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**Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedures and Evidence concerning
Parts 9 and 10 of the Statute**

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**Discussion paper submitted by the Coordinator concerning
Part 10 (Enforcement)**

Rules relating to articles 105, 106, 110 and 111 of the Statute

Article 105

Enforcement of the sentence

Rule 10.15

For the conduct of any hearing provided for in **rule 8.11**, the competent Chamber of the Court may decide to order the transfer of the sentenced person to the seat of the Court, to hear him or her by video conference or to authorize the person's counsel to represent him or her at the hearing.¹

Rule 10.16

(a) For the conduct of the hearing provided for in **rule 8.12**, the competent Chamber of the Court shall issue its order sufficiently in advance to enable the transfer of the sentenced person to the seat of the Court, as appropriate.

(b) The determination of the Court shall be notified without delay to the State of enforcement.

(c) The provisions of **rule 10.9 (c)** shall be applicable.

¹ This provision should be reconsidered after the discussions concerning Part 8.

Article 106

Supervision of enforcement of sentences and conditions of imprisonment²

Rule 10.17

1. In order to supervise the enforcement of sentences of imprisonment, the Presidency:

(a) Shall, in consultation with the State of enforcement, ensure that in establishing appropriate arrangements for the exercise by any sentenced person of his or her right to communicate with the Court about the conditions of imprisonment, the provisions of article 106, paragraph 3, shall be respected;

(b) May, when necessary, request any information, report or expert opinion from the State of enforcement or from any reliable sources;

(c) May, where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying the State of enforcement, for meeting the sentenced person and hearing his or her views, without the presence of national authorities.

2. When a sentenced person is eligible for a prison programme or benefit available under the domestic law of the State of enforcement which may entail some activity outside the prison facility, the State of enforcement shall communicate that fact to the Presidency, together with any relevant information or observation, to enable the Court to exercise its supervisory function.

Article 110

Review by the Court concerning reduction of sentence

Rule 10.30

(a) For the application of article 110, paragraph 3, the bench of three judges of the Appeals Chamber shall conduct a hearing, unless it decides otherwise in a particular case, for exceptional reasons. The hearing shall be conducted with the sentenced person, who may be assisted by his or her counsel, with interpretation, as may be required. The bench of three judges of the Appeals Chamber shall invite the Prosecutor, the State of enforcement of any penalty under article 77 or any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings, to participate in the hearing or to submit written observations. Under exceptional circumstances, this hearing may be conducted by way of a videoconference or in the State of enforcement by a judge delegated by the Appeals Chamber of the Court.

(b) The bench of three judges of the Appeals Chamber shall communicate the decision and the reasons for it to all those who participated in the review proceedings as soon as possible, including, to the extent possible, the victims or their legal representatives.

² The issue of pre-trial regulations concerning the detention in custody, together with those concerning the detention of sentenced persons who remain in a prison facility made available by the host State, should be envisaged in the Host Arrangement. This Arrangement should provide for arrangements concerning the exercise of the right of a detainee to file a complaint to a judge of the Court about the detention conditions.

Rule 10.31

(a) For the application of article 110, paragraph 5, the bench of three judges of the Appeals Chamber shall review the question of reduction of sentence every three years, unless it establishes a shorter interval in its decision taken pursuant to article 110, paragraph 3. In case of a significant change in circumstances, the bench of three judges of the Appeals Chamber may permit the sentenced person to apply for a review within the three-year period or such shorter period as may have been set by the bench of three judges of the Appeals Chamber.

(b) For any review under article 110, paragraph 5, the bench of three judges of the Appeals Chamber shall invite written representations from the sentenced person or his or her counsel, the Prosecutor, the State of enforcement of any penalty under article 77 and any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings. The bench of three judges of the Appeals Chamber may also decide to hold a hearing.

Rule 10.32

In reviewing the question of reduction of sentence pursuant to article 110, paragraphs 3 and 5, the bench of three judges of the Appeals Chamber shall take into account the criteria listed in article 110, paragraph 4 (a) and (b) and the following criteria:

(a) The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime;

(b) The prospect of the resocialization and successful resettlement of the sentenced person;

(c) The prospect that, given the time that has elapsed and the normalization of the social environment in the territory in which the crime occurred, early release of the sentenced person would not give rise to significant social instability or jeopardize reconciliation;³

(d) Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release;

(e) Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age.

Article 111**Escape****Rule 10.33**

(a) The State of enforcement shall advise the Registrar in writing as soon as possible that the sentenced person has escaped. The Presidency shall then proceed in accordance with Part 9 of the Statute.

(b) However, if the State in which the sentenced person is located agrees to surrender him or her to the State of enforcement, pursuant to either international agreements or its national legislation, the State of enforcement shall so advise the

³ Some delegations questioned whether it is appropriate for the Court to be asked to assess political issues.

Registrar in writing. The person shall be surrendered to the State of enforcement as soon as possible, if necessary in consultation with the Registrar, who shall provide all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with **rule 10.10**.

The costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

(c) If the sentenced person is surrendered to the Court pursuant to Part 9 of the Statute, the Court shall transfer him or her to the State of enforcement. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of the initial State of enforcement and in accordance with article 103 and **rules 10.6-10.9**, designate another State, including the State to the territory of which the sentenced person has fled.

(d) In all cases, the entire period of detention in the territory of the State in which the sentenced person was arrested after his or her escape shall be deducted from the sentence remaining to be served.

Rule supplementing rule 9.15 contained in Part 9 (this rule could also be included in Part 9)

It is necessary to make provision for cases in which the Court must hear a sentenced person as a witness; the provisions of article 93, paragraph 7, concern the case of a person held in custody by a State for its own purposes, whose transfer is requested by the Court for the purpose of obtaining testimony or other assistance. The situation considered here is different, since the State holds in custody in its territory on behalf of the Court a person sentenced by the Court. A specific provision is therefore necessary.

Rule 9.xx/10.xx

(a) The Chamber of the Court that is considering the case may order the temporary transfer from the State of enforcement to the seat of the Court of any person sentenced by the Court whose testimony or other assistance is necessary to the Court. The provisions of article 93, paragraph 7, shall not apply.

(b) The Registrar shall ensure the proper conduct of the transfer, in liaison with the authorities of the State of enforcement. When the purposes of the transfer have been fulfilled, the Court shall return the sentenced person to the State of enforcement.
