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**Preparatory Commission for the International  
Criminal Court**

**Working Group on Rules of Procedure and Evidence  
concerning Part 2 of the Statute**

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**Proposal submitted by Colombia concerning the Rules of  
Procedure and Evidence relating to Part 4 of the Statute,  
on jurisdiction, admissibility and applicable law**

**Comments by the delegation of Colombia on document  
PCNICC/1999/WGRPE(2)/RT.1 submitted by the Coordinator  
concerning Part 2 of the Statute, on jurisdiction, admissibility  
and applicable law, as incorporated in document  
PCNICC/1999/L.5/Rev.1/Add.1**

**1. Comments on rule 2.1**

We consider that some changes should be made in subparagraph (a), because the first thing that the Registrar should do is to notify the State that the Court intends to exercise jurisdiction with respect to one of the crimes referred to in article 5, and thereafter inquire of the State whether it wishes to make the declaration provided for in article 12, paragraph 3. Accordingly, we propose that the text should read as follows:

“(a) The Registrar, at the request of the Prosecutor, **shall notify** a State which is not a party to the Statute or which has become a party to the Statute after its entry into force **that the Court intends to exercise jurisdiction with respect to one of the crimes referred to in article 5 and shall inquire of the State** whether it intends to make the declaration provided for in article 12, paragraph 3.”

With regard to subparagraph (b) we propose only a drafting change and suggest that the text should read as follows:

“(b) **It is understood** that any State that accepts the jurisdiction of the Court with respect to the provisions of article 12, paragraph 3, **does so** with respect to the crimes mentioned in article 5 **relating** to the situation, and the provisions of Part 9 of the Statute, together with rules X to XX concerning States Parties, shall apply.”

**2. Comments on rule 2.3**

With regard to this rule we propose only a drafting change and suggest that the text should read as follows:

“(b) In the event of information **obtained** under article 15, paragraph 1, ...”

[The remaining proposed changes to rule 2.3 are not applicable to the English text.]

**3. Comments on rule 2.4**

[The proposed changes to rule 2.4 are not applicable to the English text.]

**4. Comments on rule 2.6**

With regard to subparagraph (a) we propose only a drafting change and suggest that the text should read as follows:

“(a) **When a decision is adopted** under article 15, paragraph 6, the Prosecutor shall promptly ensure that notice is provided, including as appropriate the reasons for his or her decision, **taking such measures as may be necessary to prevent** 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.”

With regard to subparagraph (b) we propose only a drafting change and suggest that the text should read as follows:

“(b) The notice may also advise of the possibility of submitting further information, **consisting of** new facts and evidence, regarding the same situation.”

**5. Comments on rule 2.7**

With regard to subparagraphs (a) and (b) we propose only drafting changes and suggest that the text should read as follows:

“(a) A request by the Prosecutor for authorization of an investigation under article 15, paragraph 3, shall be in writing. **In addition**, the Prosecutor may, with leave of the Court, make oral submissions to the Pre-Trial Chamber ...”

[The remaining proposed changes to subparagraph (a) are not applicable to the English text.]

“(b) When the Prosecutor intends to **request** authorization from the Pre-Trial Chamber to initiate an investigation pursuant to article 15, paragraph 3, the Prosecutor shall **so** inform victims or their legal representatives, **if any**,

known to him or her, **and** to the Victims and Witnesses Unit. **The Prosecutor shall also give notice** by way of public announcement, **except where doing so might** pose a danger to the integrity of the investigation or to the life or well-being of victims and witnesses ...”

[The remaining proposed changes to subparagraph (b) are not applicable to the English text.]

With regard to footnote 4 of document PCNICC/1999/WGRPE(2)/RT.1, which became footnote 6 of document PCNICC/1999/L.5/Rev.1/Add.1, concerning the need for further discussion of the question of the participation of victims, we wish to state that that does not apply, since article 15, paragraph 3, allows victims to make representations at that stage of the proceedings.

## 6. Comments on rule 2.10

[The proposed changes to subparagraph (a) are not applicable to the English text.]

We propose that, following subparagraph (a), a new subparagraph should be inserted that would read as follows:

**“(b) The Prosecutor shall include, at minimum, the following information in the notification referred to in article 18, paragraph 1:**

**(i) A description of the conduct, with an indication of the circumstances of method, time and place; and**

**(ii) Indication of the identity or description of the possible authors or participants without prejudice to the option of the Prosecutor to restrict information.**

**(c) In order to exercise the option granted to it in article 18, paragraph 2, a State may request additional information from the Prosecutor ...”**

[The remaining proposed changes to rule 2.10 are not applicable to the English text.]

## 7. Comments on rule 2.13

We propose that, following subparagraph (a), a new subparagraph should be inserted that would read as follows:

**“(b) For the purpose of article 18, paragraph 2, before the Pre-Trial Chamber takes a decision on the Prosecutor's application for authorization to initiate an investigation, the Chamber shall, at the request of the State, hold a hearing in which, in addition to the parties, victims or their representatives may participate.**

**(c) The Pre-Trial Chamber shall examine the Prosecutor's application and any observations submitted by a State and by the victims and shall consider the factors in article 17 (2) and (3). The Pre-Trial Chamber shall adopt a decision on whether to authorize the Prosecutor to initiate an investigation under article 18, paragraph 2.”**

Subparagraph (c) would become subparagraph (d) with the same text.

**8. Comments on rule 2.14**

Since the proposed rule is unclear, we propose to replace it with the following:

**“(a) If, as a result of the review of the question of deferral, as referred to in article 18, paragraph 3, the Prosecutor reaches the conclusion that there is a reasonable basis to commence the investigation, he shall formulate the necessary request for authorization addressed to the Pre-Trial Chamber.**

**(b) The Prosecutor shall attach to the request for authorization the information presented by the State under article 18, paragraph 5.**

**(c) The Prosecutor shall notify the States mentioned in article 18, paragraph 1, of the decision in question.**

**(d) To this end, rules 2.10 to 2.13 shall be applied to the different proceedings.”**

**9. Comments on rule 2.17**

[The proposed changes to subparagraph (b) are not applicable to the English text.]

With regard to subparagraph (d) we propose that the text should read as follows:

**“(d) The State or States invited shall notify its intention to challenge the jurisdiction or admissibility **within 30 days from the date of receipt of the invitation.**”**

With regard to subparagraph (f) we propose that the text should read as follows:

**“(f) The Court shall issue a single decision with respect to all issues or challenges. ...**

[The remaining proposed changes to subparagraph (f) are not applicable to the English text.]

**10. Comments on rules 2.18 and 2.19**

We consider it unnecessary to have two separate rules governing two situations that are treated in the same way in article 19, paragraph 3. We therefore suggest that rules 2.18 and 2.19 be combined in a single rule, as follows:

**“(a) For the purpose of article 19, paragraph 3, the Registrar shall inform those who have referred a situation pursuant to article 13, and the victims who have already expressed their intention of participating in the proceedings or their legal representatives, of the initiation of proceedings with respect to challenges concerning jurisdiction and admissibility on the basis of article 19, paragraph 1, 2 or 3, and shall provide them, in a manner consistent with the duty of the Court regarding the confidentiality of information, in circumstances which do not endanger the integrity of the investigation or proceedings, the preservation of the evidence, or the life or well-being of victims and witnesses, with a summary of the grounds**

**on which the jurisdiction of the Court or the admissibility of the case has been challenged.**

**(b) Those who have referred a situation and the victims or their legal representatives may submit written observations, including request for a hearing, and with the leave of the Court, observations in any other form.”**

**11. Comments on rule 2.20**

We propose that the text should read as follows:

“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 **the document containing it** to the Trial Chamber as soon as the latter is constituted or designated in accordance with rule 5.27.”

**12. Comments on rule 2.23**

[The proposed changes to subparagraph (a) are not applicable to the English text.]

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