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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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**Discussion paper proposed by the Coordinator regarding
Part 4 of the Rome Statute: composition and administration
of the Court**

Rules relating to the organization of the Court

B1. Plenary sessions

Plenary sessions of the Court

1. The judges shall meet in plenary session not later than two months after their election. At that first session, after having made their solemn undertaking, in conformity with rule X, the judges shall:

- (a) Elect the President and Vice-Presidents;
- (b) Elect the Registrar;
- (c) Adopt the Regulations;
- (d) Assign judges to divisions.

2. The judges shall meet subsequently in plenary session at least once a year to exercise their functions under the Statute, these Rules and the Regulations of the Court and, if necessary, in special plenary sessions convened by the President on his or her own motion or at the request of one half of the judges.

3. The quorum for each plenary session of the Court shall be two thirds of the judges of the Court.

4. Except where another requirement is specified in the Statute or these Rules, the decisions of the plenary sessions of the Court shall be taken by the majority of

the judges present. In the event of an equality of votes, the President or the judge acting in the place of the President shall have a casting vote.

B2. Election and qualifications

1. Prosecutor

Delegation of the Prosecutor's functions

Except for the inherent powers of the Prosecutor set forth in the Statute, *inter alia*, those described in articles 15 and 53, the Prosecutor or a Deputy Prosecutor may authorize staff members of the Office of the Prosecutor, other than those referred to in article 44 (4), to represent him or her in the exercise of his or her functions.

2. Registrar

Qualification and election of the Registrar and the Deputy Registrar

1. As soon as it is elected, the Presidency shall establish a list of candidates who satisfy the criteria laid down in article 43 (3) and shall transmit such a list to the Assembly of States Parties with a request for any recommendations.
2. Upon receipt of any recommendations from the Assembly of States Parties, the President shall transmit the list together with the recommendations to the plenary session of the Court.
3. As provided for in article 43 (4), the Court meeting in plenary session shall elect the Registrar by an absolute majority, taking into account any recommendations by the Assembly of States Parties. In the event that no candidate obtains an absolute majority on the first ballot, successive ballots shall be held until one candidate obtains an absolute majority.
4. If the need for a Deputy Registrar arises, the Registrar may make a recommendation to the President of the Court to that effect. The President shall convene a plenary session of the Court to decide on the matter. If the Court meeting in the plenary session decides by an absolute majority that a Deputy Registrar is to be elected, the Registrar shall submit a list of candidates to the Court.
5. The Deputy Registrar shall be elected by the Court meeting in plenary session in the same manner as the Registrar.

B3. The Office of the Prosecutor

Operation of the Office of the Prosecutor

1. In discharging his or her responsibility for the management and administration of the Office of the Prosecutor, the Prosecutor shall put in place regulations to govern the operation of the Office.
2. In preparing or amending these regulations, the Prosecutor shall consult with the Registrar on any matters that may affect the operation of the Registry.

Retention of information and evidence

The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence obtained in the course of the investigations by his or her Office.

B4. The Office of the Registrar**1. Functions of the Registrar^{1,2}**

1. Without prejudice to the authority of the Office of the Prosecutor under the Statute to receive, obtain and provide information and to establish channels of communication for this purpose, the Registrar shall serve as the Court's channel of communication.

2. The Registrar shall also be responsible for the internal security of the Court in consultation with the Presidency and the Prosecutor, as well as the host State.

2. Operation of the Registry

1. In discharging his or her responsibility for the organization and the management of the Registry, the Registrar shall put in place regulations to govern the operation of the Registry. In preparing or amending these regulations, the Registrar shall consult with the Prosecutor on any matters that may affect the operation of the Office of the Prosecutor.

2. Such regulations shall be approved by the Presidency.

3. The regulations shall provide for defence counsel to have access to the appropriate and reasonable administrative assistance of the Registry.

3. Records

1. The Registrar shall keep a database containing all the particulars of each case brought before the Court, subject to any order of a judge or Chamber providing for the non-disclosure of any document or information, and to the protection of sensitive personal data. Information on the database shall be available to the public in the working languages of the Court.

2. The Registrar shall also maintain the other records of the Court.

¹ One delegation was of the view that rules under Part 4 relating to information and assistance to be provided to victims in order to ensure their participation at all stages of the proceedings should be placed in this rule. This would apply in particular to rules 4.2.a (i) and 4.2.c (i) and (ii). Those functions apply to all victims and not only to those referred to in article 43, paragraph 6. Moreover, the rule under 4.2.c should be supplemented with the idea that the Registrar shall assist victims to organize their legal representation and provide legal representatives of the victims with adequate support, including such facilities as may be necessary.

² It may be necessary to take into consideration discussions under Part 2 regarding victims who intend to participate in specific investigations.

4. Rules relating to the Victims and Witnesses Unit

4.1 Functions of the Unit

1. The Victims and Witnesses Unit shall exercise its functions in accordance with article 43, paragraph 6.

2. The Victims and Witnesses Unit shall, *inter alia*, perform the following functions, in accordance with the Statute and these Rules, and in consultation with the Chamber, the Prosecutor and the defence, as appropriate:

(a) With respect to all witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

(i) To inform them of their rights under the Statute and these Rules, and of the existence, functions and availability of the Unit;

(ii) To provide them with adequate protective and security measures and to formulate long- and short-term plans for their protection;

(iii) To recommend to the organs of the Court the adoption of protection measures and also advise relevant States of such measures;

(iv) To ensure that they are aware, in a timely manner, of the relevant decisions of the Court that may have an impact on their interests, subject to provisions on confidentiality;

(v) To assist them in obtaining medical, psychological and other appropriate assistance;

(vi) To make available to the Court and the parties training in issues of trauma, sexual violence, security and confidentiality;

(vii) To recommend, in consultation with the Office of the Prosecutor, the elaboration of a code of conduct, emphasizing the vital nature of security and confidentiality for investigators of the Court and of the defence and all intergovernmental or non-governmental organizations acting at the request of the Court, as appropriate;

(viii) To cooperate with States, where necessary, in providing any of the measures stipulated in this Rule;

(b) With respect to witnesses:

(i) To advise them where to obtain legal advice for the purpose of protecting their rights, in particular in relation to their testimony;

(ii) To assist them when they are called to testify before the Court;

(iii) To take gender-sensitive measures to facilitate the testimony at all stages of the Court proceedings of victims of sexual violence;

(c) With respect to victims:

(i) To assist them in participating in the different phases of the proceedings, in accordance with rule 6.30;

(ii) To assist them in obtaining legal advice and assistance for the purpose of protecting their rights during all stages of the proceedings, in accordance with rule 6.30;

(iii) To take gender-sensitive measures to facilitate the participation at all stages of the Court proceedings of victims of sexual violence.

3. In performing its functions, the Unit shall give due regard to the particular needs of children, elderly persons and persons with disabilities. In order to facilitate the participation and protection of children as witnesses, the Unit may assign, as appropriate, and with the agreement of the parents or of the legal guardian, a child-support person to assist a child through all stages of the proceedings.

4.2 Responsibilities of the Unit in the performance of its functions

For the efficient and effective performance of its work, the Unit shall:

(a) Ensure that the staff in the Victims and Witnesses Unit maintain confidentiality at all times;

(b) Recognizing the specific interests of the Office of the Prosecutor, the defence and the witnesses, respect the interests of the witness, including, where necessary, by maintaining an appropriate separation of the services between the Prosecution and defence witnesses, and act impartially when cooperating with all parties and in accordance with the rulings and decisions of the Chambers;

(c) Have administrative and technical assistance available for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, during all stages of the proceedings and thereafter, as is reasonably appropriate;

(d) Ensure training of its staff with respect to victims' and witnesses' security, integrity and dignity, including matters related to gender and cultural sensitivity;

(e) Where appropriate, cooperate with intergovernmental and non-governmental organizations.

4.3 Expertise in the Unit

In addition to the staff mentioned in article 43, paragraph 6, and subject to article 44, the Victims and Witnesses Unit may include, as appropriate, persons with expertise, *inter alia*, in the following areas:

- (1) Witness protection and security;
- (2) Legal and administrative matters, including areas of humanitarian and criminal law;
- (3) Logistics administration;
- (4) Psychological expertise in criminal proceedings;
- (5) Gender and cultural diversity;
- (6) Children, in particular traumatized children;
- (7) Elderly persons, in particular in connection with war and exile trauma;

- (8) Persons with disabilities;
- (9) Social work and counselling;
- (10) Health care;
- (11) Interpretation and translation.

5. Rules relating to counsel of the defence

5.1 Responsibilities of the Registrar related to the rights of the defence

1. In accordance with article 43, paragraph 1, the Registrar shall organize the staff of the Registry in a manner that promotes the rights of the defence, consistent with the principle of fair trial as defined in the Statute. For that purpose, the Registrar shall, *inter alia*:

(a) Facilitate the protection of confidentiality, as defined in article 67 (1) (b) of the Statute;

(b) Provide support, assistance, and information to all defence counsel appearing before the Court and, as appropriate, support for professional investigators necessary for the efficient and effective conduct of the defence;

(c) Assist arrested persons, persons to whom article 55 (2) of the statute applies and the accused in obtaining legal advice and the assistance of legal counsel;

(d) Advise the Prosecutor and the Chambers of the Court, as needed, on relevant defence-related issues;

(e) Provide the defence with such facilities as may be necessary for the direct performance of the duty of the defence;

(f) Facilitate the dissemination of information and case law of the Court to defence counsel and, as appropriate, cooperate with national defence and bar associations or any independent representative body of counsel and legal associations referred to in paragraph 3 to promote the specialization and training of lawyers in the law of the Statute and the Rules.

2. The Registrar shall carry out the functions stipulated in paragraph 1, including the financial administration of the registry, in such a manner as to ensure the professional independence of defence counsel.

3. For such purposes as the management of legal assistance in accordance with rule 5.2 and the development of a code of professional conduct in accordance with rule YY, the Registrar shall consult, as appropriate, with any independent representative body of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties.

5.2 Assignment of legal assistance

1. Subject to article 55, paragraph 2 (c) and article 67, paragraph 1 (d), criteria and procedures for assignment of legal assistance shall be established in Regulations of the Court, based on a proposal by the Registrar following consultations with any independent representative body of counsel or legal associations, as referred to in rule 5.1, paragraph 3.

2. The Registrar shall create and maintain a list of counsel who meet the criteria set forth in rule 5.3 and the Regulations of the Court. The person shall freely choose his or her counsel from this list or other counsel who meets the required criteria and is willing to be included in the list.
3. A person may seek from the Presidency a review of a decision to refuse a request for assignment of counsel. The decision of the Presidency shall be final. If a request is refused, a further request may be made by a person to the Registrar, upon showing a change in circumstances.
4. A person electing to represent himself or herself shall so notify the Registrar in writing at the first opportunity.
5. Where a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at that time may make an order of contribution to recover the cost of providing counsel.

5.3 Appointment and qualifications of counsel of the defence

1. A counsel shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. A counsel can be assisted by other persons, including professors of law, with relevant expertise.
2. Counsel engaged by a person exercising his or her right under the Statute to retain legal counsel of his or her choosing shall file a power of attorney with the Registrar at the earliest opportunity.
3. In the performance of their duties, counsels shall be subject to the Statute, these rules, the Regulations of the Court, the code of professional conduct for counsel promulgated in accordance with rule YY and any other document adopted by the Court that may be relevant to the performance of their duties.

YY Code of professional conduct

1. The Presidency, on the basis of a proposal made by the Registrar, shall draw up a draft code of professional conduct for counsel, after having consulted the Prosecutor. In the preparation of the proposal, the Registrar shall conduct the consultations in accordance with rule 5.1, paragraph 3.
 2. The draft code of professional conduct for counsel shall then be transmitted to the Assembly of States Parties, for the purpose of adoption, according to article 112, paragraph 7, of the Statute.
 3. The code shall contain procedures for its amendment.
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