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## **Preparatory Commission for the International Criminal Court**

Working Group on Rules of Procedure and Evidence  
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### **Proposal of Italy on evidence, investigation and the rights of the accused**

#### **A. Statements made by persons who are not present (article 69 of the Statute)**

##### **Rule 69.1**

1. In the situations considered in article 63, paragraph 2, and 68, paragraph 2, and in any other situation where, in order to avoid any form of delay in the proceedings, it is necessary to receive a statement made by a person who is not physically present before the Court,
  - (a) An audiovisual link shall be set up between the hearing chamber and the place where the person concerned is located, in such a way as to ensure the contextual, effective, reciprocal visibility of the persons present in both places, and the possibility of hearing what is being said;
  - (b) When the said measure is adopted in respect of several accused persons, who are being held in detention in different places, each one shall be put in a position to see and hear the others;
  - (c) Defence counsel or one of his assistants must be able to:
    - (i) Go to the place where the person he is assisting is located;
    - (ii) Consult with one another and with the accused, in private.
2. Even when the person who is to make a statement outside the hearing chamber is the accused, the provisions outlined in paragraph 1 shall apply.
3. The Court shall order appropriate measures to ensure that the face of the person who is to make the statement or the identification cannot be seen.

## **B. Rules concerning seizure (article 69 of the Statute)**

### **Rule 69.2**

1. If in the course of a search, an article or document is seized in respect of which a State indicates that disclosure would lead to the dissemination of information which could prejudice the national security interests of a State, the most appropriate steps shall be taken to avoid any risk of dispersion of the evidence.

### **Rule 69.3**

1. When it is not necessary to hold on to the articles seized for purposes of evidence, the articles shall be returned to whoever has a right to them, even before the judgement.

2. The Court may order that articles belonging to the accused be kept as security for payment of damages resulting from the offence.

3. Once the judgement is final, articles seized shall be returned to those who have a right to them, unless it is ordered that they be confiscated.

## **C. Procedure in relation to a unique investigative opportunity (article 56 of the Statute)**

### **Rule 56.1**

1. During the investigation, the Pre-Trial Chamber may order that steps be taken under article 56 to:

(a) Obtain testimony from a person, when there is reason to believe that it will not be possible to examine the person during the trial, for health reasons or for some other serious reasons;

(b) Obtain testimony when, on the basis of concrete and specific data, there is reason to believe that the person may be subjected to violence or threats, or may be offered or promised money or some other benefit in order to keep them from testifying or in order to give false testimony;

(c) Examine the accused;

(d) Confront individuals who have made conflicting statements, in the presence of one of the circumstances referred to in subparagraphs (a) and (b) above;

(e) Conduct an expert examination, if the evidence concerns an individual, article, thing or place, the state of which is, inevitably, subject to change;

(f) Secure an identification if, due to particular reasons of urgency, it is not possible to postpone the identification until the trial;

2. The said evidence shall be collected in accordance with rules ..., in the presence of counsels representing the victims.

3. The Prosecutor may ask the Pre-Trial Chamber to postpone the procedure provided for in article 56 if proceeding with it could prejudice one or more steps of the investigation. Postponement shall not be permitted if postponement would be prejudicial to securing the evidence.

**Rule 56.2**

1. The Prosecutor shall apply to the Pre-Trial Chamber, in accordance with article 56, for permission to intercept telephone conversations or communications and other forms of telecommunication, or to intercept the flow of communications relating to computer or teletext systems or existing between several systems.

**D. Rights of persons in the context of the investigation and the trial****D.1. Proposed amendment to the text “Rules of Procedure and Evidence — Discussion paper proposed by the Coordinator — Part 6 of the Rome Statute — The Trial” (Siracusa document)****Rule 6.9**

*Add the following paragraph:*

2. In any event, in the situation referred to in paragraph 1, the authority conducting the proceedings shall interrupt the examination and advise the person concerned of his or her rights.

**Rule 6.13**

*Insert the following paragraphs:*

(d) During the time required for the expert examination, the Court shall, at the request of defence counsel, obtain the evidence which may have a bearing on the dismissal of proceedings against the accused and, where delay may be dangerous, any other evidence requested by the parties;

(e) If, upon examination, it is determined that the accused is mentally unfit to stand trial, the Court shall order a stay of the proceedings;

(f) Six months after the stay of proceedings was ordered or, if necessary, even sooner, the Court shall order another expert examination of the accused’s mental state. It shall continue to do so every six months thereafter unless the trial has resumed;

(g) The stay of proceedings shall be lifted as soon as it is determined that the accused is mentally fit to stand trial;

(h) The Court may issue orders under article 60, paragraph 3, and may even order the accused to be transferred to a hospital while in detention.

**D.2. Rights of persons during an investigation (article 55 of the Statute)****Rule 55.1**

1. If an expert examination is ordered by the Court, the Prosecutor and the private parties shall have the right to designate their own consultants.

2. The consultants may attend the expert examination and may submit requests, make observations and express reservations.

**Rule 55.2**

1. Before an inspection or a physical search, the persons concerned shall be informed that they have the right to the presence of a person whom they trust, provided that he or she can be located immediately and is suitable.

**Rule 55.3**

1. The statement by which accused persons waive the right to be questioned in the presence of counsel must be documented by an audio or video recording.

**Rule 55.4**

1. Persons arrested under a warrant of arrest issued as described in article 58 or on the basis of a request for provisional arrest as described in article 92, paragraph 1, shall have the right to request a Court review of the grounds for the warrant and the legality of the arrest.
  2. Before considering a request for release, the competent authority in the custodial State shall immediately transmit a copy of the request to the Court so that the latter can either make the recommendations called for in article 59, paragraph 5, or exercise its right to transfer the sentenced person to a prison of another State under article 104, paragraph 1. The authority of the custodial State may not take a decision on the accused's release until ... days after transmission of the request for release.
  3. In case of violation of the conditions relating to orders for interim release, the Court may order the accused to be returned to prison or replace the condition by a stricter or additional one, bearing in mind the seriousness of, the reasons for and the circumstances of the violation.
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