Witnesses Support Unit consisting of qualified staff to:

(i) Recommend the adoption of protective measures for victims and witnesses in accordance with Article 21 of the Statute;

(ii) Ensure that they receive relevant support, including physical and psychological rehabilitation, especially counselling in cases of rape and sexual assault; and

(iii) Develop short term and long term plans for the protection of witnesses who have testified before the Tribunal and who fear a threat to their life, property or family.

(B) A gender sensitive approach to victims and witnesses protective and support measures should be adopted and due consideration given, in the appointment of staff within this Unit, to the employment of qualified women.

Rule 35: Minutes

Except where a full record is made under Rule 81, the Registrar, or Registry staff designated by him, shall take minutes of the Plenary Meetings of the Tribunal and of the sittings of the Chambers or a Judge, other than private deliberations.

Rule 36: Record Book

The Registrar shall keep a Record Book which shall list, subject to Rule 53, all the particulars of each case brought before the Tribunal. The Record Book shall be open to the public.

Section 6: The Prosecutor

Rule 37: Functions of the Prosecutor

(A) The Prosecutor shall perform all the functions provided by the Statute in accordance with the Rules and such Regulations, consistent with the Statute and the Rules, as may be framed by him. Any alleged inconsistency in the Regulations shall be brought to the attention of the Bureau to whose opinion the Prosecutor shall defer.

(B) The Prosecutor's powers under Parts Four to Eight of the Rules may be exercised by staff members of the Office of the Prosecutor authorized by him, or by any person acting under his direction.

Rule 38: Deputy Prosecutor

(A) The Prosecutor shall make his recommendations to the Secretary-General of the United Nations for the appointment of a Deputy Prosecutor.

(B) The Deputy Prosecutor shall exercise the functions of the Prosecutor in the event of his absence or inability to act or upon the Prosecutor's express instructions.

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Part Four

INVESTIGATIONS AND RIGHTS OF SUSPECTS

Section 1: Investigations

Rule 39: Conduct of Investigations

In the conduct of an investigation, the Prosecutor may:

- (i) Summon and question suspects, interview victims and witnesses and record their statements, collect evidence and conduct on-site investigations;
- (ii) Take all measures deemed necessary for the purpose of the investigation and to support the prosecution at trial, including the taking of special measures to provide for the safety of potential witnesses and informants;
- (iii) Seek, to that end, the assistance of any State authority concerned, as well as of any relevant international body including the International Criminal Police Organization (INTERPOL); and
- (iv) Request such orders as may be necessary from a Trial Chamber or a Judge.

Rule 40: Provisional Measures

(A) In case of urgency, the Prosecutor may request any State:

- (i) To arrest a suspect and place him in custody;
- (ii) To seize all physical evidence;
- (iii) To take all necessary measures to prevent the escape of a suspect or an accused, injury to or intimidation of a victim or witness, or the destruction of evidence.

The State concerned shall comply forthwith, in accordance with Article 28 of the Statute.

(B) Upon showing that a major impediment does not allow the State to keep the suspect in custody or to take all necessary measures to prevent his escape, the Prosecutor may apply to a Judge designated by the President for an order to transfer the suspect to the seat of the Tribunal or to such other place as the Bureau may decide, and to detain him provisionally. After consultation with the Prosecutor and the Registrar, the transfer shall be arranged between the State authorities concerned, the authorities of the host Country of the Tribunal and the Registrar.

(C) In the cases referred to in paragraph B, the suspect shall, from the moment of his transfer, enjoy all the rights provided for in Rule 42, and may apply for review to a Trial Chamber of the Tribunal. The Chamber, after hearing the Prosecutor, shall rule upon the application.

(D) The suspect shall be released if (i) the Chamber so rules; or (ii) the Prosecutor fails to issue an indictment within twenty days of the transfer.

Rule 40 bis: Transfer and Provisional Detention of Suspects

(A) In the conduct of an investigation, the Prosecutor may transmit to the Registrar, for an order by a Judge assigned pursuant to Rule 28, a request for the transfer to and provisional detention of a suspect in

the premises of the detention unit of the Tribunal. This request shall indicate the grounds upon which the request is made and, unless the Prosecutor wishes only to question the suspect, shall include a provisional charge and a summary of the material upon which the Prosecutor relies.

(B) The Judge shall order the transfer and provisional detention of the suspect if the following conditions are met:

(i) The Prosecutor has requested a State to arrest the suspect and to place him in custody, in accordance with Rule 40, or the suspect is otherwise detained by a State;

(ii) After hearing the Prosecutor, the Judge considers that there is a reliable and consistent body of material which tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction; and

(iii) The Judge considers provisional detention to be a necessary measure to prevent the escape of the suspect, physical or mental injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation.

(C) The provisional detention of the suspect may be ordered for a period not exceeding 30 days from the day after the transfer of the suspect to the detention unit of the Tribunal.

(D) The order for the transfer and provisional detention of the suspect shall be signed by the Judge and bear the seal of the Tribunal. The order shall set forth the basis of the request made by the Prosecutor under Sub-Rule (A), including the provisional charge, and shall state the Judge's grounds for making the order, having regard to Sub-Rule (B). The order shall also specify the initial time limit for the provisional detention of the suspect, and be accompanied by a statement of the rights of a suspect, as specified in this Rule and in Rules 42 and 43.

(E) As soon as possible, copies of the order and of the request by the Prosecutor are served upon the suspect and his counsel by the Registrar.

(F) At the Prosecutor's request indicating the grounds upon which it is made and if warranted by the needs of the investigation, the Judge who made the initial order, or another Judge of the same Trial Chamber, may decide, subsequent to an *inter partes* hearing and before the end of the period of detention, to extend the provisional detention for a period not exceeding 30 days.

(G) At the Prosecutor's request indicating the grounds upon which it is made and if warranted by special circumstances, the Judge who made the initial order, or another Judge of the same Trial Chamber, may decide, subsequent to an *inter partes* hearing and before the end of the period of detention, to extend the detention for a further period not exceeding 30 days.

(H) The total period of provisional detention shall in no case exceed 90 days after the day of transfer of the suspect to the Tribunal, at the end of which, in the event the indictment has not been confirmed and an arrest warrant signed, the suspect shall be released or, if appropriate, be delivered to the authorities of the State to which the request was initially made.

(I) The provisions in Rules 55(B) to 59 shall apply *mutatis mutandis* to the execution of the order for the transfer and provisional detention of the suspect.

(J) After his transfer to the seat of the Tribunal, the suspect, assisted by his counsel, shall be brought, without delay, before the Judge who made the initial order, or another Judge of the same Trial Chamber, who shall ensure that his rights are respected.

(K) During detention, the Prosecutor, the suspect or his counsel may submit to the Trial Chamber of which the Judge who made the initial order is a member, all applications relative to the propriety of provisional detention or to the suspect's release.

(L) Without prejudice to Sub-Rules (C) to (H), the Rules relating to the detention on remand of accused persons shall apply *mutatis mutandis* to the provisional detention of persons under this Rule.

Rule 41: Preservation of Information

(A) The Prosecutor shall be responsible for the preservation, storage and security of information and physical evidence obtained in the course of his investigations.

(B) The Prosecutor shall draw up an inventory of all materials seized from the accused, including documents, books, papers, and other objects, and shall serve a copy thereof on the accused. Materials that are of no evidentiary value shall be returned without delay to the accused.

Rule 42: Rights of Suspects during Investigation

(A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which he shall be informed by the Prosecutor prior to questioning, in a language he speaks and understands:

- (i) The right to be assisted by counsel of his choice or to have legal assistance assigned to him without payment if he does not have sufficient means to pay for it;
- (ii) The right to have the free assistance of an interpreter if he cannot understand or speak the language to be used for questioning; and
- (iii) The right to remain silent, and to be cautioned that any statement he makes shall be recorded and may be used in evidence.

(B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived his right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43: Recording Questioning of Suspects

Whenever the Prosecutor questions a suspect, the questioning shall be audio-recorded or video-recorded, in accordance with the following procedure:

- (i) The suspect shall be informed in a language he speaks and understands that the questioning is being audio-recorded or video-recorded;
- (ii) In the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;

(iii) At the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything he has said, and to add anything he may wish, and the time of conclusion shall be recorded;

(iv) The content of the recording shall then be transcribed as soon as practicable after the conclusion of questioning and a copy of the transcript supplied to the suspect, together with a copy of the recording or, if multiple recording apparatus was used, one of the original recorded tapes; and

(v) After a copy has been made, if necessary, of the recorded tape for purposes of transcription, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect.

Section 2: Of Counsel

Rule 44: Appointment and Qualifications of Counsel

(A) Counsel engaged by a suspect or an accused shall file his power of attorney with the Registrar at the earliest opportunity. Subject to verification by the Registrar, a counsel shall be considered qualified to represent a suspect or accused, provided that he is admitted to the practice of law in a State, or is a University professor of law.

(B) In the performance of their duties counsel shall be subject to the relevant provisions of the Statute, the Rules, the Rules of Detention and any other rules or regulations adopted by the Tribunal, the Host Country Agreement, the Code of Conduct and the codes of practice and ethics governing their profession and, if applicable, the Directive on the Assignment of Defence Counsel.

Rule 44 *bis*: Duty Counsel

(A) A list of duty counsel who speak one or both working languages of the Tribunal and have indicated their willingness to be assigned pursuant to this Rule shall be kept by the Registrar.

(B) Duty counsel shall fulfill the requirements of Rule 44, and shall be situated within reasonable proximity to the Detention Facility and the Seat of the Tribunal.

(C) The Registrar shall at all times ensure that duty counsel will be available to attend the Detention Facility in the event of being summoned.

(D) If an accused, or suspect transferred under Rule 40 *bis*, is unrepresented at any time after being transferred to the Tribunal, the Registrar shall as soon as practicable summon duty counsel to represent the accused or suspect until counsel is engaged by the accused or suspect, or assigned under Rule 45.

(E) In providing initial legal advice and assistance to a suspect transferred under Rule 40 *bis*, duty counsel shall advise the suspect of his or her rights including the rights referred to in Rule 55 (A).

Rule 45: Assignment of Counsel

(A) A list of counsel who speak one or both of the working languages of the Tribunal, meet the requirements of Rule 44, have at least 10 years' relevant experience, and have indicated their willingness to be assigned by the Tribunal to indigent suspects or accused, shall be kept by the Registrar.

- (B) The criteria for determination of indigence shall be established by the Registrar and approved by the Judges.
- (C) In assigning counsel to an indigent suspect or accused, the following procedure shall be observed:
- (i) A request for assignment of counsel shall be made to the Registrar;
 - (ii) The Registrar shall enquire into the financial means of the suspect or accused and determine whether the criteria of indigence are met;
 - (iii) If he decides that the criteria are met, he shall assign counsel from the list; if he decides to the contrary, he shall inform the suspect or accused that the request is refused.
- (D) If a request is refused, a further reasoned request may be made by the suspect or the accused to the Registrar upon showing a change in circumstances.
- (E) The Registrar shall, in consultation with the Judges, establish the criteria for the payment of fees to assigned counsel.
- (F) If a suspect or an accused elects to conduct his own defence, he shall so notify the Registrar in writing at the first opportunity.
- (G) Where an alleged indigent person is subsequently found not to be indigent, the Chamber may make an order of contribution to recover the cost of providing counsel.
- (H) Under exceptional circumstances, at the request of the suspect or accused or his counsel, the Chamber may instruct the Registrar to replace an assigned counsel, upon good cause being shown and after having been satisfied that the request is not designed to delay the proceedings.
- (I) It is understood that Counsel will represent the accused and conduct the case to finality. Failure to do so, absent just cause approved by the Chamber, may result in forfeiture of fees in whole or in part. In such circumstances the Chamber may make an order accordingly. Counsel shall only be permitted to withdraw from the case to which he has been assigned in the most exceptional circumstances.

Rule 45 bis: Detained Persons

Rules 44 and 45 shall apply to any person detained under the authority of the Tribunal.

Rule 45 ter: Availability of Counsel

- (A) Counsel and Co-Counsel, whether assigned by the Registrar or appointed by the client for the purposes of proceedings before the Tribunal, shall furnish the Registrar, upon date of such assignment or appointment, a written undertaking that he will appear before the Tribunal within a reasonable time as specified by the Registrar.
- (B) Failure by Counsel or Co-Counsel to appear before the Tribunal, as undertaken, shall be a ground for withdrawal by the Registrar of the assignment of such Counsel or Co-Counsel or the refusal of audience by the Tribunal or the imposition of any other sanctions by the Chamber concerned.

Rule 46: Misconduct of Counsel

- (A) A Chamber may, after a warning, impose sanctions against a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice. This provision is applicable *mutatis mutandis* to Counsel for the prosecution.
- (B) A Judge or a Chamber may also, with the approval of the President, communicate any misconduct of counsel to the professional body regulating the conduct of counsel in his State of admission or, if a professor and not otherwise admitted to the profession, to the governing body of his University.
- (C) If a counsel assigned pursuant to Rule 45 is sanctioned in accordance with Sub-Rule by being refused audience, the Chamber shall instruct the Registrar to replace the counsel.
- (D) The Registrar may set up a Code of Professional Conduct enunciating the principles of professional ethics to be observed by counsel appearing before the Tribunal, subject to adoption by the Plenary Meeting. Amendments to the Code shall be made in consultation with representatives of the Prosecutor and Defence counsel, and subject to adoption by the Plenary Meeting. If the Registrar has strong grounds for believing that Counsel has committed a serious violation of the Code of Professional Conduct so adopted, he may report the matter to the President or the Bureau for appropriate action under this rule.
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Part Five

PRE-TRIAL PROCEEDINGS

Section 1: Indictments

Rule 47: Submission of Indictment by the Prosecutor

- (A) An indictment, submitted in accordance with the following procedure, shall be reviewed by a Judge designated in accordance with Rule 28 for this purpose.
- (B) The Prosecutor, if satisfied in the course of an investigation that there is sufficient evidence to provide reasonable grounds for believing that a suspect has committed a crime within the jurisdiction of the Tribunal, shall prepare and forward to the Registrar an indictment for confirmation by a Judge, together with supporting material.
- (C) The indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged.
- (D) The Registrar shall forward the indictment and accompanying material to the designated Judge, who will inform the Prosecutor of the scheduled date for review of the indictment.

- (E) The reviewing Judge shall examine each of the counts in the indictment, and any supporting materials the Prosecutor may provide, to determine, applying the standard set forth in Article 18 of the Statute, whether a case exists against the suspect.
- (F) The reviewing Judge may:
- (i) Request the Prosecutor to present additional material in support of any or all counts, or to take any further measures which appear appropriate;
 - (ii) Confirm each count;
 - (iii) Dismiss each count; or
 - (iv) adjourn the review so as to give the Prosecutor the opportunity to modify the indictment.
- (G) The indictment as confirmed by the Judge shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Tribunal. If the accused does not understand either of the official languages of the Tribunal and if the language understood is known to the Registrar, a translation of the indictment in that language shall also be prepared, and a copy of the translation attached to each certified copy of the indictment.
- (H) Upon confirmation of any or all counts in the indictment:
- (i) The Judge may issue an arrest warrant, in accordance with Sub-Rule 55 (A), and any orders as provided in Article 19 of the Statute; and
 - (ii) The suspect shall have the status of an accused.
- (I) The dismissal of a count in an indictment shall not preclude the Prosecutor from subsequently bringing an amended indictment based on the acts underlying that count if supported by additional evidence.

Rule 48: Joinder of Accused

Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.

Rule 48 bis: Joinder of Trials

Persons who are separately indicted, accused of the same or different crimes committed in the course of the same transaction, may be tried together, with leave granted by a Trial Chamber pursuant to Rule 73.

Rule 49: Joinder of Crimes

Two or more crimes may be joined in one indictment if the series of acts committed together form the same transaction, and the said crimes were committed by the same accused.

Rule 50: Amendment of Indictment

(A) The Prosecutor may amend an indictment, without prior leave, at any time before its confirmation, but thereafter, until the initial appearance of the accused before a Trial Chamber pursuant to Rule 62, only with leave of the Judge who confirmed it but, in exceptional circumstances, by leave of a Judge assigned by the President. At or after such initial appearance, an amendment of an indictment may only be made by leave granted by a Trial Chamber pursuant to Rule 73. If leave to amend is granted, Rule 47 (G) and Rule 53 *bis* apply *mutatis mutandis* to the amended indictment.

(B) If the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges.

(C) The accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges.

Rule 51: Withdrawal of Indictment

(A) The Prosecutor may withdraw an indictment, without prior leave, at any time before its confirmation, but thereafter, until the initial appearance of the accused before a Trial Chamber pursuant to Rule 62, only with leave of the Judge who confirmed it but, in exceptional circumstances, by leave of a Judge assigned by the President. At or after such initial appearance an indictment may only be withdrawn by leave granted by a Trial Chamber pursuant to Rule 73.

(B) The withdrawal of the indictment shall be promptly notified to the suspect or the accused and to the counsel of the suspect or accused.

Rule 52: Public Character of Indictment

Subject to Rule 53, upon confirmation by a Judge of a Trial Chamber, the indictment shall be made public.

Rule 53: Non-disclosure

(A) In exceptional circumstances, a Judge or a Trial Chamber may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order.

(B) When confirming an indictment the Judge may, in consultation with the Prosecutor, order that there be no public disclosure of the indictment until it is served on the accused, or, in the case of joint accused, on all the accused.

(C) A Judge or Trial Chamber may, in consultation with the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice.

Rule 53 *bis*: Service of Indictment

(A) Service of the indictment shall be effected personally on the accused at the time the accused is taken into the custody of the Tribunal or as soon as possible thereafter.

(B) Personal service of an indictment on the accused is effected by giving the accused a copy of the indictment certified in accordance with Rule 47 (G).

Section 2: Orders and Warrants

Rule 54: General Provision

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

Rule 55: Execution of Arrest Warrants

(A) A warrant of arrest shall be signed by a Judge and shall bear the seal of the Tribunal. It shall be accompanied by a copy of the indictment, and a statement of the rights of the accused. These rights include those set forth in Article 20 of the Statute, and in Rules 42 and 43 *mutatis mutandis*, together with the right of the accused to remain silent, and to be cautioned that any statement he makes shall be recorded and may be used in evidence.

(B) The Registrar shall transmit to the national authorities of the State in whose territory or under whose jurisdiction or control the accused resides, or was last known to be, three sets of certified copies of:

- (i) The warrant for arrest of the accused and an order for his surrender to the Tribunal;
- (ii) The confirmed indictment;
- (iii) A statement of the rights of the accused; and if necessary a translation thereof in a language understood by the accused.

(C) The Registrar shall instruct the said authorities to:

- (i) Cause the arrest of the accused and his transfer to the Tribunal;
- (ii) Serve a set of the aforementioned documents upon the accused;
- (iii) Cause the documents to be read to the accused in a language understood by him and to caution him as to his rights in that language; and
- (iv) Return one set of the documents together with proof of service, to the Tribunal.

(D) When an arrest warrant issued by the Tribunal is executed, a member of the Prosecutor's Office may be present as from the time of arrest.

Rule 55 bis: Warrant of Arrest to All States

(A) Upon the request of the Prosecutor, and if satisfied that to do so would facilitate the arrest of an accused who may move from State to State, or whose whereabouts are unknown, a Judge may without having recourse to the procedures set out in Rule 61, and subject to sub-rule (B), address a warrant of arrest to all States.

(B) The Registrar shall transmit such a warrant to the national authorities of such States as may be indicated by the Prosecutor.

Rule 56: Cooperation of States

The State to which a warrant of arrest or a transfer order for a witness is transmitted shall act promptly and with all due diligence to ensure proper and effective execution thereof, in accordance with Article 28 of the Statute.

Rule 57: Procedure after Arrest

Upon the arrest of the accused, the State concerned shall detain him, and shall promptly notify the Registrar. The transfer of the accused to the seat of the Tribunal, or to such other place as the Bureau may decide, after consultation with the Prosecutor and the Registrar, shall be arranged by the State authorities concerned, in liaison with the authorities of the host country and the Registrar.

Rule 58: National Extradition Provisions

The obligations laid down in Article 28 of the Statute shall prevail over any legal impediment to the surrender or transfer of the accused or of a witness to the Tribunal which may exist under the national law or extradition treaties of the State concerned.

Rule 59: Failure to Execute a Warrant of Arrest or Transfer Order

(A) Where the State to which a warrant of arrest or transfer order has been transmitted has been unable to execute the warrant of arrest or transfer order, it shall report forthwith its inability to the Registrar, and the reasons therefore.

(B) If, within a reasonable time after the warrant of arrest or transfer order has been transmitted to the State, no report is made on action taken, this shall be deemed a failure to execute the warrant of arrest or transfer order and the Tribunal, through the President, may notify the Security Council accordingly.

Rule 60: Publication of Indictment

At the request of the Prosecutor, a form of advertisement shall be transmitted by the Registrar to the national authorities of any State or States, for publication in newspapers or for broadcast via radio, transmission via Internet or television, notifying publicly the existence of an indictment and calling upon the accused to surrender to the Tribunal and inviting any person with information as to the whereabouts of the accused to communicate that information to the Tribunal.

Rule 61: Procedure in Case of Failure to Execute a Warrant of Arrest

(A) If, within a reasonable time, a warrant of arrest has not been executed, and personal service of the indictment has consequently not been effected, the Judge who confirmed the indictment shall invite the Prosecutor to report on the measures taken. When the Judge is satisfied that:

- (i) The Registrar and the Prosecutor have taken all reasonable steps to secure the arrest of the accused, including recourse to the appropriate authorities of the State in whose territory or under whose jurisdiction and control the accused to be served resides or was last known to be; and

- (ii) If the whereabouts of the accused are unknown, the Prosecutor and the Registrar have taken all reasonable steps to ascertain those whereabouts, including by seeking publication of advertisement pursuant to Rule 60,

the Judge shall order that the indictment be submitted by the Prosecutor to his Trial Chamber.

(B) Upon obtaining such an order the Prosecutor shall submit the indictment to the Trial Chamber in open court, together with all the evidence that was before the Judge who initially confirmed the indictment and any other evidence submitted to him after confirmation of the indictment. The Prosecutor may also call before the Trial Chamber and examine any witness whose statement has been submitted to the confirming Judge.

(C) If the Trial Chamber is satisfied on that evidence, together with such additional evidence as the Prosecutor may tender, that there are reasonable grounds for believing that the accused has committed all or any of the crimes charged in the indictment, it shall so determine. The Trial Chamber shall have the relevant parts of the indictment read out by the Prosecutor together with an account of the efforts to effect service referred to in Sub-Rule (A) above.

(D) The Trial Chamber shall also issue an international arrest warrant in respect of the accused which shall be transmitted to all States. Upon request by the Prosecutor or *proprio motu*, after having heard the Prosecutor, the Trial Chamber may order a State or States to adopt provisional measures to freeze the assets of the accused, without prejudice to the rights of third parties.

(E) If, during the hearing, the Prosecutor satisfies the Trial Chamber that the failure to effect personal service of the indictment was due in whole or in part to a failure or refusal of a State to co-operate with the Tribunal in accordance with Article 28 of the Statute, the Trial Chamber shall so certify. After consulting the Presiding Judges of the Chambers, the President shall notify the Security Council thereof in such manner as he thinks fit.

Rule 62: Initial Appearance of Accused and Plea

(A) Upon his transfer to the Tribunal, the accused shall be brought before a Trial Chamber or a Judge thereof without delay, and shall be formally charged. The Trial Chamber or the Judge shall:

- (i) Satisfy itself or himself that the right of the accused to counsel is respected;
- (ii) Read or have the indictment read to the accused in a language he speaks and understands, and satisfy itself or himself that the accused understands the indictment;
- (iii) Call upon the accused to enter a plea of guilty or not guilty on each count; should the accused fail to do so, enter a plea of not guilty on his behalf;
- (iv) In case of a plea of not guilty, instruct the Registrar to set a date for trial;
- (v) In case of a plea of guilty:
 - (a) if before a Judge, shall refer the plea to the Trial Chamber so that it may act in accordance with Rule 62 (B); or
 - (b) if before the Trial Chamber, act in accordance with Rule 62 (B);

(B) If an accused pleads guilty in accordance with Rule 62 (A)(v), or requests to change his plea to guilty, the Trial Chamber shall satisfy itself that the guilty plea:

(i) is made freely and voluntarily;

(ii) is an informed plea;

(iii) is unequivocal; and

(iv) is based on sufficient facts for the crime and accused's participation in it, either on the basis of independent indicia or of lack of any material disagreement between the parties about the facts of the case.

Thereafter the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.

Rule 63: Questioning of the Accused

(A) Questioning by the Prosecutor of an accused, including after the initial appearance, shall not proceed without the presence of counsel unless the accused has voluntarily and expressly agreed to proceed without counsel present. If the accused subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the accused's counsel is present.

(B) The questioning, including any waiver of the right to counsel, shall be audio-recorded or video-recorded in accordance with the procedure provided for in Rule 43. The Prosecutor shall at the beginning of the questioning caution the accused in accordance with Rule 42 (A)(iii).

Rule 64: Detention on Remand

Upon his transfer to the Tribunal, the accused shall be detained in facilities provided by the host country or by another country. The President may, on the application of a party, request modification of the conditions of detention of an accused.

Rule 65: Provisional Release

(A) Once detained, an accused may not be provisionally released except upon an order of a Trial Chamber.

(B) Provisional release may be ordered by a Trial Chamber only in exceptional circumstances, after hearing the host country and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

(C) The Trial Chamber may impose such conditions upon the provisional release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused at trial and the protection of others.

(D) Any decision rendered under this Rule shall be subject to appeal in cases where leave is granted by a bench of three Judges of the Appeals Chamber, upon good cause being shown. Applications for leave to appeal shall be filed within seven days of the impugned decision.

(E) If necessary, the Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been provisionally released or is for any other reason at large. The provisions of Section 2 of Part Five shall apply *mutatis mutandis*.

Rule 65 bis: Status Conferences

A status conference may be convened by a Trial Chamber or a Judge thereof. Its purpose is to organize exchanges between the parties so as to ensure expeditious trial proceedings.

Section 3: Production of Evidence

Rule 66: Disclosure of materials by the Prosecutor

Subject to the provisions of Rules 53 and 69;

(A) The Prosecutor shall disclose to the Defence:

- i) Within 30 days of the initial appearance of the accused copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused, and
- ii) No later than 60 days before the date set for trial, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial; upon good cause shown a Trial Chamber may order that copies of the statements of additional prosecution witnesses be made available to the defence within a prescribed time.

(B) At the request of the defence, the Prosecutor shall, subject to Sub-Rule (C), permit the defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

(C) Where information or materials are in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to the Trial Chamber sitting *in camera* to be relieved from the obligation to disclose pursuant to Sub-Rule (A) and (B). When making such an application the Prosecutor shall provide the Trial Chamber, and only the Trial Chamber, with the information or materials that are sought to be kept confidential.

Rule 67: Reciprocal Disclosure of Evidence

Subject to the provisions of Rules 53 and 69:

(A) As early as reasonably practicable and in any event prior to the commencement of the trial:

- (i) The Prosecutor shall notify the defence of the names of the witnesses that he intends to call to establish the guilt of the accused and in rebuttal of any defence plea of which the Prosecutor has received notice in accordance with Sub-Rule (ii) below;
- (ii) The defence shall notify the Prosecutor of its intent to enter:

(a) The defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;

(b) Any special defence, including that of diminished or lack of mental responsibility; in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence.

(B) Failure of the defence to provide such notice under this Rule shall not limit the right of the accused to rely on the above defences.

(C) If the defence makes a request pursuant to Rule 66 (B), the Prosecutor shall in turn be entitled to inspect any books, documents, photographs and tangible objects, which are within the custody or control of the defence and which it intends to use as evidence at the trial.

(D) If either party discovers additional evidence or information or materials which should have been produced earlier pursuant to the Rules, that party shall promptly notify the other party and the Trial Chamber of the existence of the additional evidence or information or materials.

Rule 68: Disclosure of Exculpatory Evidence

The Prosecutor shall, as soon as practicable, disclose to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence.

Rule 69: Protection of Victims and Witnesses

(A) In exceptional circumstances, either of the parties may apply to a Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Chamber decides otherwise.

(B) In the determination of protective measures for victims and witnesses, the Trial Chamber may consult the Victims and Witnesses Support Unit.

(C) Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the prosecution and the defence.

Rule 70: Matters not Subject to Disclosure

(A) Notwithstanding the provisions of Rules 66 and 67, 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 or notification under the aforementioned provisions.

(B) If the Prosecutor is in possession of information which has been provided to him on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information and shall in any event not be given in evidence without prior disclosure to the accused.

(C) If, after obtaining the consent of the person or entity providing information under this Rule, the Prosecutor elects to present as evidence any testimony, document or other material so provided, the Trial Chamber, notwithstanding Rule 98, may not order either party to produce additional evidence received from the person or entity providing the initial information, nor may the Trial Chamber for the purpose of obtaining such additional evidence itself summon that person or a representative of that entity as a witness or order their attendance.

(D) If the Prosecutor calls as a witness the person providing or a representative of the entity providing information under this Rule, the Trial Chamber may not compel the witness to answer any question the witness declines to answer on grounds of confidentiality.

(E) The right of the accused to challenge the evidence presented by the Prosecution shall remain unaffected subject only to limitations contained in Sub-Rules (C) and (D).

(F) Nothing in Sub-Rule (C) or (D) above shall affect a Trial Chamber's power under Rule 89 (C) to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

Section 4: Depositions

Rule 71: Depositions

(A) At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial, and appoint, for that purpose, a Presiding Officer.

(B) The motion for the taking of a deposition shall be in writing and shall indicate the name and whereabouts of the witness whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined, and of the exceptional circumstances justifying the taking of the deposition.

(C) If the motion is granted, the party at whose request the deposition is to be taken shall give reasonable notice to the other party, who shall have the right to attend the taking of the deposition and cross-examine the witness.

(D) The deposition may also be given by means of a video-conference.

(E) The Presiding Officer shall ensure that the deposition is taken in accordance with the Rules and that a record is made of the deposition, including cross-examination and objections raised by either party for decision by the Trial Chamber. He shall transmit the record to the Trial Chamber.

Section 5: Preliminary Motions

Rule 72: Preliminary Motions

(A) Preliminary motions by either party shall be brought within thirty days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66 (A) (i).

(B) Preliminary motions by the accused are:

- i) Objections based on lack of jurisdiction;

- ii) Objections based on defects in the form of the indictment;
 - iii) Applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Rule 82 (B);
 - iv) objections based on the denial of request for assignment of counsel.
- (C) The Trial Chamber shall dispose of preliminary motions *in limine litis*.
- (D) Decisions on preliminary motions are without interlocutory appeal, save in the case of dismissal of an objection based on lack of jurisdiction, where an appeal will lie as of right.
- (E) Notice of appeal envisaged in Sub-Rule (D) shall be filed within seven days from the impugned decision.
- (F) Failure to comply with the time limits prescribed in this Rule shall constitute a waiver of the rights. The Trial Chamber may, however, grant relief from the waiver upon showing good cause.
- (G) Objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by a Trial Chamber.
- (H) For purposes of Rule 72(B)(i) and (D) an objection based on lack of jurisdiction@ refers exclusively to a motion which challenges an indictment on the ground that it does not relate to:
- (i) any of the persons indicated in Articles 1, 5, 6 and 8 of the Statute;
 - (ii) the territories indicated in Articles 1, 7 and 8 of the Statute;
 - (iii) the period indicated in Articles 1, 7, and 8 of the Statute, or
 - (iv) any of the violations indicated in Articles 2, 3, 4 and 6 of the Statute.
- (I) An appeal brought under Rule 72 (D) may not be proceeded with if a bench of three Judges of the Appeals Chamber, assigned by the presiding Judge of the Appeals Chamber, decides that the appeal is not capable of satisfying the requirements of paragraph (H), in which case the appeal shall be dismissed.

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Part Six

PROCEEDINGS BEFORE TRIAL CHAMBERS

Section 1: General Provisions

Rule 73: Motions

- (A) Subject to Rule 72, either party may move before a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. The Trial Chamber, or a Judge designated by the Chamber from among its members, may rule on such motions based solely on the briefs of the parties, unless it is decided to hear the motion in open Court.
- (B) Decisions rendered on such motions are without interlocutory appeal.
- (C) Where a date has been set for the hearing of a motion, including a preliminary motion, any additional motions to be heard on that date and any supporting material to the motions must be filed at least ten days before the hearing of the motion. Failure to observe this Rule will mean that the later motion will not be considered on the hearing date, nor will any adjournment of the original motion be granted on the basis of subsequent motions filed, save in exceptional circumstances.
- (D) A responding party shall, thereafter, file any reply within five days from the date on which Counsel received the motion.
- (E) In addition to the sanctions envisaged by Rule 46, a Chamber may impose sanctions against Counsel if Counsel brings a motion, including a preliminary motion, that, in the opinion of the Chamber, is frivolous or is an abuse of process. Such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof.
- (F) Notwithstanding the time limits in Rule 72(A), the time limit in the present Rule applies.

Rule 73 bis: Pre-Trial Conference

- (A) The Trial Chamber shall hold a Pre-Trial Conference prior to the commencement of the trial.
- (B) At the Pre-Trial Conference the Trial Chamber or a Judge, designated from among its members, may order the Prosecutor, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial, to file the following:
- (i) A pre-trial brief addressing the factual and legal issues;
 - (ii) Admissions by the parties and a statement of other matters not in dispute;
 - (iii) A statement of contested matters of fact and law;
 - (iv) A list of witnesses the Prosecutor intends to call with:
 - (a) The name or pseudonym of each witness;
 - (b) A summary of the facts on which each witness will testify;
 - (c) The points in the indictment on which each witness will testify; and
 - (d) The estimated length of time required for each witness;
 - (v) A list of exhibits the Prosecutor intends to offer stating, where possible, whether or

not the defence has any objection as to authenticity.

The Trial Chamber or the Judge may order the Prosecutor to provide the Trial Chamber with copies of written statements of each witness whom the Prosecutor intends to call to testify.

(C) The Trial Chamber or the designated Judge may order the Prosecutor to shorten the examination-in-chief of some witnesses.

(D) The Trial Chamber or the designated Judge may order the Prosecutor to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts.

(E) After commencement of Trial, the Prosecutor may, if he considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decision as to which witnesses are to be called.

(F) At the Pre-Trial Conference, the Trial Chamber or the designated Judge may order the defence to file a statement of admitted facts and law and a pre-trial brief addressing the factual and legal issues, not later than seven days prior to the date set for trial.

Rule 73 *ter*: Pre-Defence Conference

(A) The Trial Chamber may hold a Conference prior to the commencement by the defence of its case.

(B) At that Conference, the Trial Chamber or a Judge, designated from among its members, may order that the defence, before the commencement of its case but after the close of the case for the prosecution, file the following:

- (i) Admissions by the parties and a statement of other matters which are not in dispute;
- (ii) A statement of contested matters of fact and law;
- (iii) A list of witnesses the defence intends to call with:
 - (a) The name or pseudonym of each witness;
 - (b) A summary of the facts on which each witness will testify;
 - (c) The points in the indictment as to which each witness will testify; and
 - (d) The estimated length of time required for each witness;
- (iv) A list of exhibits the defence intends to offer in its case, stating where possible whether or not the Prosecutor has any objection as to authenticity.

The Trial Chamber or the Judge may order the Defence to provide the Trial Chamber with copies of the written statements of each witness whom the Defence intends to call to testify.

(C) The Trial Chamber or the designated Judge may order the defence to shorten the estimated length of the examination-in-chief for some witnesses.

(D) The Trial Chamber or the designated Judge may order the defence to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts.

(E) After commencement of the defence case, the defence may, if it considers it to be in the interests of justice, may move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.

Rule 74: *Amicus Curiae*

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to appear before it and make submissions on any issue specified by the Chamber.

Rule 74 bis: Medical examination of the accused

A Trial Chamber may, *proprio motu* or at the request of a party, order a medical, including psychiatric examination or a psychological examination of the accused. In such case, the Registrar shall entrust this task to one or several experts whose names appear on a list previously drawn up by the Registry and approved by the Bureau.

Rule 75: Measures for the Protection of Victims and Witnesses

(A) A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Support Unit, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused.

(B) A Chamber may hold an *in camera* proceeding to determine whether to order notably:

(i) Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him by such means as:

(a) Expunging names and identifying information from the Tribunal's public records;

(b) Non-disclosure to the public of any records identifying the victim;

(c) Giving of testimony through image- or voice- altering devices or closed circuit television; and

(d) Assignment of a pseudonym;

(ii) Closed sessions, in accordance with Rule 79;

(iii) Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.

(C) A Chamber shall control the manner of questioning to avoid any harassment or intimidation.

Rule 76: Solemn Declaration by Interpreters and Translators

Before performing any duties, an interpreter or a translator shall solemnly declare to do so faithfully, independently, impartially and with full respect for the duty of confidentiality.

Rule 77: Contempt of the Tribunal

(A) Subject to the provisions of Rule 90 (E), a witness who refuses or fails contumaciously to answer a question relevant to the issue before a Chamber may be found in contempt of the Tribunal. The Chamber may impose a fine not exceeding USD 10,000 or a term of imprisonment not exceeding six months.

(B) The Chamber may, however, relieve the witness of the duty to answer, for reasons which it deems appropriate.

(C) Any person who attempts to interfere with or intimidate a witness may be found guilty of contempt and sentenced in accordance with Sub-Rule (A).

(D) Any judgement rendered under this Rule shall be subject to appeal.

(E) Payment of a fine shall be made to the Registrar to be held in a separate account.

Rule 78: Open Sessions

All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.

Rule 79: Closed Sessions

(A) The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:

- (i) Public order or morality;
- (ii) Safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75; or
- (iii) The protection of the interests of justice.

(B) The Trial Chamber shall make public the reasons for its order.

Rule 80: Control of Proceedings

(A) The Trial Chamber may exclude a person from the proceedings in order to protect the right of the accused to a fair and public trial, or to maintain the dignity and decorum of the proceedings.

(B) The Trial Chamber may order the removal of an accused from the proceedings and continue the proceedings in his absence if he has persisted in disruptive conduct following a warning that he may be removed.

Rule 81: Records of Proceedings and Preservation of Evidence

- (A) The Registrar shall cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings.
- (B) The Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering the non disclosure no longer exist.
- (C) The Registrar shall retain and preserve all physical evidence offered during the proceedings.
- (D) Photography, video-recording or audio-recording of the trial, otherwise than by the Registry, may be authorised at the discretion of the Trial Chamber.

Section 2: Case Presentation**Rule 82: Joint and Separate Trials**

- (A) In joint trials, each accused shall be accorded the same rights as if he were being tried separately.
- (B) The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

Rule 83: Instruments of Restraint

Instruments of restraint, such as handcuffs, shall not be used except as a precaution against escape during transfer or for security reasons, and shall be removed when the accused appears before a Chamber.

Rule 84: Opening Statements

Before presentation of evidence by the Prosecutor, each party may make an opening statement. The defence may however elect to make its statement after the Prosecutor has concluded presentation of evidence and before the presentation of evidence for the defence.

Rule 85: Presentation of Evidence

- (A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:
- (i) Evidence for the prosecution;
 - (ii) Evidence for the defence;
 - (iii) Prosecution evidence in rebuttal;
 - (iv) Defence evidence in rejoinder;

- (v) Evidence ordered by the Trial Chamber pursuant to Rule 98.
- (vi) Any relevant information that may assist the Trial Chamber in determining an appropriate sentence, if the accused is found guilty on one or more of the charges in the indictment.

(B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine him in chief, but a Judge may at any stage put any question to the witness.

(C) The accused may, if he so desires, appear as a witness in his own defence.

Rule 86: Closing Arguments

(A) After the presentation of all the evidence, the Prosecutor may present a closing argument. Whether or not the Prosecutor does so, the defence may make a closing argument. The Prosecutor may present a rebuttal argument to which the defence may present a rejoinder.

(B) A party shall file a final trial brief with the Trial Chamber not later than five days prior to the day set for the presentation of that party's closing argument.

(C) The parties shall also address matters of sentencing in closing arguments.

Rule 87: Deliberations

(A) After presentation of closing arguments, the Presiding Judge shall declare the hearing closed, and the Trial Chamber shall deliberate in private. A finding of guilty may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.

(B) The Trial Chamber shall vote separately on each count contained in the indictment. If two or more accused are tried together under Rule 48, separate findings shall be made as to each accused.

(C) If the Trial Chamber finds the accused guilty on one or more of the counts contained in the indictment, it shall also determine the penalty to be imposed in respect of each of the counts.

Rule 88: Judgement

(A) The judgement shall be pronounced in public, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present.

(B) If the Trial Chamber finds the accused guilty of a crime and concludes from the evidence that unlawful taking of property by the accused was associated with it, it shall make a specific finding to that effect in its judgement. The Trial Chamber may order restitution as provided in Rule 105.

(C) The judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing. Separate or dissenting opinions may be appended.

Section 3: Rules of Evidence

Rule 89: General Provisions

- (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.
- (C) A Chamber may admit any relevant evidence which it deems to have probative value.
- (D) A Chamber may request verification of the authenticity of evidence obtained out of court.

Rule 90: Testimony of Witnesses

- (A) Witnesses shall, in principle, be heard directly by the Chambers unless a Chamber has ordered that the witness be heard by means of a deposition as provided for in Rule 71.
- (B) Every witness shall, before giving evidence, make the following solemn declaration:

"I solemnly declare that I will speak the truth, the whole truth and nothing but the truth."
- (C) A child who, in the opinion of the Chamber, does not understand the nature of a solemn declaration, may be permitted to testify without that formality, if the Chamber is of the opinion that the child is sufficiently mature to be able to report the facts of which the child had knowledge and understands the duty to tell the truth. A judgement, however, cannot be based on such testimony alone.
- (D) A witness, other than an expert, who has not yet testified shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying.
- (E) A witness may refuse to make any statement which might tend to incriminate him. The Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than perjury.
- (F) The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to:
 - (i) Make the interrogation and presentation effective for the ascertainment of the truth; and
 - (ii) Avoid needless consumption of time.
- (G) Cross-examination shall be limited to points raised in the examination-in-chief or matters affecting the credibility of the witness. The Trial Chamber may, if it deems it advisable, permit enquiry into additional matters, as if on direct examination.

Rule 90 bis: Transfer of a Detained Witness

- (A) Any detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal.

(B) The transfer order shall be issued by a Judge or Trial Chamber only after prior verification that the following conditions have been met:

- (i) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State;

(C) The Registry shall transmit the order of transfer to the national authorities of the State on whose territory, or under whose jurisdiction or control, the witness is detained. Transfer shall be arranged by the national authorities concerned in liaison with the host country and the Registrar.

(D) The Registry shall ensure the proper conduct of the transfer, including the supervision of the witness in the Detention Unit of the Tribunal ; it shall remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the detention of the witness in the Detention Unit and, as promptly as possible, shall inform the relevant Judge or Chamber.

(E) On expiration of the period decided by the Tribunal for the temporary transfer, the detained witness shall be remanded to the authorities of the requested State, unless the State, within that period, has transmitted an order of release of the witness, which shall take effect immediately.

(F) If, by the end of the period decided by the Tribunal, the presence of the detained witness continues to be necessary, a Judge or a Chamber may extend the period, on the same conditions stated in the Sub-Rule (B).

Rule 91: False Testimony under Solemn Declaration

(A) A Chamber, on its own initiative or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so.

(B) If a Chamber has strong grounds for believing that a witness may have knowingly and wilfully given false testimony, the Chamber may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony.

(C) The Rules of Procedure and Evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.

(D) The maximum penalty for false testimony under solemn declaration shall be a fine of USD 10,000 or a term of imprisonment of twelve months, or both. The payment of any fine imposed shall be made to the Registrar to be held in the separate account referred to in Rule 77(E).

Rule 92: Confessions

A confession by the accused given during questioning by the Prosecutor shall, provided the requirements of Rule 63 were strictly complied with, be presumed to have been free and voluntary unless the contrary is proved.

Rule 93: Evidence of Consistent Pattern of Conduct

(A) Evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the Statute may be admissible in the interests of justice.

(B) Acts tending to show such a pattern of conduct shall be disclosed by the Prosecutor to the defence pursuant to Rule 66.

Rule 94: Judicial Notice

(A) A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.

(B) At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to the matter at issue in the current proceedings.

Rule 94 bis: Testimony of Expert Witnesses

(A) Notwithstanding the provisions of Rule 66 (A) (ii), Rule 73 bis (B) (iv) (b) and Rule 73 ter (B) (iii) (b) of the present Rules, the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify.

(B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:

- (i) It accepts the expert witness statement; or
- (ii) It wishes to cross-examine the expert witness.

(C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

Rule 95: Exclusion of Evidence on the Grounds of the Means by which it was Obtained

No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.

Rule 96: Rules of Evidence in Cases of Sexual Assault

In cases of sexual assault:

- (i) Notwithstanding Rule 90 (C), no corroboration of the victim's testimony shall be required;
- (ii) Consent shall not be allowed as a defence if the victim:
 - (a) Has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression; or

(b) Reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear;

(iii) Before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber *in camera* that the evidence is relevant and credible;

(iv) Prior sexual conduct of the victim shall not be admitted in evidence or as defence.

Rule 97: Lawyer-Client Privilege

All communications between lawyer and client shall be regarded as privileged, and consequently disclosure cannot be ordered, unless:

(i) The client consents to such disclosure; or

(ii) The client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.

Rule 98: Power of Chambers to Order Production of Additional Evidence

A Trial Chamber may *proprio motu* order either party to produce additional evidence. It may itself summon witnesses and order their attendance.

Rule 98 bis: Motion for Judgement of Acquittal

If, after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber, on motion of an accused or *proprio motu*, shall order the entry of judgement of acquittal in respect of those counts.

Section 4: Sentencing Procedure

Rule 99: Status of the Acquitted Person

(A) In case of acquittal, the accused shall be released immediately.

(B) If, at the time the judgement is pronounced, the Prosecutor advises the Trial Chamber in open court of his intention to file notice of appeal pursuant to Rule 108, the Trial Chamber may, at the request of the Prosecutor, issue a warrant for the arrest and further detention of the accused to take effect immediately.

Rule 100: Sentencing Procedure on a Guilty Plea

(A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.

(B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Sub-Rule 102 (B).

Rule 101: Penalties

(A) A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or the remainder of his life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 23 (2) of the Statute, as well as such factors as:

- (i) Any aggravating circumstances;
- (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
- (iii) The general practice regarding prison sentences in the courts of Rwanda;
- (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal.

Rule 102: Status of the Convicted Person

(A) Subject to the Trial Chamber's directions in terms of Rule 101, the sentence shall begin to run from the day it is pronounced under Rule 100 (B). However, as soon as notice of appeal is given, the enforcement of the judgement shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided in Rule 64.

(B) If, by a previous decision of the Trial Chamber, the convicted person has been provisionally released, or is for any other reason at liberty, and he is not present when the judgement is pronounced, the Trial Chamber shall issue a warrant for his arrest. On arrest, he shall be notified of the conviction and sentence, and the procedure provided in Rule 103 shall be followed.

Rule 103: Place of Imprisonment

(A) Imprisonment shall be served in Rwanda or any State designated by the Tribunal from a list of States which have indicated their willingness to accept convicted persons for the serving of sentences. Prior to a decision on the place of imprisonment, the Chamber shall notify the Government of Rwanda.

(B) Transfer of the convicted person to that State shall be effected as soon as possible after the time limit for appeal has elapsed.

Rule 104: Supervision of Imprisonment

All sentences of imprisonment shall be served under the supervision of the Tribunal or a body designated by it.

Rule 105: Restitution of Property

- (A) After a judgement of conviction containing a specific finding as provided in Rule 88 (B), the Trial Chamber shall, at the request of the Prosecutor, or may, at its own initiative, hold a special hearing to determine the matter of the restitution of the property or the proceeds thereof, and may in the meantime order such provisional measures for the preservation and protection of the property or proceeds as it considers appropriate.
- (B) The determination may extend to such property or its proceeds, even in the hands of third parties not otherwise connected with the crime of which the convicted person has been found guilty.
- (C) Such third parties shall be summoned before the Trial Chamber and be given an opportunity to justify their claim to the property or its proceeds.
- (D) Should the Trial Chamber be able to determine the rightful owner on the balance of probabilities, it shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate.
- (E) Should the Trial Chamber not be able to determine ownership, it shall notify the competent national authorities and request them so to determine.
- (F) Upon notice from the national authorities that an affirmative determination has been made, the Trial Chamber shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate.
- (G) The Registrar shall transmit to the competent national authorities any summonses, orders and requests issued by a Trial Chamber pursuant to Sub-Rules (C), (D), (E) and (F).

Rule 106: Compensation to Victims

- (A) The Registrar shall transmit to the competent authorities of the States concerned the judgement finding the accused guilty of a crime which has caused injury to a victim.
- (B) Pursuant to the relevant national legislation, a victim or persons claiming through him may bring an action in a national court or other competent body to obtain compensation.
- (C) For the purposes of a claim made under Sub-Rule (B) the judgement of the Tribunal shall be final and binding as to the criminal responsibility of the convicted person for such injury.

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Part Seven

APPELLATE PROCEEDINGS

Rule 107: General Provision

The rules of procedure and evidence that govern proceedings in the Trial Chambers shall apply *mutatis*

mutandis to proceedings in the Appeals Chamber.

Rule 107 bis: Practice Directions for the Appeals Chamber

The Presiding Judge of the Appeals Chamber may issue Practice Directions, in consultation with the President of the Tribunal, addressing detailed aspects of the conduct of proceedings before the Appeals Chamber.

Rule 108: Notice of Appeal

(A) Subject to Sub-Rule (B), a party seeking to appeal a judgement or sentence shall, not more than thirty days from the reception of the full judgement and sentence in both English and French, file with the Registrar and serve upon the other parties a written notice of appeal, setting forth the grounds.

(B) In an appeal from a decision dismissing an objection based on lack of jurisdiction or a decision rendered under Rule 77 or Rule 91, such delay shall be fixed at seven days from the date on which the full decision is received in either French or English, whichever comes first. The party wishing to file a notice of appeal may apply to the Appeals Chamber under Rule 116 to enlarge the time so prescribed. Where the ability of the accused to make full answer and defence depends on the availability of the decision in an official language other than that in which it was originally issued, that circumstance shall be taken into account as a good cause under Rule 116.

Rule 108 bis : Pre-Hearing Judge

(A) The Presiding Judge of the Appeals Chamber may designate from among its members a Judge responsible for the pre-hearing proceedings (the "Pre-Hearing Judge").

(B) The Pre-Hearing Judge shall ensure that the proceedings are not unduly delayed and shall take any measures related to procedural matters, including the issuing of decisions, orders and directions with a view to preparing the case for a fair and expeditious hearing.

(C) The Pre-Hearing Judge shall record the points of agreement and disagreement between the parties on matters of law and fact. In this connection, he or she may order the parties to file further written submissions with the Pre-Hearing Judge or the Appeals Chamber.

(D) The Appeals Chamber may proprio motu exercise any of the functions of the Pre-Hearing Judge.

Rule 109: Record on Appeal

(A) The record on appeal shall consist of the parts of the trial record, as certified by the Registrar, and designated by the parties.

(B) The parties shall, within thirty days of the certification of the trial record by the Registrar, by agreement designate the parts of that record which, in their opinion, are necessary for the decision on the appeal.

(C) Should the parties fail so to agree within that time, the Appellant and the Respondent shall each designate to the Registrar, within sixty days of the certification, the parts of the trial record which he considers necessary for the decision on the appeal.

(D) A party shall designate only parts of the trial record to which the party intends actually to refer the Appeals Judges in the party's submissions.

(E) With leave of the Appeals Chamber, a party may designate such additional parts of the trial record as the party intends further to cite in the party's submissions.

(F) The Appeals Chamber shall remain free to call for the whole of the trial record.

(G) A certified true copy of the record on appeal shall be promptly transmitted to the Appeals Unit of the Appeals Chamber of the International Criminal Tribunal for Rwanda, located in The Hague.

Rule 110: Copies of Record on Appeal

The Registrar shall make a sufficient number of copies of the record on appeal for the use of the Judges of the Appeals Chamber and of the parties.

Rule 111: Appellant's Brief

An Appellant's brief shall contain all the argument and authorities. It shall be filed with the Registrar and served on the other party within ninety days of the notice of appeal pursuant to Rule 108.

Rule 112: Respondent's Brief

A Respondent's brief shall contain all the arguments and authorities. It shall be served on the other party and filed with the Registrar within thirty days of the filing of the Appellant's brief.

Rule 113: Brief in Reply

An Appellant may file a brief in reply within fifteen days after the filing of the Respondent's brief.

Rule 114: Date of Hearing

After the expiration of the time-limits for filing the briefs provided for in Rules 111, 112 and 113, the Appeals Chamber may rule on such appeals based solely on the briefs of the parties, unless it decides to hear the appeal in open court. The Registrar shall notify the parties accordingly.

Rule 115: Additional Evidence

(A) A party may apply by motion to present before the Appeals Chamber additional evidence which was not available to it at the trial. Such motion must be served on the other party and filed with the Registrar not less than fifteen days before the date of the hearing.

(B) The Appeals Chamber shall authorize the presentation of such evidence if it considers that the interests of justice so require.

Rule 116: Extension of Time Limits

The Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause.

Rule 117: Expedited Appeals Procedure

- (A) An appeal under Rule 72 (D), 77 or 91 shall be heard expeditiously and may be determined entirely on the basis of written submissions. The record on appeal shall be the record of the Trial Chamber in the particular phase of proceeding that resulted in the impugned decision.
- (B) All delays and other procedural requirements shall be fixed by an order of the Presiding Judge.
- (C) Rules 109 to 114 and 118 (D) shall not apply to such appeals.

Rule 117 bis: Parties' Books

(A) In every appeal before the Appeals Chamber, the Appellant and the Respondent shall each prepare and file an Appeal Book respectively to be entitled "APPELLANT'S APPEAL BOOK" and "RESPONDENT'S APPEAL BOOK", in consecutively numbered pages or tabs arranged in the following order:

- (i) a table of contents describing each document, including each exhibit, by its nature, date, and where applicable, number, with an indication of the page or tab where the document will be found in the Appeal Book, and
- (ii) a legible copy of the pages of or excerpts from every document in the case to which the party actually refers in the party's briefs or intends to refer in the party's oral arguments.

(B) In every appeal before the Appeals Chamber, the Appellant and the Respondent shall each prepare and file a Book of Authorities respectively to be entitled "APPELLANT'S BOOK OF AUTHORITIES" and "RESPONDENT'S BOOK OF AUTHORITIES", in consecutively numbered pages or tabs arranged in the following order:

- (i) a table of contents describing each document, including each exhibit, by its nature, date, and where applicable, number, with an indication of the page or tab where the document will be found in the Appeal Book, and
- (ii) a legible copy of the pages of or excerpts from every reference material, including case law, statutory and regulatory provisions, from international and national sources, to which the party actually refers in the party's briefs or intends to refer in the party's oral arguments.

(C) Unless otherwise ordered in any particular case by the Appeals Chamber *proprio motu* or upon a motion by a party, each party shall file eight copies of his or her Appeal Book, and eight copies of his or her Book of Authorities, at the Registry two weeks before the date set for hearing.

(D) Failure to file the books prescribed above shall not bar the Appeals Chamber from rendering a judgement, a decision or an order as it sees fit in the appeal.

Rule 117ter: Filing of the Appeal Documents

The notice of Appeal under Rule 108 and, where necessary, the briefs earmarked under Rules 111, 112, 113, 115 and 117 shall be filed, by the parties, either with the Registry or with an officer of the Registry specifically designated by the Registrar at the Appeals Unit of the Appeals Chamber of the International Criminal Tribunal for Rwanda, located in The Hague. Two similar records shall be kept: one at the Registry of the Tribunal and the other in The Hague. Depending on the place of filing, each record shall

consist of the original documents or certified true copies thereof.

Rule 118: Judgement on Appeal

(A) The Appeals Chamber shall pronounce judgement on the basis of the record on appeal and on any additional evidence as has been presented to it.

(B) The judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

(C) In appropriate circumstances the Appeals Chamber may order that the accused be retried before the Trial Chamber.

(D) The judgement shall be pronounced in public, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present.

(E) The written judgement shall be filed and registered with the Registry or with an officer of the Registry specifically designated by the Registrar at the Appeals Unit of the Appeals Chamber of the International Criminal Tribunal for Rwanda, located in The Hague.

Rule 119: Status of the Accused Following Judgement on Appeal

(A) A sentence pronounced by the Appeals Chamber shall be enforced immediately.

(B) Where the accused is not present when the judgement is due to be delivered, either as having been acquitted on all charges or as a result of an order issued pursuant to Rule 65, or for any other reason, the Appeals Chamber may deliver its judgement in the absence of the accused and shall, unless it pronounces his acquittal, order his arrest or surrender to the Tribunal.

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Part Eight

REVIEW PROCEEDINGS

Rule 120: Request for Review

Where a new fact has been discovered which was not known to the moving party at the time of the proceedings before a Chamber, and could not have been discovered through the exercise of due diligence, the defence or, within one year after the final judgement has been pronounced, the Prosecutor, may make a motion to that Chamber, if it can be reconstituted or, failing that, to the appropriate Chamber of the Tribunal for review of the judgement.

Rule 121: Preliminary Examination

If the Chamber which ruled on the matter decides that the new fact, if it had been proven, could have been a decisive factor in reaching a decision, the Chamber shall review the judgement, and pronounce a further judgement after hearing the parties.

Rule 122: Appeals

The judgement of a Trial Chamber on review may be appealed in accordance with the provisions of Part Seven.

Rule 123: Return of the Case to the Trial Chamber

If the judgement to be reviewed is under appeal at the time the motion for review is filed, the Appeals Chamber may return the case to the Trial Chamber for disposition of the motion.

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Part Nine**PARDON AND COMMUTATION OF SENTENCE****Rule 124: Notification by States**

If, according to the law of a State in which a convicted person is imprisoned, he is eligible for pardon or commutation of sentence, the State shall, in accordance with Article 27 of the Statute, notify the Tribunal of such eligibility.

Rule 125: Determination by the President

The President shall, upon such notice, determine, in consultation with the Judges and after notification to the Government of Rwanda, whether pardon or commutation is appropriate.

Rule 126: General Standards for Granting Pardon or Commutation

In determining whether pardon or commutation is appropriate, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor.

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