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**Preparatory Commission for the  
International Criminal Court  
Working Group on Rules of Procedure and  
Evidence concerning Part 4 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 the composition and administration of the Court**

**Comments by the delegation of Colombia on the discussion papers  
submitted by the Coordinator concerning Part 4 of the Statute, on  
the composition and administration of the Court, as incorporated  
in document PCNICC/1999/L.5/Rev.1/Add.1**

We should like to begin by making a general comment concerning Part 4:

As we said in several of our comments on the Elements of Crimes, in order to avoid confusion and misinterpretation it is extremely important that, in all the provisions where this is relevant, the language used should be that used in the Statute and not new language.

**1. Comments on rule 4.1.1**

(The proposed changes to the first paragraph of rule 4.1.1 are not applicable to the English text.)

...

**1. Serious misconduct**

We propose that subparagraph (a) of this section should read as follows:

“(a) If it occurs in the course of official duties, **is contrary to official functions** and causes or could cause serious harm to the proper administration of **justice or** the proper internal functioning of the Court, such as:”.

(The other proposed changes to section 1 are not applicable to the English text.)

## 2. Serious breach of duty

Subparagraph (b) should read:

“(b) Repeated and unwarranted delay in initiating, prosecuting or trying cases, or in the exercise of any of **his or her powers**”.

(The other proposed changes to section 2 are not applicable to the English text.)

## 2. Comments on rule 4.1.2

We propose that subparagraph (a) should read as follows:

“(a) Conduct which, if it occurs in the course of official duties, causes or could cause harm to the proper administration of justice **or to the internal functioning of the Court**, such as:”.

(The proposed changes to subparagraphs (i) and (ii) are not applicable to the English text.)

We propose that subparagraph (iii) should read as follows:

“(iii) Failing to enforce the disciplinary measures to which Registrars and other officers of the Court are subject when **he or she knows or should have known** of a serious breach of duty on their part; or”

## 3. Comments on rule 4.1.3

We propose that rule 4.1.3 should read as follows:

(The proposed changes to the first paragraph are not applicable to the English text.)

...

“All complaints shall be transmitted to the Presidency, **which shall, pursuant to the Regulations of the Court**, set aside anonymous or manifestly unfounded complaints and transmit the other complaints to the competent organ. The Presidency shall be assisted in this task by one or more judges, appointed on the basis of automatic rotation, in accordance with the Regulations of the Court.

**The Presidency may also initiate proceedings on its own motion, in which case it shall proceed as indicated in the preceding paragraph”.**

## 4. Comments on rule 4.1.4

### 1. Common provisions on rights of the defence

(The proposed changes to the first paragraph are not applicable to the English text.)

Subparagraph (b) should read as follows:

“(b) In all other cases, **to the Court, meeting in plenary session specially convened for the purpose**”.

## 2. Procedure in the event of a *request for removal from office*

### (a) Judges

Subparagraphs (i) and (ii) should read:

“(i) ... If no scheduled plenary session will be held within that time, a **special** plenary session shall be convened to allow the vote to be taken.

(ii) If the recommendation is adopted, it shall be transmitted to the President of the Bureau **of the Assembly of States Parties**”.

With regard to the options proposed for subparagraph (iii), we prefer option one, which should read as follows:

“(iii) It shall be open to the judges in an appropriate case, if they decide not to make a recommendation to the Assembly **of States Parties** on removal from office, to decide in accordance with article 47 ...”.

### (b) Registrar or Deputy Registrar

Subparagraphs (i) and (ii) should read:

“(i) ... If no scheduled plenary session will be held within that time, a **special** plenary session shall be convened to allow the vote to be taken.

(ii) The President shall inform the President of the Bureau **of the Assembly of States Parties** in writing of the result of this vote”.

With regard to the options proposed for subparagraph (iii), we again prefer option one.

### (c) Deputy Prosecutor

(The proposed changes to subparagraph (i) do not apply to the English text.)

Subparagraph (ii) should read:

“(ii) The Prosecutor shall inform the President of the Bureau **of the Assembly of States Parties** in writing of his or her decision under sub-rule X”.

With regard to the options proposed for subparagraph (iii), we again prefer option one, which should read as follows:

“(iii) **If the Prosecutor decides not to recommend to the Assembly of States Parties that a Deputy Prosecutor be removed from office**, it shall be open to him or her in an appropriate case to decide in accordance with article 47 that the Deputy Prosecutor concerned has engaged in misconduct of a less serious nature and to impose a disciplinary measure”.

## **Penalties**

### **1. Removal from office**

(The proposed changes are not applicable to the English text.)

### **2. Disciplinary measures**

We believe that **subparagraph (ii) should be deleted** since, if adopted, it would affect the functioning of the Court.

With regard to subparagraph (iii), we propose that **the sentence in square brackets should be deleted**.

### **3. Time limits**

We believe that this section should be deleted, since it would make no sense to impose a two-year time limit on removal from office, a penalty which stipulates that the person may not at any time in the future be elected or appointed to again form part of the Court.

### **5. Comments on rule 4.1.6: Disqualification of a judge, of the Prosecutor or of a Deputy Prosecutor**

We believe that subparagraph 1 (b) should read:

“(b) Involvement, in his or her private capacity, in any legal proceedings **prior to taking office or prior to his or her involvement in the case, or in legal proceedings initiated subsequently, when** the person being investigated or prosecuted was an opposing party”.

(The proposed changes to subparagraphs 1 (a) and 1 (c) are not applicable to the English text.)

### **6. Comments on rule 4.1.7**

We believe that the second sentence of rule 4.1.7 should read as follows:

“The request shall be made **to the Presidency**, and the Presidency shall deal with the request, in accordance with rule 4.1.5”.

### **7. Comments on rule 4.1.9**

We propose that paragraph 1 of rule 4.1.9 should read as follows:

“1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall communicate his or her decision to resign in writing to the Presidency. **The Presidency shall, in turn,** inform the President of the Bureau of the Assembly of States Parties in writing”.

(The proposed changes to paragraph 2 are not applicable to the English text.)

### **8. Comments on rule B1**

(The proposed changes to the first sentence of paragraph 1 of rule B1 are not applicable to the English text.)

## 9. Comments on the rules relating to the organization of the Court

With regard to the rules relating to the organization of the Office of the Registrar, we believe that the rules in section B5 should be grouped with those in section C and that the rules relating to the organization of the Office of the Prosecutor should follow the rules contained in section B2.

(With regard to section 1 of rule B5, on the functions of the Registrar, the proposed changes to the final phrase of paragraph 1 are not applicable to the English text.)

A paragraph 3 should be added to **section 1 of rule B5, on the functions of the Registrar**, to read as follows:

**“3. The Registrar shall, in addition, perform the functions assigned to him or her under the Regulations of the Court”.**

## 10. Comments on rule C, section 3, on the functions of the Victims and Witnesses Unit

We believe that paragraph 1 of rule C, section 3, should read as follows:

**“1. The Victims and Witnesses Unit shall service the Court, the defence, in all matters related to the protection afforded to all witnesses, the victims who appear before the Court and others who are at risk on account of testimony given by witnesses, in accordance with their particular needs and circumstances”.**

We believe that it is necessary to clarify what is meant by the final phrase of subparagraph 2 (ii), which reads: “and the potential consequences of their testimony”.

We believe that subparagraphs 2 (iii) and (iv) could be combined into a single subparagraph which would read as follows:

**“(iii) Advise victims and witnesses on how to obtain legal advice and assistance for the purpose of protecting their rights during all stages of the proceedings, and witnesses in particular in relation to their testimony”.**

We propose that subparagraph 2 (viii) should read as follows:

**“(viii) Recommend, in consultation with the Court or the Offices of the Prosecutor, as appropriate, the elaboration of a code of conduct, emphasizing the vital nature of security and confidentiality for all officers of the Court, including gratis personnel provided by States Parties, intergovernmental organizations and non-governmental organizations which, by virtue of article 44, paragraph 4, assist with the work of any of the organs of the Court and, where appropriate, the defence”.**

(The proposed changes to subparagraph 3 (iii) are not applicable to the English text.)

## 11. Comments on rule C, section 4, on the appointment and qualifications of counsel

We believe that paragraph 1 should begin as follows:

**“An assigned** counsel shall have ...”.

(The proposed changes to paragraph 2 are not applicable to the English text.)

**12. Comments on rule C, section 5, on the responsibilities of the Registrar related to the rights of the defence**

Paragraph 1 should read as follows:

“1. In accordance with article 43, paragraph 1, the Registrar shall organize the staff of the Registry in such a manner as to promote the rights of the defence, consistent with the **right to a fair and impartial trial set forth in article 67 of the Statute**”.

(The proposed changes to paragraph 3 are not applicable to the English text.)

**13. Comments on rule C, section 6, on the assignment of counsel to indigent persons**

We believe that the words “indigent persons” in the title should be replaced by **“an accused who lacks sufficient means to pay for it”**.

Paragraph 6 should begin:

“Where **a person alleged to lack means** is subsequently found not to **lack them, ...**”.

**14. Comments on the rules relating to texts, amendments and solemn undertaking (replacements and alternate judge)**

**Authentic texts**

We propose that this rule should read as follows:

**“The Arabic, Chinese, English, French, Russian and Spanish texts of the Rules of Procedure and Evidence are equally authentic. The Registrar of the Court shall send certified copies thereof to all States”.**

**Amendments**

We propose that paragraph 1 of this rule should read as follows:

**“1. When amendments to the Rules of Procedure and Evidence are proposed in accordance with article 51, paragraph 2, they shall be forwarded to the President of the Bureau of the Assembly of States Parties”.**