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Establishment of an International
Criminal Court**

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COMMITTEE OF THE WHOLE
Working Group on Procedural Matters

REPORT OF THE WORKING GROUP ON PROCEDURAL MATTERS

I. INTRODUCTION

1. At its 2nd meeting, on 16 June 1998, the Committee of the Whole decided to refer to the Working Group on Procedural Matters, under the chairmanship of Silvia Fernandez de Gurmendi (Argentina), the following articles of parts 5, 6 and 8:

Part 5. Investigation and Prosecution

- Article 54. Investigation of alleged crimes
- [Article 55]. Information on national investigations or proceedings
- [Article 56]. Deferral of an investigation by the Prosecutor
- [Article 57]. Functions of the Pre-Trial Chamber in relation with investigation
- Article 58. Commencement of prosecution
- Article 59. Arrest
- Article 60. Pre-trial detention or release
- Article 61. Notification of the indictment

Part 6. The Trial

- Article 62. Place of trial
- Article 63. Trial in presence of the accused
- Article 64. Functions and powers of the Trial Chamber
- Article 65. Proceedings on an admission of guilt
- Article 66. Presumption of innocence

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- Article 67. Rights of the accused
- Article 68. Protection of the [accused], victims and witnesses [and their participation in the proceedings]
- Article 69. Evidence
- Article 70. Offences or acts against the integrity of the Court [Article 71]. Sensitive national security information
- Article 72. Quorum and judgement [Article 73]. Reparations to victims
- Article 74. Sentencing

Part 8. Appeal and Review

- Article 80. Appeal against judgement or sentence
- Article 81. Appeal against interlocutory decision
- Article 82. Proceedings on appeal
- Article 83. Revision of conviction or sentence [Article 84]. Compensation to a suspect/accused/convicted person

2. The Working Group on Procedural Matters held eight meetings to consider these articles, from 19 to 24 June 1998. The Working Group herewith transmits to the Committee of the Whole the following articles for its consideration: article 54, paragraph 1 (a) and (b), paragraph 3 (a) and (b), paragraph 4; article 54 bis, paragraph 2; article 54 ter, paragraph 1, paragraph 2 (a), (b) and (d), paragraph 3; article 58, paragraphs 1 to 4; article 59, paragraphs 1, 2, 4 and 5; article 60, paragraphs 1 to 5; article 61, paragraphs 2, 4 to 6 and 8.

3. The remaining articles will be transmitted at a later stage.

II. TEXT OF DRAFT ARTICLES

Part 5. Investigation and Prosecution

Article 54

Initiation of an investigation

1. The Prosecutor shall initiate an investigation upon ...,¹ unless he or she determines there is no reasonable basis to proceed under this Statute. In deciding whether to invite an investigation, the Prosecutor shall consider if:

¹The Working Group will return to this provision after the resolution of issues relating to the trigger mechanism.

(a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;

(b) The case is or would be admissible under Article 15; and

(c) pending

(d) pending²

2. pending

3. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:

(a) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;

(b) The case is inadmissible under article 15; or

(c) pending

Final part of paragraph 3: pending.

Article 54 bis

Duties and powers of the Prosecutor with
respect to investigations

Paragraph 1: pending

Paragraph 1 bis: pending

2. The Prosecutor shall:

(a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate equally incriminating and exonerating circumstances;

(b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, shall respect the interests and personal circumstances of victims and witnesses, including age, gender and health, and take into account the nature of the crime, in particular, but not limited to, where it involves sexual or gender violence or violence against children; and

(c) Fully respect the rights of persons arising under this Statute and the Rules of Procedure and Evidence.

²The Working Group will return to this provision after the resolution of issues relating to the trigger mechanism.

Article 54 ter

Rights of suspects and other persons
during an investigation

1. A person in respect of whom there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court and who is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, shall have the rights set out in paragraph 2 and shall be informed of those rights prior to being questioned.
2. The rights referred to in paragraph 1 are:
 - (a) Prior to being questioned, to be informed that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
 - (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
 - (c) pending
 - (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.Proposed new paragraphs (e), (f) and (g): pending.
3. In respect of an investigation under this Statute, a person
 - (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
 - (b) Shall not be subjected to any form of coercion, duress or threat, to torture, or to any form of cruel, inhuman or degrading treatment or punishment; and
 - (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness.

Article 57

Functions of the Pre-Trial Chamber in relation
with investigation

- Paragraph 1: pending
Paragraph 2: pending
Paragraph 3: pending

Article 58

Issuance by the Pre-Trial Chamber of an
arrest warrant or a summons to appear

1. At any time after an investigation has been initiated, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant for the arrest of a person if satisfied that:
 - (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
 - (b) It appears that the arrest of the person is necessary to ensure the person's appearance at trial, to ensure that the person does not obstruct or endanger the investigation or the court proceedings, or where applicable to prevent the person from continuing with the commission of that crime or a related crime being committed which is within the jurisdiction of the Court and arises out of the same circumstances.
2. The application shall specify:
 - (a) The name of the person or persons, and any other relevant identifying information;
 - (b) The specific crimes within the jurisdiction of the Court which the person is alleged to have committed;
 - (c) A concise statement of the facts which are alleged to constitute those crimes;
 - (d) A summary of the evidence and any other information which form reasonable grounds to believe that the person committed those crimes; and
 - (e) The reason why the Prosecutor believes the arrest of the person is necessary.
3. The Pre-Trial Chamber shall examine the application and the evidence or other information submitted by the Prosecutor and, if satisfied that there are reasonable grounds to believe that the person named committed the crimes alleged and that the arrest of the person appears necessary, shall issue a warrant for the arrest of the person. The warrant of arrest shall identify the person to be arrested and the crimes for which the person's arrest is sought, and shall contain a

concise statement of the facts which are alleged to constitute those crimes. The warrant of arrest shall remain in effect until otherwise ordered by the Court.

4. Based on the arrest warrant, the Court may request the provisional arrest, or the arrest and [surrender] [extradition] of the person under Part 9.³

5. Pending.⁴

6. Pending.

Article 59

Arrest proceedings in the custodial State

1. A State Party which has received a request for provisional arrest or for arrest and [surrender] [extradition] shall immediately take steps to arrest the suspect in accordance with its laws and the provisions of Part 9.

2. A person arrested shall be brought promptly before a competent judicial authority in the custodial State who shall determine, in accordance with the law of that State, that the warrant applies to that person, that the person has been arrested in accordance with the proper process, and that the person's rights have been respected.

3. Pending.

4. deleted

5. Once ordered to be [surrendered] [extradited] by the custodial State, the person shall be delivered to the Court as soon as possible.

Article 60

Initial proceedings before the Court

1. Upon the [surrender][extradition] of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes he or she is alleged to have committed, and of his or her rights under the Statute, including the right to apply for interim release pending trial.

³The Working Group draws the attention of the Drafting Committee to the need to consider the terms that appear in square brackets in various provisions contained in Part 5 in the light of Part 9.

⁴The Working Group deferred consideration of this paragraph pending the consideration of Part 9.

2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are present, the person shall be detained. Otherwise the Pre-Trial Chamber shall release the person, with or without conditions.

3. The Pre-Trial Chamber shall periodically review⁵ its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the accused. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period⁶ prior to trial due to unexcusable delay by the Prosecutor. If such delay has occurred, the Court shall consider releasing the person, with or without conditions.

5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been released.

Article 61

Confirmation of the charges before trial

Paragraph 1: pending

2. A reasonable time⁷ before the hearing, the person shall be provided with a copy of the charges on which the Prosecutor intends to seek trial, and be informed of the evidence on which the Prosecutor intends to rely at the hearing. The Pre-Trial Chamber may make orders regarding the disclosure of information for purposes of the hearing as may be appropriate under the Statute and the Rules.

Paragraph 3: pending

4. At the hearing, the Prosecutor shall have the burden of presenting, for each charge on which he seeks trial, sufficient evidence to establish substantial grounds to believe that the person committed

⁵The Working Group noted that this time period should be addressed in the Rules of Procedure and Evidence.

⁶The Working Group noted that this time period should be addressed in the Rules of Procedure and Evidence.

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the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.

5. At the hearing, the accused person may object to the proposed charges, challenge the evidence presented by the Prosecutor and present evidence on his or her own behalf.

6. The Pre-Trial Chamber shall determine whether, considering the presentations by both the Prosecutor and the accused, there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determinations, the Pre-Trial Chamber may:

(a) Confirm those proposed charges as to which it has determined there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;

(b) Refuse to confirm those proposed charges as to which it has determined there is insufficient evidence;

(c) Adjourn the hearing and request the Prosecutor to consider:

(i) Providing further evidence or conduct further investigation with respect to a particular charge; or

(ii) Amending a proposed charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

Paragraph 7: pending

8. A previously issued warrant shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.
