



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

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RULES OF PROCEDURE AND EVIDENCE

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RULES OF PROCEDURE AND EVIDENCE

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<p style="text-align: center;">PART ONE GENERAL PROVISIONS</p>
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Rule 1
Entry into Force

These Rules of Procedure and Evidence, adopted pursuant to Article 15 of the Statute of the Tribunal, shall come into force on 14 March 1994.

Rule 2
Definitions

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

Rules: The Rules of Procedure and Evidence in force;

Statute: The Statute of the Tribunal adopted by Security Council resolution 827 of 25 May 1993;

Tribunal: The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993.

* * *

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

Arrest: The act of 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 Presiding Judges 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 an indictment is confirmed;

Party: The Prosecutor or the accused;

President: The President of the Tribunal;

Prosecutor: The Prosecutor appointed pursuant to Article 16 of the Statute;

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

State: A State Member or non-Member of the United Nations or a self-proclaimed entity de facto exercising governmental functions, whether recognised as a State or not;

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

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;

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) An accused shall have the right to use his or her own language.
- (C) Other persons appearing before the Tribunal, other than as counsel, who do not have sufficient knowledge of either of the two working languages, may use their own language.
- (D) Counsel for an accused may apply to the Presiding Judge of 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.
- (E) The Registrar shall make any necessary arrangements for interpretation and translation into and from the working languages.
- (F) If:
 - (i) a party is required to take any action within a specified time after the filing or service of a document by another party; and
 - (ii) pursuant to the Rules, that document is filed in a language other than one of the working languages of the Tribunal,

time shall not run until the party required to take action has received from the Registrar a translation of the document into one of the working languages of the Tribunal.

Rule 4

Meetings away from the Seat of the Tribunal

A Chamber may exercise its functions at a place other than the seat of the Tribunal, if so authorised 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 the 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 nine Judges at a plenary meeting of the Tribunal convened with notice of the proposal addressed to all Judges.
- (B) An amendment to the Rules may be otherwise adopted, provided it is unanimously approved by the Judges.
- (C) Proposals for amendment of the Rules may otherwise be made in accordance with the Practice Direction issued by the President.
- (D) An amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment, 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.

<p style="text-align: center;">PART TWO PRIMACY OF THE TRIBUNAL</p>

Rule 7 bis

Non-compliance with Obligations

- (A) In addition to cases to which Rule 11, Rule 13, Rule 59 or Rule 61 applies, where a Trial Chamber or a Judge is satisfied that a State has failed to comply with an obligation under Article 29 of the Statute which relates to any proceedings before that Chamber or Judge, the Chamber or Judge may advise the President, who shall 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 29 of the Statute in respect of a request by the Prosecutor under Rule 8, Rule 39 or Rule 40, the President shall notify the Security Council thereof.

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, the Prosecutor may request the State to forward all relevant information in that respect, and the State shall transmit such information to the Prosecutor forthwith in accordance with Article 29 of the Statute.

Rule 9
Prosecutor's Request for Deferral

Where it appears to the Prosecutor that in any such investigations or criminal proceedings instituted in the courts of any State:

- (i) the act being investigated or which is the subject of those proceedings is characterized as an ordinary crime;
- (ii) there is a lack of impartiality or independence, or the investigations or proceedings are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted; or
- (iii) what is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal,

the Prosecutor may propose to the Trial Chamber designated by the President that a formal request be made 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 proposal for deferral that, on any of the grounds specified in Rule 9, deferral is appropriate, the Trial Chamber may issue a formal request to the State concerned that its 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) Where deferral to the Tribunal has been requested by a Trial Chamber, any subsequent trial shall be held before the other Trial Chamber.

Rule 11

Non-compliance with a 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 request the President to report the matter to the Security Council.

Rule 11 bis

Suspension of Indictment in case of Proceedings before National Courts

(A) Where, on application by the Prosecutor or *proprio motu*, it appears to the Trial Chamber that

- (i) the authorities of the State in which an accused was arrested are prepared to prosecute the accused in their own courts; and
- (ii) it is appropriate in the circumstances for the courts of that State to exercise jurisdiction over the accused,

the Trial Chamber, after affording the opportunity to an accused already in the custody of the Tribunal to be heard, may order that the indictment against the accused be suspended, pending the proceedings before the national courts.

(B) If an order is made under this Rule:

- (i) the accused, if in the custody of the Tribunal, shall be transferred to the authorities of the State concerned;
- (ii) the Prosecutor may transmit to the authorities of the State concerned such information relating to the case as the Prosecutor considers appropriate;

- (iii) the Prosecutor may direct trial observers to monitor proceedings before the national courts on the Prosecutor's behalf.

- (C) At any time after the making of an order under this Rule and before the accused is convicted or acquitted by a national court, the Trial Chamber may, upon the Prosecutor's application and after affording an opportunity to the authorities of the State concerned to be heard, rescind the order and issue a formal request for deferral under Rule 10.

- (D) If an order under this Rule is rescinded by the Trial Chamber, the Trial Chamber may formally request the State concerned to transfer the accused to the seat of the Tribunal, and the State shall comply without undue delay in accordance with Article 29 of the Statute. The Trial Chamber or a Judge may also issue a warrant for the arrest of the accused.

Rule 12

Determinations of Courts of any State

Subject to Article 10, paragraph 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 a crime 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.

<p style="text-align:center">PART THREE ORGANIZATION OF THE TRIBUNAL</p>
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Section 1 : The Judges

Rule 14

Solemn Declaration

- (A) Before taking up 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 Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 honourably, faithfully, impartially and conscientiously".

- (B) The declaration shall be signed by the Judge and witnessed by, or by a representative of, the Secretary-General of the United Nations. The declaration shall be kept in the records of the Tribunal.
- (C) A Judge whose service continues without interruption after expiry of a previous period of service shall not make a new declaration.

Rule 15

Disqualification of Judges

- (A) A Judge may not sit on a trial or appeal in any case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect his or her impartiality. The Judge shall in any such circumstance withdraw, and the President shall assign another Judge to the case.

- (B) Any party may apply to the Presiding Judge of a Chamber for the disqualification and withdrawal of a Judge of that Chamber from a trial or appeal upon the above grounds. The Presiding Judge shall confer with the Judge in question, and if necessary the Bureau 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 of the Trial Chamber who reviews an indictment against an accused, pursuant to Article 19 of the Statute and Rules 47 or 61, shall not sit as a member of the Trial Chamber for the trial of that accused.
- (D) (i) No Judge shall sit on any appeal or as a member of a bench of three Judges appointed pursuant to Rules 65 (D), 72 (B)(ii), 73 (B) or 77 (J) in a case in which that Judge sat as a member of the Trial Chamber.
- (ii) No Judge shall sit on any State Request for Review pursuant to Rule 108 *bis* in a matter in which that Judge sat as a member of the Trial Chamber whose decision is to be reviewed.
- (E) In case of illness or an unfilled vacancy or in any other exceptional circumstances, the President may authorise a Chamber to conduct routine matters, such as the holding of an initial appearance under Rule 62 or the delivery of decisions, in the absence of one or more of its members.
- (F) If a Judge is, for any reason, unable to continue sitting in a part-heard case, the Presiding Judge may, if that inability seems likely to be of short duration, adjourn the proceedings; otherwise 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.

Rule 16
Resignation

A Judge who decides to resign shall communicate the 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 Trial 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 or her 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 from office before the expiration of his or her 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 composing 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. The President shall coordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on the President by the Statute and the Rules.
- (B) The President may from time to time, and 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 or her term of office as a Judge. The Vice President may be re-elected once.
- (B) The Vice-President may sit as a member of a Trial Chamber or of the Appeals Chamber.
- (C) Sub-rules 18 (B) and (C) shall apply *mutatis mutandis* to the Vice-President.

Rule 21
Functions of the Vice-President

Subject to Sub-rule 22 (B), the Vice-President shall exercise the functions of the President in case of the latter's absence or inability to act.

Rule 22
Replacements

- (A) If neither the President nor the Vice-President can carry out the functions of the President, these shall be assumed by the senior Judge, determined in accordance with Rule 17.
- (B) If the President is unable to exercise the functions of Presiding Judge of the Appeals Chamber, that Chamber shall elect a Presiding Judge from among its number.

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 the Judge considers ought to be discussed by the Bureau or submitted to a plenary meeting of the Tribunal.
- (D) If any member of the Bureau is unable to carry out any of the functions of the Bureau, these shall be assumed by the senior available Judge determined in accordance with Rule 17.

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 34 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 Sessions

- (A) The dates of the plenary sessions 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 the President's 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 nine Judges.
- (B) Subject to Sub-rules 6 (A) and (B) and Sub-rule 18 (C), the decisions of the plenary meetings 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 acting in the place of the President shall have a casting vote.

Section 4 : The Chambers

Rule 27

Rotation

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

Rule 28

Duty Judge

- (A) The President shall, every six months and after consultation with the Judges, designate for each fortnight of the next six months one Judge from each Trial Chamber and one Judge from the Appeals Chamber as the duty Judge for that Chamber. The duty roster shall be published by the Registrar.
- (B) The duty Judge of a Chamber is empowered to exercise all the functions of any single Judge of that Chamber, and shall be available at all times to do so. However, in exceptional circumstances, a duty Judge may request another Judge of the same Chamber to replace him or her, after having informed the President and the Registrar.
- (C) Submissions not pertaining to a case already assigned to a Chamber, including review of an indictment under Rule 47, and applications for arrest warrants, shall be transmitted to a duty Judge.

Rule 29
Deliberations

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

Section 5 : The Registry

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 17, paragraph 3, of the Statute.

Rule 31

Appointment of the Deputy Registrar and Registry Staff

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

Rule 32

Solemn Declaration

(A) Before taking up 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 Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 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 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

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, the Registrar shall be responsible for the administration and servicing of the Tribunal and shall serve as its channel of communication.

Rule 34

Victims and Witnesses Unit

- (A) There shall be set up under the authority of the Registrar a Victims and Witnesses Unit consisting of qualified staff to:
 - (i) recommend protective measures for victims and witnesses in accordance with Article 22 of the Statute; and
 - (ii) provide counselling and support for them, in particular in cases of rape and sexual assault.
- (B) Due consideration shall be given, in the appointment of staff, 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 the Registrar, shall take minutes of the plenary meetings of the Tribunal and of the sittings of the Chambers, other than private deliberations.

Rule 36

Record Book

The Registrar shall keep a Record Book which shall list, subject to any Practice Direction under Rule 19 or any order of a Judge or Chamber providing for the non-disclosure of any document or information, 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 the Prosecutor. 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 and duties under the Rules may be exercised by staff members of the Office of the Prosecutor authorised by the Prosecutor, or by any person acting under the Prosecutor's direction.

Rule 38

Deputy Prosecutor

- (A) The Prosecutor shall make 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 the latter's absence from duty or inability to act or upon the Prosecutor's express instructions.

<p style="text-align: center;">PART FOUR INVESTIGATIONS AND RIGHTS OF SUSPECTS</p>
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Section 1 : Investigations

Rule 39

Conduct of Investigations

In the conduct of an investigation, the Prosecutor may:

- (i) summon and question suspects, victims and witnesses and record their statements, collect evidence and conduct on-site investigations;
- (ii) undertake such other matters as may appear necessary for completing the investigation and the preparation and conduct of the prosecution at the 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

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

- (i) to arrest a suspect or an accused provisionally;
- (ii) to seize 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 29 of the Statute.

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 provisionally, in accordance with Rule 40, or the suspect is otherwise detained by State authorities;

- (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, 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 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 application 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.
- (D) The provisional detention of a suspect shall be ordered for a period not exceeding thirty days from the date of the transfer of the suspect to the seat of the Tribunal. At the end of that period, at the Prosecutor's request, the Judge who made the order, or another Judge of the same Trial Chamber, may decide, subsequent to an inter partes hearing of the Prosecutor and the suspect assisted by counsel, to extend the detention for a period not exceeding thirty days, if warranted by the needs of the investigation. At the end of that extension, at the Prosecutor's request, the Judge who made the order, or another Judge of the same Trial Chamber, may decide, subsequent to an inter partes hearing of the Prosecutor and the suspect assisted by counsel, to extend the detention for a further period not exceeding thirty days, if warranted by special circumstances. The total period of detention shall in no case exceed ninety days, 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 requested State.

- (E) The provisions in Rules 55 (B) to 59 *bis* shall apply *mutatis mutandis* to the execution of the transfer order and the provisional detention order relative to a suspect.
- (F) After being transferred to the seat of the Tribunal, the suspect, assisted by counsel, shall be brought, without delay, before the Judge who made the order, or another Judge of the same Trial Chamber, who shall ensure that the rights of the suspect are respected.
- (G) During detention, the Prosecutor and the suspect or the suspect's counsel may submit to the Trial Chamber of which the Judge who made the order is a member, all applications relative to the propriety of provisional detention or to the suspect's release.
- (H) Without prejudice to Sub-rule (D), 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

Retention of Information

The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence obtained in the course of the Prosecutor's investigations.

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 the Prosecutor shall inform the suspect prior to questioning, in a language the suspect speaks and understands:
- (i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;
 - (ii) the right to have the free assistance of an interpreter if the suspect 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 the suspect 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 the 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 the suspect 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 the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;
- (iv) the tape 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 recorded tape 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, Qualifications and Duties of Counsel

- (A) Counsel engaged by a suspect or an accused shall file a power of attorney with the Registrar at the earliest opportunity. A counsel shall be considered qualified to represent a suspect or accused if the counsel satisfies the Registrar that the counsel 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 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 and have indicated their willingness to be assigned by the Tribunal to indigent suspects or accused, shall be kept by the Registrar.
- (B) In particular circumstances, upon the request of an indigent suspect or accused, the Registrar may assign counsel who speaks the language of the suspect or the accused but does not speak either of the two working languages of the Tribunal.
- (C) The criteria for determination of indigency shall be established by the Registrar and approved by the Judges.

- (D) 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 means of the suspect or accused and determine whether the criteria of indigency are met;
 - (iii) if the Registrar decides that the criteria are met, the Registrar shall assign counsel from the list; otherwise the Registrar shall inform the suspect or accused that the request is refused.
- (E) If a request is refused, a further request may be made by a suspect or an accused to the Registrar upon showing a change in circumstances.
- (F) The Registrar shall, in consultation with the Judges, establish the criteria for the payment of fees to assigned counsel.
- (G) A suspect or an accused electing to conduct his or her own defence shall so notify the Registrar in writing at the first opportunity.
- (H) 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.

Rule 45 bis
Detained Persons

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

Rule 46
Misconduct of Counsel

- (A) A Chamber may, after a warning, refuse audience to counsel if, in its opinion, the conduct of that counsel is offensive, abusive or otherwise obstructs the proper conduct of the proceedings.

- (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 the counsel's State of admission or, if a professor and not otherwise admitted to the profession, to the governing body of that counsel's University.

<p style="text-align: center;">PART FIVE PRE-TRIAL PROCEEDINGS</p>
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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 date fixed 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 19, paragraph 1, 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 shall be included as part of 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 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:
- (i) at any time before its confirmation, without leave;
 - (ii) thereafter, and until the commencement of the presentation of evidence in terms of Rule 85, with leave of the Judge who confirmed the indictment, or a Judge assigned by the President; or
 - (iii) after the commencement of the presentation of evidence, with leave of the Trial Chamber hearing the case, after having heard the parties.

If leave to amend is granted, the amended indictment shall be reviewed by the Judge or Trial Chamber granting leave. 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 and, where necessary, the date for trial may be postponed to ensure adequate time for the preparation of the defence.

Rule 51

Withdrawal of Indictment

- (A) The Prosecutor may withdraw an indictment, without 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. At or after such initial appearance an indictment may only be withdrawn by motion before that 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.
- (D) Notwithstanding Sub-rules (A), (B) and (C), the Prosecutor may disclose an indictment or part thereof to the authorities of a State or an appropriate authority or international body where the Prosecutor deems it necessary to prevent an opportunity for securing the possible arrest of an accused from being lost.

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 custody or as soon as reasonably practicable 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 & Warrants

Rule 54

General Rule

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. It shall include an order for the prompt transfer of the accused to the Tribunal upon the arrest of the accused.
- (B) The original warrant shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Tribunal.
- (C) Each certified copy shall be accompanied by a copy of the indictment certified in accordance with Rule 47 (G) and a statement of the rights of the accused set forth in Article 21 of the Statute, and in Rules 42 and 43 *mutatis mutandis*. If the accused does not understand either of the official languages of the Tribunal and if the language understood by the accused is known to the Registrar, each certified copy of the warrant of arrest shall also be accompanied by a translation of the statement of the rights of the accused in that language.
- (D) Subject to any order of a Judge or Chamber, the Registrar may transmit a certified copy of a warrant of arrest to the person or authorities to which it is addressed, including the national authorities of a State in whose territory or under whose jurisdiction the accused resides, or was last known to be, or is believed by the Registrar to be likely to be found.

- (E) The Registrar shall instruct the person or authorities to which a warrant is transmitted that at the time of arrest the indictment and the statement of the rights of the accused be read to the accused in a language that he or she understands and that the accused be cautioned in that language that the accused has the right to remain silent, and that any statement he or she makes shall be recorded and may be used in evidence.
- (F) Notwithstanding Sub-rule (E), if at the time of arrest the accused is served with, or with a translation of, the indictment and the statement of rights of the accused in a language that the accused understands and is able to read, these need not be read to the accused at the time of arrest.
- (G) When an arrest warrant issued by the Tribunal is executed by the authorities of a State, or an appropriate authority or international body, a member of the Office of the Prosecutor may be present as from the time of the arrest.

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 29 of the Statute.

Rule 57
Procedure after Arrest

Upon arrest, the accused shall be detained by the State concerned which shall promptly notify the Registrar. The transfer of the accused to the seat of the Tribunal shall be arranged between the State authorities concerned, the authorities of the host country and the Registrar.

Rule 58
National Extradition Provisions

The obligations laid down in Article 29 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 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, it shall report forthwith its inability to the Registrar, and the reasons therefor.
- (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 59 bis
Transmission of Arrest Warrants

- (A) Notwithstanding Rules 55 to 59, on the order of a Judge, the Registrar shall transmit to an appropriate authority or international body or the Prosecutor a copy of a warrant for the arrest of an accused, on such terms as the Judge may determine, together with an order for the prompt transfer of the accused to the Tribunal in the event that the accused be taken into custody by that authority or international body or the Prosecutor.
- (B) At the time of being taken into custody an accused shall be informed immediately, in a language the accused understands, of the charges against him or her and of the fact that he or she is being transferred to the Tribunal. Upon such transfer, the

indictment and a statement of the rights of the accused shall be read to the accused and the accused shall be cautioned in such a language.

- (C) Notwithstanding Sub-rule (B), the indictment and statement of rights of the accused need not be read to the accused if the accused is served with these, or with a translation of these, in a language the accused understands and is able to read.

Rule 60

Advertisement 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 and 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

- (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 person to be served resides or was last known to them 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 advertisements pursuant to Rule 60,

the Judge shall order that the indictment be submitted by the Prosecutor to the Trial Chamber of which the Judge is a member.

- (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. The Prosecutor may also call before the Trial Chamber and examine any witness whose statement has been submitted to the confirming Judge. In addition, the Trial Chamber may request the Prosecutor to call any other 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 the Prosecutor satisfies the Trial Chamber that the failure to effect personal service was due in whole or in part to a failure or refusal of a State to cooperate with the Tribunal in accordance with Article 29 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 the President thinks fit.

Section 3 : Preliminary Proceedings

Rule 62

Initial Appearance of Accused

Upon transfer of an accused to the seat of the Tribunal, the President shall forthwith assign the case to a Trial Chamber. The accused shall be brought before that Trial Chamber without delay, and shall be formally charged. The Trial Chamber shall:

- (i) satisfy itself that the right of the accused to counsel is respected;
- (ii) read or have the indictment read to the accused in a language the accused speaks and understands, and satisfy itself that the accused understands the indictment;
- (iii) inform the accused that, within thirty days of the initial appearance, he or she will be called upon to enter a plea of guilty or not guilty on each count, but that, should the accused so request, he or she may immediately enter a plea of guilty or not guilty on one or more count;
- (iv) if the accused fails to enter a plea at the initial or any further appearance, enter a plea of not guilty on the accused's behalf;
- (v) in case of a plea of not guilty, instruct the Registrar to set a date for trial;
- (vi) in case of a plea of guilty, act in accordance with Rule 62 *bis*;
- (vii) instruct the Registrar to set such other dates as appropriate.

Rule 62 bis
Guilty Pleas

If an accused pleads guilty in accordance with Rule 62 (vi), or requests to change his or her plea to guilty and the Trial Chamber is satisfied that:

- (i) the guilty plea has been made voluntarily;
- (ii) the guilty plea is informed;
- (iii) the guilty plea is not equivocal; and
- (iv) there is a sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case,

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 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 being transferred to the seat of the Tribunal, the accused shall be detained in facilities provided by the host country, or by another country. In exceptional circumstances, the accused may be held in facilities outside of the host 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 released except upon an order of a Trial Chamber.
- (B) 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 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 for 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. Where such decision is rendered orally, the application shall be filed within seven days of the oral decision, unless

- (i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or
 - (ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.
- (E) If necessary, the Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been released or is for any other reason at liberty. The provisions of Section 2 of Part Five shall apply *mutatis mutandis*.

Rule 65 bis
Status Conferences

A Trial Chamber or a Trial Chamber Judge shall, within one hundred and twenty days of the initial appearance of the accused and not less than every one hundred and twenty days thereafter, convene a status conference

- (i) to organize exchanges between the parties so as to ensure expeditious preparation for trial,
- (ii) to review the status of his or her case and to allow the accused the opportunity to raise issues in relation thereto, including the mental and physical condition of the accused.

Rule 65 ter
Pre-Trial Judge

- (A) The Trial Chamber may, at any time, designate from among its members a Judge responsible for the pre-trial proceedings (hereinafter “pre-trial Judge”).

- (B) The pre-trial Judge shall, under the authority and supervision of the Trial Chamber seized of the case, coordinate communication between the parties during the pre-trial phase. The pre-trial Judge shall ensure that the proceedings are not unduly delayed and shall take any measure necessary to prepare the case for a fair and expeditious trial.
- (C) The pre-trial Judge shall set appropriate deadlines, particularly where the Prosecutor requests time for further investigation.
- (D) The pre-trial Judge may be entrusted by the Trial Chamber with all or part of any pre-trial functions set forth in Rule 73 and Rule 73 *bis*, or with all or part of the pre-defence functions set forth in Rule 73 *ter*.
- (E) The pre-trial Judge shall record the points of agreement and disagreement on matters of law and fact. In this connection, he or she may order the parties to file written submissions with the Trial Chamber.
- (F) In order to perform his or her functions, the pre-trial Judge may *proprio motu* hear the parties.
- (G) The pre-trial Judge shall keep the Trial Chamber regularly informed, particularly where issues are in dispute and may refer such disputes to the Trial Chamber.
- (H) As soon as the pre-trial Judge considers the case to be ready for trial, he or she shall report to the Trial Chamber prior to the final Pre-Trial Conference held pursuant to Rule 73 *bis*.

Section 4 : Production of Evidence

Rule 66

Disclosure by the Prosecutor

- (A) Subject to the provisions of Rules 53 and 69, the Prosecutor shall make available to the defence in a language which the accused understands
- (i) within thirty 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) within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge appointed pursuant to Rule 65 *ter*, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial; copies of the statements of additional prosecution witnesses shall be made available to the defence when a decision is made to call those witnesses.
- (B) The Prosecutor shall on request, subject to Sub-rule (C), permit the defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's 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 is 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 (B). When making such application the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential.

Rule 67
Reciprocal Disclosure

- (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 the Prosecutor intends to call in proof of 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 offer:
 - (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 notice under this Rule shall not limit the right of the accused to testify on the above defences.
- (C) If the defence makes a request pursuant to Sub-rule 66 (B), the Prosecutor shall 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 material 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 material.

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, the Prosecutor 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 such person is brought under the protection of the Tribunal.
- (B) In the determination of protective measures for victims and witnesses, the Trial Chamber may consult the Victims and Witnesses 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 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 those Rules.
- (B) If the Prosecutor is in possession of information which has been provided to the Prosecutor 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. A Trial Chamber may not use its power to order the attendance of witnesses or to require production of documents in order to compel the production of such additional evidence.
- (D) If the Prosecutor calls a witness to introduce in evidence any information provided under this Rule, the Trial Chamber may not compel that witness to answer any question relating to the information or its origin, if 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 the limitations contained in Sub-rules (C) and (D).
- (F) The Trial Chamber may order upon an application by the accused or defence counsel that, in the interests of justice, the provisions of this Rule shall apply *mutatis mutandis* to specific information in the possession of the accused.
- (G) Nothing in Sub-rule (C) or (D) above shall affect a Trial Chamber's power under Rule 89 (D) to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

Section 5 : 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 person 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 person whose deposition is being taken.
- (D) Deposition evidence 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. The Presiding Officer shall transmit the record to the Trial Chamber.

Section 6 : Motions

Rule 72

Preliminary Motions

- (A) Preliminary motions, being motions which
- (i) challenge jurisdiction
 - (ii) allege defects in the form of the indictment
 - (iii) seek the severance of counts joined in one indictment under Rule 49 or seek separate trials under Rule 82 (B), or
 - (iv) raise objections based on the refusal of a request for assignment of counsel made under Rule 45 (C)

shall be in writing and be brought not later than thirty days after disclosure by the Prosecutor to the defence of all material and statements referred to in Rule 66 (A)(i) and shall be disposed of before the commencement of the opening statements provided for in Rule 84.

- (B) Decisions on preliminary motions are without interlocutory appeal save
- (i) in the case of motions challenging jurisdiction, where an appeal by either party lies as of right;
 - (ii) in other cases where leave to appeal is, upon good cause being shown, granted by a bench of three Judges of the Appeals Chamber.
- (C) Applications for leave to appeal under Sub-rule (B)(ii) shall be filed within seven days of filing of the impugned decision. Where such decision is rendered orally, the application shall be filed within seven days of the oral decision, unless

- (i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or
- (ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

Rule 73
Other Motions

- (A) After a case is assigned to a Trial Chamber, either party may at any time move before the Chamber by way of motion, not being a preliminary motion, for appropriate ruling or relief. Such motions may be written or oral, at the discretion of the Trial Chamber.
- (B) Decisions on such motions are without interlocutory appeal save with the leave of a bench of three Judges of the Appeals Chamber which may grant such leave
 - (i) if the decision impugned would cause such prejudice to the case of the party seeking leave as could not be cured by the final disposal of the trial including post-judgement appeal; or
 - (ii) if the issue in the proposed appeal is of general importance to proceedings before the Tribunal or in international law generally.
- (C) Applications for leave to appeal shall be filed within seven days of the filing of the impugned decision. Where such decision is rendered orally, the application shall be filed within seven days of the oral decision, unless
 - (i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or
 - (ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

Section 7: Conferences

Rule 73 bis

Pre-Trial Conference

- (A) Prior to the commencement of the trial, the Trial Chamber shall hold a Pre-Trial Conference.
- (B) At the Pre-Trial Conference the Trial Chamber may order that the Prosecutor, within a time-limit set by the Trial Chamber, and before the date set for trial, 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 which are 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 as to 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 the defence has any objection as to authenticity.

- (C) The Trial Chamber may call upon the Prosecutor to shorten the estimated length of the examination-in-chief for some witnesses.
- (D) The Trial Chamber may call upon 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 the trial, the Prosecutor may, if she considers it to be in the interests of justice, file a motion to reinstate the list of witnesses or to vary her decision as to which witnesses are to be called.
- (F) At the Pre-Trial Conference, the Trial Chamber 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) Prior to the commencement by the defence of its case the Trial Chamber may hold a Conference.
- (B) At that Conference the Trial Chamber 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 the Prosecutor has any objection as to authenticity.
- (C) The Trial Chamber may call upon the defence to shorten the estimated length of the examination-in-chief for some witnesses.
- (D) The Trial Chamber may call upon 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, file a motion to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.

<p style="text-align: center;">PART SIX PROCEEDINGS BEFORE TRIAL CHAMBERS</p>

Section 1 : General Provisions

Rule 74
Amicus Curiae

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a 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, psychiatric or 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 Unit, order appropriate measures for the privacy and protection 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:
- (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 a victim or witness by such means as:
 - (a) expunging names and identifying information from the Chamber'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, whenever necessary, 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) Any person who
- (i) being a witness before a Chamber, contumaciously refuses or fails to answer a question,
 - (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber, or
 - (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber,
- commits a contempt of the Tribunal.
- (B) Any person who threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness, commits a contempt of the Tribunal.
- (C) Any person who threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber, commits a contempt of the Tribunal.
- (D) Incitement to commit, and attempts to commit, any of the acts punishable under this Rule are punishable as contempts of the Tribunal with the same penalties.
- (E) Nothing in this Rule affects the inherent power of the Tribunal to hold in contempt those who knowingly and wilfully interfere with its administration of justice.
- (F) When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may, *proprio motu*, initiate proceedings and call upon that person that

he or she may be found in contempt, giving notice of the nature of the allegations against that person. After affording such person an opportunity to appear and answer personally or by counsel, the Chamber may, if satisfied beyond reasonable doubt, find the person to be in contempt of the Tribunal.

- (G) Any person so called upon shall, if that person satisfies the criteria for determination of indigency established by the Registrar, be assigned counsel in accordance with Rule 45.
- (H) The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal:
 - (i) under Sub-rules (A) and (E) above is a term of imprisonment not exceeding twelve months, or a fine not exceeding Dfl. 40,000, or both;
 - (ii) under Sub-rules (B), (C) or (D) above is a term of imprisonment not exceeding seven years, or a fine not exceeding Dfl. 200,000, or both.
- (I) Payment of a fine shall be made to the Registrar to be held in a separate account.
- (J) Any decision rendered by a Trial Chamber 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 grounds being shown. Applications for leave to appeal shall be filed within seven days of the impugned decision. Where such decision is rendered orally, the application shall be filed within seven days of the oral decision, unless
 - (i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or
 - (ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

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 courtroom 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 courtroom and continue the proceedings in the absence of the accused if the accused has persisted in disruptive conduct following a warning that such conduct may warrant the removal of the accused from the courtroom.

Rule 81
Records of Proceedings and 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 its non-disclosure no longer exist.
- (C) The Registrar shall retain and preserve all physical evidence offered during the proceedings subject to any Practice Direction or any order which a Chamber may at any time make with respect to the control or disposition of physical evidence offered during proceedings before that Chamber.
- (D) Photography, video-recording or audio-recording of the trial, otherwise than by the Registrar, 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 such accused 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 be used only on the order of the Registrar as a precaution against escape during transfer or in order to prevent an accused from self-injury, injury to others or to prevent serious damage to property. Instruments of restraint shall be removed when the accused appears before a Chamber or a Judge.

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 conclusion of the Prosecutor's 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; and
 - (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 such witness in chief, but a Judge may at any stage put any question to the witness.
- (C) If the accused so desires, the accused may appear as a witness in his or her 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) Not later than five days prior to presenting a closing argument, a party shall file a final trial brief with the Trial Chamber.
- (C) The parties shall also address matters of sentencing in closing arguments.

Rule 87
Deliberations

- (A) When both parties have completed their presentation of the case, the Presiding Judge shall declare the hearing closed, and the Trial Chamber shall deliberate in private. A finding of guilt 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 charge 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 charges contained in the indictment, it shall at the same time determine the penalty to be imposed in respect of each finding of guilt.

Rule 88
[Deleted]

Rule 88 *bis*
[Deleted]

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 exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.
- (E) 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 or where, in exceptional circumstances and in the interests of justice, a Chamber has authorized the receipt of testimony via video-conference link.
- (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) Notwithstanding Sub-rule (D), upon order of the Chamber, an investigator in charge of a party's investigation shall not be precluded from being called as a witness on the ground that he or she has been present in the courtroom during the proceedings.
- (F) A witness may object to making any statement which might tend to incriminate the witness. 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.
- (G) 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.
- (H) Cross-examination shall be limited to the subject-matter of the direct examination and matters affecting the credibility of the witness. The Trial Chamber may, in the exercise of its discretion, 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 the person's 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 detention as foreseen by the requested State.
- (C) The Registrar 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 Registrar shall ensure the proper conduct of the transfer, including the supervision of the witness in the detention unit of the Tribunal; the Registrar 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 Chamber may extend the period on the same conditions as stated in Sub-rule (B).

Rule 91

False Testimony under Solemn Declaration

- (A) A Chamber, *proprio motu* 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 has knowingly and wilfully given false testimony, it 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) No Judge who sat as a member of the Trial Chamber before which the witness appeared shall sit for the trial of the witness for false testimony.

- (E) The maximum penalty for false testimony under solemn declaration shall be a fine of Dfl. 200,000 or a term of imprisonment of seven years, or both. The payment of any fine imposed shall be paid to the Registrar to be held in the account referred to in Sub-rule 77 (I).

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 matters at issue in the current proceedings.

Rule 94 bis
Testimony of Expert Witnesses

- (A) Notwithstanding the provisions of Rule 73 *bis* (B)(iv)(b) and Rule 73 *ter* (B)(iii)(b), 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 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 94 ter
Affidavit Evidence

To prove a fact in dispute, a party may propose to call a witness and to submit in corroboration of his or her testimony on that fact affidavits signed by other witnesses in accordance with the law and procedure of the State in which such affidavits are signed. These affidavits are admissible if the other party does not object within five working days after the witness' testimony. If the party objects and the Trial Chamber so rules, or if the Trial Chamber so orders, the witnesses shall be called for cross-examination.

Rule 95
Exclusion of Certain Evidence

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
Evidence in Cases of Sexual Assault

In cases of sexual assault:

- (i) 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.

Rule 97
Lawyer-Client Privilege

All communications between lawyer and client shall be regarded as privileged, and consequently not subject to disclosure at trial, 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 order either party to produce additional evidence. It may *proprio motu* summon witnesses and order their attendance.

Section 4 : Judgement

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 offences charged in the indictment, the Trial Chamber, on motion of an accused or *proprio motu*, shall order the entry of judgement of acquittal on that or those charges.

Rule 98 ter

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, subject to the provisions of Sub-rule 102 (B).
- (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, to which separate or dissenting opinions may be appended.
- (D) A copy of the judgement and of the Judges' opinions in a language which the accused understands shall as soon as possible be served on the accused if in custody. Copies thereof in that language and in the language in which they were delivered shall also as soon as possible be provided to counsel for the accused.

Rule 99
Status of the Acquitted Person

- (A) Subject to Sub-rule (B), in the case of an acquittal or the upholding of a challenge to jurisdiction, 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 the Prosecutor's intention to file notice of appeal pursuant to Rule 108, the Trial Chamber may, on application in that behalf by the Prosecutor and upon hearing the parties, in its discretion, issue an order for the continued detention of the accused, pending the determination of the appeal.

Section 5 : Sentencing and Penalties

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 convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 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 the former Yugoslavia;
 - (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 10, paragraph 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 surrender to the Tribunal or pending trial or appeal.

Rule 102

Status of the Convicted Person

- (A) The sentence shall begin to run from the day it is pronounced. 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 released, or is for any other reason at liberty, and is not present when the judgement is pronounced, the Trial Chamber shall issue a warrant for the convicted person's arrest. On arrest, the convicted person 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 a State designated by the President of the Tribunal from a list of States which have indicated their willingness to accept convicted persons.
- (B) Transfer of the convicted person to that State shall be effected as soon as possible after the time-limit for appeal has elapsed.

- (C) Pending the finalisation of arrangements for his or her transfer to the State where his or her sentence will be served, the convicted person shall remain in the custody of the Tribunal.

Rule 104
Supervision of Imprisonment

All sentences of imprisonment shall be supervised by 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 Sub-rule 98 *ter* (B), the Trial Chamber shall, at the request of the Prosecutor, or may, *proprio motu*, 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 the victim 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.

<p style="text-align: center;">PART SEVEN APPELLATE PROCEEDINGS</p>

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 108
Notice of Appeal

A party seeking to appeal a judgement shall, not more than fifteen days from the date on which the judgement was pronounced, file with the Registrar and serve upon the other party or parties a signed notice of appeal.

Rule 108 bis
State Request for Review

- (A) A State directly affected by an interlocutory decision of a Trial Chamber may, within fifteen days from the date of the decision, seek a review of the decision by the Appeals Chamber if that decision concerns issues of general importance relating to the powers of the Tribunal.
- (B) The Prosecutor and the defence shall be entitled to be heard by the Appeals Chamber.
- (C) The Appeals Chamber, if it considers the request for review admissible may, if it deems it appropriate, suspend the execution of the impugned decision.
- (D) Rule 116 *bis* shall apply *mutatis mutandis*.

Rule 109
Record on Appeal

- (A) The record on appeal shall consist of the parts of the trial record, as certified by the Registrar, designated by the parties.
- (B) The parties, within thirty days of the certification of the trial record by the Registrar, may 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 each considers necessary for the decision on the appeal.
- (D) The Appeals Chamber shall remain free to call for the whole of the trial record.

Rule 110
Copies of Record

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 of argument setting out the grounds of appeal and authorities shall be served on the other party and filed with the Registrar within ninety days of filing of the notice of appeal pursuant to Rule 108.

Rule 112
Respondent's Brief

A Respondent's brief of argument and authorities 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 expiry of the time-limits for filing the briefs provided for in Rules 111, 112 and 113, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the parties.

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 authorise the presentation of such evidence if it considers that the interests of justice so require.

Rule 116

[Deleted]

Rule 116 bis

Expedited Appeals Procedure

- (A) An appeal under Sub-rule 72 (B) or Sub-rule 73 (B) or appeal from a decision rendered under Rule 65, Rule 77 or Rule 91 shall be heard expeditiously on the basis of the original record of the Trial Chamber and without the necessity of any written brief.
- (B) All delays and other procedural requirements shall be fixed by an order of the President issued on an application by one of the parties, or *proprio motu* should no such application have been made within fifteen days after the filing of the notice of appeal.
- (C) Rules 109 to 114 shall not apply to such appeals.
- (D) The President, after consulting the members of the Appeals Chamber, may decide not to apply Sub-rule 117 (D).

Rule 117

Judgement on Appeal

- (A) The Appeals Chamber shall pronounce judgement on the basis of the record on appeal together with such 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 according to law.
- (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.

Rule 118

Status of the Accused following 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 an acquittal, order the arrest or surrender of the accused to the Tribunal.

<p style="text-align: center;">PART EIGHT REVIEW PROCEEDINGS</p>
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Rule 119
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 Trial Chamber or the Appeals 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 for review of the judgement.

Rule 120
Preliminary Examination

If a majority of Judges of the Chamber that pronounced the judgement agree that the new fact, if proved, 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 121
Appeals

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

Rule 122
Return of Case to 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.

<p style="text-align:center">PART NINE PARDON AND COMMUTATION OF SENTENCE</p>

Rule 123
Notification by States

If, according to the law of the State of imprisonment, a convicted person is eligible for pardon or commutation of sentence, the State shall, in accordance with Article 28 of the Statute, notify the Tribunal of such eligibility.

Rule 124
Determination by the President

The President shall, upon such notice, determine, in consultation with the Judges, whether pardon or commutation is appropriate.

Rule 125
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.

<p style="text-align: center;">PART TEN TIME</p>
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Rule 126
General Provision

Where the time prescribed by or under these Rules for the doing of any act is to run as from the occurrence of an event, that time shall begin to run as from the date on which notice of the occurrence of the event would have been received in the normal course of transmission by counsel for the accused or the Prosecutor as the case may be.

Rule 127
Variation of Time-limits

- (A) Save as provided by Sub-rule (B), a Trial Chamber may, on good cause being shown by motion,
- (i) enlarge or reduce any time prescribed by or under these Rules;
 - (ii) recognize as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired.
- (B) In relation to any step falling to be taken in connection with an appeal or application for leave to appeal, the Appeals Chamber or a bench of three Judges of that Chamber may exercise the like power as is conferred by Sub-rule (A) and in like manner and subject to the same conditions as are therein set out.
- (C) This Rule shall not apply to the times prescribed in Rules 40 *bis* and 90 *bis*.

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