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COMMITTEE OF THE WHOLE  
Working Group on Procedural Matters

PROPOSAL SUBMITTED BY CANADA

Article 68

Protection of the victims and witnesses and their  
participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims 1/ and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

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1/ Delegations took the view that the protective measures contemplated by this article are intended to be afforded to witnesses, to victims (who are not witnesses) directly connected with an investigation or proceedings before the Court and to other persons who are at risk on account of the testimony given by such witnesses. Some delegations did not agree with this.

GE.98-71727 (E)

ROM.98-2589

2. Notwithstanding the principle of public hearings in article 67, the Chambers of the Court may, to protect victims and witnesses, conduct closed proceedings or allow the presentation of evidence by electronic or other special means. Such measures shall be implemented where requested by a child witness or victim, or a victim of sexual violence, unless otherwise ordered by the Court.

3. The Court shall permit the views and concerns of the victims to be presented and considered at stages of the proceedings determined to be appropriate by the Court where their personal interests are affected, in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance referred to in article 44, paragraph 4.

5. In respect of any evidence or information to be disclosed pursuant to this Statute, if disclosure of such evidence or information may lead to the security of any witness or his/her family being gravely endangered, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and submit a summary of such evidence or information. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. <sup>2</sup>

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<sup>2</sup>The Drafting Committee should be advised that this paragraph could either be included within article 68 or as a new paragraph 10 of article 61, although there was a preference expressed by many delegations to retain it in article 68.

<sup>3</sup> [6. In the exercise of its powers under this article, the Court shall take into consideration the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.]

7. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of sensitive information.

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<sup>3</sup>Option 1

Paragraph 6, as amended, to be included in the text.

Option 2

The text of paragraph 6, as amended, to be included as a footnote.