

**Rules of Procedure and Evidence
for the Application of the Rome
Statute of the International
Criminal Court**

**Assembly of States of Parties to
the Rome Statute of the
International Criminal Court**

First session

New York, 3-10 September 2002

Official Records

Instrument adopted by the Assembly of States Parties

Rules of Procedure and Evidence*

Contents

Rule

Chapter 1. General provisions

1. Use of terms
2. Authentic texts
3. Amendments

Chapter 2. Composition and administration of the Court

Section I. General provisions relating to the composition and administration of the Court

4. Plenary sessions
 5. Solemn undertaking under article 45
 6. Solemn undertaking by the staff of the Office of the Prosecutor, the Registry, interpreters and translators
 7. Single judge under article 39, paragraph 2 (b) (iii)
 8. Code of Professional Conduct
- ##### Section II. The Office of the Prosecutor
9. Operation of the Office of the Prosecutor
 10. Retention of information and evidence
 11. Delegation of the Prosecutor's functions

***. Explanatory note:** The Rules of Procedure and Evidence are instruments for the application of the Rome Statute of the International Criminal Court, to which they are subordinate in all cases. In elaborating the Rules of Procedure and Evidence, care has been taken to avoid rephrasing and, to the extent possible, repeating the provisions of the Statute. Direct references to the Statute have been included in the Rules, where appropriate, in order to emphasize the relationship between the Rules and the Rome Statute, as provided for in article 51, in particular, paragraphs 4 and 5.

In all cases, the Rules of Procedure and Evidence should be read in conjunction with and subject to the provisions of the Statute.

The Rules of Procedure and Evidence of the International Criminal Court do not affect the procedural rules for any national court or legal system for the purpose of national proceedings.

Section III. The Registry

Subsection 1. General provisions relating to the Registry

12. Qualifications and election of the Registrar and the Deputy Registrar
13. Functions of the Registrar
14. Operation of the Registry
15. Records

Subsection 2. Victims and Witnesses Unit

16. Responsibilities of the Registrar relating to victims and Witnesses
17. Functions of the Unit
18. Responsibilities of the Unit
19. Expertise in the Unit

Subsection 3. Counsel for the defence

20. Responsibilities of the Registrar relating to the rights of the defence
21. Assignment of legal assistance
22. Appointment and qualifications of Counsel for the defence

Section IV. Situations that may affect the functioning of the Court

Subsection 1. Removal from office and disciplinary measures

23. General principle
24. Definition of serious misconduct and serious breach of duty
25. Definition of misconduct of a less serious nature
26. Receipt of complaints
27. Common provisions on the rights of the defence
28. Suspension from duty
29. Procedure in the event of a request for removal from office
30. Procedure in the event of a request for disciplinary measures
31. Removal from office
32. Disciplinary measures

Subsection 2. Excusing, disqualification, death and resignation

33. Excusing of a judge, the Prosecutor or a Deputy Prosecutor
34. Disqualification of a judge, the Prosecutor or a Deputy Prosecutor
35. Duty of a judge, the Prosecutor or a Deputy Prosecutor to request to be excused
36. Death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar
37. Resignation of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar
 - Subsection 3. Replacements and alternate judges
38. Replacements
39. Alternate judges
 - Section V. Publication, languages and translation
40. Publication of decisions in official languages of the Court
41. Working languages of the Court
42. Translation and interpretation services
43. Procedure applicable to the publication of documents of the Court

Chapter 3. Jurisdiction and admissibility

- Section I. Declarations and referrals relating to articles 11, 12, 13 and 14
44. Declaration provided for in article 12, paragraph 3
45. Referral of a situation to the Prosecutor
 - Section II. Initiation of investigations under article 15
46. Information provided to the Prosecutor under article 15, paragraphs 1 and 2
47. Testimony under article 15, paragraph 2
48. Determination of reasonable basis to proceed with an investigation under article 15, paragraph 3
49. Decision and notice under article 15, paragraph 6
50. Procedure for authorization by the Pre-Trial Chamber of the commencement of the investigation
 - Section III. Challenges and preliminary rulings under articles 17, 18 and 19
51. Information provided under article 17

52. Notification provided for in article 18, paragraph 1
53. Deferral provided for in article 18, paragraph 2
54. Application by the Prosecutor under article 18, paragraph 2
55. Proceedings concerning article 18, paragraph 2
56. Application by the Prosecutor following review under article 18, paragraph 3
57. Provisional measures under article 18, paragraph 6
58. Proceedings under article 19
59. Participation in proceedings under article 19, paragraph 3
60. Competent organ to receive challenges
61. Provisional measures under article 19, paragraph 8
62. Proceedings under article 19, paragraph 10

Chapter 4. Provisions relating to various stages of the proceedings

Section I. Evidence

63. General provisions relating to evidence
64. Procedure relating to the relevance or admissibility of evidence
65. Compellability of witnesses
66. Solemn undertaking
67. Live testimony by means of audio or video-link technology
68. Prior recorded testimony
69. Agreements as to evidence
70. Principles of evidence in cases of sexual violence
71. Evidence of other sexual conduct
72. In camera procedure to consider relevance or admissibility of evidence
73. Privileged communications and information
74. Self-incrimination by a witness
75. Incrimination by family members

Section II. Disclosure

76. Pre-trial disclosure relating to prosecution witnesses
77. Inspection of material in possession or control of the Prosecutor
78. Inspection of material in possession or control of the defence
79. Disclosure by the defence

80. Procedures for raising a ground for excluding criminal responsibility under article 31, paragraph 3
81. Restrictions on disclosure
82. Restrictions on disclosure of material and information protected under article 54, paragraph 3 (e)
83. Ruling on exculpatory evidence under article 67, paragraph 2
84. Disclosure and additional evidence for trial
 - Section III. Victims and witnesses
 - Subsection 1. Definition and general principle relating to victims
85. Definition of victims
86. General principle
 - Subsection 2. Protection of victims and witnesses
87. Protective measures
88. Special measures
 - Subsection 3. Participation of victims in the proceedings
89. Application for participation of victims in the proceedings
90. Legal representatives of victims
91. Participation of legal representatives in the proceedings
92. Notification to victims and their legal representatives
93. Views of victims or their legal representatives
 - Subsection 4. Reparations to victims
94. Procedure upon request
95. Procedure on the motion of the Court
96. Publication of reparation proceedings
97. Assessment of reparations
98. Trust Fund
99. Cooperation and protective measures for the purpose of forfeiture under articles 57, paragraph 3 (e), and 75, paragraph 4
 - Section IV. Miscellaneous provisions
100. Place of the proceedings
101. Time limits
102. Communications other than in writing
103. Amicus curiae and other forms of submission

Chapter 5. Investigation and prosecution

Section I. Decision of the Prosecutor regarding the initiation of an investigation under article 53, paragraphs 1 and 2

- 104. Evaluation of information by the Prosecutor
- 105. Notification of a decision by the Prosecutor not to initiate an investigation
- 106. Notification of a decision by the Prosecutor not to prosecute

Section II. Procedure under article 53, paragraph 3

- 107. Request for review under article 53, paragraph 3 (a)
- 108. Decision of the Pre-Trial Chamber under article 53, paragraph 3 (a)
- 109. Review by the Pre-Trial Chamber under article 53, paragraph 3 (b)
- 110. Decision by the Pre-Trial Chamber under article 53, paragraph 3 (b)

Section III. Collection of evidence

- 111. Record of questioning in general
- 112. Recording of questioning in particular
- 113. Collection of information regarding the state of health of the person concerned
- 114. Unique investigative opportunity under article
- 115. Collection of evidence in the territory of a State Party under article 57, paragraph 3 (d)
- 116. Collection of evidence at the request of the defence under article 57, paragraph 3 (b)

Section IV. Procedures in respect of restriction and deprivation of liberty

- 117. Detention in the custodial State
- 118. Pre-trial detention at the seat of the Court
- 119. Conditional release
- 120. Instruments of restraint

Section V. Proceedings with regard to the confirmation of charges under article 61

- 121. Proceedings before the confirmation hearing

122. Proceedings at the confirmation hearing in the presence of the person charged
 123. Measures to ensure the presence of the person concerned at the confirmation hearing
 124. Waiver of the right to be present at the confirmation hearing
 125. Decision to hold the confirmation hearing in the absence of the person concerned
 126. Confirmation hearing in the absence of the person concerned
 - Section VI. Closure of the pre-trial phase
 127. Procedure in the event of different decisions on multiple charges
 128. Amendment of the charges
 129. Notification of the decision on the confirmation of charges
 130. Constitution of the Trial Chamber
- Chapter 6. Trial procedure**
131. Record of the proceedings transmitted by the Pre-Trial Chamber
 132. Status conferences
 133. Motions challenging admissibility or jurisdiction
 134. Motions relating to the trial proceedings
 135. Medical examination of the accused
 136. Joint and separate trials
 137. Record of the trial proceedings
 138. Custody of evidence
 139. Decision on admission of guilt
 140. Directions for the conduct of the proceedings and testimony
 141. Closure of evidence and closing statements
 142. Deliberations
 143. Additional hearings on matters related to sentence or reparations
 144. Delivery of the decisions of the Trial Chamber
- Chapter 7. Penalties**
145. Determination of sentence
 146. Imposition of fines under article 77
 147. Orders of forfeiture

148. Orders to transfer fines or forfeitures to the Trust Fund

Chapter 8. Appeal and revision

Section I. General provisions

149. Rules governing proceedings in the Appeals Chamber

Section II. Appeals against convictions, acquittals, sentences and reparation orders

150. Procedure for the appeal

152. Discontinuance of the appeal

153. Judgement on appeals against reparation orders

Section III. Appeals against other decisions

154. Appeals that do not require the leave of the Court

155. Appeals that require leave of the Court

156. Procedure for the appeal

157. Discontinuance of the appeal

158. Judgement on the appeal

Section IV. Revision of conviction or sentence

159. Application for revision

160. Transfer for the purpose of revision

161. Determination on revision

Chapter 9. Offences and misconduct against the Court

Section I. Offences against the administration of justice under article 70

162. Exercise of jurisdiction

163. Application of the Statute and the Rules

164. Periods of limitation

165. Investigation, prosecution and trial

166. Sanctions under article 70

167. International cooperation and judicial assistance

168. *Ne bis in idem*

169. Immediate arrest

Section II. Misconduct before the Court under article 71

170. Disruption of proceedings

171. Refusal to comply with a direction by the Court

172. Conduct covered by both articles 70 and 71

Chapter 10. Compensation to an arrested or convicted person

- 173. Request for compensation
- 174. Procedure for seeking compensation
- 175. Amount of compensation

Chapter 11. International cooperation and judicial assistance

Section I. Requests for cooperation under article 87

- 176. Organs of the Court responsible for the transmission and receipt of any communications relating to international cooperation and judicial assistance
- 177. Channels of communication
- 178. Language chosen by States Parties under article 87, paragraph 2
- 179. Language of requests directed to States not party to the Statute
- 180. Changes in the channels of communication or the languages of requests for cooperation

Section II. Surrender, transit and competing requests under articles 89 and 90

- 181. Challenge to admissibility of a case before a national court
- 182. Request for transit under article 89, paragraph 3 (e)
- 183. Possible temporary surrender
- 184. Arrangements for surrender
- 185. Release of a person from the custody of the Court other than upon completion of sentence
- 186. Competing requests in the context of a challenge to the admissibility of the case

Section III. Documents for arrest and surrender under articles 91 and 92

- 187. Translation of documents accompanying request for surrender
- 188. Time limit for submission of documents after provisional arrest
- 189. Transmission of documents supporting the request

Section IV. Cooperation under article 93

- 190. Instruction on self-incrimination accompanying request for witness

191. Assurance provided by the Court under article 93, paragraph 2
 192. Transfer of a person in custody
 193. Temporary transfer of the person from the State of enforcement
 194. Cooperation requested from the Court
 - Section V. Cooperation under article 98
 195. Provision of information
 - Section VI. Rule of speciality under article 101
 196. Provision of views on article 101, paragraph 1
 197. Extension of the surrender
- Chapter 12. Enforcement**
- Section I. Role of States in enforcement of sentences of imprisonment and change in designation of State of enforcement under articles 103 and 104
198. Communications between the Court and States
 199. Organ responsible under Part 10
 200. List of States of enforcement
 201. Principles of equitable distribution
 202. Timing of delivery of the sentenced person to the State of enforcement
 203. Views of the sentenced person
 204. Information relating to designation
 205. Rejection of designation in a particular case
 206. Delivery of the sentenced person to the State of enforcement
 207. Transit
 208. Costs
 209. Change in designation of State of enforcement
 210. Procedure for change in the designation of a State of enforcement Section II. Enforcement, supervision and transfer under articles 105, 106 and 107
 211. Supervision of enforcement of sentences and conditions of imprisonment
 212. Information on location of the person for enforcement of fines, forfeitures or reparation measures
 213. Procedure for article 107, paragraph 3

Section III. Limitation on the prosecution or punishment of other offences under article 108

- 214. Request to prosecute or enforce a sentence for prior conduct
- 215. Decision on request to prosecute or enforce a sentence
- 216. Information on enforcement

Section IV. Enforcement of fines, forfeiture measures and reparation orders

- 217. Cooperation and measures for enforcement of fines, forfeiture or reparation orders
- 218. Orders for forfeiture and reparations
- 219. Non-modification of orders for reparation
- 220. Non-modification of judgements in which fines were imposed
- 221. Decision on disposition or allocation of property or assets
- 222. Assistance for service or any other measure

Section V. Review concerning reduction of sentence under article 110

- 223. Criteria for review concerning reduction of sentence
- 224. Procedure for review concerning reduction of sentence

Section VI. Escape

- 225. Measures under article 111 in the event of escape

Chapter 1

General provisions

Rule 1

Use of terms

In the present document:

- “article” refers to articles of the Rome Statute;
- “Chamber” refers to a Chamber of the Court;
- “Part” refers to the Parts of the Rome Statute;
- “Presiding Judge” refers to the Presiding Judge of a Chamber;
- “the President” refers to the President of the Court;
- “the Regulations” refers to the Regulations of the Court;
- “the Rules” refers to the Rules of Procedure and Evidence.

Rule 2

Authentic texts

The Rules have been adopted in the official languages of the Court established by article 50, paragraph 1. All texts are equally authentic.

Rule 3

Amendments

1. Amendments to the rules that are proposed in accordance with article 51, paragraph 2, shall be forwarded to the President of the Bureau of the Assembly of States Parties.
2. The President of the Bureau of the Assembly of States Parties shall ensure that all proposed amendments are translated into the official languages of the Court and are transmitted to the States Parties.
3. The procedure described in sub-rules 1 and 2 shall also apply to the provisional rules referred to in article 51, paragraph 3.

Chapter 2

Composition and administration of the Court

Section I

General provisions relating to the composition and administration of the Court

Rule 4

Plenary sessions

1. The judges shall meet in plenary session not later than two months after their election. At that first session, after having made their solemn undertaking, in conformity with rule 5, the judges shall:
 - (a) Elect the President and Vice-Presidents;
 - (b) Assign judges to divisions.
2. The judges shall meet subsequently in plenary session at least once a year to exercise their functions under the Statute, the Rules and the Regulations and, if necessary, in special plenary sessions convened by the President on his or her own motion or at the request of one half of the judges.
3. The quorum for each plenary session shall be two-thirds of the judges.
4. Unless otherwise provided in the Statute or the Rules, the decisions of the plenary sessions 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.
5. The Regulations shall be adopted as soon as possible in plenary sessions.

Rule 5

Solemn undertaking under article 45

1. As provided in article 45, before exercising their functions under the Statute, the following solemn undertakings shall be made:
 - (a) In the case of a judge:

“I solemnly undertake that I will perform my duties and exercise my powers as a judge of the International Criminal

Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions and the secrecy of deliberations”;

(b) In the case of the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar of the Court:

“I solemnly undertake that I will perform my duties and exercise my powers as (title) of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions”.

2. The undertaking, signed by the person making it and witnessed by the President or a Vice-President of the Bureau of the Assembly of States Parties, shall be filed with the Registry and kept in the records of the Court.

Rule 6

Solemn undertaking by the staff of the Office of the Prosecutor, the Registry, interpreters and translators

1. Upon commencing employment, every staff member of the Office of the Prosecutor and the Registry shall make the following undertaking:

“I solemnly undertake that I will perform my duties and exercise my powers as (title) of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions”;

The undertaking, signed by the person making it and witnessed, as appropriate, by the Prosecutor, the Deputy Prosecutor, the Registrar or the Deputy Registrar, shall be filed with the Registry and kept in the records of the Court.

2. Before performing any duties, an interpreter or a translator shall make the following undertaking:

“I solemnly declare that I will perform my duties faithfully, impartially and with full respect for the duty of confidentiality”;

The undertaking, signed by the person making it and witnessed by the President of the Court or his or her representative, shall be filed with the Registry and kept in the records of the Court.

Rule 7

Single judge under article 39, paragraph 2 (b) (iii)

1. Whenever the Pre-Trial Chamber designates a judge as a single judge in accordance with article 39, paragraph 2 (b) (iii), it shall do so on the basis of objective pre-established criteria.
2. The designated judge shall make the appropriate decisions on those questions on which decision by the full Chamber is not expressly provided for in the Statute or the Rules.
3. The Pre-Trial Chamber, on its own motion or, if appropriate, at the request of a party, may decide that the functions of the single judge be exercised by the full Chamber.

Rule 8

Code of Professional Conduct

1. The Presidency, on the basis of a proposal made by the Registrar, shall draw up a draft Code of Professional Conduct for counsel, after having consulted the Prosecutor. In the preparation of the proposal, the Registrar shall conduct the consultations in accordance with rule 20, sub-rule 3.
2. The draft Code shall then be transmitted to the Assembly of States Parties, for the purpose of adoption, according to article 112, paragraph 7.
3. The Code shall contain procedures for its amendment.

Section II

The Office of the Prosecutor

Rule 9

Operation of the Office of the Prosecutor

In discharging his or her responsibility for the management and administration of the Office of the Prosecutor, the Prosecutor shall put in

place regulations to govern the operation of the Office. In preparing or amending these regulations, the Prosecutor shall consult with the Registrar on any matters that may affect the operation of the Registry.

Rule 10

Retention of information and evidence

The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence obtained in the course of the investigations by his or her Office.

Rule 11

Delegation of the Prosecutor's functions

Except for the inherent powers of the Prosecutor set forth in the Statute, *inter alia*, those described in articles 15 and 53, the Prosecutor or a Deputy Prosecutor may authorize staff members of the Office of the Prosecutor, other than those referred to in article 44, paragraph 4, to represent him or her in the exercise of his or her functions.

Section III

The Registry

Subsection 1

General provisions relating to the Registry

Rule 12

Qualifications and election of the Registrar and the Deputy Registrar

1. As soon as it is elected, the Presidency shall establish a list of candidates who satisfy the criteria laid down in article 43, paragraph 3, and shall transmit the list to the Assembly of States Parties with a request for any recommendations.

2. Upon receipt of any recommendations from the Assembly of States Parties, the President shall, without delay, transmit the list together with the recommendations to the plenary session.

3. As provided for in article 43, paragraph 4, the Court, meeting in plenary session, shall, as soon as possible, elect the Registrar by an absolute majority, taking into account any recommendations by the Assembly of States Parties. In the event that no candidate obtains an absolute majority on the first ballot, successive ballots shall be held until one candidate obtains an absolute majority.

4. If the need for a Deputy Registrar arises, the Registrar may make a recommendation to the President to that effect. The President shall convene a plenary session to decide on the matter. If the Court, meeting in plenary session, decides by an absolute majority that a Deputy Registrar is to be elected, the Registrar shall submit a list of candidates to the Court.

5. The Deputy Registrar shall be elected by the Court, meeting in plenary session, in the same manner as the Registrar.

Rule 13

Functions of the Registrar

1. Without prejudice to the authority of the Office of the Prosecutor under the Statute to receive, obtain and provide information and to establish channels of communication for this purpose, the Registrar shall serve as the channel of communication of the Court.

2. The Registrar shall also be responsible for the internal security of the Court in consultation with the Presidency and the Prosecutor, as well as the host State.

Rule 14

Operation of the Registry

1. In discharging his or her responsibility for the organization and management of the Registry, the Registrar shall put in place regulations to govern the operation of the Registry. In preparing or amending these regulations, the Registrar shall consult with the Prosecutor on any matters which may affect the operation of the Office of the Prosecutor. The regulations shall be approved by the Presidency.

2. The regulations shall provide for defence counsel to have access to

appropriate and reasonable administrative assistance from the Registry.

Rule 15

Records

1. The Registrar shall keep a database containing all the particulars of each case brought before the Court, subject to any order of a judge or Chamber providing for the non-disclosure of any document or information, and to the protection of sensitive personal data. Information on the database shall be available to the public in the working languages of the Court.
2. The Registrar shall also maintain the other records of the Court.

Subsection 2

Victims and Witnesses Unit

Rule 16

Responsibilities of the Registrar relating to victims and witnesses

1. In relation to victims, the Registrar shall be responsible for the performance of the following functions in accordance with the Statute and these Rules:
 - (a) Providing notice or notification to victims or their legal representatives;
 - (b) Assisting them in obtaining legal advice and organizing their legal representation, and providing their legal representatives with adequate support, assistance and information, including such facilities as may be necessary for the direct performance of their duty, for the purpose of protecting their rights during all stages of the proceedings in accordance with rules 89 to 91;
 - (c) Assisting them in participating in the different phases of the proceedings in accordance with rules 89 to 91;
 - (d) Taking gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.
2. In relation to victims, witnesses and others who are at risk on account of testimony given by such witnesses, the Registrar shall be responsible for

the performance of the following functions in accordance with the Statute and these Rules:

(a) Informing them of their rights under the Statute and the Rules, and of the existence, functions and availability of the Victims and Witnesses Unit;

(b) Ensuring that they are aware, in a timely manner, of the relevant decisions of the Court that may have an impact on their interests, subject to provisions on confidentiality.

3. For the fulfilment of his or her functions, the Registrar may keep a special register for victims who have expressed their intention to participate in relation to a specific case.

4. Agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others who are at risk on account of testimony given by such witnesses may be negotiated with the States by the Registrar on behalf of the Court. Such agreements may remain confidential.

Rule 17

Functions of the Unit

1. The Victims and Witnesses Unit shall exercise its functions in accordance with article 43, paragraph 6.

2. The Victims and Witnesses Unit shall, *inter alia*, perform the following functions, in accordance with the Statute and the Rules, and in consultation with the Chamber, the Prosecutor and the defence, as appropriate:

(a) With respect to all witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

(i) Providing them with adequate protective and security measures and formulating long- and short-term plans for their protection;

(ii) Recommending to the organs of the Court the adoption

of protection measures and also advising relevant States of such measures;

(iii) Assisting them in obtaining medical, psychological and other appropriate assistance;

(iv) Making available to the Court and the parties training in issues of trauma, sexual violence, security and confidentiality;

(v) Recommending, in consultation with the Office of the Prosecutor, the elaboration of a code of conduct, emphasizing the vital nature of security and confidentiality for investigators of the Court and of the defence and all intergovernmental and non-governmental organizations acting at the request of the Court, as appropriate;

(vi) Cooperating with States, where necessary, in providing any of the measures stipulated in this rule;

(b) With respect to witnesses:

(i) Advising them where to obtain legal advice for the purpose of protecting their rights, in particular in relation to their testimony;

(ii) Assisting them when they are called to testify before the Court;

(iii) Taking gender-sensitive measures to facilitate the testimony of victims of sexual violence at all stages of the proceedings.

3. In performing its functions, the Unit shall give due regard to the particular needs of children, elderly persons and persons with disabilities. In order to facilitate the participation and protection of children as witnesses, the Unit may assign, as appropriate, and with the agreement of the parents or the legal guardian, a child-support person to assist a child through all stages of the proceedings.

Rule 18

Responsibilities of the Unit

For the efficient and effective performance of its work, the Victims and

Witnesses Unit shall:

- (a) Ensure that the staff in the Unit maintain confidentiality at all times;
- (b) While recognizing the specific interests of the Office of the Prosecutor, the defence and the witnesses, respect the interests of the witness, including, where necessary, by maintaining an appropriate separation of the services provided to the prosecution and defence witnesses, and act impartially when cooperating with all parties and in accordance with the rulings and decisions of the Chambers;
- (c) Have administrative and technical assistance available for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, during all stages of the proceedings and thereafter, as reasonably appropriate;
- (d) Ensure training of its staff with respect to victims' and witnesses' security, integrity and dignity, including matters related to gender and cultural sensitivity;
- (e) Where appropriate, cooperate with intergovernmental and non-governmental organizations.

Rule 19

Expertise in the Unit

In addition to the staff mentioned in article 43, paragraph 6, and subject to article 44, the Victims and Witnesses Unit may include, as appropriate, persons with expertise, *inter alia*, in the following areas:

- (a) Witness protection and security;
- (b) Legal and administrative matters, including areas of humanitarian and criminal law;
- (c) Logistics administration;
- (d) Psychology in criminal proceedings;
- (e) Gender and cultural diversity;
- (f) Children, in particular traumatized children;
- (g) Elderly persons, in particular in connection with armed conflict and exile trauma;

- (h) Persons with disabilities;
- (i) Social work and counselling;
- (j) Health care;
- (k) Interpretation and translation.

Subsection 3

Counsel for the defence

Rule 20

Responsibilities of the Registrar relating to the rights of the defence

1. In accordance with article 43, paragraph 1, the Registrar shall organize the staff of the Registry in a manner that promotes the rights of the defence, consistent with the principle of fair trial as defined in the Statute. For that purpose, the Registrar shall, *inter alia*:

- (a) Facilitate the protection of confidentiality, as defined in article 67, paragraph 1 (b);
- (b) Provide support, assistance, and information to all defence counsel appearing before the Court and, as appropriate, support for professional investigators necessary for the efficient and effective conduct of the defence;
- (c) Assist arrested persons, persons to whom article 55, paragraph 2, applies and the accused in obtaining legal advice and the assistance of legal counsel;
- (d) Advise the Prosecutor and the Chambers, as necessary, on relevant defence-related issues;
- (e) Provide the defence with such facilities as may be necessary for the direct performance of the duty of the defence;
- (f) Facilitate the dissemination of information and case law of the Court to defence counsel and, as appropriate, cooperate with national defence and bar associations or any independent representative body of counsel and legal associations referred to in sub-rule 3 to promote the specialization and training of lawyers in the law of the Statute and the Rules.

2. The Registrar shall carry out the functions stipulated in sub-rule 1, including the financial administration of the Registry, in such a manner as to ensure the professional independence of defence counsel.

3. For purposes such as the management of legal assistance in accordance with rule 21 and the development of a Code of Professional Conduct in accordance with rule 8, the Registrar shall consult, as appropriate, with any independent representative body of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties.

Rule 21

Assignment of legal assistance

1. Subject to article 55, paragraph 2 (c), and article 67, paragraph 1 (d), criteria and procedures for assignment of legal assistance shall be established in the Regulations, based on a proposal by the Registrar, following consultations with any independent representative body of counsel or legal associations, as referred to in rule 20, sub-rule 3.

2. The Registrar shall create and maintain a list of counsel who meet the criteria set forth in rule 22 and the Regulations. The person shall freely choose his or her counsel from this list or other counsel who meets the required criteria and is willing to be included in the list.

3. A person may seek from the Presidency a review of a decision to refuse a request for assignment of counsel. The decision of the Presidency shall be final. If a request is refused, a further request may be made by a person to the Registrar, upon showing a change in circumstances.

4. A person choosing to represent himself or herself shall so notify the Registrar in writing at the first opportunity.

5. Where a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at that time may make an order of contribution to recover the cost of providing counsel.

Rule 22

Appointment and qualifications of Counsel for the defence

1. A counsel for the defence shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel for the defence shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. Counsel for the defence may be assisted by other persons, including professors of law, with relevant expertise.

2. Counsel for the defence engaged by a person exercising his or her right under the Statute to retain legal counsel of his or her choosing shall file a power of attorney with the Registrar at the earliest opportunity.

3. In the performance of their duties, Counsel for the defence shall be subject to the Statute, the Rules, the Regulations, the Code of Professional Conduct for Counsel adopted in accordance with rule 8 and any other document adopted by the Court that may be relevant to the performance of their duties.

Section IV

Situations that may affect the functioning of the Court

Subsection 1

Removal from office and disciplinary measures

Rule 23

General principle

A judge, the Prosecutor, a Deputy Prosecutor, the Registrar and a Deputy Registrar shall be removed from office or shall be subject to disciplinary measures in such cases and with such guarantees as are established in the Statute and the Rules.

Rule 24

Definition of serious misconduct and serious breach of duty

1. For the purposes of article 46, paragraph 1 (a), “serious misconduct” shall be constituted by conduct that:

(a) If it occurs in the course of official duties, is incompatible with official functions, and causes or is likely to cause serious harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Disclosing facts or information that he or she has acquired in the course of his or her duties or on a matter which is *sub judice*, where such disclosure is seriously prejudicial to the judicial proceedings or to any person;

(ii) Concealing information or circumstances of a nature sufficiently serious to have precluded him or her from holding office;

(iii) Abuse of judicial office in order to obtain unwarranted favourable treatment from any authorities, officials or professionals; or

(b) If it occurs outside the course of official duties, is of a grave nature that causes or is likely to cause serious harm to the standing of the Court.

2. For the purposes of article 46, paragraph 1 (a), a “serious breach of duty” occurs where a person has been grossly negligent in the performance of his or her duties or has knowingly acted in contravention of those duties. This may include, *inter alia*, situations where the person:

(a) Fails to comply with the duty to request to be excused, knowing that there are grounds for doing so;

(b) Repeatedly causes unwarranted delay in the initiation, prosecution or trial of cases, or in the exercise of judicial powers.

Rule 25

Definition of misconduct of a less serious nature

1. For the purposes of article 47, “misconduct of a less serious nature” shall be constituted by conduct that:

(a) If it occurs in the course of official duties, causes or is likely to cause harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Interfering in the exercise of the functions of a person referred to in article 47;

(ii) Repeatedly failing to comply with or ignoring requests made by the Presiding Judge or by the Presidency in the exercise of their lawful authority;

(iii) Failing to enforce the disciplinary measures to which the Registrar or a Deputy Registrar and other officers of the Court are subject when a judge knows or should know of a serious breach of duty on their part; or

(b) If it occurs outside the course of official duties, causes or is likely to cause harm to the standing of the Court.

2. Nothing in this rule precludes the possibility of the conduct set out in sub-rule 1 (a) constituting “serious misconduct” or “serious breach of duty” for the purposes of article 46, paragraph 1 (a).

Rule 26

Receipt of complaints

1. For the purposes of article 46, paragraph 1, and article 47, any complaint concerning any conduct defined under rules 24 and 25 shall include the grounds on which it is based, the identity of the complainant and, if available, any relevant evidence. The complaint shall remain confidential.

2. All complaints shall be transmitted to the Presidency, which may also initiate proceedings on its own motion, and which shall, pursuant to the Regulations, set aside anonymous or manifestly unfounded complaints and transmit the other complaints to the competent organ. The Presidency shall be

assisted in this task by one or more judges, appointed on the basis of automatic rotation, in accordance with the Regulations.

Rule 27

Common provisions on the rights of the defence

1. In any case in which removal from office under article 46 or disciplinary measures under article 47 is under consideration, the person concerned shall be so informed in a written statement.
2. The person concerned shall be afforded full opportunity to present and receive evidence, to make written submissions and to supply answers to any questions put to him or her.
3. The person may be represented by counsel during the process established under this rule.

Rule 28

Suspension from duty

Where an allegation against a person who is the subject of a complaint is of a sufficiently serious nature, the person may be suspended from duty pending the final decision of the competent organ.

Rule 29

Procedure in the event of a request for removal from office

1. In the case of a judge, the Registrar or a Deputy Registrar, the question of removal from office shall be put to a vote at a plenary session.
2. The Presidency shall advise the President of the Bureau of the Assembly of States Parties in writing of any recommendation adopted in the case of a judge, and any decision adopted in the case of the Registrar or a Deputy Registrar.
3. The Prosecutor shall advise the President of the Bureau of the Assembly of States Parties in writing of any recommendation he or she makes in the case of a Deputy Prosecutor.
4. Where the conduct is found not to amount to serious misconduct or a serious breach of duty, it may be decided in accordance with article 47 that

the person concerned has engaged in misconduct of a less serious nature and a disciplinary measure imposed.

Rule 30

Procedure in the event of a request for disciplinary measures

1. In the case of a judge, the Registrar or a Deputy Registrar, any decision to impose a disciplinary measure shall be taken by the Presidency.
2. In the case of the Prosecutor, any decision to impose a disciplinary measure shall be taken by an absolute majority of the Bureau of the Assembly of States Parties.
3. In the case of a Deputy Prosecutor:
 - (a) Any decision to give a reprimand shall be taken by the Prosecutor;
 - (b) Any decision to impose a pecuniary sanction shall be taken by an absolute majority of the Bureau of the Assembly of States Parties upon the recommendation of the Prosecutor.
4. Reprimands shall be recorded in writing and shall be transmitted to the President of the Bureau of the Assembly of States Parties.

Rule 31

Removal from office

Once removal from office has been pronounced, it shall take effect immediately. The person concerned shall cease to form part of the Court, including for unfinished cases in which he or she was taking part.

Rule 32

Disciplinary measures

The disciplinary measures that may be imposed are:

- (a) A reprimand; or
- (b) A pecuniary sanction that may not exceed six months of the salary paid by the Court to the person concerned.

Subsection 2

Excusing, disqualification, death and resignation

Rule 33

Excusing of a judge, the Prosecutor or a Deputy Prosecutor

1. A judge, the Prosecutor or a Deputy Prosecutor seeking to be excused from his or her functions shall make a request in writing to the Presidency, setting out the grounds upon which he or she should be excused.
2. The Presidency shall treat the request as confidential and shall not make public the reasons for its decision without the consent of the person concerned.

Rule 34

Disqualification of a judge, the Prosecutor or a Deputy Prosecutor

1. In addition to the grounds set out in article 41, paragraph 2, and article 42, paragraph 7, the grounds for disqualification of a judge, the Prosecutor or a Deputy Prosecutor shall include, *inter alia*, the following:
 - (a) Personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;
 - (b) Involvement, in his or her private capacity, in any legal proceedings initiated prior to his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted was or is an opposing party;
 - (c) Performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality of the person concerned;
 - (d) Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the person concerned.
2. Subject to the provisions set out in article 41, paragraph 2, and article

42, paragraph 8, a request for disqualification shall be made in writing as soon as there is knowledge of the grounds on which it is based. The request shall state the grounds and attach any relevant evidence, and shall be transmitted to the person concerned, who shall be entitled to present written submissions.

3. Any question relating to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by a majority of the judges of the Appeals Chamber.

Rule 35

Duty of a judge, the Prosecutor or a Deputy Prosecutor to request to be excused

Where a judge, the Prosecutor or a Deputy Prosecutor has reason to believe that a ground for disqualification exists in relation to him or her, he or she shall make a request to be excused and shall not wait for a request for disqualification to be made in accordance with article 41, paragraph 2, or article 42, paragraph 7, and rule 34. The request shall be made and the Presidency shall deal with it in accordance with rule 33.

Rule 36

Death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar

The Presidency shall inform, in writing, the President of the Bureau of the Assembly of States Parties of the death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar.

Rule 37

Resignation of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar shall communicate to the Presidency, in writing, his or her decision to resign. The Presidency shall inform, in writing, the President of the Bureau of the Assembly of States Parties.

2. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar shall endeavour to give notice of the date on which his or her resignation will take effect at least six months in advance. Before the resignation of a judge takes effect, he or she shall make every effort to discharge his or her outstanding responsibilities.

Subsection 3

Replacements and alternate judges

Rule 38

Replacements

1. A judge may be replaced for objective and justified reasons, *inter alia*:
 - (a) Resignation;
 - (b) Accepted excuse;
 - (c) Disqualification;
 - (d) Removal from office;
 - (e) Death.
2. Replacement shall take place in accordance with the pre-established procedure in the Statute, the Rules and the Regulations.

Rule 39

Alternate judges

Where an alternate judge has been assigned by the Presidency to a Trial Chamber pursuant to article 74, paragraph 1, he or she shall sit through all proceedings and deliberations of the case, but may not take any part therein and shall not exercise any of the functions of the members of the Trial Chamber hearing the case, unless and until he or she is required to replace a member of the Trial Chamber if that member is unable to continue attending. Alternate judges shall be designated in accordance with a procedure pre-established by the Court.

Section V

Publication, languages and translation

Rule 40

Publication of decisions in official languages of the Court

1. For the purposes of article 50, paragraph 1, the following decisions shall be considered as resolving fundamental issues:
 - (a) All decisions of the Appeals Division;
 - (b) All decisions of the Court on its jurisdiction or on the admissibility of a case pursuant to articles 17, 18, 19 and 20;
 - (c) All decisions of a Trial Chamber on guilt or innocence, sentencing and reparations to victims pursuant to articles 74, 75 and 76;
 - (d) All decisions of a Pre-Trial Chamber pursuant to article 57, paragraph 3 (d).
2. Decisions on confirmation of charges under article 61, paragraph 7, and on offences against the administration of justice under article 70, paragraph 3, shall be published in all the official languages of the Court when the Presidency determines that they resolve fundamental issues.
3. The Presidency may decide to publish other decisions in all the official languages when such decisions concern major issues relating to the interpretation or the implementation of the Statute or concern a major issue of general interest.

Rule 41

Working languages of the Court

1. For the purposes of article 50, paragraph 2, the Presidency shall authorize the use of an official language of the Court as a working language when:
 - (a) That language is understood and spoken by the majority of those involved in a case before the Court and any of the participants in the proceedings so requests; or
 - (b) The Prosecutor and the defence so request.

2. The Presidency may authorize the use of an official language of the Court as a working language if it considers that it would facilitate the efficiency of the proceedings.

Rule 42

Translation and interpretation services

The Court shall arrange for the translation and interpretation services necessary to ensure the implementation of its obligations under the Statute and the Rules.

Rule 43

Procedure applicable to the publication of documents of the Court

The Court shall ensure that all documents subject to publication in accordance with the Statute and the Rules respect the duty to protect the confidentiality of the proceedings and the security of victims and witnesses.

Chapter 3

Jurisdiction and admissibility

Section I

Declarations and referrals relating to articles 11, 12, 13 and 14

Rule 44

Declaration provided for in article 12, paragraph 3

1. The Registrar, at the request of the Prosecutor, may inquire of a State that is not a Party to the Statute or that has become a Party to the Statute after its entry into force, on a confidential basis, whether it intends to make the declaration provided for in article 12, paragraph 3.

2. When a State lodges, or declares to the Registrar its intent to lodge, a declaration with the Registrar pursuant to article 12, paragraph 3, or when the Registrar acts pursuant to sub-rule 1, the Registrar shall inform the State concerned that the declaration under article 12, paragraph 3, has as a consequence the acceptance of jurisdiction with respect to the crimes referred to in article 5 of relevance to the situation and the provisions of Part 9, and any rules thereunder concerning States Parties, shall apply.

Rule 45

Referral of a situation to the Prosecutor

A referral of a situation to the Prosecutor shall be in writing.

Section II

Initiation of investigations under article 15

Rule 46

Information provided to the Prosecutor under article 15, paragraphs 1 and 2

Where information is submitted under article 15, paragraph 1, or where oral or written testimony is received pursuant to article 15, paragraph 2, at the seat of the Court, the Prosecutor shall protect the confidentiality of such

information and testimony or take any other necessary measures, pursuant to his or her duties under the Statute.

Rule 47

Testimony under article 15, paragraph 2

1. The provisions of rules 111 and 112 shall apply, *mutatis mutandis*, to testimony received by the Prosecutor pursuant to article 15, paragraph 2.
2. When the Prosecutor considers that there is a serious risk that it might not be possible for the testimony to be taken subsequently, he or she may request the Pre-Trial Chamber to take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to appoint a counsel or a judge from the Pre-Trial Chamber to be present during the taking of the testimony in order to protect the rights of the defence. If the testimony is subsequently presented in the proceedings, its admissibility shall be governed by article 69, paragraph 4, and given such weight as determined by the relevant Chamber.

Rule 48

Determination of reasonable basis to proceed with an investigation under article 15, paragraph 3

In determining whether there is a reasonable basis to proceed with an investigation under article 15, paragraph 3, the Prosecutor shall consider the factors set out in article 53, paragraph 1 (a) to (c).

Rule 49

Decision and notice under article 15, paragraph 6

1. Where a decision under article 15, paragraph 6, is taken, the Prosecutor shall promptly ensure that notice is provided, including reasons for his or her decision, in a manner that prevents any danger to the safety, well-being and privacy of those who provided information to him or her under article 15, paragraphs 1 and 2, or the integrity of investigations or proceedings.
2. The notice shall also advise of the possibility of submitting further

information regarding the same situation in the light of new facts and evidence.

Rule 50

Procedure for authorization by the Pre-Trial Chamber of the commencement of the investigation

1. When the Prosecutor intends to seek authorization from the Pre-Trial Chamber to initiate an investigation pursuant to article 15, paragraph 3, the Prosecutor shall inform victims, known to him or her or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses. The Prosecutor may also give notice by general means in order to reach groups of victims if he or she determines in the particular circumstances of the case that such notice could not pose a danger to the integrity and effective conduct of the investigation or to the security and well-being of victims and witnesses. In performing these functions, the Prosecutor may seek the assistance of the Victims and Witnesses Unit as appropriate.
2. A request for authorization by the Prosecutor shall be in writing.
3. Following information given in accordance with sub-rule 1, victims may make representations in writing to the Pre-Trial Chamber within such time limit as set forth in the Regulations.
4. The Pre-Trial Chamber, in deciding on the procedure to be followed, may request additional information from the Prosecutor and from any of the victims who have made representations, and, if it considers it appropriate, may hold a hearing.
5. The Pre-Trial Chamber shall issue its decision, including its reasons, as to whether to authorize the commencement of the investigation in accordance with article 15, paragraph 4, with respect to all or any part of the request by the Prosecutor. The Chamber shall give notice of the decision to victims who have made representations.
6. The above procedure shall also apply to a new request to the Pre-Trial Chamber pursuant to article 15, paragraph 5.

Section III

Challenges and preliminary rulings under articles 17, 18 and 19

Rule 51

Information provided under article 17

In considering the matters referred to in article 17, paragraph 2, and in the context of the circumstances of the case, the Court may consider, *inter alia*, information that the State referred to in article 17, paragraph 1, may choose to bring to the attention of the Court showing that its courts meet internationally recognized norms and standards for the independent and impartial prosecution of similar conduct, or that the State has confirmed in writing to the Prosecutor that the case is being investigated or prosecuted.

Rule 52

Notification provided for in article 18, paragraph 1

1. Subject to the limitations provided for in article 18, paragraph 1, the notification shall contain information about the acts that may constitute crimes referred to in article 5, relevant for the purposes of article 18, paragraph 2.
2. A State may request additional information from the Prosecutor to assist it in the application of article 18, paragraph 2. Such a request shall not affect the one-month time limit provided for in article 18, paragraph 2, and shall be responded to by the Prosecutor on an expedited basis.

Rule 53

Deferral provided for in article 18, paragraph 2

When a State requests a deferral pursuant to article 18, paragraph 2, that State shall make this request in writing and provide information concerning its investigation, taking into account article 18, paragraph 2. The Prosecutor may request additional information from that State.

Rule 54

Application by the Prosecutor under article 18, paragraph 2

1. An application submitted by the Prosecutor to the Pre-Trial Chamber in accordance with article 18, paragraph 2, shall be in writing and shall contain the basis for the application. The information provided by the State under rule 53 shall be communicated by the Prosecutor to the Pre-Trial Chamber.

2. The Prosecutor shall inform that State in writing when he or she makes an application to the Pre-Trial Chamber under article 18, paragraph 2, and shall include in the notice a summary of the basis of the application.

Rule 55

Proceedings concerning article 18, paragraph 2

1. The Pre-Trial Chamber shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing.

2. The Pre-Trial Chamber shall examine the Prosecutor's application and any observations submitted by a State that requested a deferral in accordance with article 18, paragraph 2, and shall consider the factors in article 17 in deciding whether to authorize an investigation.

3. The decision and the basis for the decision of the Pre-Trial Chamber shall be communicated as soon as possible to the Prosecutor and to the State that requested a deferral of an investigation.

Rule 56

Application by the Prosecutor following review under article 18, paragraph 3

1. Following a review by the Prosecutor as set forth in article 18, paragraph 3, the Prosecutor may apply to the Pre-Trial Chamber for authorization in accordance with article 18, paragraph 2. The application to the Pre-Trial Chamber shall be in writing and shall contain the basis for the application.

2. Any further information provided by the State under article 18, paragraph 5, shall be communicated by the Prosecutor to the Pre-Trial Chamber.

3. The proceedings shall be conducted in accordance with rules 54, sub-rule 2, and 55.

Rule 57

Provisional measures under article 18, paragraph 6

An application to the Pre-Trial Chamber by the Prosecutor in the circumstances provided for in article 18, paragraph 6, shall be considered ex parte and in camera. The Pre-Trial Chamber shall rule on the application on an expedited basis.

Rule 58

Proceedings under article 19

1. A request or application made under article 19 shall be in writing and contain the basis for it.

2. When a Chamber receives a request or application raising a challenge or question concerning its jurisdiction or the admissibility of a case in accordance with article 19, paragraph 2 or 3, or is acting on its own motion as provided for in article 19, paragraph 1, it shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing. It may join the challenge or question to a confirmation or a trial proceeding as long as this does not cause undue delay, and in this circumstance shall hear and decide on the challenge or question first.

3. The Court shall transmit a request or application received under sub-rule 2 to the Prosecutor and to the person referred to in article 19, paragraph 2, who has been surrendered to the Court or who has appeared voluntarily or pursuant to a summons, and shall allow them to submit written observations to the request or application within a period of time determined by the Chamber.

4. The Court shall rule on any challenge or question of jurisdiction first

and then on any challenge or question of admissibility.

Rule 59

Participation in proceedings under article 19, paragraph 3

1. For the purpose of article 19, paragraph 3, the Registrar shall inform the following of any question or challenge of jurisdiction or admissibility which has arisen pursuant to article 19, paragraphs 1, 2 and 3:

- (a) Those who have referred a situation pursuant to article 13;
- (b) The victims who have already communicated with the Court in relation to that case or their legal representatives.

2. The Registrar shall provide those referred to in sub-rule 1, in a manner consistent with the duty of the Court regarding the confidentiality of information, the protection of any person and the preservation of evidence, with a summary of the grounds on which the jurisdiction of the Court or the admissibility of the case has been challenged.

3. Those receiving the information, as provided for in sub-rule 1, may make representation in writing to the competent Chamber within such time limit as it considers appropriate.

Rule 60

Competent organ to receive challenges

If a challenge to the jurisdiction of the Court or to the admissibility of a case is made after a confirmation of the charges but before the constitution or designation of the Trial Chamber, it shall be addressed to the Presidency, which shall refer it to the Trial Chamber as soon as the latter is constituted or designated in accordance with rule 130.

Rule 61

Provisional measures under article 19, paragraph 8

When the Prosecutor makes application to the competent Chamber in the circumstances provided for in article 19, paragraph 8, rule 57 shall apply.

Rule 62**Proceedings under article 19, paragraph 10**

1. If the Prosecutor makes a request under article 19, paragraph 10, he or she shall make the request to the Chamber that made the latest ruling on admissibility. The provisions of rules 58, 59 and 61 shall be applicable.
2. The State or States whose challenge to admissibility under article 19, paragraph 2, provoked the decision of inadmissibility provided for in article 19, paragraph 10, shall be notified of the request of the Prosecutor and shall be given a time limit within which to make representations.

Chapter 4

Provisions relating to various stages of the proceedings

Section I

Evidence

Rule 63

General provisions relating to evidence

1. The rules of evidence set forth in this chapter, together with article 69, shall apply in proceedings before all Chambers.
2. A Chamber shall have the authority, in accordance with the discretion described in article 64, paragraph 9, to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69.
3. A Chamber shall rule on an application of a party or on its own motion, made under article 64, subparagraph 9 (a), concerning admissibility when it is based on the grounds set out in article 69, paragraph 7.
4. Without prejudice to article 66, paragraph 3, a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence.
5. The Chambers shall not apply national laws governing evidence, other than in accordance with article 21.

Rule 64

Procedure relating to the relevance or admissibility of evidence

1. An issue relating to relevance or admissibility must be raised at the time when the evidence is submitted to a Chamber. Exceptionally, when those issues were not known at the time when the evidence was submitted, it may be raised immediately after the issue has become known. The Chamber may request that the issue be raised in writing. The written motion shall be communicated by the Court to all those who participate in the proceedings, unless otherwise decided by the Court.

2. A Chamber shall give reasons for any rulings it makes on evidentiary matters. These reasons shall be placed in the record of the proceedings if they have not already been incorporated into the record during the course of the proceedings in accordance with article 64, paragraph 10, and rule 137, sub-rule 1.

3. Evidence ruled irrelevant or inadmissible shall not be considered by the Chamber.

Rule 65

Compellability of witnesses

1. A witness who appears before the Court is compellable by the Court to provide testimony, unless otherwise provided for in the Statute and the Rules, in particular rules 73, 74 and 75.

2. Rule 171 applies to a witness appearing before the Court who is compellable to provide testimony under sub-rule 1.

Rule 66

Solemn undertaking

1. Except as described in sub-rule 2, every witness shall, in accordance with article 69, paragraph 1, make the following solemn undertaking before testifying:

“I solemnly declare that I will speak the truth, the whole truth and nothing but the truth”.

2. A person under the age of 18 or a person whose judgement has been impaired and who, in the opinion of the Chamber, does not understand the nature of a solemn undertaking may be allowed to testify without this solemn undertaking if the Chamber considers that the person is able to describe matters of which he or she has knowledge and that the person understands the meaning of the duty to speak the truth.

3. Before testifying, the witness shall be informed of the offence defined in article 70, paragraph 1 (a).

Rule 67

Live testimony by means of audio or video-link technology

1. In accordance with article 69, paragraph 2, a Chamber may allow a witness to give viva voce (oral) testimony before the Chamber by means of audio or video technology, provided that such technology permits the witness to be examined by the Prosecutor, the defence, and by the Chamber itself, at the time that the witness so testifies.
2. The examination of a witness under this rule shall be conducted in accordance with the relevant rules of this chapter.
3. The Chamber, with the assistance of the Registry, shall ensure that the venue chosen for the conduct of the audio or video-link testimony is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness.

Rule 68

Prior recorded testimony

When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraph 2, allow the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that:

- (a) If the witness who gave the previously recorded testimony is not present before the Trial Chamber, both the Prosecutor and the defence had the opportunity to examine the witness during the recording; or
- (b) If the witness who gave the previously recorded testimony is present before the Trial Chamber, he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.

Rule 69

Agreements as to evidence

The Prosecutor and the defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or other evidence is not contested and, accordingly, a Chamber may consider such alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims.

Rule 70

Principles of evidence in cases of sexual violence

In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:

- (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- (b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- (c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;
- (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

Rule 71

Evidence of other sexual conduct

In the light of the definition and nature of the crimes within the jurisdiction of the Court, and subject to article 69, paragraph 4, a Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness.

Rule 72

In camera procedure to consider relevance or admissibility of evidence

1. Where there is an intention to introduce or elicit, including by means of the questioning of a victim or witness, evidence that the victim consented to an alleged crime of sexual violence, or evidence of the words, conduct, silence or lack of resistance of a victim or witness as referred to in principles (a) through (d) of rule 70, notification shall be provided to the Court which shall describe the substance of the evidence intended to be introduced or elicited and the relevance of the evidence to the issues in the case.

2. In deciding whether the evidence referred to in sub-rule 1 is relevant or admissible, a Chamber shall hear in camera the views of the Prosecutor, the defence, the witness and the victim or his or her legal representative, if any, and shall take into account whether that evidence has a sufficient degree of probative value to an issue in the case and the prejudice that such evidence may cause, in accordance with article 69, paragraph 4. For this purpose, the Chamber shall have regard to article 21, paragraph 3, and articles 67 and 68, and shall be guided by principles (a) to (d) of rule 70, especially with respect to the proposed questioning of a victim.

3. Where the Chamber determines that the evidence referred to in sub-rule 2 is admissible in the proceedings, the Chamber shall state on the record the specific purpose for which the evidence is admissible. In evaluating the evidence during the proceedings, the Chamber shall apply principles (a) to (d) of rule 70.

Rule 73

Privileged communications and information

1. Without prejudice to article 67, paragraph 1 (b), communications made in the context of the professional relationship between a person and his or her legal counsel shall be regarded as privileged, and consequently not subject to disclosure, unless:

- (a) The person consents in writing to such disclosure; or

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

2. Having regard to rule 63, sub-rule 5, communications made in the context of a class of professional or other confidential relationships shall be regarded as privileged, and consequently not subject to disclosure, under the same terms as in sub-rules 1 (a) and 1 (b) if a Chamber decides in respect of that class that:

- (a) Communications occurring within that class of relationship are made in the course of a confidential relationship producing a reasonable expectation of privacy and non-disclosure;
- (b) Confidentiality is essential to the nature and type of relationship between the person and the confidant; and
- (c) Recognition of the privilege would further the objectives of the Statute and the Rules.

3. In making a decision under sub-rule 2, the Court shall give particular regard to recognizing as privileged those communications made in the context of the professional relationship between a person and his or her medical doctor, psychiatrist, psychologist or counsellor, in particular those related to or involving victims, or between a person and a member of a religious clergy; and in the latter case, the Court shall recognize as privileged those communications made in the context of a sacred confession where it is an integral part of the practice of that religion.

4. The Court shall regard as privileged, and consequently not subject to disclosure, including by way of testimony of any present or past official or employee of the International Committee of the Red Cross (ICRC), any information, documents or other evidence which it came into the possession of in the course, or as a consequence, of the performance by ICRC of its functions under the Statutes of the International Red Cross and Red Crescent Movement, unless:

- (a) After consultations undertaken pursuant to sub-rule 6, ICRC does not object in writing to such disclosure, or otherwise has waived this privilege; or

(b) Such information, documents or other evidence is contained in public statements and documents of ICRC.

5. Nothing in sub-rule 4 shall affect the admissibility of the same evidence obtained from a source other than ICRC and its officials or employees when such evidence has also been acquired by this source independently of ICRC and its officials or employees.

6. If the Court determines that ICRC information, documents or other evidence are of great importance for a particular case, consultations shall be held between the Court and ICRC in order to seek to resolve the matter by cooperative means, bearing in mind the circumstances of the case, the relevance of the evidence sought, whether the evidence could be obtained from a source other than ICRC, the interests of justice and of victims, and the performance of the Court's and ICRC's functions.

Rule 74

Self-incrimination by a witness

1. Unless a witness has been notified pursuant to rule 190, the Chamber shall notify a witness of the provisions of this rule before his or her testimony.

2. Where the Court determines that an assurance with respect to self-incrimination should be provided to a particular witness, it shall provide the assurances under sub-rule 3, paragraph (c), before the witness attends, directly or pursuant to a request under article 93, paragraph (1) (e).

3. (a) A witness may object to making any statement that might tend to incriminate him or her.

(b) Where the witness has attended after receiving an assurance under sub-rule 2, the Court may require the witness to answer the question or questions.

(c) In the case of other witnesses, the Chamber may require the witness to answer the question or questions, after assuring the witness that the evidence provided in response to the questions:

(i) Will be kept confidential and will not be disclosed to the public or any State; and

(ii) Will not be used either directly or indirectly against that person in any subsequent prosecution by the Court, except under articles 70 and 71.

4. Before giving such an assurance, the Chamber shall seek the views of the Prosecutor, ex parte, to determine if the assurance should be given to this particular witness.

5. In determining whether to require the witness to answer, the Chamber shall consider:

- (a) The importance of the anticipated evidence;
- (b) Whether the witness would be providing unique evidence;
- (c) The nature of the possible incrimination, if known; and
- (d) The sufficiency of the protections for the witness, in the particular circumstances.

6. If the Chamber determines that it would not be appropriate to provide an assurance to this witness, it shall not require the witness to answer the question. If the Chamber determines not to require the witness to answer, it may still continue the questioning of the witness on other matters.

7. In order to give effect to the assurance, the Chamber shall:

- (a) Order that the evidence of the witness be given in camera;
- (b) Order that the identity of the witness and the content of the evidence given shall not be disclosed, in any manner, and provide that the breach of any such order will be subject to sanction under article 71;
- (c) Specifically advise the Prosecutor, the accused, the defence counsel, the legal representative of the victim and any Court staff present of the consequences of a breach of the order under subparagraph (b);
- (d) Order the sealing of any record of the proceedings; and
- (e) Use protective measures with respect to any decision of the Court to ensure that the identity of the witness and the content of the evidence given are not disclosed.

8. Where the Prosecutor is aware that the testimony of any witness may raise issues with respect to self-incrimination, he or she shall request an in

camera hearing and advise the Chamber of this, in advance of the testimony of the witness. The Chamber may impose the measures outlined in sub-rule 7 for all or a part of the testimony of that witness.

9. The accused, the defence counsel or the witness may advise the Prosecutor or the Chamber that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Chamber may take the measures outlined in sub-rule 7.

10. If an issue of self-incrimination arises in the course of the proceedings, the Chamber shall suspend the taking of the testimony and provide the witness with an opportunity to obtain legal advice if he or she so requests for the purpose of the application of the rule.

Rule 75

Incrimination by family members

1. A witness appearing before the Court, who is a spouse, child or parent of an accused person, shall not be required by a Chamber to make any statement that might tend to incriminate that accused person. However, the witness may choose to make such a statement.

2. In evaluating the testimony of a witness, a Chamber may take into account that the witness, referred to in sub-rule 1, objected to reply to a question which was intended to contradict a previous statement made by the witness, or the witness was selective in choosing which questions to answer.

Section II

Disclosure

Rule 76

Pre-trial disclosure relating to prosecution witnesses

1. The Prosecutor shall provide the defence with the names of witnesses whom the Prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the defence.

2. The Prosecutor shall subsequently advise the defence of the names of any additional prosecution witnesses and provide copies of their statements when the decision is made to call those witnesses.

3. The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.

4. This rule is subject to the protection and privacy of victims and witnesses and the protection of confidential information as provided for in the Statute and rules 81 and 82.

Rule 77

Inspection of material in possession or control of the Prosecutor

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

Rule 78

Inspection of material in possession or control of the defence

The defence shall permit the Prosecutor to inspect any books, documents, photographs and other tangible objects in the possession or control of the defence, which are intended for use by the defence as evidence for the purposes of the confirmation hearing or at trial.

Rule 79

Disclosure by the defence

1. The defence shall notify the Prosecutor of its intent to:
 - (a) Raise the existence of an 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 of witnesses and any other evidence upon which the accused intends to

rely to establish the alibi; or

(b) Raise a ground for excluding criminal responsibility provided for in article 31, paragraph 1, in which case the notification shall specify the names of witnesses and any other evidence upon which the accused intends to rely to establish the ground.

2. With due regard to time limits set forth in other rules, notification under sub-rule 1 shall be given sufficiently in advance to enable the Prosecutor to prepare adequately and to respond. The Chamber dealing with the matter may grant the Prosecutor an adjournment to address the issue raised by the defence.

3. Failure of the defence to provide notice under this rule shall not limit its right to raise matters dealt with in sub-rule 1 and to present evidence.

4. This rule does not prevent a Chamber from ordering disclosure of any other evidence.

Rule 80

Procedures for raising a ground for excluding criminal responsibility under article 31, paragraph 3

1. The defence shall give notice to both the Trial Chamber and the Prosecutor if it intends to raise a ground for excluding criminal responsibility under article 31, paragraph 3. This shall be done sufficiently in advance of the commencement of the trial to enable the Prosecutor to prepare adequately for trial.

2. Following notice given under sub-rule 1, the Trial Chamber shall hear both the Prosecutor and the defence before deciding whether the defence can raise a ground for excluding criminal responsibility.

3. If the defence is permitted to raise the ground, the Trial Chamber may grant the Prosecutor an adjournment to address that ground.

Rule 81

Restrictions on disclosure

1. 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.

2. Where material or information is in the possession or control of the Prosecutor which must be disclosed in accordance with the Statute, but disclosure may prejudice further or ongoing investigations, the Prosecutor may apply to the Chamber dealing with the matter for a ruling as to whether the material or information must be disclosed to the defence. The matter shall be heard on an ex parte basis by the Chamber. However, the Prosecutor may not introduce such material or information into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

3. Where steps have been taken to ensure the confidentiality of information, in accordance with articles 54, 57, 64, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, such information shall not be disclosed, except in accordance with those articles. When the disclosure of such information may create a risk to the safety of the witness, the Court shall take measures to inform the witness in advance.

4. The Chamber dealing with the matter shall, on its own motion or at the request of the Prosecutor, the accused or any State, take the necessary steps to ensure the confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, including by authorizing the non-disclosure of their identity prior to the commencement of the trial.

5. Where material or information is in the possession or control of the Prosecutor which is withheld under article 68, paragraph 5, such material and information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

6. Where material or information is in the possession or control of the defence which is subject to disclosure, it may be withheld in circumstances similar to those which would allow the Prosecutor to rely on article 68, paragraph 5, and a summary thereof submitted instead. Such material and

information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the Prosecutor.

Rule 82

Restrictions on disclosure of material and information protected under article 54, paragraph 3 (e)

1. Where material or information is in the possession or control of the Prosecutor which is protected under article 54, paragraph 3 (e), the Prosecutor may not subsequently introduce such material or information into evidence without the prior consent of the provider of the material or information and adequate prior disclosure to the accused.

2. If the Prosecutor introduces material or information protected under article 54, paragraph 3 (e), into evidence, a Chamber may not order the production of additional evidence received from the provider of the initial material or information, nor may a Chamber for the purpose of obtaining such additional evidence itself summon the provider or a representative of the provider as a witness or order their attendance.

3. If the Prosecutor calls a witness to introduce in evidence any material or information which has been protected under article 54, paragraph 3 (e), a Chamber may not compel that witness to answer any question relating to the material or information or its origin, if the witness declines to answer on grounds of confidentiality.

4. The right of the accused to challenge evidence which has been protected under article 54, paragraph 3 (e), shall remain unaffected subject only to the limitations contained in sub-rules 2 and 3.

5. A Chamber dealing with the matter may order, upon application by the defence, that, in the interests of justice, material or information in the possession of the accused, which has been provided to the accused under the same conditions as set forth in article 54, paragraph 3 (e), and which is to be introduced into evidence, shall be subject *mutatis mutandis* to sub-rules 1, 2 and 3.

Rule 83

Ruling on exculpatory evidence under article 67, paragraph 2

The Prosecutor may request as soon as practicable a hearing on an ex parte basis before the Chamber dealing with the matter for the purpose of obtaining a ruling under article 67, paragraph 2.

Rule 84

Disclosure and additional evidence for trial

In order to enable the parties to prepare for trial and to facilitate the fair and expeditious conduct of the proceedings, the Trial Chamber shall, in accordance with article 64, paragraphs 3 (c) and 6 (d), and article 67, paragraph (2), and subject to article 68, paragraph 5, make any necessary orders for the disclosure of documents or information not previously disclosed and for the production of additional evidence. To avoid delay and to ensure that the trial commences on the set date, any such orders shall include strict time limits which shall be kept under review by the Trial Chamber.

Section III

Victims and witnesses

Subsection 1

Definition and general principle relating to victims

Rule 85

Definition of victims

For the purposes of the Statute and the Rules of Procedure and Evidence:

- (a) “Victims” means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;
- (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their

historic monuments, hospitals and other places and objects for humanitarian purposes.

Rule 86

General principle

A Chamber in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, shall take into account the needs of all victims and witnesses in accordance with article 68, in particular, children, elderly persons, persons with disabilities and victims of sexual or gender violence.

Subsection 2

Protection of victims and witnesses

Rule 87

Protective measures

1. Upon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure.

2. A motion or request under sub-rule 1 shall be governed by rule 134, provided that:

- (a) Such a motion or request shall not be submitted ex parte;
- (b) A request by a witness or by a victim or his or her legal representative, if any, shall be served on both the Prosecutor and the defence, each of whom shall have the opportunity to respond;
- (c) A motion or request affecting a particular witness or a particular victim shall be served on that witness or victim or his or her legal representative, if any, in addition to the other party, each of

whom shall have the opportunity to respond;

(d) When the Chamber proceeds on its own motion, notice and opportunity to respond shall be given to the Prosecutor and the defence, and to any witness or any victim or his or her legal representative, if any, who would be affected by such protective measure; and

(e) A motion or request may be filed under seal, and, if so filed, shall remain sealed until otherwise ordered by a Chamber. Responses to motions or requests filed under seal shall also be filed under seal.

3. A Chamber may, on a motion or request under sub-rule 1, hold a hearing, which shall be conducted in camera, to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness by ordering, *inter alia*:

(a) That the name of the victim, witness or other person at risk on account of testimony given by a witness or any information which could lead to his or her identification, be expunged from the public records of the Chamber;

(b) That the Prosecutor, the defence or any other participant in the proceedings be prohibited from disclosing such information to a third party;

(c) That testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audio-visual technology, in particular videoconferencing and closed-circuit television, and the exclusive use of the sound media;

(d) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness; or

(e) That a Chamber conduct part of its proceedings in camera.

Rule 88

Special measures

1. Upon the motion of the Prosecutor or the defence, or upon the request

of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may, taking into account the views of the victim or witness, order special measures such as, but not limited to, measures to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence, pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the special measure is sought prior to ordering that measure.

2. A Chamber may hold a hearing on a motion or a request under sub-rule 1, if necessary in camera or ex parte, to determine whether to order any such special measure, including but not limited to an order that a counsel, a legal representative, a psychologist or a family member be permitted to attend during the testimony of the victim or the witness.

3. For *inter partes* motions or requests filed under this rule, the provisions of rule 87, sub-rules 2 (b) to (d), shall apply *mutatis mutandis*.

4. A motion or request filed under this rule may be filed under seal, and if so filed shall remain sealed until otherwise ordered by a Chamber. Any responses to *inter partes* motions or requests filed under seal shall also be filed under seal.

5. Taking into consideration that violations of the privacy of a witness or victim may create risk to his or her security, a Chamber shall be vigilant in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence.

Subsection 3

Participation of victims in the proceedings

Rule 89

Application for participation of victims in the proceedings

1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the

relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

2. The Chamber, on its own initiative or on the application of the Prosecutor or the defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose application has been rejected may file a new application later in the proceedings.

3. An application referred to in this rule may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is disabled.

4. Where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision.

Rule 90

Legal representatives of victims

1. A victim shall be free to choose a legal representative.

2. Where there are a number of victims, the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives. In facilitating the coordination of victim representation, the Registry may provide assistance, *inter alia*, by referring the victims to a list of counsel, maintained by the Registry, or suggesting one or more common legal representatives.

3. If the victims are unable to choose a common legal representative or representatives within a time limit that the Chamber may decide, the Chamber may request the Registrar to choose one or more common legal representatives.
4. The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided.
5. A victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance.
6. A legal representative of a victim or victims shall have the qualifications set forth in rule 22, sub-rule 1.

Rule 91

Participation of legal representatives in the proceedings

1. A Chamber may modify a previous ruling under rule 89.
2. A legal representative of a victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Chamber and any modification thereof given under rules 89 and 90. This shall include participation in hearings unless, in the circumstances of the case, the Chamber concerned is of the view that the representative's intervention should be confined to written observations or submissions. The Prosecutor and the defence shall be allowed to reply to any oral or written observation by the legal representative for victims.
3. (a) When a legal representative attends and participates in accordance with this rule, and wishes to question a witness, including questioning under rules 67 and 68, an expert or the accused, the legal representative must make application to the Chamber. The Chamber may require the legal representative to provide a written note of the questions and in that case the questions shall be communicated to the Prosecutor and, if appropriate, the defence, who shall be allowed to make observations within a time limit set by the Chamber.

(b) The Chamber shall then issue a ruling on the request, taking into account the stage of the proceedings, the rights of the accused, the interests of witnesses, the need for a fair, impartial and expeditious trial and in order to give effect to article 68, paragraph 3. The ruling may include directions on the manner and order of the questions and the production of documents in accordance with the powers of the Chamber under article 64. The Chamber may, if it considers it appropriate, put the question to the witness, expert or accused on behalf of the victim's legal representative.

4. For a hearing limited to reparations under article 75, the restrictions on questioning by the legal representative set forth in sub-rule 2 shall not apply. In that case, the legal representative may, with the permission of the Chamber concerned, question witnesses, experts and the person concerned.

Rule 92

Notification to victims and their legal representatives

1. This rule on notification to victims and their legal representatives shall apply to all proceedings before the Court, except in proceedings provided for in Part 2.

2. In order to allow victims to apply for participation in the proceedings in accordance with rule 89, the Court shall notify victims concerning the decision of the Prosecutor not to initiate an investigation or not to prosecute pursuant to article 53. Such a notification shall be given to victims or their legal representatives who have already participated in the proceedings or, as far as possible, to those who have communicated with the Court in respect of the situation or case in question. The Chamber may order the measures outlined in sub-rule 8 if it considers it appropriate in the particular circumstances.

3. In order to allow victims to apply for participation in the proceedings in accordance with rule 89, the Court shall notify victims regarding its decision to hold a hearing to confirm charges pursuant to article 61. Such a notification shall be given to victims or their legal representatives who have already participated in the proceedings or, as far as possible, to those who

have communicated with the Court in respect of the case in question.

4. When a notification for participation as provided for in sub-rules 2 and 3 has been given, any subsequent notification as referred to in sub-rules 5 and 6 shall only be provided to victims or their legal representatives who may participate in the proceedings in accordance with a ruling of the Chamber pursuant to rule 89 and any modification thereof.

5. In a manner consistent with the ruling made under rules 89 to 91, victims or their legal representatives participating in proceedings shall, in respect of those proceedings, be notified by the Registrar in a timely manner of:

(a) Proceedings before the Court, including the date of hearings and any postponements thereof, and the date of delivery of the decision;

(b) Requests, submissions, motions and other documents relating to such requests, submissions or motions.

6. Where victims or their legal representatives have participated in a certain stage of the proceedings, the Registrar shall notify them as soon as possible of the decisions of the Court in those proceedings.

7. Notifications as referred to in sub-rules 5 and 6 shall be in writing or, where written notification is not possible, in any other form as appropriate. The Registry shall keep a record of all notifications. Where necessary, the Registrar may seek the cooperation of States Parties in accordance with article 93, paragraph 1 (d) and (l).

8. For notification as referred to in sub-rule 3 and otherwise at the request of a Chamber, the Registrar shall take necessary measures to give adequate publicity to the proceedings. In doing so, the Registrar may seek, in accordance with Part 9, the cooperation of relevant States Parties, and seek the assistance of intergovernmental organizations.

Rule 93

Views of victims or their legal representatives

A Chamber may seek the views of victims or their legal representatives participating pursuant to rules 89 to 91 on any issue, *inter alia*, in relation to

issues referred to in rules 107, 109, 125, 128, 136, 139 and 191. In addition, a Chamber may seek the views of other victims, as appropriate.

Subsection 4

Reparations to victims

Rule 94

Procedure upon request

1. A victim's request for reparations under article 75 shall be made in writing and filed with the Registrar. It shall contain the following particulars:
 - (a) The identity and address of the claimant;
 - (b) A description of the injury, loss or harm;
 - (c) The location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm;
 - (d) Where restitution of assets, property or other tangible items is sought, a description of them;
 - (e) Claims for compensation;
 - (f) Claims for rehabilitation and other forms of remedy;
 - (g) To the extent possible, any relevant supporting documentation, including names and addresses of witnesses.
2. At commencement of the trial and subject to any protective measures, the Court shall ask the Registrar to provide notification of the request to the person or persons named in the request or identified in the charges and, to the extent possible, to any interested persons or any interested States. Those notified shall file with the Registry any representation made under article 75, paragraph 3.

Rule 95

Procedure on the motion of the Court

1. In cases where the Court intends to proceed on its own motion pursuant to article 75, paragraph 1, it shall ask the Registrar to provide notification of its intention to the person or persons against whom the Court

is considering making a determination, and, to the extent possible, to victims, interested persons and interested States. Those notified shall file with the Registry any representation made under article 75, paragraph 3.

2. If, as a result of notification under sub-rule 1:

(a) A victim makes a request for reparations, that request will be determined as if it had been brought under rule 94;

(b) A victim requests that the Court does not make an order for reparations, the Court shall not proceed to make an individual order in respect of that victim.

Rule 96

Publication of reparation proceedings

1. Without prejudice to any other rules on notification of proceedings, the Registrar shall, insofar as practicable, notify the victims or their legal representatives and the person or persons concerned. The Registrar shall also, having regard to any information provided by the Prosecutor, take all the necessary measures to give adequate publicity of the reparation proceedings before the Court, to the extent possible, to other victims, interested persons and interested States.

2. In taking the measures described in sub-rule 1, the Court may seek, in accordance with Part 9, the cooperation of relevant States Parties, and seek the assistance of intergovernmental organizations in order to give publicity, as widely as possible and by all possible means, to the reparation proceedings before the Court.

Rule 97

Assessment of reparations

1. Taking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both.

2. At the request of victims or their legal representatives, or at the request of the convicted person, or on its own motion, the Court may appoint appropriate experts to assist it in determining the scope, extent of any

damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of reparations. The Court shall invite, as appropriate, victims or their legal representatives, the convicted person as well as interested persons and interested States to make observations on the reports of the experts.

3. In all cases, the Court shall respect the rights of victims and the convicted person.

Rule 98

Trust Fund

1. Individual awards for reparations shall be made directly against a convicted person.

2. The Court may order that an award for reparations against a convicted person be deposited with the Trust Fund where at the time of making the order it is impossible or impracticable to make individual awards directly to each victim. The award for reparations thus deposited in the Trust Fund shall be separated from other resources of the Trust Fund and shall be forwarded to each victim as soon as possible.

3. The Court may order that an award for reparations against a convicted person be made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate.

4. Following consultations with interested States and the Trust Fund, the Court may order that an award for reparations be made through the Trust Fund to an intergovernmental, international or national organization approved by the Trust Fund.

5. Other resources of the Trust Fund may be used for the benefit of victims subject to the provisions of article 79.

Rule 99

Cooperation and protective measures for the purpose of forfeiture under articles 57, paragraph 3 (e), and 75, paragraph 4

1. The Pre-Trial Chamber, pursuant to article 57, paragraph 3 (e), or the

Trial Chamber, pursuant to article 75, paragraph 4, may, on its own motion or on the application of the Prosecutor or at the request of the victims or their legal representatives who have made a request for reparations or who have given a written undertaking to do so, determine whether measures should be requested.

2. Notice is not required unless the Court determines, in the particular circumstances of the case, that notification could not jeopardize the effectiveness of the measures requested. In the latter case, the Registrar shall provide notification of the proceedings to the person against whom a request is made and so far as is possible to any interested persons or interested States.

3. If an order is made without prior notification, the relevant Chamber shall request the Registrar, as soon as is consistent with the effectiveness of the measures requested, to notify those against whom a request is made and, to the extent possible, to any interested persons or any interested States and invite them to make observations as to whether the order should be revoked or otherwise modified.

4. The Court may make orders as to the timing and conduct of any proceedings necessary to determine these issues.

Section IV

Miscellaneous provisions

Rule 100

Place of the proceedings

1. In a particular case, where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host State.

2. An application or recommendation changing the place where the Court sits may be filed at any time after the initiation of an investigation, either by the Prosecutor, the defence or by a majority of the judges of the Court. Such an application or recommendation shall be addressed to the Presidency. It shall be made in writing and specify in which State the Court would sit. The Presidency shall satisfy itself of the views of the relevant Chamber.

3. The Presidency shall consult the State where the Court intends to sit. If that State agrees that the Court can sit in that State, then the decision to sit in a State other than the host State shall be taken by the judges, in plenary session, by a two-thirds majority.

Rule 101

Time limits

1. In making any order setting time limits regarding the conduct of any proceedings, the Court shall have regard to the need to facilitate fair and expeditious proceedings, bearing in mind in particular the rights of the defence and the victims.

2. Taking into account the rights of the accused, in particular under article 67, paragraph (1) (c), all those participating in the proceedings to whom any order is directed shall endeavour to act as expeditiously as possible, within the time limit ordered by the Court.

Rule 102

Communications other than in writing

Where a person is unable, due to a disability or illiteracy, to make a written request, application, observation or other communication to the Court, the person may make such request, application, observation or communication in audio, video or other electronic form.

Rule 103

Amicus curiae and other forms of submission

1. At any stage of the proceedings, 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 submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

3. A written observation submitted under sub-rule 1 shall be filed with the Registrar, who shall provide copies to the Prosecutor and the defence. The Chamber shall determine what time limits shall apply to the filing of such observations.

The remaining 8 Chapters of the Document
will appear in the next issue