



SPECIAL TRIBUNAL FOR LEBANON

RULES OF PROCEDURE AND EVIDENCE

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PART 1
GENERAL PROVISIONS

Section 1: Basic Principles

Rule 1
Entry into Force

These Rules of Procedure and Evidence, adopted pursuant to Article 28 of the Statute of the Special Tribunal for Lebanon, shall enter into force on 20 March 2009.

Rule 2
Definitions

(A) In the Rules, unless the context otherwise requires, the following terms shall mean:

Accused: A person against whom one or more counts in an indictment have been confirmed in accordance with Article 18(1) of the Statute and Rule 68(I) (iii);

Agreement: The Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, annexed to Security Council resolution 1757(2007);

Arrest: The act of taking a suspect, accused or witness into custody pursuant to a warrant of arrest;

Code of Professional Conduct: The Code of Professional Conduct for Counsel Appearing before the Tribunal adopted pursuant to Rule 60;

Defence:	The accused/suspect and/or Defence counsel;
Defence counsel:	A person representing or eligible to represent a suspect or accused pursuant to Rules 58 and 59 of the Rules;
Defence Office:	The Office provided for in Article 13 of the Statute;
EUROPOL:	European Police Office;
Hariri Attack:	The attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and 22 others;
Head of Defence Office:	The Head of Defence Office appointed pursuant to Article 13(1) of the Statute;
Host State Agreement:	The Host State Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the Tribunal signed on 21 December 2007;
INTERPOL:	International Criminal Police Organisation;
Investigation:	All activities undertaken by the Prosecutor under the Statute and the Rules for the collection of information and evidence, whether before or after an indictment is confirmed;
Judgement:	A decision on guilt or innocence rendered by the Trial Chamber pursuant to Rule 168;
Lebanese Code of Criminal Procedure:	The Code of Criminal Procedure adopted by the Parliament of Lebanon as amended;

Legal representative of a victim participating in the proceedings:	Counsel representing a victim participating in proceedings before the Tribunal;
Management Committee:	The Committee referred to in Article 6 of the Agreement composed of representatives of certain States that contribute to the financing of the Tribunal;
Outreach Programme Unit:	The unit established by the Registrar within the Registry to disseminate information about the role and functions of the Tribunal, particularly in Lebanon;
Party:	The Prosecutor or the Defence;
Practice Directions:	Directions issued by the President pursuant to Rule 32 (E);
Prosecutor:	The Prosecutor appointed pursuant to Article 11(3) of the Statute;
Registrar:	The Registrar appointed pursuant to Article 12(3) of the Statute;
Regulations:	The provisions adopted by the Prosecutor, the Head of Defence Office or the Registrar for the purpose of directing the functions of their respective Offices;
Rules:	The Rules of Procedure and Evidence in force;
Rules of Detention:	The Rules Governing the Detention of Persons Awaiting Trial

or Appeal before the Special Tribunal for Lebanon or Otherwise Detained on the Authority of the Special Tribunal for Lebanon adopted by the Plenary and promulgated by the Registrar of the Tribunal;

Secretary-General:	The Secretary-General of the United Nations;
Senior Management Board:	A body composed of the President, the Prosecutor, the Head of Defence Office and the Registrar, which ensures the coordination of the activities of the organs of the Tribunal;
Statute:	The Statute of the Tribunal attached to the Agreement between the United Nations and the Lebanese Republic annexed to Security Council resolution 1757(2007), adopted on 30 May 2007;
Suspect:	A person who the Prosecutor has reasonable grounds to believe has committed a crime;
Third State:	A State other than Lebanon;
Tribunal:	The Special Tribunal for Lebanon;
UNIIC:	United Nations International Independent Investigation Commission;
Victim:	A natural person who has suffered physical, material, or mental harm as a direct result of an attack within the Tribunal's jurisdiction;

Victim participating in the proceedings: Victim of an attack within the Tribunal's jurisdiction who has been granted leave by the Pre-Trial Judge to present his views and concerns at one or more stages of the proceedings after an indictment has been confirmed.

(amended 30 October 2009, 10 November 2010 and 8 February 2012)

(B) In the Rules, the masculine shall include the feminine and the singular the plural, and vice-versa.

Rule 3

Interpretation of the Rules

- (A) The Rules shall be interpreted in a manner consonant with the spirit of the Statute and, in order of precedence, (i) the principles of interpretation laid down in customary international law as codified in Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties (1969), (ii) international standards on human rights (iii) the general principles of international criminal law and procedure, and, as appropriate, (iv) the Lebanese Code of Criminal Procedure.
- (B) Any ambiguity that has not been resolved in the manner provided for in paragraph (A) shall be resolved by the adoption of such interpretation as is considered to be the most favourable to any relevant suspect or accused in the circumstances then under consideration.

Rule 4

Non-compliance with the Rules

(amended 20 February 2013)

Where an objection on the ground of non-compliance with the Rules by a Party, the Defence Office or a victim participating in the proceedings is raised by a Party or by a victim participating in the proceedings within two weeks of the date that the non-compliance became known to the Party or the victim participating in the proceedings, or *proprio motu*, having heard the Parties, a Judge or Chamber, as appropriate, may grant relief if finding that there was non-compliance, that it was serious and that it caused material prejudice to the Party or to the victim participating in the proceedings.

Rule 5

Amendment of the Rules

(amended 10 November 2010)

- (A) Proposals for amendment of the Rules may be made by a Judge, the Prosecutor, the Head of Defence Office or the Registrar.
- (B) A Rules committee, in charge of examining all proposals for amendment of the Rules forwarded to it by a Judge, the Prosecutor, the Head of the Defence Office or the Registrar, is established.
- (C) Preceding the entry into office of at least eight Judges, this committee, presided by the Vice-President, is composed of the President or a Judge designated by him and the Pre-Trial Judge, as well as the Prosecutor, The Head of the Defense Office and the Registrar or their representatives as non-voting representatives. After the entry into office of eight Judges, this committee, presided by the Vice-President, is composed of two other judges designated by the President, as well as the Prosecutor, the Head of the Defense Office and the Registrar or their representatives as non-voting representatives.

- (D) The Prosecutor, the Head of Defence Office and the Registrar shall in any case be allowed to provide their views on any proposed amendment to the Rules.
- (E) The Rules Committee, or any other *ad hoc* Committee established prior to that, shall report to the Judges meeting in plenary meetings and propose any changes in the Rules that they consider necessary or desirable.
- (F) A proposal for amendment shall be adopted if agreed to by not less than seven Judges at a plenary meeting of the Tribunal convened with notice of the proposal addressed to all Judges.
- (G) An amendment to the Rules may be otherwise adopted, provided it is unanimously approved by the Judges.
- (H) An amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment, but shall not operate to prejudice the rights of a suspect, an accused or of a convicted or acquitted person in any pending case.
- (I) A summary of the accepted rule amendments together with the original proposal, the changes adopted by the Judges and the reasons for the changes shall be made public by the President after the entry into force of the amendments. The President may decide, in consultation with the Judges, to make public a summary of rejected proposed amendments. (added 10 November 2010)

Rule 6
Authentic Texts

The Arabic, English and French texts of the Rules shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute and of the Rules shall prevail.

Section 2: Time-Limits

Rule 7

General Provisions

(amended 20 February 2013)

- (A) Time periods under these Rules are calculated by calendar days.
- (B) Time runs from the first working day after the filing of a document, decision, order or Judgement in English or French. Where the time for carrying out any act prescribed by these Rules or directed by a Judge or Chamber runs from the occurrence of an event, time runs from the first working day after that event.
- (C) Time runs from the first working day after an oral decision, order or Judgement is rendered. If the Judge or Chamber states that a written decision will follow, time runs from the first working day after it is delivered.
- (D) The last day of a time period prescribed under these Rules or ordered by a Judge or Chamber, and falling on a weekend or a Tribunal holiday, is the first working day afterwards.

Rule 8

Time for Filing Responses to Motions

(amended 20 February 2013 and 9 April 2013)

- (A) Subject to any Practice Direction or an order by a Judge or Chamber either generally or in any particular case, a response, if any, to a motion filed by a Party shall be filed within fourteen days of the filing of the motion.

- (B) Subject to paragraph (A), any request for leave to file a reply to the response shall be filed within two days of the filing of the response. The reply shall be filed within seven days of obtaining leave of the Judge or Chamber.

Rule 9

Variation of Time-limits

- (A) Except as provided in paragraph (B), a Judge or Chamber may, *proprio motu* or on good cause being shown by motion,

- (i) enlarge or reduce any time prescribed by the Rules; or
- (ii) recognise as validly done any act carried out after the expiration of a time so prescribed on such terms, if any, as is thought just, whether or not that time has already expired.

(amended 30 October 2009 and 20 February 2013)

- (B) This Rule shall not apply to Rules 63 and 151.

Section 3: Languages

Rule 10

Official and Working Languages

(amended 20 February 2013)

- (A) The official languages of the Tribunal shall be Arabic, English and French. Unless otherwise ordered by a Judge or Chamber, any participant in oral proceedings before the Tribunal may use any one of the official languages. (amended 10 November 2010)

- (B) As early in the proceedings as possible, a Judge or Chamber, after consulting with the Parties and the legal representatives of victims participating in the proceedings, shall decide what language(s) shall be used as working language(s) in the case.
- (C) An accused shall have the right to use his own language during proceedings before a Judge or Chamber.
- (D) Other persons appearing before a Judge or Chamber, other than as counsel, who do not have sufficient knowledge of the official languages, may use their own language, subject to the authorisation of the Judge or Chamber.
- (E) Decisions on any written or oral submission shall be rendered in English or French. Judgements, sentences, decisions on jurisdiction and other decisions which a Judge or Chamber decides address fundamental issues shall be translated into Arabic.

Section 4: Jurisdiction

Rule 11

Exercise of Jurisdiction over Attacks that May Fall Within the Jurisdiction of the Tribunal

- (A) The Prosecutor may, at any time during his investigation and before presenting an indictment for confirmation under Rule 68, file a motion (“Connected Case Submission”) for a ruling by the Pre-Trial Judge that an attack that occurred in Lebanon between 1 October 2004 and 12 December 2005 is “connected” to the Hariri Attack in the manner required by Article 1 of the Statute.
- (B) The Pre-Trial Judge shall rule on whether there is prima facie evidence that a case is within the jurisdiction of the Tribunal.

- (C) Should the investigation under paragraph (A) lead to an indictment, the Defence may challenge the ruling by the Pre-Trial Judge as a preliminary motion on jurisdiction under Rule 90.
- (D) The Prosecutor may appeal the ruling by the Pre-Trial Judge within seven days, in which case the Appeals Chamber may request the Head of Defence Office to nominate independent counsel for appointment as *amicus curiae* to act in opposition to the Prosecutor's appeal.
- (E) The decision of the Appeals Chamber under paragraph (D) shall be subject to review on application of the Defence not later than twenty-one days after disclosure by the Prosecutor to the Defence of all material and statements referred to in Rule 110(A) (i).
- (F) The Appeals Chamber, upon such review, may either determine the application, or refer the matter to the Pre-Trial Judge for reconsideration. In the latter event, the Prosecutor and the Defence may each appeal the decision of the Pre-Trial Judge within seven days.

Rule 12

Exercise of Jurisdiction over Attacks that Occurred after 12 December 2005

- (A) Where the Prosecutor considers that an attack that occurred after 12 December 2005 is connected, in accordance with the principles of criminal justice, to the attack of 14 February 2005 and is of a similar nature and gravity, and in addition considers that it is appropriate for the Tribunal to exercise jurisdiction over persons allegedly responsible for that attack, he shall inform the President accordingly.
- (B) At the request of the President, the Registrar shall transmit the reasoned conclusions of the Prosecutor to the Secretary-General so that the Security Council and the Government of Lebanon may determine whether or not to grant the Tribunal jurisdiction over the alleged crime.

PART 2
COOPERATION WITH THE TRIBUNAL

Rule 13

Arrangements or Agreements between National or International Entities and the Tribunal

The Tribunal, through the President, may invite a Third State or an entity to provide assistance on the basis of an arrangement or an agreement with such State or entity or on any other appropriate basis. (renumbered 30 October 2009)

(B) [Deleted] (repealed 30 October 2009)

Rule 14

Cooperation between National or International Entities and the Prosecutor

The Prosecutor may seek cooperation in a manner consistent with the Statute from any State, entity or person to assist with investigations and prosecutions, in matters such as the conduct of on-site investigations, the provision of documents and information, the summoning and questioning of suspects and witnesses, and arrests and transfers of suspects or accused.

Rule 15

Cooperation between National or International Entities and the Defence

The Head of Defence Office may seek cooperation in a manner consistent with the Statute from any State, entity or person to assist with the defence of suspects and accused before the Tribunal. In a particular case, such cooperation shall be upon request of the Defence.

Rule 16

Request to Lebanon for Information and Cooperation

- (A) Where it appears to the Prosecutor that an attack that may fall within the jurisdiction of the Tribunal under Article 1 of the Statute is the subject of investigations in, or criminal proceedings in the courts of, Lebanon, the Prosecutor may request the relevant Lebanese authorities to forward all relevant information.
- (B) Where it appears to the Prosecutor that, for the purposes of investigations concerning the Hariri Attack or any other attack that may fall within the Tribunal's jurisdiction under Article 1 of the Statute, it is necessary to question witnesses, search premises, seize documents and other potential evidence, or undertake any other investigative measure in Lebanon, the Prosecutor may request the Lebanese authorities to conduct such measures or request permission to have his staff conduct such measures themselves, or a combination thereof. (amended 5 June 2009 and 30 October 2009)
- (C) Requests can be made *mutatis mutandis* by the Head of Defence Office, at the request of the Defence, unless the Head of Defence Office considers the request by the Defence to be frivolous or vexatious. (added 5 June 2009)

Rule 17

Request to Lebanon for Deferral

- (A) Pursuant to Article 4(2) of the Statute, no later than two months after the assumption of office by the Prosecutor, the Pre-Trial Judge, upon request of the Prosecutor, shall request the Lebanese judicial authorities seized with the investigation of the Hariri Attack within 14 days to:
 - (i) defer to the Tribunal's competence;

- (ii) hand over to the Prosecutor the results of the investigations and a copy of the relevant court records and other probative material; and
 - (iii) submit to the Pre-Trial Judge a list of all persons detained in connection with the investigation.
- (B) Once he receives the list referred to in (A) (iii), the Pre-Trial Judge shall forward it to the Prosecutor. As soon as practicable, the Prosecutor shall file reasoned submissions together with any supporting material stating, for each person on the list, whether he requests the continuation of his detention or he does not oppose release by the Pre-Trial Judge and, in the latter event, whether the release should be subject to conditions in accordance with Rule 102.
 - (i) For each person on the list whose release the Prosecutor does not oppose, the Pre-Trial Judge shall decide within a reasonable time whether or not to direct the Lebanese judicial authorities to release the person with immediate effect, subject to the necessary measures to ensure the safety of the person in question, if requested. His decision shall be rendered in public in the presence of the Head of Defence Office and the Prosecutor. The Prosecutor's submission under paragraph (B) shall be made public at that time.
 - (ii) For each person on the list whose release the Prosecutor opposes, the Pre-Trial Judge shall hold, as soon as practicable, a public hearing, which may include a videoconference for the person and his counsel, if appropriate, to determine whether the person shall be transferred to the custody of the Tribunal under Article 4(2) of the Statute and may, after hearing the person or his counsel, issue any appropriate order or warrant of arrest in this respect.
- (C) If the Pre-Trial Judge makes a request under paragraph (A) or an order under paragraph (B) and the relevant authorities fail, within 14 days of notification of the request or order, to comply with it, the Pre-Trial Judge shall make a judicial finding to that effect.

- (D) Where the Pre-Trial Judge makes a judicial finding under paragraph (C), he must report it to the President. The President shall consult with the relevant Lebanese authorities with a view to obtaining the required cooperation and report back to the Pre-Trial Judge on the results of these consultations. If, in the view of the Pre-Trial Judge, after consultation with the President, a satisfactory response has still not been provided within a reasonable timeframe, the President shall make a judicial finding to that effect and refer the matter to the Security Council for consideration and further action, as the Council deems appropriate.
- (E) In addition to the procedure for deferral provided for in Article 4(2) of the Statute, requests to Lebanon for deferral may be made by the Pre-Trial Judge upon request of the Prosecutor. In particular, where the Prosecutor considers in relation to any investigation in Lebanon or criminal proceedings instituted in the courts of Lebanon that the relevant acts or conduct are within the jurisdiction of the Tribunal, he may make a motion to the Pre-Trial Judge to request Lebanon to defer to the competence of the Tribunal.
- (F) A request for deferral under paragraph (E) shall provide reasons and include a request that the results of the investigation and a copy of the court's records and the judgement, if already delivered, be forwarded to the Tribunal.
- (G) At the request of the Prosecutor, the Pre-Trial Judge may decide that persons detained by the national courts of Lebanon shall be transferred to the custody of the Tribunal.
- (H) Decisions under paragraph (B) may be appealed pursuant to the procedure in Rule 102 (C). (amended 20 February 2013)

Rule 18

Request to Third States for Information and Cooperation

- (A) Where it appears to the Prosecutor that an attack that may fall within the jurisdiction of the Tribunal under Article 1 of the Statute is or has been the subject of investigation in a Third State or criminal proceedings instituted in the courts of a Third State, the Prosecutor may request the State to forward all relevant information in that respect.
- (B) Where it appears to the Prosecutor that, for the purposes of investigation or prosecution concerning an attack that may fall within the jurisdiction of the Tribunal, it is necessary for the Prosecutor to question witnesses, search premises, seize documents or other potential evidence, or undertake any other investigative measure in a Third State, the Prosecutor may request the assistance of the relevant authorities of the State to conduct such activities or request permission to have his staff conduct such measures themselves, or a combination thereof. (amended 5 June 2009 and 30 October 2009)
- (C) Requests can be made *mutatis mutandis* by the Head of Defence Office, at the request of the Defence, unless the Head of Defence Office considers the request by the Defence to be frivolous or vexatious. (added 5 June 2009)

Rule 19

Request to Third States for Deferral

Where the national authorities of a Third State are conducting investigations or criminal proceedings in relation to an attack within the Tribunal's jurisdiction, the Prosecutor may request those authorities to defer to the competence of the Tribunal. A request for deferral by the Prosecutor shall provide reasons and include a request that the results of the investigation or a copy of the relevant court records and the judgement, if already delivered, be forwarded to the Tribunal.

Rule 20

Non-compliance by Lebanon with a Tribunal Request or Order

- (A) Whenever the Lebanese authorities receive a request for information, cooperation or deferral under Rules 16 and 17, they shall provide such assistance without delay and in accordance with the timeframe specified in the request. Where, within thirty days of notification of the request to the Lebanese authorities, or such longer delay as is provided in the request, such authorities fail to comply with the request, the Parties may seek an order from the Pre-Trial Judge or a Chamber, as appropriate, to the Lebanese authorities to compel the requested assistance. (amended 5 June 2009)
- (B) Where the Lebanese authorities receive a summons to appear, a warrant of arrest, a transfer order, an order for the production of documents or information or any order for cooperation issued by the Pre-Trial Judge or a Chamber, they shall provide the requested assistance without delay.
- (C) Where the Lebanese authorities fail, within thirty days of notification of an order under paragraphs (A) and (B), to comply with it, the Pre-Trial Judge or a Chamber, as appropriate, may make a finding to that effect. The President shall engage in consultations with the relevant Lebanese authorities with a view to obtaining the required cooperation. If, in the view of the Pre-Trial Judge or a Chamber, after consultation with the President, a satisfactory response has still not been provided within a reasonable timeframe, the President shall make a judicial finding to that effect and refer the matter to the Security Council for consideration and further action, as the Council deems appropriate.
- (D) Unless otherwise indicated, this Rule shall apply to any Tribunal request or order directed to Lebanon pursuant to the Rules. (amended 5 June 2009)

Rule 21

Non-compliance by Third States with a Tribunal Request or Order

- (A) A State that has an obligation to cooperate with the Tribunal shall provide such cooperation as provided for in the relevant agreement or instrument. Where the competent authorities of such State fail to comply with a request or order from an organ of the Tribunal, or an order of a Judge or Chamber, the mechanism for settlement of disputes provided for in the relevant agreement or instrument shall apply. (amended 5 June 2009 and 20 February 2013)
- (B) Where a Third State that does not have an obligation to cooperate with the Tribunal fails to comply with a request from an organ of the Tribunal, the President may engage in consultations with the competent authorities of that State with a view to obtaining the requested cooperation. (amended 5 June 2009)
- (C) [Deleted] (repealed 5 June 2009)
- (D) [Deleted] (repealed 5 June 2009)
- (E) [Deleted] (repealed 5 June 2009)

Rule 22

Consultation with the Head of Defence Office

When appropriate, the President, the Pre-Trial Judge or a Chamber may consult the Head of Defence Office on matters concerning cooperation with Lebanon or Third States.

Rule 23

Non Bis in Idem

- (A) In addition to the rules laid down in Article 5 of the Statute, no person shall be tried before the Tribunal with respect to conduct that formed the basis of charges of which the person has been convicted or acquitted by the Tribunal.

- (B) When the President receives reliable information to show that criminal proceedings have been instituted against a person before a court of any State for a crime for which that person has already been tried by the Tribunal, at the President's request, the Trial Chamber shall issue a reasoned request that the court permanently discontinue its proceedings.

PART 3
ORGANISATION OF THE TRIBUNAL

Section 1: Judges

Rule 24
Solemn Declaration

- (A) Before taking up his duties, each Judge shall make the following solemn declaration:

"I solemnly declare that I will perform my duties and exercise my powers as a Judge of the Special Tribunal for Lebanon honourably, faithfully, impartially and conscientiously".

- (B) The declaration shall be signed by the Judge and witnessed by the Secretary-General or one of his representatives. The declaration shall be kept in the records of the Tribunal.
- (C) A Judge whose service continues without interruption after expiry of a previous period of service shall not make a new declaration.

Rule 25
Excusal and Disqualification of Judges

(amended 10 November 2010; amended and renumbered 12 February 2015)

- (A) A Judge may not sit in any case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect or appear to affect the Judge's impartiality.
- (B) A Judge seeking to be excused from exercising functions upon the grounds specified in paragraph (A) or for any other serious reason shall make a request in writing to the President. The President shall designate a panel of three Judges in accordance with the

relevant Practice Direction to determine whether the Judge should be excused. If the Panel decides that the Judge should be excused, the President shall assign a replacement Judge.

- (C) A Party may apply to the President for the disqualification and withdrawal of a Judge upon the grounds specified in paragraph (A). The President shall designate a panel of three Judges in accordance with the relevant Practice Direction to determine whether the Judge should be disqualified. The panel shall take into account the Judge's views. If the Panel decides to grant the application, the President shall assign a replacement Judge.
- (D) Pending a decision under paragraphs (B) and (C), the Judge shall not participate in the proceedings unless the panel decides otherwise.
- (E) The decision of the panel under paragraphs (B) and (C) may not be appealed.
- (F) If the President is the Judge the subject of the application, the most senior uninvolved Judge, according to Rule 30 (B), shall assume the President's responsibility under this Rule.

Rule 26

Absence of a Judge

- (A) If:
 - (i) a Judge is, for illness or urgent personal reasons, or for reasons of authorised Tribunal business, unable to continue sitting in an ongoing case for a period which is likely to be of short duration, and
 - (ii) the remaining Judges of the Chamber are satisfied that it is in the interests of justice to do so,

those remaining Judges of the Chamber may order that the hearing of the case continue in the absence of that Judge for a period of not more than ten hearing days.

(amended 30 October 2009)

- (B) If:
- (i) a Judge is, for illness or urgent personal reasons, or for reasons of authorised Tribunal business, unable to continue sitting in an ongoing case for a period which is likely to be of short duration, and
 - (ii) the remaining Judges of the Chamber are not satisfied that it is in the interests of justice to order that the hearing of the case continue in the absence of that Judge, then
 - (a) those remaining Judges of the Chamber may nevertheless, after hearing the Parties, conduct those matters which they are satisfied must in the interests of justice be disposed of, notwithstanding the absence of that Judge, or
 - (b) the remaining Judges of the Chamber may adjourn the proceedings.
- (C) If a Judge is unable to continue sitting for a long period or permanently, the trial shall continue with the alternate Judge replacing the Judge who is unable to continue sitting.
- (D) In case of illness or an unfilled vacancy, or in any other similar circumstances, the President may, if satisfied that it is in the interests of justice to do so, authorise a Chamber to conduct routine matters, such as the delivery of decisions, in the absence of one or more of its members.

Rule 27
Alternate Judges

- (A) An alternate Judge shall be present at each stage of a trial or appeal to which that Judge has been assigned.
- (B) An alternate Judge may pose questions that are necessary to the alternate Judge's understanding of the trial or appeal.
- (C) An alternate Judge shall be present, but shall not vote, during any deliberations in a trial or appeal.
- (D) In plenary meetings of the Judges, alternate Judges have the same rights as the other Judges.

Rule 28
Resignation

- (A) A Judge who decides to resign shall communicate the resignation in writing to the President, who shall transmit it to the Secretary-General and the Government of Lebanon.
- (B) Following resignation of a Judge, the Secretary-General, in consultation with the Government of Lebanon, shall appoint a new Judge. Such appointment shall be made in accordance with the procedure provided for in Article 2 of the Agreement.
- (C) The procedure outlined in paragraph (B) shall also apply in the event of the death or permanent incapacity of a Judge.

Rule 29

Presiding Judge of the Trial Chamber

- (A) The Presiding Judge of the Trial Chamber shall be elected by the majority of the votes of the Judges comprising the Trial Chamber. If no Judge obtains such a majority, the second ballot shall be limited to the two judges who obtained the greatest number of votes on the first ballot.
- (B) The Presiding Judge of the Trial Chamber shall be elected for a term of one year and a half or such shorter term as shall coincide with the duration of his term of office as a Judge. He may be re-elected.
- (C) The first term of office of the Presiding Judge shall run from the date of the confirmation of the first indictment.

Rule 30

Precedence

- (A) Except as provided in the Rules, all Judges are equal in the exercise of their judicial functions, regardless of dates of election, appointment, age or period of service.
- (B) The Presiding Judge of the Trial Chamber shall take precedence after the President and the Vice-President. The Pre-Trial Judge shall take precedence after the Presiding Judge of the Trial Chamber. After that, precedence is determined by age.

Section 2: Presidency

Rule 31

Election of the President

- (A) Pursuant to Article 8(2) of the Statute, the Presiding Judge of the Appeals Chamber shall be the President of the Tribunal.
- (B) The Presiding Judge shall be elected by a majority of the votes of the Judges comprising the Appeals Chamber. If no Judge obtains such a majority, the second ballot shall be limited to the two Judges who obtained the greatest number of votes on the first ballot.
- (C) The Presiding Judge of the Appeals Chamber shall be elected by the members of the Appeals Chamber for a term of one year and a half, or such shorter term as shall coincide with the duration of his term of office as a Judge. He may be re-elected.

Rule 32

Functions of the President

- (A) The President shall preside at all plenary meetings of the Tribunal.
- (B) He shall coordinate the work of the Chambers and be responsible for the effective functioning of the Tribunal and the good administration of justice.
- (C) He shall supervise the activities of the Registry.
- (D) He shall supervise the conditions of detention.

- (E) He may, in consultation with the Council of Judges, the Registrar, the Head of Defence Office and the Prosecutor, issue Practice Directions, consistent with the Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Tribunal.
- (F) The President shall represent the Tribunal in international relations with the United Nations, other inter-governmental organisations, States and non-governmental organisations.
- (G) In consultation with the Council of Judges and, if necessary, the Senior Management Board, he shall promote and negotiate agreements on cooperation with States. Where an agreement is reached, he shall sign it on behalf of the Tribunal after consulting with the Secretary-General and the Council of Judges. (amended 30 October 2009)
- (H) In close consultation with the Registrar, the President shall inform the Management Committee of the activities of the Tribunal that are relevant to the functions of the Committee at any time on the request of the Committee, or on his own initiative.
- (I) The President shall submit an annual report to the Secretary-General and the Government of Lebanon.
- (J) The President shall exercise all other functions conferred on him by the Statute and the Rules.

Rule 33

Vice-President

- (A) The Vice-President shall be elected for a term of one year and a half, or such shorter term as shall coincide with the duration of his term of office as a Judge. The Vice-President may be re-elected.

- (B) Rule 31 (B) shall apply *mutatis mutandis* to the Vice-President.

Rule 34

Functions of the Vice-President

The Vice-President shall exercise the functions of the President in case of the President's absence or inability to act, as well as any other function delegated to him by the President.

Rule 35

Replacements

- (A) If neither the President nor the Vice-President remains in office or is able to carry out the functions of the President, these shall be assumed by the Presiding Judge of the Trial Chamber.
- (B) If the Presiding Judge of the Appeals Chamber ceases to be a member of the Tribunal or resigns from office before the expiration of his term, the members of the Appeals Chamber shall elect from among their number a successor for the remainder of the term.
- (C) The President and the Vice-President, if still Judges, shall continue to discharge their functions after the expiration of their terms until the election of the President and the Vice-President has taken place.

Rule 36
Judge Rapporteur

- (A) In order to ensure greater efficiency in the administration of justice, the Presiding Judge of the Trial Chamber or of the Appeals Chamber, in consultation with the Judges of their respective Chambers, may designate a Judge Rapporteur. He may be entrusted with drafting a decision of the Chamber or be responsible for one or more specific matters of law or fact in dispute between the Parties.

- (B) The Judge Rapporteur may issue orders or decisions related to routine procedural matters, such as scheduling orders or variations of word and time limits. (added 20 February 2013)

Section 3: Internal Functioning of the Tribunal

Rule 37
Council of Judges

- (A) The Council of Judges shall be composed of the President, the Vice-President, the Presiding Judge of the Trial Chamber and the Pre-Trial Judge.

- (B) The President shall consult the other members of the Council on all major questions relating to the functioning of the Tribunal.

- (C) A Judge may draw the attention of any member of the Council to issues that the Judge considers ought to be discussed by the Council or submitted to a plenary meeting of the Tribunal.

- (D) If any member of the Council is unable to carry out any of the functions of the Council of Judges, these shall be assumed by the most senior available Judge determined in accordance with Rule 30(B).

Rule 38

Senior Management Board

(amended 5 June 2009)

- (A) The Senior Management Board shall be composed of the President, the Prosecutor, the Head of Defence Office and the Registrar. (amended 5 June 2009)

- (B) In order to achieve the mission of the Tribunal, as defined in the Statute, and having due regard for the responsibilities and the independence of any member, the Senior Management Board shall ensure the coordination of the activities of the organs of the Tribunal. (amended 5 June 2009)

- (C) The Senior Management Board shall meet once a month at the initiative of the President. A member may request, at any time, that additional meetings be held. The President shall chair the meetings. (amended 5 June 2009)

- (D) The Vice-President, the Deputy Prosecutor, the Deputy Head of Defence Office and the Deputy Registrar may *ex officio* represent the President, the Prosecutor, the Head of Defence Office and the Registrar respectively.

Rule 39

Consultation and Coordination

(amended 30 October 2009)

The President, in carrying out his duties under Article 12(1) of the Statute, may consult and coordinate with the Registrar on any matter related to the Registrar's administrative and judicial support functions, including authorising him to negotiate cooperation agreements and entertain relations with international entities. (amended 30 October 2009)

Rule 40
Plenary Meetings of the Tribunal

The Judges shall meet in plenary to:

- (i) adopt and amend the Rules after hearing the views of the Prosecutor, the Head of Defence Office and the Registrar on a draft set of the Rules, circulated at least two weeks before the Plenary;
- (ii) decide upon matters relating to the internal functioning of the Chambers and the Tribunal;
- (iii) determine and supervise the general conditions of detention; and
- (iv) exercise any other functions provided for in the Statute or in the Rules.

(amended and renumbered 30 October 2009 and 10 November 2010)

Rule 41
Dates of Plenary Sessions

- (A) The dates of the plenary sessions of the Tribunal shall be determined by the President after consultation with all the Judges.
- (B) Other plenary meetings shall be convened by the President if so requested by at least seven Judges, and may be convened whenever the exercise of the President's functions under the Statute or the Rules so requires.

Rule 42
Quorum and Vote

- (A) The quorum for each plenary meeting of the Tribunal shall be nine Judges.

- (B) Subject to Rules 5(A) and (B) and 31(B), the decisions of the plenary meetings of the Tribunal 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 the deciding vote.

Section 4: Chambers

Rule 43
Deliberations

The deliberations of the Chambers shall take place in private and remain secret.

Rule 44
Meetings away from the Seat of the Tribunal
(amended 20 February 2013)

A Judge or Chamber may exercise their functions at a place other than the seat of the Tribunal, if so authorised by the President in the interests of justice.

Section 5: Registry

Rule 45

Solemn Declaration

- (A) The Registrar shall make the following declaration before the President as soon as possible after the Registrar assumes office:

"I solemnly declare that I will perform the duties incumbent upon me as Registrar of the Special Tribunal for Lebanon in all loyalty, discretion and good conscience, and that I will faithfully observe all the provisions of the Statute and the Rules of Procedure and Evidence of the Tribunal".

(amended 30 October 2009)

- (B) The Deputy Registrar shall make a similar declaration before the President as soon as possible after the Deputy Registrar assumes office. (amended 30 October 2009)
- (C) Every staff member of the Registry shall make a similar declaration before the Registrar.

Rule 46

Solemn Declaration by Interpreters and Translators

Before performing his duties, an interpreter or a translator shall solemnly declare before the Registrar to do so faithfully, independently, impartially and with full respect for the duty of confidentiality. (amended 30 October 2009)

Rule 47

Appointment of the Deputy Registrar and Registry Staff

The Registrar, when necessary after consultation with the President or a Judge designated by the President, shall appoint the Deputy Registrar and Registry staff.

Rule 48

Functions of the Registrar

- (A) The Registrar shall assist the Chambers, the Judges, the Prosecutor and the Head of Defence Office in the performance of their functions. Under the authority of the President, the Registrar shall be responsible for the administration and servicing of the Tribunal.
- (B) The Registrar shall, as required:
 - (i) direct and administer the Chambers Legal Support Section and shall oversee the assignment of appropriate resources to the Chambers with a view to enabling them to perform their functions efficiently;
 - (ii) take all appropriate measures so that the decisions rendered by the Chambers and Judges are executed, especially sentences and penalties; and
 - (iii) make recommendations regarding the functions of the Registry that affect the judicial activity of the Tribunal.

(added 30 October 2009)

- (C) The Registrar, in the execution of his functions, may make oral and written representations to the President or Chambers on any issue that affects the discharge of his

functions, with notice to the Prosecutor, the Defence and the Head of Defence Office where appropriate. (renumbered 30 October 2009 and amended 10 November 2010)

- (D) The Registrar shall report regularly on his activities to the Judges meeting in plenary. (renumbered 30 October 2009)

- (E) Subject to any order by a Judge or Chamber, and in accordance with any relevant Practice Direction that may be issued by the President pursuant to Rule 32 (E), the Registrar shall receive and file all filings and distribute them to all intended recipients. He shall also copy all filings addressed to the Defence to the Defence Office. (amended 5 June 2009; amended and renumbered 30 October 2009; amended 20 February 2013)

Rule 49

Functions of the Deputy Registrar

The Deputy Registrar shall exercise the functions of the Registrar in the event of the latter's absence from duty or inability to act, or upon the Registrar's delegation.

- (B) [Deleted] (repealed 30 October 2009)

Rule 50

Victims and Witnesses Unit

(amended 30 October 2009)

- (A) The Registrar shall set up a unit responsible for protecting witnesses, victims who participate in the proceedings and, where appropriate, others at risk on account of their interaction with the Tribunal. (amended 30 October 2009)

- (B) The Unit shall exercise the following functions:

- (i) formulate strategies and provide adequate protective and security measures for victims and witnesses in conjunction with the relevant Party, States, intergovernmental and non-governmental organisations where appropriate;
 - (ii) provide all necessary administrative and logistical assistance to witnesses appearing before the Tribunal, including informing witnesses about: (i) any matter relating to their security and safety; (ii) the nature of the courtroom proceedings; (iii) the courtroom layout and the participants; (iv) the role, rights and obligations of witnesses in the proceedings;
 - (iii) assist victims and witnesses in obtaining medical, psychological and other appropriate support necessary for them to testify before the Tribunal; and (renumbered 20 February 2013)
 - (iv) provide any additional assistance as ordered by a Judge or Chamber as is consistent with the mandate and responsibilities of the Unit. (amended 30 October 2009; amended and renumbered 20 February 2013)
- (C) In performing its functions, the Unit shall respect the interests of victims and witnesses, maintain confidentiality and act impartially at all times. (added 30 October 2009)
- (D) At the request of the Registrar, a Party, a victim participating in the proceedings or his legal representative, or, *proprio motu*, where the interests of justice so require, a Judge or Chamber may grant the person in charge of the Unit, or a person designated by him, the right of audience in relation to matters of interest to the protection of victims and witnesses in the proceedings. (renumbered 30 October 2009; amended 20 February 2013)

Rule 51

Victims' Participation Unit

- (A) The Registrar shall set up a unit within the Registry responsible for assisting the victims in participating in the proceedings in accordance with the Statute and the Rules.

- (B) The Unit shall exercise the following functions:
 - (i) formulate long and short term strategies in this regard;

 - (ii) inform the victims of their rights under the Statute and the Rules and of the existence and functions of the Unit;

 - (iii) receive applications from victims seeking to participate in the proceedings in accordance with Rule 87, verify that these applications are complete and, once this has been done, transmit them to the Pre-Trial Judge;

 - (iv) ensure that the victims or their legal representatives receive documents filed by the Parties and the files submitted by the Pre-Trial Judge, subject to any restrictions due to confidentiality or the interests of justice, in accordance with Rule 87;

 - (v) inform, in a timely manner, the victims of relevant decisions of the Tribunal that might have an impact on their rights or specific interests, subject to any confidentiality restrictions;

 - (vi) provide all necessary administrative and logistical assistance to victims participating in the proceedings or their legal representatives; and

 - (vii) provide any additional assistance as ordered by the Pre-Trial Judge or a Chamber as is consistent with the mandate and responsibilities of the Unit.

- (C) This Unit, under the authority of the Registrar, shall also:
- (i) draw up and maintain a list of highly qualified counsel who meet the criteria set forth in Rule 59(B)(i), (ii), (iii) and (C) concerning the qualifications of defence counsel, and who have indicated their availability and willingness to represent victims participating in the proceedings;
 - (ii) in accordance with the applicable Legal Aid Policy, administer and monitor the provision of funds to the legal representatives of indigent victims;
 - (iii) upon the request of a victim or his legal representative or *proprio motu*, provide adequate assistance and support to the victim or his legal representative, including, where appropriate, legal research, memoranda and other advice as necessary;
 - (iv) when necessary, provide professional training to legal representatives of victims participating in the proceedings; and
 - (v) exercise, *mutatis mutandis*, in respect of victims' legal representatives, the powers granted to the Head of Defence Office under Rule 57(G) and, where appropriate, request the Registrar to exercise his powers under Rule 51(G);

(amended 10 November 2010 and corrected 29 November 2010; amended 8 February 2012)

- (D) Legal representatives of victims participating in the proceedings shall be subject to the provisions of the Code of Professional Conduct for Counsel and the codes of practice and ethics governing their profession.
- (E) At the request of the Registrar, a Party, a victim or his legal representative, or where the interests of justice so require, *proprio motu*, a Judge or Chamber may grant the person in

charge of the Unit a right of audience in relation to matters relating to the participation of victims in the proceedings. (amended 20 February 2013)

- (F) A member of the Unit shall not take any instruction from a victim or be involved in any manner in a specific case or proceeding before the Tribunal such that the independence of the Unit or of the Registry may be, or may be perceived to be, compromised.
- (G)
 - (i) The Registrar, after consulting the Victims' Participation Unit, shall designate counsel to represent victims participating in the proceedings in accordance with the Directive on Victims' Legal Representation.
 - (ii) Rule 58(B) applies *mutatis mutandis* to victims' legal representatives.
 - (iii) The Registrar, if satisfied that a victim's legal representative has breached any 'relevant provisions' in Rule 58(B), may withhold the payment of fees until the matter is resolved, after first hearing from the representative. The President may review a decision to withhold fees. The Registrar may report any breach to the Pre-Trial Judge or a Chamber.

(added 8 February 2012)

Rule 52

Outreach Programme Unit

- (A) The Registrar shall set up an Outreach Programme Unit within the Registry to (i) disseminate accurate and timely information to the public, particularly in Lebanon, about the general role and functioning of the Tribunal, and (ii) carry out outreach activities related to victims.
- (B) Due consideration shall be given, in the appointment of staff, to the employment of qualified Lebanese nationals.

Rule 53

Minutes

The Registrar, or Registry staff designated by the Registrar, shall, as appropriate, take minutes of the plenary meetings of the Tribunal and of the proceedings of a Judge or Chamber, other than private deliberations. (amended 30 October 2009 and 20 February 2013)

Rule 54

Record Book

The Registrar shall keep a Record Book, which shall list, subject to any Practice Direction issued under Rule 32(E) or any order of a Judge or Chamber providing for the non-disclosure of any document or information, the particulars of each case brought before the Tribunal. The Record Book shall be open to the public and an electronic version shall be published on the Tribunal's website. (amended 20 February 2013)

Section 6: Prosecutor

Rule 55

Functions of the Prosecutor

- (A) The Prosecutor shall be of high moral character and possess the highest level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases.

- (B) The Prosecutor shall perform all the functions provided for in the Statute in accordance with the Rules and with such Regulations, consistent with the Statute and the Rules, as may be framed and amended by the Prosecutor.

- (C) In performing his functions, the Prosecutor shall assist the Tribunal in establishing the truth and protect the interests of the victims and witnesses. He shall also respect the fundamental rights of suspects and accused.

Rule 56

Functions of the Deputy Prosecutor

- (A) The Deputy Prosecutor shall be of high moral character and possess the highest level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases.
- (B) The Deputy Prosecutor shall exercise the functions of the Prosecutor in the event of the Prosecutor's absence from duty or inability to act to the extent that the Prosecutor has not authorised other members of his office to carry out those functions.

Section 7: Defence

Rule 57

Functions of the Head of Defence Office

- (A) The Head of Defence Office shall be of high moral character and possess the highest level of professional competence and extensive experience in the defence of criminal cases. He shall be, or have been, admitted to the practice of law in a recognised jurisdiction and shall have practised criminal law before a national or international criminal court for a minimum of fifteen years. He shall be fluent in English or French.
(amended 10 November 2010)

- (B) The Head of Defence Office shall perform all the functions provided for in the Statute in accordance with the Rules, Practice Directions and such Regulations, consistent with the Statute and the Rules, as may be framed and amended by the Head of Defence Office.
- (C) The Head of Defence Office shall, for all purposes connected with pre-trial, trial and appellate proceedings, enjoy equal status with the Prosecutor in respect of rights of audience and negotiations *inter partes*.
- (D) The Head of Defence Office shall perform the following functions:
- (i) adopt a Directive on the Appointment and Assignment of Defence Counsel following approval by the Plenary;
 - (ii) draw up and maintain the list, referred to in Rule 59(B), of highly qualified defence counsel who meet the criteria set forth in that Rule;
 - (iii) identify on the list mentioned in Rule 59(B) counsel who are available at short notice to act temporarily for a suspect, for an accused for the purpose of the initial appearance conducted in accordance with Rule 98 or for any other urgent matter;
(amended 8 February 2012)
 - (iv) in consultation with the suspect or accused and with his agreement, assign such counsel available at short notice to act temporarily for him;
(amended 8 February 2012)
 - (v) upon the request of a suspect or accused whose indigence prevents him from appointing defence counsel, assign counsel and a co-counsel who have been admitted to the list referred to in Rule 59(B);
 - (vi) upon the request of lead counsel or, where the interests of justice so demand, assign to a suspect or accused who has been assigned a defence counsel of his

choosing, one or more co-counsel from the list of defence counsel referred to in Rule 59(B);

- (vii) where an accused or a suspect has privately retained counsel, confirm that this counsel meets the requirements of Rule 58 and appoint him to represent the accused or suspect in proceedings before the Tribunal. (added 30 October 2009 and amended 8 February 2012)
- (viii) upon the request of a suspect or an accused who is self-represented, assign one or more persons to provide assistance and support;
- (ix) assign counsel for the purpose of proceedings *in absentia* conducted in accordance with Rule 106;
- (x) in consultation with the President and the Registrar, adopt a Legal Aid Policy establishing the criteria for the payment of fees to assigned counsel and their support staff;
- (xi) in accordance with the Directive on the Appointment and Assignment of Defence Counsel, appoint or assign persons assisting counsel who meet the criteria, *mutatis mutandis*, in Rule 58(A)(ii) to (vi); and
- (xii) act as representative of the Defence Office before bar associations and other professional bodies.

(amended and renumbered 20 February 2013)

- (E) The Head of Defence Office shall provide:

- (i) upon the request of counsel or *proprio motu*, adequate assistance and support to Defence counsel and their staff, including, where appropriate, legal research and memoranda and other advice as deemed necessary; (amended 8 February 2012)
- (ii) adequate facilities to defence counsel and persons entitled to legal assistance in the preparation of a case;
- (iii) continuing professional training to defence counsel; and
- (iv) any additional assistance ordered by a Judge or Chamber.

(amended 20 February 2013)

- (F) At the request of a Judge or Chamber, the Registrar, the Defence or where the interests of justice so require, *proprio motu*, the Head of Defence Office or a person designated by him shall have rights of audience in relation to matters of general interest to defence teams, the fairness of the proceedings or the rights of a suspect or accused. (amended 20 February 2013)
- (G) The Head of Defence Office shall, in the interests of justice, ensure that the representation of suspects and accused meets internationally recognised standards of practice and is consistent with the provisions of the Statute, the Rules, the Code of Professional Conduct for Counsel, the Directive on the Appointment and Assignment of Defence Counsel and other relevant provisions. To this end, subject to lawyer-client privilege and confidentiality, where valid reasons exist to do so, he may:
 - (i) monitor the performance and work of counsel and the persons assisting them;
 - (ii) request all necessary information in order to exercise the function referred to in (i);

- (iii) ensure that the appropriate advice is given to the lead counsel as would contribute to an effective defence of the suspect or accused; and
 - (iv) in exceptional circumstances and after considering the opinion of the lead counsel, invite the suspect or accused to provide his views on the adequacy and effectiveness of his legal representation and the performance of the Defence counsel. Any statement made by the suspect or the accused in this regard shall be recorded in writing and kept by the Head of Defence Office. A copy of the record shall be provided to the suspect or accused and his counsel. (amended 8 February 2012)
- (H) If the Head of Defence Office is not satisfied that the representation of a suspect or accused meets the standards set forth in Rule 58(B), he may, in the interests of justice and after giving counsel an opportunity to be heard:
- (i) if Defence counsel has been assigned, withhold the payment of the fees of the assigned counsel or part thereof until there is a satisfactory resolution of the matter. Such decision may be reviewed by the President; (amended 8 February 2012)
 - (ii) make representations to a Judge or Chamber for the removal of counsel or for other measures intended to ensure the effective representation of the suspect or accused; and (amended 20 February 2013)
 - (iii) where appropriate, initiate disciplinary proceedings against the counsel concerned.
- (I) Neither the Head of Defence Office nor its members shall take any instructions from suspects or accused persons or be involved in factual allegations or matters relating to a specific case, which may raise conflicts of interest and affect the independence of the Office.

- (J) In the discharge of their duties, the Head of Defence Office and his staff shall always comply with the principles of the Code of Professional Conduct for Counsel.

Rule 58

Appointment, Qualifications and Duties of Counsel

- (A) Counsel engaged by a suspect or an accused shall, at the earliest opportunity, file with the Head of Defence Office a written authorisation of appointment, in accordance with relevant law, signed by the suspect or the accused. Subject to any determination by a Chamber pursuant to Rules 57 or 60, a counsel shall be considered qualified to represent a suspect or accused if the counsel satisfies the Head of Defence Office that he:
- (i) is admitted to the practice of law in a recognised jurisdiction or, as co-counsel, is a professor of law;
 - (ii) has written and oral proficiency in English or French;
 - (iii) has not been found guilty or otherwise disciplined in relevant disciplinary proceedings against him in a national or international forum, including proceedings pursuant to the Code of Professional Conduct for Counsel, unless the Head of Defence Office deems that, in the circumstances, it would be disproportionate to exclude such counsel on this basis;
 - (iv) has not been found guilty in criminal proceedings that were fair and impartial and met the requirements of due process, unless the Head of Defence Office deems that, in the circumstances, it would be disproportionate to exclude such counsel on this basis;
 - (v) has not engaged in conduct, whether in pursuit of his profession or otherwise, which is dishonest or otherwise discreditable to a counsel, prejudicial to the

administration of justice, likely to diminish public confidence in the Tribunal or the administration of justice, or otherwise brings the Tribunal into disrepute; and

- (vi) has not provided false or misleading information in relation to his qualifications and fitness to practice or intentionally sought to conceal relevant information, unless the Head of Defence Office deems that, in the circumstances, it would be disproportionate to exclude such counsel on this basis.
- (B) In the performance of their duties, counsel shall be subject to the relevant provisions of the Statute, the Rules, Practice Directions, the Rules of Detention, the Host State Agreement, the Code of Professional Conduct for Counsel and the codes of practice and ethics governing their profession, the Directive on the Appointment and Assignment of Defence Counsel, and if applicable, the Legal Aid Policy and any other Regulations adopted by the Head of Defence Office. (amended 20 February 2013)
- (C) Defence Counsel shall undertake such mandatory continuing professional training as the Head of Defence Office may direct, in consultation with the President.

Rule 59

Assignment of Counsel

- (A) Whenever the interests of justice so demand, the Head of Defence Office shall assign counsel to a suspect or an accused who lacks the means to remunerate such counsel. Such assignments shall be treated in accordance with the procedure established in the Directive on the Appointment and Assignment of Defence Counsel adopted by the Head of Defence Office and approved by the Plenary. (amended 20 February 2013)
- (B) The Head of Defence Office shall maintain a list of counsel who:
 - (i) fulfil all the requirements of Rule 58(A);

- (ii) possess established competence in criminal law and/or international criminal law, or other relevant competence;
 - (iii) for purposes of assignment as lead counsel and co-counsel, possess at least ten years and seven years of relevant experience respectively, whether as a judge, prosecutor, attorney or in some other relevant capacity; and
 - (iv) have indicated their availability and willingness to be assigned by the Tribunal to any person detained under the authority of the Tribunal lacking the means to remunerate counsel under the terms set out in the Directive on the Appointment and Assignment of Defence Counsel. (amended 20 February 2013)
- (C) Before counsel may be admitted to the list, they shall be interviewed by an admission panel which shall decide whether they fulfil the conditions for admission. The decision of the admission panel may be subject to review, at the request of counsel, by the President.
- (D) A suspect or accused has the right to be represented by any counsel properly admitted to the list, except insofar as such representation would not ensure the combined language abilities required for fair and expeditious proceedings. A suspect or accused who has been denied his choice of counsel from the list may ask for a review of the decision by the President. (amended 30 October 2009 and 10 November 2010)
- (E) Where a person is assigned counsel and is subsequently found able to properly remunerate counsel, a Chamber may, on application by the Head of Defence Office and after hearing the views of the Registrar, make an order of contribution to recover the cost of providing counsel. (amended 30 October 2009)
- (F) A suspect or an accused electing to conduct his own defence shall so notify, in writing, the Pre-Trial Judge, Contempt Judge or Chamber of his election. The Pre-Trial Judge, Contempt Judge or Chamber may impose counsel to represent or otherwise assist the

accused in accordance with international criminal law and international human rights where this is deemed necessary in the interests of justice and to ensure a fair and expeditious trial. (amended 20 February 2013)

Section 8: Misconduct

Rule 60

Misconduct of Counsel or other Persons Appearing before the Tribunal

(amended and renumbered 20 February 2013)

- (A) If a Judge or Chamber finds that counsel or anyone appearing in proceedings before the Tribunal is offensive, abusive or obstructing the proper conduct of the proceedings, or is negligent, or otherwise fails to meet the acceptable standards of professional competence and/or ethics in the performance of his duties, the Judge or Chamber may, after giving them the opportunity to be heard:
- (i) issue a formal warning;
 - (ii) defer, suspend, or refuse audience to them; or
 - (iii) determine that they are no longer eligible to represent a suspect or an accused before the Tribunal, a victim participating in the proceedings, or to appear before the Tribunal.

(amended 30 October 2009)

- (B) An order under paragraph (A) (iii) may only be made by the Pre-Trial Judge, the Contempt Judge or a Chamber.

- (C) The Judge or Chamber may also, with the approval of the President, communicate any misconduct of counsel to the professional body regulating the conduct of counsel in the counsel's national jurisdiction.
- (D) The President, in consultation with the Prosecutor, the Head of Defence Office and the Registrar shall publish and oversee the implementation of a Code of Professional Conduct for Counsel appearing before the Tribunal.

Rule 60 *bis*

Contempt and Obstruction of Justice

(added 10 November 2010, amended and renumbered 20 February 2013)

- (A) The Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, upon assertion of the Tribunal's jurisdiction according to the Statute. This includes, but is not limited to, the power to hold in contempt any person who:
 - (i) being a person who is questioned by or on behalf of a Party in circumstances not covered by Rule 152, knowingly and wilfully makes a statement which the person knows is false and which the person knows may be used as evidence in proceedings before the Tribunal, provided that the statement is accompanied by a formal acknowledgement by the person being questioned that he has been made aware about the potential criminal consequences of making a false statement;
 - (ii) being a witness before a Judge or Chamber refuses or fails to answer a question without reasonable excuse including the situation described in Rule 150(F);
 - (iii) discloses information relating to proceedings in knowing violation of an order of a Judge or Chamber;

- (iv) without reasonable excuse fails to comply with an order to appear or produce documents before a Judge or Chamber;
 - (v) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Judge or Chamber, or a potential witness;
 - (vi) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or
 - (vii) threatens, intimidates, engages in serious public defamation of, by statements that are untrue and the publication of which is inconsistent with freedom of expression as laid down in international human rights standards, offers a bribe to, or otherwise seeks to coerce, a Judge or any other officer of the Tribunal.
- (B) Any incitement or attempt to commit any of the acts under paragraph (A) is punishable as contempt of the Tribunal with the same penalties.
- (C) The President shall designate a Contempt Judge in accordance with the relevant Practice Direction to hear cases of contempt and obstruction of justice. The Contempt Judge shall also hear cases under Rule 152.
- (D) A Party believing that a person is in contempt under paragraph (A) (i) may so inform the relevant Judge or Chamber, submitting, where appropriate, supporting material. In other cases, a Party or any other interested person may inform the Judge or Chamber of an allegation of contempt or obstruction of justice. The Judge or Chamber shall refer the matter to the President for referral to a Contempt Judge.
- (E) When the Contempt Judge has reason to believe that a person may be in contempt of the Tribunal, he may:

- (i) invite the Prosecutor to consider investigating the matter with a view to the preparation and submission of an indictment for contempt;
 - (ii) where the Prosecutor indicates a preference not to investigate the matter or submit an indictment himself, or where in the view of the Contempt Judge, the Prosecutor has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Contempt Judge as to whether there are sufficient grounds for instigating contempt proceedings; or
 - (iii) initiate proceedings himself.
- (F) If the Contempt Judge considers that there are sufficient grounds to proceed against a person for contempt, he may:
- (i) in circumstances described in paragraph (E) (i), direct the Prosecutor to prosecute the matter; or
 - (ii) in circumstances described in paragraph (E) (ii) or (iii), issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter himself.
- (G) With respect to contempt under paragraph (A) (i), the Contempt Judge shall undertake the steps in paragraph (E) or (F) only if there is *prima facie* evidence that the alleged contempt has led to a material interference with the administration of justice.
- (H) The rules of procedure and evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.

- (I) Any person indicted for or charged with contempt shall be afforded the rights envisaged in Rule 69 and, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned counsel in accordance with Rule 59.
- (J) The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.
- (K) Payment of a fine shall be made to the Registrar to be held in a separate account.
- (L) If a counsel is found guilty of contempt of the Tribunal pursuant to this Rule, a relevant Judge or Chamber may determine that counsel is no longer eligible to represent a suspect or accused before the Tribunal, or that such conduct amounts to misconduct of counsel pursuant to Rule 60, or both.
- (M) A decision of a Contempt Judge finalising a contempt case may be appealed to a bench of three judges designated by the President in accordance with the relevant Practice Direction. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. The Appellant's brief shall be filed within fifteen days of filing of the notice of appeal.

PART 4
INVESTIGATIONS AND RIGHTS OF SUSPECTS AND ACCUSED

Rule 61
Conduct of Investigations

In the conduct of an investigation in relation to the Hariri Attack or any other attack that may fall within the jurisdiction of the Tribunal under Article 1 of the Statute, the Prosecutor may:

- (i) summon and question suspects, victims and witnesses and record their statements; collect evidence and conduct on-site investigations;
- (ii) undertake such other matters as may appear necessary for completing the investigation and for the preparation and conduct of the prosecution at the trial, including the taking of special measures to provide for the safety of potential witnesses and informants;
- (iii) seek the assistance of any State authority concerned, as well as of any relevant international body, including INTERPOL; and
- (iv) request such orders as may be necessary from the Pre-Trial Judge or a Chamber.

Rule 62
Provisional Measures

- (A) In case of urgency, the Prosecutor may request that a State:
 - (i) arrest a suspect or an accused and place him in custody in accordance with the laws of that State;

- (ii) seize physical evidence;
 - (iii) take all appropriate measures to prevent the escape of a suspect or an accused, injury to or intimidation of a victim or witness, or the destruction of evidence.
- (B) Within ten days of any arrest under paragraph (A) above, the Prosecutor shall apply to the Pre-Trial Judge for an order pursuant to Rule 63 to transfer the suspect or accused to a detention facility of the Tribunal and shall inform the Head of Defence Office of the arrest. Subject to Rules 16 to 21, the Pre-Trial Judge may order the transfer. Where the Pre-Trial Judge orders the transfer, the Registrar, in consultation with the Prosecutor, shall arrange the transfer with the relevant State authorities. (amended 8 February 2012)

Rule 63

Transfer and Provisional Detention of Suspects

(amended 10 November 2010)

- (A) In the conduct of an investigation, the Prosecutor may apply for an order or request by the Pre-Trial Judge for the transfer to, and provisional detention of, a suspect in the premises of a detention facility of the Tribunal. This request shall indicate the grounds upon which the request is made and, unless the Prosecutor wishes only to question the suspect, shall include a provisional charge and a summary of the material upon which the Prosecutor relies to justify the person's designation as a suspect and that person's provisional detention.
- (B) The Pre-Trial Judge, after hearing the Prosecutor and counsel for the suspect, shall order or request the transfer and provisional detention of the suspect subject to Rules 16 to 21, and if the following conditions are met:

- (i) the Prosecutor has requested a State to arrest the suspect, in accordance with Rule 62, or the suspect is otherwise detained by State authorities;
 - (ii) after hearing the Prosecutor, the Pre-Trial Judge considers that the person is a suspect; and
 - (iii) the Pre-Trial Judge considers provisional detention to be a necessary measure: (a) to prevent the escape of the suspect; (b) to ensure that the person does not obstruct or endanger the investigation or the court proceedings, for instance by posing a danger to, or intimidating, any victim or witness; (c) to prevent criminal conduct of a kind of which he is suspected.
- (C) The order or request for the transfer and provisional detention of the suspect shall be signed by the Pre-Trial Judge and bear the seal of the Tribunal. The order or request shall set forth the basis of the application made by the Prosecutor under paragraph (A), including the charge, and shall state the grounds for making the order, having regard to paragraph (B). The order or request shall also specify the initial time-limit for the provisional detention of the suspect and shall be accompanied by a statement of the rights of a suspect, as specified in this Rule and in Rule 65.
- (D) The provisional detention of a suspect shall be ordered for a period not exceeding thirty days from the date of the transfer of the suspect to the seat of the Tribunal. At the end of that period, at the Prosecutor's request, the Pre-Trial Judge may decide, subsequent to an *inter partes* hearing of the Prosecutor and the suspect or his counsel, to extend the detention for a period not exceeding thirty days, if warranted by the needs of the investigation. At the end of that extension, at the Prosecutor's request, the Pre-Trial Judge may decide, subsequent to an *inter partes* hearing of the Prosecutor and the suspect or his counsel, to extend the detention for a further period not exceeding thirty days, if warranted by special circumstances. The total period of detention shall in no case exceed ninety days, at the end of which, in the event the indictment has not been confirmed and

an arrest warrant signed by the Tribunal, the suspect shall be released or, if appropriate, delivered to the authorities of the requested State.

- (E) The provisions of Rule 79 shall apply *mutatis mutandis* to the execution of the transfer order and the provisional detention order in relation to a suspect.
- (F) After being transferred to the seat of the Tribunal, the suspect shall be brought, without delay, before the Pre-Trial Judge.
- (G) During detention, the Prosecutor and the suspect or his counsel may submit to the Pre-Trial Judge all applications concerning the propriety of provisional detention or the suspect's release.
- (H) Without prejudice to paragraph (D), Rules 101 and 102 relating to the detention on remand of accused persons shall apply *mutatis mutandis* to the provisional detention of persons under this Rule.

Rule 64

Preservation of Information

Subject to Rule 139, the Prosecutor shall be responsible for the retention, storage and security of information and physical and electronic material obtained in the course of the Prosecutor's investigations unless and until such information or material has been formally tendered into evidence.

Rule 65

Rights of Suspects during Investigation

- (A) Whether he is free or in detention, a suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning in a manner and language the suspect understands:
- (i) The right to be informed that there are grounds to believe that he has committed a crime within the jurisdiction of the Tribunal; (added and renumbered 10 November 2010)
 - (ii) the right to be assisted by counsel of the suspect's choosing or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for such assistance;
 - (iii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and
 - (iv) the right to remain silent and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.
- (B) Questioning of a suspect shall not proceed without the presence of counsel, unless the suspect has voluntarily and expressly waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease and shall only resume when counsel for the suspect is present.

Rule 66
Recording Questioning of Suspects

- (A) Whenever the Prosecutor questions a suspect, the procedure envisaged in Rule 65 and the questioning shall be video-recorded or, if that is not practicable, audio-recorded, in accordance with the following procedure:
- (i) the suspect shall be informed in a language he understands that the questioning is being video-recorded or audio-recorded;
 - (ii) in the event of a break in the course of the questioning, the questioner shall state the fact and the time of the break before video-recording or audio-recording ends, and the time of resumption of the questioning shall also be recorded;
 - (iii) at the conclusion of the questioning, the suspect shall be offered the opportunity to clarify anything he has said and to add or amend anything he may wish, and the time of conclusion shall be recorded;
 - (iv) a copy of the recorded tape or digital recording or, if multiple recording apparatus were used, one of the original recorded tapes or memory cards shall be supplied to the suspect or his counsel;
 - (v) after a copy has been made, if necessary, of the recorded tape or memory card, the original recorded tape or memory card or one of the original tapes or memory cards shall be sealed in the presence of the suspect under the signature of a member of the Office of the Prosecutor and the suspect; and
 - (vi) the tape or digital recording shall be transcribed if the suspect becomes an accused.

- (B) As an exception, a person may be questioned without the questioning being audio-recorded or video-recorded where circumstances make it absolutely impractical for such recording to take place. The Prosecutor, however, shall make every reasonable effort to record the questioning. In any event, he shall provide in writing the specific grounds that in his view justify the decision not to audio-record or video-record the questioning.

Rule 67

Assistance of Counsel to Detained Persons

(amended 20 February 2013)

Rules 58 and 59 shall apply to any person detained under the authority of the Tribunal.

PART 5
CONFIRMATION OF CHARGES AND PRE-TRIAL PROCEEDINGS

Section 1: Indictments

Rule 68

Submission of Indictment by the Prosecutor

- (A) An indictment, submitted in accordance with the following procedure, shall be reviewed by the Pre-Trial Judge.
- (B) The Prosecutor shall, if satisfied in the course of an investigation that there is sufficient evidence that a suspect has committed a crime that may fall within the jurisdiction of the Tribunal, file an indictment for confirmation by the Pre-Trial Judge, together with supporting material.
- (C) If the Prosecutor submits an indictment that relates to an attack other than the Hariri Attack, and he has not already obtained a ruling under Rule 11 that the case is “connected” to the Hariri Attack in the manner required by Article 1 of the Statute, he shall file an accompanying Connected Case Submission with the indictment stating how the attack that is the subject of the indictment is connected to and is of a nature and gravity similar to the Hariri Attack in the manner required under Article 1 of the Statute, together with supporting material as he deems appropriate.
- (D) The indictment shall set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime with which the suspect is charged.
- (E) Upon filing of the indictment and accompanying material the Pre-Trial Judge shall notify the Prosecutor of the date of the review of the indictment. (amended 10 November 2010)

- (F) The Pre-Trial Judge shall examine each of the counts in the indictment and any supporting materials provided by the Prosecutor to determine whether a prima facie case exists against the suspect.
- (G) The Pre-Trial Judge may submit to the Appeals Chamber any preliminary question, on the interpretation of the Agreement, Statute and Rules regarding the applicable law, that he deems necessary in order to examine and rule on the indictment. (added 10 November 2010)
- (H) The Pre-Trial Judge shall examine the Connected Case Submission, and any supporting materials provided by the Prosecutor, to determine whether the evidence shows prima facie that a case is within the jurisdiction of the Tribunal. (renumbered 10 November 2010)
- (I) As a result of the examination provided for in paragraph (F), the Pre-Trial Judge may:
 - (i) request or permit the Prosecutor to present additional material in support of any or all counts;
 - (ii) request or permit the Prosecutor to present additional material in support of the Connected Case Submission;
 - (iii) confirm one or more counts; or
 - (iv) dismiss one or more counts.

The Pre-Trial Judge shall provide reasons for his decision.

(amended 30 October 2009; amended and renumbered 10 November 2010 and corrected 29 November 2010)

- (J) Upon confirmation of any or all counts in the indictment and, where a Connected Case Submission was filed, upon confirmation that the Tribunal has jurisdiction over the attack that is the subject of the indictment:
- (i) the Pre-Trial Judge may issue a summons to appear or an arrest warrant, in accordance with Rules 78 and 79, and any orders as provided for in Article 18(2) of the Statute; and
 - (ii) the suspect shall have the status of an accused.

Any challenge by the Defence to a ruling on the indictment or Connected Case Submission, or to a ruling under Rule 11, shall be by preliminary motion under Rule 90(A). (renumbered 10 November 2010)

- (K) The Registrar shall prepare certified copies of the indictment, to the extent confirmed by the Pre-Trial Judge, bearing the seal of the Tribunal. If the accused does not understand the language in which the indictment has been drafted, a translation of the indictment into a language understood by the accused shall be prepared and shall be included as part of each certified copy of the indictment. (amended and renumbered 10 November 2010)
- (L) The dismissal of any count in an indictment shall not preclude the Prosecutor from subsequently filing an amended indictment, or the same count in an indictment with new supporting material, for confirmation. (renumbered 10 November 2010)

Rule 69

Rights of the Accused

An accused shall enjoy the rights enshrined in Article 16 of the Statute, as well as, *mutatis mutandis*, the rights conferred on suspects by Rules 65 and 66.

Rule 70

Joinder of Crimes or Accused

- (A) Two or more crimes may be joined in one indictment if the conduct falls within Article 1 of the Statute and the alleged crimes were committed by the same accused.
- (B) Persons accused of the same or different crimes falling within Article 1 of the Statute may be jointly charged and tried.
- (C) In cases under paragraphs (A) and (B) the Trial Chamber, in consultation with the Pre-Trial Judge, may perform any of the Pre-Trial Judge's functions in Rules 89 (A)-(D), (F), 90 (A) (iv), 91 and 94. Rule 95 may be wholly or partly dispensed with. (added 20 February 2013)

Rule 71

Amendment of Indictment

- (A) The Prosecutor may amend an indictment:
 - (i) at any time before its confirmation, without leave;
 - (ii) between its confirmation and the assignment of the case to the Trial Chamber, with the leave of the Pre-Trial Judge; and
 - (iii) after the assignment of the case to the Trial Chamber, with the leave of the Trial Chamber, after having heard the Parties.
- (B) Leave to amend an indictment under paragraph (A) (ii) and (iii) shall not be granted unless the Pre-Trial Judge or the Trial Chamber is satisfied that there is prima facie evidence to support the proposed amendment. The Pre-Trial Judge or the Trial Chamber,

as appropriate, may grant leave only if satisfied that the amendment would not result in improper prejudice to the accused.

- (C) Further confirmation is not required where an indictment is amended by leave.
- (D) Rules 68(J) and 76 apply *mutatis mutandis* to the amended indictment.
- (E) If the amended indictment includes new charges, and the accused has already appeared before the Trial Chamber in accordance with Rule 98, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges.
- (F) The accused shall have a further period of twenty-one days in which to file preliminary motions pursuant to Rules 89 and 90 in respect of the new charges. Where necessary, the Pre-Trial Judge or a Chamber may postpone the date for trial to ensure adequate time for the preparation of the defence.

Rule 72

Withdrawal of Indictment or Charges

- (A) The Prosecutor may withdraw an indictment or charges in an indictment:
 - (i) at any time before its confirmation, without leave;
 - (ii) between its confirmation and the assignment of the case to the Trial Chamber, once he provides to the Pre-Trial Judge, in open court, a statement of the reasons for the withdrawal; and
 - (iii) after the assignment of the case to the Trial Chamber, by motion before the Trial Chamber pursuant to Rule 126.

- (B) The withdrawal of the indictment or of any charges in the indictment shall be promptly notified to the Defence.

Rule 73

Public Character of Indictment

Subject to Rule 74, upon confirmation by the Pre-Trial Judge, the indictment shall be made public.

Rule 74

Non-Disclosure of Indictment

- (A) In exceptional circumstances, on the application of the Prosecutor or Defence, the Pre-Trial Judge may, in the interests of justice, order the non-disclosure to the public of the indictment, or any related document or information until further order.
- (B) Notwithstanding paragraph (A), the Prosecutor may disclose an indictment or part thereof to the authorities of a State where the Prosecutor deems it necessary for the purpose of an investigation or prosecution.

Rule 75

Advertisement of Indictment

(Deleted and moved on 10 November 2010)

Rule 75 bis

Service of Judicial Documents

(added 5 June 2009)

Any request, order or other judicial document from the Pre-Trial Judge or a Chamber to a State shall be validly served by the Registrar on the diplomatic representative of the State in The Netherlands, or alternatively, to a person or body designated by the State authorities, and advised to the Registrar, for this purpose. (amended 10 November 2010)

Rule 76

Service of Indictment

(amended 10 November 2010)

- (A) The indictment, certified in accordance with Rule 68, shall be formally provided to the authorities of the State in whose territory the accused resides or was last known to be residing, or in whose territory or under whose jurisdiction he is believed likely to be found, in order to serve the indictment on the accused without delay.
- (B) Personal service of an indictment on the accused is effected by giving the accused a copy of the indictment, together with the summons to appear or the arrest warrant.
- (C) Notwithstanding Rules 20 and 21, Lebanon or a State which has agreed to provide cooperation with the Tribunal must inform the President of the measures taken in execution of paragraphs (A) and (B) as soon as possible and no later than 30 days following the request under paragraph (A). (amended 8 February 2012)
- (D) When a summons to appear, a warrant of arrest or a transfer order relates to a person living in, or under the control of, a State other than those referred to in paragraph (C), the Registrar, after consulting with the President, shall transmit a request for cooperation, to the appropriate authorities of the relevant State, in order to serve the summons to appear, the warrant of arrest or the transfer order to the accused without delay.

- (E) Where the President establishes that reasonable attempts have been made to serve the indictment, the summons to appear or the warrant of arrest to the accused, but that they have failed, he may, after consulting the Pre-Trial Judge, order the service of process to be effected in an alternative manner, including procedures of public advertisement.

Rule 76 bis

Advertisement of Indictment

(added 10 November 2010)

In keeping with the President's order made under Rule 76 (E), a form of advertisement shall be transmitted by the Registrar to the authorities of any relevant State or entity for publication in newspapers and/or for broadcast via radio, television and/or other media, including the internet, providing notification to the public of the existence of an indictment and calling upon the accused to surrender to the Tribunal or in any case to submit to its jurisdiction. The advertisement shall invite any person with information as to the whereabouts of the accused to communicate that information to the Tribunal.

Section 2: Orders, Requests and Warrants

Rule 77

General Rule

- (A) At the request of a Party, the Pre-Trial Judge may issue such orders, summonses, subpoenas, warrants and transfer orders or requests as may be necessary for the purposes of an investigation or for the preparation or conduct of the proceedings.
- (B) Notwithstanding Rule 16, a Party may, when it deems it necessary and appropriate, request the Pre-Trial Judge to authorise it to carry out investigative activities, including

questioning suspects, victims or witnesses, collecting evidence, and conducting on-site investigations. (added 5 June 2009)

- (C) Where the Prosecutor requests the Pre-Trial Judge to issue a warrant of arrest against an accused, the Judge may decide that, in the interests of justice, a summons to appear is more appropriate and accordingly issue such summons. (renumbered 5 June 2009)
- (D) Where a Party requests the Pre-Trial Judge to issue a summons to appear, he may either grant the request or decide to issue a warrant of arrest. (renumbered 5 June 2009)
- (E) Except for warrants of arrest, the Pre-Trial Judge may, in the interests of justice, issue *proprio motu* such orders as may be necessary for the preparation or conduct of the proceedings. (renumbered 5 June 2009)

Rule 78

Summonses to Appear

- (A) Upon request of the Prosecutor, or *proprio motu* when warranted by the interests of justice, the Pre-Trial Judge may issue a summons to appear to a suspect, an accused or a witness.
- (B) Upon request of the Defence, the Pre-Trial Judge may issue a summons to appear to a witness.
- (C) The Registrar shall transmit a certified copy of the summons to the person or authorities to which it is addressed, including the national authorities of a State in whose territory or under whose jurisdiction the suspect, accused or witness resides, was last known to be, or is believed to be likely to be found. When appropriate, the Registrar shall also consult with the relevant authorities of the Host State. (amended 12 February 2015)

- (D) The summons may identify a place other than the seat of the Tribunal for the suspect, the accused or the witness to appear.

Rule 79

Warrants of Arrest

- (A) The Pre-Trial Judge may issue a warrant of arrest on application by the Prosecutor (i) to ensure the person's appearance as appropriate; (ii) to ensure that the person does not obstruct or endanger the investigation or the court proceedings, for instance by posing a danger to, or intimidating, any victim or witness; or (iii) to prevent criminal conduct of a kind of which he stands accused. The warrant of arrest shall include an order for the prompt transfer of the accused to the Tribunal upon his arrest. (amended 10 November 2010)
- (B) The original warrant shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Tribunal.
- (C) Each certified copy of the arrest warrant shall be accompanied by a copy of the indictment certified in accordance with Rule 68 (K), and a statement of the rights of the accused as set forth in Article 16 of the Statute, and in Rules 65, 66 and 67 *mutatis mutandis*. Where practicable, these documents shall be in a language the accused understands.
- (D) Subject to any order of the Pre-Trial Judge or Chamber, the Registrar may transmit a certified copy of a warrant of arrest or, in the case of an accused in detention, a transfer order to (i) the person or authorities to whom it is addressed, including the national authorities of a State in whose territory or under whose jurisdiction the accused resides, was last known to be, or is believed by the Registrar to be likely to be found; (ii) an international body, including INTERPOL; or (iii) the Prosecutor on such terms as the Pre-Trial Judge or Chamber may determine. (amended 5 June 2009)

- (E) The Registrar shall instruct the person or authorities to which a warrant of arrest is transmitted that, at the time of arrest, the indictment and the statement of the rights of the accused be read to the accused in a language that he understands, and that the accused be cautioned in a language that he understands that he has the right to remain silent, and that any statement he makes shall be recorded and may be used in evidence.
- (F) Notwithstanding paragraph (E), if, at the time of arrest, the accused is served with the indictment or a translation thereof and the statement of rights of the accused in a language that the accused understands and is able to read, these need not be read to the accused at the time of arrest.
- (G) When an arrest warrant issued by the Tribunal is executed by the authorities of a State, a member of the Office of the Prosecutor may be present as from the time of the arrest.
- (H) [Deleted] (repealed 5 June 2009)
- (I) The above provisions shall also apply, *mutatis mutandis*, to suspects.

Rule 80

Temporary Surrender

Where a person, whose presence at the Tribunal is sought by the Pre-Trial Judge or a Chamber, is being proceeded against or is serving a sentence in Lebanon for a crime other than a crime that may fall under the Tribunal's jurisdiction, the authorities of Lebanon may be ordered temporarily to surrender the person. The Pre-Trial Judge or a Chamber may also order the temporary surrender of such a person from any Third State that has agreed to do so in an agreement with the Tribunal or which is obligated to provide such cooperation with the Tribunal on any other basis.

Rule 81

Issuance of Safe-Conducts

- (A) Following a motion by a Party, the Pre-Trial Judge or a Chamber, after consulting with the relevant authority of the Host State, may order the Registrar to issue a safe-conduct to a witness, suspect or accused who is not in custody. The order shall provide the reasons warranting the granting of the safe-conduct and any such conditions as deemed appropriate. (amended 30 October 2009)
- (B) The safe-conduct shall be notified to the other Party and to the relevant State authorities. It shall afford temporary immunity from arrest. It shall also afford temporary immunity from prosecution, except in proceedings before the Tribunal for conduct before its issuance.
- (C) Where an order of safe-conduct is issued by the Pre-Trial Judge or a Chamber, a Party may file an appeal with the Appeals Chamber within three days.

Rule 82

Execution of Summonses, Warrants, Orders and Requests

- (A) Notwithstanding Rule 76(C), where a summons to appear, a warrant of arrest or a transfer order is transmitted to Lebanon or a State which has agreed to provide cooperation with the Tribunal or one of its organs, or has on any other basis assumed an obligation to provide assistance, the national authorities shall act promptly and with all due diligence to ensure the proper and effective execution thereof. (amended 10 November 2010)
- (B) Where a summons to appear, a warrant of arrest or a transfer order relates to a person living in, or under the control of a State other than those referred to in paragraph (A), the Registrar, after consulting with the President, shall transmit the request for cooperation,

including the summons, the warrant or the order, to the appropriate authorities of the relevant State.

- (C) Upon request of the Prosecutor or the Registrar, or *proprio motu* after having heard the Defence, the Pre-Trial Judge or the Trial Chamber may request a State or States to adopt provisional measures to freeze the assets of the accused, without prejudice to the rights of third parties.

Rule 83

Procedure after Arrest

(amended 8 February 2012)

Upon arrest, the suspect or accused shall be detained by the State concerned, which shall promptly notify the Registrar, who shall, in turn, immediately inform the Head of Defence Office and the Prosecutor. The transfer of the suspect or accused to a detention facility of the Tribunal shall be arranged between the State authorities concerned, the Registrar and, if necessary, the authorities of the Host State.

Rule 84

Issuance of International Arrest Warrants

Upon request of the Prosecutor, the Pre-Trial Judge or the Trial Chamber may decide to issue an international arrest warrant in respect of the accused, to be transmitted to all States through any relevant international body, including INTERPOL and EUROPOL. (amended 10 November 2010; corrected 8 February 2012)

Rule 85

Questioning of the Accused

- (A) Questioning by the Prosecutor of an accused, including after the initial appearance, shall not proceed without the presence of counsel, unless the accused has voluntarily and expressly agreed to proceed without counsel present. If the accused subsequently expresses a desire to have counsel, questioning shall thereupon cease and shall only resume when counsel is present.
- (B) The Prosecutor shall, at the beginning of the questioning, caution the accused in accordance with Rule 65. The procedure envisaged in Rule 65 and the questioning, including any waiver of the right to counsel, shall be video-recorded or, if video-recording is not possible, audio-recorded in accordance with the procedure provided for in Rule 66.

Section 3: Participation of Victims in Proceedings

Rule 86

Granting the Status of Victim Participating in the Proceedings

- (A) If the Pre-Trial Judge has confirmed the indictment under Rule 68, a person claiming to be a victim of a crime within the Tribunal's jurisdiction may request the Pre-Trial Judge to be granted the status of victim participating in the proceedings pursuant to Article 17 of the Statute.
- (B) In deciding whether a victim may participate in the proceedings, the Pre-Trial Judge shall consider in particular:
 - (i) whether the applicant has provided prima facie evidence that he is a victim as defined in Rule 2;

- (ii) whether the applicant's personal interests are affected;
- (iii) whether the applicant's proposed participation is intended to express his views and concerns; and
- (iv) whether the applicant's proposed participation would be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

The Pre-Trial Judge may also consider:

- (v) whether the applicant having relevant factual information pertaining to the guilt or innocence of the accused is likely to be a witness;
- (vi) whether the legitimate personal interests of the applicant at stake in the trial are different from those of other victims participating in the proceedings, if any;
- (vii) whether the proposed participation by the applicant would jeopardise the appearance of integrity, dignity, decorum and objectivity of the proceedings;
- (viii) whether the proposed participation would cause unnecessary delay or inefficiency in the proceedings;
- (ix) whether the proposed participation would impact negatively on the security of the proceedings or of any person involved; and
- (x) whether the proposed participation would otherwise be in the interests of justice.

(renumbered 10 November 2010 and corrected 29 November 2010)

- (C) (i) The Pre-Trial Judge shall decide a request for the status of victim participating in the proceedings, after seeking submissions from the Parties and the Victims'

Participation Unit on relevant legal issues. An unsuccessful applicant for the status of victim participating in the proceedings may appeal the decision within seven days after receiving notification under Rule 51 (B) (v). A Party may appeal the decision after obtaining certification under Rule 126 but only on an error of law. (amended 20 February 2013)

- (ii) A victim participating in the proceedings may only do so through a legal representative unless the Pre-Trial Judge authorises otherwise.

(amended 10 November 2010 and 8 February 2012)

(D) The Pre-Trial Judge shall also decide whether to divide victims participating in the proceedings into groups having common legal representation, considering:

- (i) any conflicting interests that may hinder common representation;
- (ii) any shared or similar interests that may facilitate common representation; and
- (iii) the rights of the accused and the interests of a fair and expeditious trial.

This decision may not be appealed.

(amended 8 February 2012)

(E) [Deleted] (repealed 8 February 2012)

(F) The Registrar shall provide victims participating in the proceedings or their legal representatives information about procedural developments in the case.

(G) Any person identified in a final judgment as a victim, or otherwise considering himself or herself victim, who has suffered harm as a result of the commission of crimes by an accused convicted by the Tribunal may request from the Registrar a certified copy of the

judgment for the purpose of exercising his or her rights under national or other relevant law, as provided by Article 25 of the Statute. (added 10 November 2010 and corrected 29 November 2010)

Rule 87

Modes of Participation of Victims in the Proceedings

- (A) Unless the Pre-Trial Judge or the Trial Chamber, *proprio motu* or at the request of either Party, determines any appropriate restriction in the interests of justice, a victim participating in the proceedings is entitled to receive documents filed by the Parties, in so far as they have been disclosed by one Party to the other as well as the file, excluding any confidential and *ex parte* material, handed over by the Pre-Trial Judge to the Trial Chamber before commencement of trial pursuant to Rule 95. (amended 30 October 2009)
- (B) At the trial stage, a victim participating in the proceedings may request the Trial Chamber, after hearing the Parties, to call witnesses and to authorise him to tender other evidence. He may also, subject to the authorisation by, and under the control of, the Trial Chamber after hearing the Parties, examine or cross-examine witnesses and file motions and briefs. (amended 8 February 2012)
- (C) At the sentencing stage, subject to the authorisation by the Trial Chamber, a victim participating in the proceedings may be heard by the Trial Chamber or file written submissions relating to the personal impact of the crimes on them.
- (D) At the appeal stage, subject to the authorisation of the Appeals Chamber, after hearing the Parties, a victim participating in proceedings may participate in a manner deemed appropriate by the Appeals Chamber.

Section 4: Pre-Trial Judge

Rule 88

Role of the Pre-Trial Judge before Confirmation of the Indictment

- (A) Before confirmation of the indictment, the Pre-Trial Judge shall rule on requests for orders, summonses, warrants or any other order required for the conduct of the investigation made by the Prosecutor, and may accordingly issue orders, summonses or warrants.
- (B) Where, pursuant to Article 4 of the Statute, and except in cases where Rule 17 (B) applies, a person detained by the Lebanese authorities in connection with the investigation into the Hariri Attack is within the jurisdiction of the Tribunal, the Pre-Trial Judge, after hearing the Prosecutor and the detainee, shall promptly decide, applying the standard set out in Rule 102, whether to confirm provisional detention or order that the detainee be released and, in the latter case, on what conditions. The order shall provide reasons. This decision may be appealed pursuant to the procedure in Rule 102 (C). (amended 10 November 2010 and 20 February 2013)
- (C) The Pre-Trial Judge shall take all necessary steps to ensure the efficient and speedy preparation of cases falling or that may fall within the jurisdiction of the Tribunal. (added 30 October 2009)
- (D) To this end, as investigations proceed and when he deems it timely, the Prosecutor shall forward to the Pre-Trial Judge any item that the Prosecutor considers necessary for the exercise of the functions of the Pre-Trial Judge and, in particular, those provided in Rules 11 and 68. (added 30 October 2009)
- (E) For the purposes stated in paragraphs (C) and (D) above, the Pre-Trial Judge and the Prosecutor or a representative designated by him shall, if required, meet once a month during the investigation prior to confirmation of the indictment. The Pre-Trial Judge shall

draw up a confidential and *ex parte* report of each of these meetings. (added 30 October 2009)

- (F) All documents and information disclosed by the Prosecutor to the Pre-Trial Judge during the investigation under paragraph (D), and any reports created under paragraph (E), shall remain strictly confidential and *ex parte*, subject to the provisions of paragraph (G) below. (added 30 October 2009)
- (G) After confirmation of the indictment, the Prosecutor shall provide the Defence with the documents and/or information referred to in paragraph (F), to the extent that such documents or information are material to the rights of the Defence in accordance with the Prosecutor's obligations under Rules 110 and 113 and subject to the provisions of 115, 116, 117, 118 and 133. (added 30 October 2009)

Rule 89

Functions after Review of the Indictment

- (A) After an indictment has been confirmed by the Pre-Trial Judge, he shall coordinate communication between the Parties during the pre-trial phase.
- (B) The Pre-Trial Judge shall ensure that the proceedings are not unduly delayed. He shall take any measures necessary to prepare the case for a fair and expeditious trial.
- (C) In order to perform his functions and when necessary in the interests of justice, the Pre-Trial Judge may, *proprio motu* where appropriate, hear the Parties, without the accused or the victims participating in the proceedings being present. The Pre-Trial Judge may hear the Parties and the victims participating in the proceedings in chambers, in which case minutes of the meeting shall be taken by a representative of the Registry.

- (D) The Pre-Trial Judge shall record the points of agreement and disagreement on matters of law and fact. In this connection, he may order the Parties and the victims participating in the proceedings to file written submissions.
- (E) The Pre-Trial Judge shall keep the Trial Chamber informed of all relevant matters. The Pre-Trial Judge may, before the Trial Chamber is seized of the case, refer any matter to the Trial Chamber for adjudication. (amended 20 February 2013)
- (F) The Pre-Trial Judge may set time-limits for the making of pre-trial motions or preliminary motions until the submission of the file to the Trial Chamber.
- (G) Failure by a Party or a victim participating in the proceedings to raise objections or to make requests in accordance with the time-limits set by the Pre-Trial Judge or under these Rules, shall constitute waiver thereof, but the Pre-Trial Judge or a Chamber, for good cause, may grant relief from the waiver.
- (H) The Pre-Trial Judge may, for good cause, order that a pre-trial or preliminary motion be deferred for determination at trial.
- (I) Where the Prosecutor or the Defence considers an investigation to present a unique opportunity to take testimony or a statement from a witness, or to examine, collect or test evidence which may not be available subsequently at trial, upon either Party's request, the Pre-Trial Judge may take such measures as may be necessary to ensure: (a) the integrity of the proceedings for the collection and preservation of the evidence and (b) respect for the principle of equality of arms.

Rule 90

Disposal of Preliminary Motions

- (A) Preliminary motions, being motions which:

- (i) challenge jurisdiction;
- (ii) allege defects in the form of the indictment;
- (iii) seek the severance of counts joined in one indictment under Rule 70 or seek separate trials under Rule 141; or
- (iv) raise objections based on the refusal of a request for assignment of counsel made under Rule 59(A)

shall be in writing and shall be brought not later than thirty days after disclosure by the Prosecutor to the Defence of all material and statements referred to in Rule 110(A) (i). Such motions shall be disposed of by the Trial Chamber or, in the case under (iv), by the Pre-Trial Judge.

(B) Decisions on preliminary motions are without interlocutory appeal save:

- (i) in the case of motions challenging jurisdiction;
- (ii) in other cases where certification has been granted upon the basis that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.

(C) Appeals under paragraph (B) (i) shall be filed within ten days of the impugned decision and requests for certification under paragraph (B) (ii) shall be filed within seven days.

(D) If certification is given, a Party shall appeal to the Appeals Chamber within ten days of the filing of the decision to certify.

- (E) For the purpose of paragraphs (A) (i) and (B) (i), a motion challenging jurisdiction refers exclusively to a motion that challenges an indictment on the ground that it does not relate to the subject-matter, temporal or territorial jurisdiction of the Tribunal, including that it does not relate to the Hariri Attack or an attack of a similar nature and gravity that is connected to it in accordance with the principles of criminal justice.

Rule 91

Preparation and Implementation of Working Plan

- (A) At the beginning of the pre-trial proceedings, the Pre-Trial Judge shall establish a working plan indicating, in general terms, the obligations that the Parties are required to meet pursuant to this Rule and the dates by which these obligations must be fulfilled.
- (B) The Pre-Trial Judge shall oversee the implementation of the working plan and the progress of the discussions between and with the Parties and, in particular, of any potential difficulty. He shall communicate, without delay, to the Parties and the victims participating in the proceedings any observations and decisions made to expedite proceedings.
- (C) The Pre-Trial Judge, in consultation with the Parties, the Registrar, the Presiding Judge of the Trial Chamber and, if necessary, the President, shall set a tentative date for the start of trial proceedings at least four months prior to that date.
- (D) The Pre-Trial Judge shall order the Parties to meet to discuss issues related to the preparation of the case. He may invite victims participating in the proceedings to attend.
- (E) Such meetings shall be held *inter partes* or, if the Pre-Trial Judge so decides at the request of a Party, *ex parte*.

- (F) The presence of the accused is not necessary for meetings convened by the Pre-Trial Judge under this Rule.

- (G) The Pre-Trial Judge shall order the Prosecutor, within a time-limit set by him and not less than six weeks before the Pre-Trial Conference required by Rule 127, to file the following:
 - (i) the final version of the Prosecutor's pre-trial brief, including, for each count, a summary of the evidence which the Prosecutor intends to bring regarding the commission of the alleged crime and the form of responsibility incurred by the accused. This brief shall include any admissions by the Parties, as well as a statement of matters that are not in dispute;

 - (ii) the list of witnesses the Prosecutor intends to call, including:
 - (a) the name or pseudonym of each witness;

 - (b) a summary of the facts on which each witness is expected to testify;

 - (c) the points in the indictment as to which each witness is expected to testify, including specific references to counts and relevant paragraphs in the indictment;

 - (d) the total number of witnesses and the number of witnesses who are expected to testify against each accused and on each count;

 - (e) an indication of whether the witness will testify in person or pursuant to Rules 93, 123, 124, 125, 155, 156, 157 and 158;

- (f) the estimated length of time required for the examination-in-chief of each witness and the total time estimated for presentation of the Prosecutor's case.
 - (iii) the list of exhibits the Prosecutor intends to offer stating, where possible, whether the Defence has any objection as to authenticity. The Prosecutor shall serve on the Defence copies of the exhibits so listed or provide to the Defence access to the exhibits.
- (H) The Pre-Trial Judge shall order the victims participating in the proceedings, within a time-limit set by the Pre-Trial Judge and not less than six weeks before the Pre-Trial Conference required by Rule 127, to file the following:
 - (i) the list of witnesses the victims participating in the proceedings would like the Trial Chamber to call;
 - (ii) the list of exhibits the victims participating in the proceedings would like the Trial Chamber to admit into evidence.
- (I) After the submission by the Prosecutor of the items mentioned in paragraph (G), the Pre-Trial Judge shall order the Defence, within a set time-limit and not later than three weeks before the Pre-Trial Conference, to file a pre-trial brief addressing factual and legal issues, and including:
 - (i) in general terms, the nature of the accused's defence;
 - (ii) the matters which the accused disputes in the Prosecutor's pre-trial brief; and
 - (iii) in the case of each matter set out pursuant to paragraph (ii), the reason why the accused disputes it.

Rule 92

Exceptional Gathering of Evidence

- (A) If the interests of justice so require, at the request of a Party or a victim participating in the proceedings, the Pre-Trial Judge may exceptionally gather evidence that the requesting Party or the victim participating in the proceedings demonstrates on a balance of probabilities it is not in a position to collect, provided that the Pre-Trial Judge considers that doing so is in the interests of justice. In this regard, he may summon and interview witnesses or request the competent authorities of a State to do so, to seize probative materials or to search premises.
- (B) The evidence thus collected shall be brought to the notice of the requesting Party or of the victim participating in the proceedings who made the request and shall form part of the file to be later submitted to the Trial Chamber under Rule 95.
- (C) Where he considers that the interests of justice, the need for the impartial establishment of truth and the necessity to ensure a fair and expeditious trial, in particular the need to ensure the equality of arms and to preserve evidence, make it imperative to gather an important piece of evidence, either inculpatory or exculpatory, which the Parties or the victims participating in the proceedings have been unable to collect, the Pre-Trial Judge may, in exceptional circumstances, himself endeavour to gather that evidence by any appropriate means. Any evidence thus collected shall be brought to the notice of both Parties and the victims participating in the proceedings and shall form part of the file to be later submitted to the Trial Chamber under Rule 95.
- (D) A decision taken pursuant to paragraph (C) may be appealed by either Party within three days. The appeal shall be heard on an expedited basis. (amended 20 February 2013)

Rule 93

Questioning of Anonymous Witnesses by the Pre-Trial Judge

- (A) Where, at any stage of the proceedings, there is:
- (i) a serious risk that a witness or a person close to the witness would lose his life or suffer grave physical or mental harm as a result of his identity being revealed, and measures for the protection of witnesses as provided for in Rule 133 would be insufficient to prevent such danger; or
 - (ii) a serious risk that imperative national security interests might be jeopardised should the witness's identity or affiliation be revealed;

at the request of the Prosecutor, the Defence, or a legal representative of a victim participating in proceedings, the Pre-Trial Judge shall question the witness in the absence of the Parties or any legal representative of a victim participating in the proceedings.
(amended 30 October 2009)

- (B) The Pre-Trial Judge shall provide the Prosecutor, the Defence, and the legal representatives of victims participating in the proceedings the opportunity to convey questions to the witness without revealing his identity. He shall transmit these questions to the witness himself. The Pre-Trial Judge may also question the witness *proprio motu*.
- (C) A provisional transcript of the witness's answers shall be given by the Pre-Trial Judge to the Prosecutor, the Defence, and the legal representatives of victims participating in the proceedings. The Pre-Trial Judge may, however, decide to redact from the transcript any answer or part thereof which would reveal or threaten to reveal the identity of the witness. The Prosecutor, the Defence, and any legal representative of a victim participating in the proceedings shall be granted the opportunity to submit additional questions to the Pre-Trial Judge for transmittal to the witness.

- (D) The Pre-Trial Judge shall provide a copy of the final transcript to the Prosecutor, the Defence, and the legal representatives of victims participating in the proceedings. He shall also provide them with a copy of a declaration stating his opinion as to the veracity of the witness's statement, as well as the potential for any serious risk resulting from the witness's identity or affiliation being revealed.

Rule 94
Status Conferences

- (A) The Pre-Trial Judge shall convene a status conference within a reasonable period after the initial appearance of the accused and not more than eight weeks after it and, thereafter, within eight weeks from the previous one unless otherwise ordered to:
- (i) organise exchanges between the Parties so as to ensure expeditious preparation for trial; and
 - (ii) review the status of the case and allow the Parties the opportunity to raise issues in relation thereto, including the mental and physical condition of the accused.
- (B) With the written consent of the accused, given after receiving advice from his counsel, a status conference under this Rule may be conducted:
- (i) in the presence of the accused, but with his counsel participating either via tele-conference or video-conference; or
 - (ii) in Chambers in the accused's absence, but with his participation via tele-conference or video-conference if he so wishes, or participation of his counsel via tele-conference or video-conference.

Rule 95

Submission of File to the Trial Chamber

- (A) After receiving the filings from the Prosecutor and the Defence pursuant to Rules 90 and 91, the Pre-Trial Judge shall submit to the Trial Chamber a complete file consisting of:
- (i) all the filings of the Parties and of the victims participating in the proceedings;
 - (ii) any evidentiary material received by him;
 - (iii) transcripts of status conferences;
 - (iv) minutes of meetings held in the performance of his functions;
 - (v) all the orders and decisions he has made;
 - (vi) correspondence with relevant entities;
 - (vii) a detailed report setting out: (a) the arguments of the Parties and the victims participating in the proceedings on the facts and the applicable law; (b) the points of agreement and disagreement; (c) the probative material produced by each Party and by the victims participating in the proceedings; (d) a summary of his decisions and orders; (e) suggestions as to the number and relevance of both the witnesses to be called by the Prosecutor and the witnesses that the victims participating in the proceedings intend to request the Trial Chamber to call; and (f) the issues of fact and law that, in his view, are in contention;
 - (viii) all other material that is relevant to the case; and
 - (ix) a detailed index of all the material submitted.

- (B) As soon as the Trial Chamber has received the file pursuant to paragraph (A), it shall be seized of the case.

Rule 96

Public Nature of Pre-Trial Proceedings

- (A) Subject to sub-paragraph (B), pre-trial filings, proceedings and orders shall be public, unless otherwise provided by the Rules or decided by the Pre-Trial Judge at the request of a Party. (amended 5 June 2009)
- (B) Any filing or order relating to (i) coercive investigative measures, including requests for search warrants, arrest warrants or subpoenas or (ii) a request for confirmation of an indictment that is filed confidentially by the Prosecutor, shall remain confidential for as long as is necessary for the effective conduct of the investigation and/or the protection of any person. Applications or notifications under Rules 115-119 shall be governed by the provisions in those Rules. (added 5 June 2009; amended 30 October 2009)
- (C) This Rule shall apply, *mutatis mutandis*, to the Defence. (added 5 June 2009)

Rule 97

Other Powers and Duties

Rules 101, 102, 103, 116, 120, 121, 122, 131, 132, 133, 137, 138, 139, 140, 142 and 144 apply *mutatis mutandis*, in proceedings before the Pre-Trial Judge. (amended 30 October 2009)

Section 5: Preliminary Proceedings

Rule 98

Initial Appearance of the Accused

- (A) In the execution of a summons to appear or arrest warrant or upon transfer to the seat of the Tribunal, an accused shall be brought before the Trial Chamber or a Judge designated by the President, as appropriate, without delay and shall be formally charged. The Trial Chamber or the Judge shall:
- (i) satisfy itself or himself that the right of the accused to counsel is respected;
 - (ii) read or have the indictment read to the accused in a language the accused understands and satisfy itself that the accused understands the indictment;
 - (iii) inform the accused that, within seven days of the initial appearance, he will be called upon to enter a plea of guilty or not guilty on each count, but that should he so request, he may immediately enter a plea of guilty or not guilty on one or more counts;
 - (iv) if the accused fails to enter a plea at the initial or any further appearance, decide whether to enter a plea of not guilty on the accused's behalf;
 - (v) in case of a plea of not guilty, set a date for trial or for a status conference, as appropriate;
 - (vi) in case of a plea of guilty, act in accordance with Rule 100; and
 - (vii) set other dates as appropriate.

(amended 30 October 2009)

- (B) Where the accused has not chosen a counsel, the Head of Defence Office may assign a counsel available at short notice to act temporarily for the accused pursuant to Rule 57(D) (iii) to represent the accused at the initial appearance and at any further appearance as may be necessary for entering a plea. (amended 8 February 2012, corrected on 3 April 2014)

Rule 99
Plea Agreement

- (A) The Prosecutor and the Defence may agree that the accused will enter a plea of guilty to one or more counts of the indictment, and the Prosecutor shall do one or more of the following before the Trial Chamber:
- (i) apply to amend the indictment accordingly;
 - (ii) submit that a specific sentence or sentencing range is appropriate;
 - (iii) not oppose a submission by the accused for a particular sentence or sentencing range.
- (B) The Trial Chamber shall not be bound by any agreement specified in paragraph (A).
- (C) If a plea agreement has been reached by the Parties, the Trial Chamber shall require the disclosure of the agreement in open session or, on a showing of good cause, in closed session, at the time the accused pleads guilty in accordance with Rule 98.

Rule 100
Guilty Pleas

(amended 10 November 2010)

(A) If an accused pleads guilty in accordance with Rule 98, or requests to change his plea to guilty, and the Trial Chamber is satisfied that:

- (i) the guilty plea has been made voluntarily;
- (ii) the guilty plea is informed;
- (iii) the guilty plea is unequivocal; and
- (iv) there is a sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or lack of any material disagreement between the Parties about the facts of the case,

the Trial Chamber may enter a finding of guilt and set a date for the sentencing hearing.

(B) If an accused enters a plea of guilty pursuant to a plea agreement under Rule 99, the Trial Chamber shall, prior to entry of a finding of guilt, satisfy itself that the accused:

- (i) understands the terms of the plea agreement;
- (ii) has discussed the terms of the plea agreement with his counsel;
- (iii) understands the consequences of a plea of guilty;
- (iv) has not been threatened or coerced in any way to enter into the plea agreement; and
- (v) has entered into the plea agreement voluntarily.

(added 10 November 2010)

Rule 101

Detention on Remand

(amended 10 November 2010)

- (A) Upon (i) the transfer of a suspect or accused to the Tribunal pursuant to Rule 83 or (ii) the transfer of a detained individual to the Tribunal, including transfer pursuant to Article 4 of the Statute, or (iii) upon the arrest of an accused in accordance with Rule 79 following his voluntary appearance before the Tribunal, the Pre-Trial Judge or a Chamber, as appropriate, shall satisfy itself that the person has been informed of the crimes of which he is accused or suspected and of his rights under the Statute and the Rules, including the right to apply for release.
- (B) A person transferred to the Tribunal, who is arrested and detained under paragraph (A), or his counsel, may apply for release. In deciding such an application, the Pre-Trial Judge or a Chamber, as appropriate, shall apply the test set out in Rule 63 or Rule 102, as appropriate, and give reasons for his or its decision. (amended 5 June 2009)
- (C) If an application for release or a request to modify a ruling on release is made, the Pre-Trial Judge or a Chamber, as appropriate, shall decide upon the request without delay, after hearing the views of the Parties. If the applicant has been arrested and detained, or transferred without prior request by the Prosecutor, the Prosecutor can file a motion for release. The Pre-Trial Judge or a Chamber, as appropriate, shall also give the Host State and the State to which the accused seeks to be released the opportunity to be heard.
- (D) The Pre-Trial Judge or a Chamber, as appropriate, shall review at least every six months its ruling on the release or provisional detention of the person, and may do so at any time upon the request of the Prosecutor or the person detained. Upon such review, it may modify its ruling as to provisional detention, release or conditions of release, if it is satisfied that changed circumstances so require.

- (E) The Pre-Trial Judge or a Chamber, as appropriate, shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Pre-Trial Judge or a Chamber, as appropriate, may consider releasing the person, with or without conditions.
- (F) If necessary, at the request of the Prosecutor, the Pre-Trial Judge or a Chamber, as appropriate, may issue a summons to appear or a warrant of arrest to secure the presence of a person who has been released.
- (G) If an order is made to detain a person, he shall be detained in a detention facility of the Tribunal. In exceptional circumstances, the person may be held in facilities outside the Host State. The President may, on the application of a Party, request modification of the conditions of detention.

Rule 102

Release

(amended 10 November 2010)

- (A) The Pre-Trial Judge or a Chamber, as appropriate, may refuse release only if satisfied that provisional detention is necessary: (i) to ensure the person's appearance at trial; (ii) to ensure that the person does not obstruct or endanger the investigation or the court proceedings, for instance by posing a danger to, or intimidating, any victim or witness; or (iii) to prevent criminal conduct of a kind of which he is suspected. Such release shall not be made in the Host State without its consent.
- (B) The Pre-Trial Judge or the Chamber may impose such conditions upon release as it may deem appropriate, including the execution of a bail bond or, in the case of an accused, the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.

- (C) If the Prosecutor appeals a decision to release, he shall file his appeal within one day. The detained person shall file any response within one day. If the detained accused appeals a decision in relation to release, the appeal shall be filed within seven days of the filing of the decision. The Prosecution shall file any response within seven days. (amended 30 October 2009)
- (D) The Prosecutor may apply for a stay of a decision by the Pre-Trial Judge or the Chamber granting release on the basis that the Prosecutor has appealed or intends to appeal the decision, and he shall make such an application at the time of filing his response to any application for release.
- (E) Where the Pre-Trial Judge or the Chamber orders a stay of its decision to release pending an appeal by the Prosecutor, release shall not take place until either:
- (i) the time-limit for the filing of an appeal by the Prosecutor has expired, and no such appeal is filed;
 - (ii) the Appeals Chamber dismisses the appeal; or
 - (iii) the Appeals Chamber otherwise orders.
- (F) Without prejudice to the provisions of Rule 176(B), the Appeals Chamber may grant release to a convicted person pending an appeal or for a fixed period if it is satisfied that:
- (i) the appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, whichever is applicable;
 - (ii) the appellant, if released, will not endanger the court proceedings, for instance by posing a danger to any victim or witness or is likely to engage in conduct of which he is suspected or for which he has been accused; and

- (iii) such release is otherwise in the interests of justice.

The provisions of paragraph (B) shall apply *mutatis mutandis*.

Rule 103

Attendance at Proceedings while Not in Custody

- (A) Where, in compliance with a summons to appear issued by the Pre-Trial Judge, an accused attends the initial appearance hearing, at the request of a Party and upon authorisation of the Pre-Trial Judge or Chamber, he may attend subsequent proceedings while not being in custody, whether or not on release, provided that the Pre-Trial Judge or Chamber satisfies itself that the accused will not obstruct or endanger the investigation or the court proceedings, for instance by posing a danger to any victim or witness, nor is likely to engage in conduct for which he has been accused. (amended 30 October 2009, 10 November 2010 and 12 February 2015)
- (B) Before ruling on the attendance of the accused pursuant to paragraph (A), the Pre-Trial Judge or Chamber may request the Registrar to consult with the Host State pursuant to the Host State Agreement and to seek assurances from the State where the accused resides that, in the event the accused returns to his State, it shall prevent him from absconding or attempting to obstruct the administration of justice. (amended 12 February 2015)
- (C) At the request of a Party, the Pre-Trial Judge or Chamber may, after hearing the views of the Parties and requesting that the Registrar consult with the relevant authorities of the Host State, allow the accused to be detained in a safe house. This detention is subject to conditions to be agreed upon by the Host State, the Pre-Trial Judge or Chamber, the Registrar, the Prosecutor and the Head of Defence Office. (amended 12 February 2015).

Rule 104

Proceedings not held *in Absentia*

(amended 30 October 2009 and 20 February 2013)

Proceedings shall not be *in absentia* if an accused appears before the Tribunal in person, by video-conference, or by counsel appointed or accepted by him.

Rule 105

Attendance of Hearings via Video-Conference

Upon authorisation of the Pre-Trial Judge or of the Trial Chamber, the accused may participate in hearings via video-conference provided that his counsel attends the hearings in person.

Section 6: Absence of Accused from Proceedings before the Tribunal

(amended 30 October 2009)

Rule 105 *bis*

Absence of the Accused from the Proceedings before the Pre-Trial Judge

(added 10 November 2010 and amended 8 February 2012)

- (A) If, within a period of 30 calendar days starting from the advertisement referred to in Rule 76 *bis*, the accused is not under the Tribunal's authority, the Pre-Trial Judge shall ask the Trial Chamber to initiate proceedings *in absentia*.

- (B) After the Trial Chamber ensures that the requirements of Rule 106 have been met, the Pre-Trial Judge shall request the Head of Defence Office to assign counsel to the accused who fails to appoint one, pursuant to Rule 57 (D) (ix), and shall proceed with the pre-trial proceedings. (corrected on 3 April 2014)

Rule 106

Determination of the Intention to Avoid Trial or of the Impossibility to Attend

- (A) Where the accused:
- (i) has expressly and in writing waived his right to be present at proceedings before the Tribunal;
 - (ii) has not been handed over to the Tribunal by the State authorities concerned within a reasonable time; or
 - (iii) has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his appearance before the Tribunal and to inform him of the charges by the Pre-Trial Judge;

the Trial Chamber shall conduct proceedings *in absentia*.

(amended 30 October 2009)

- (B) Where the accused is not present on account of the failure or refusal of the relevant State to hand him over, before deciding to conduct proceedings *in absentia*, the Trial Chamber shall: (i) consult with the President and ensure that all necessary steps have been taken with a view to ensuring that the accused may, in the most appropriate way, participate in the proceedings; and (ii) ensure that the requirements of Article 22(2) of the Statute have been met.

Rule 107

Application of Rules to Proceedings *in Absentia*

The rules on pre-trial, trial, and appellate proceedings shall apply *mutatis mutandis* to proceedings *in absentia*.

Rule 108

Appearance of the Accused in the Course of Proceedings *in Absentia*

- (A) Where the accused has failed to take part in proceedings before the Tribunal, has not appointed counsel of his choosing nor has accepted in writing appointment of counsel by the Tribunal and then appears before the Trial Chamber prior to conclusion of the *in absentia* proceedings, including any sentencing, the Trial Chamber shall terminate proceedings and, unless the accused explicitly declares that he does not seek a new trial, initiate proceedings *ex novo*. (amended 30 October 2009)
- (B) After hearing the Parties and the victims participating in the proceedings, and acting in the interests of a fair and expeditious trial and of the good administration of justice, the Trial Chamber may, subject to the consent of the Defence, decide that part of the *in absentia* proceedings may be utilised in the new proceedings, and, if so, to what extent.
- (C) Any Party may appeal to the Appeals Chamber against a ruling made under paragraph (B) by filing an appeal within fourteen days.
- (D) Once the *in absentia* proceedings have been terminated because of the appearance of the accused, the trial shall continue whether or not the accused absconds. The right to retrial may be exercised only once.

Rule 109

Appearance of the Accused after Proceedings *in Absentia*

- (A) Where an accused appears before the Tribunal after a trial *in absentia*, including sentencing, if any, has been concluded he shall state his position and submissions as to the procedural consequences of his appearance.
- (B) At his appearance before the Tribunal, the accused may choose in writing to accept both the Judgement and sentence, if any.
- (C) If the accused has been convicted *in absentia* by the Trial Chamber, he may:
 - (i) accept in writing the Judgement and/or sentence;
 - (ii) request in writing a retrial;
 - (iii) accept in writing the Judgement and request a new hearing in respect of his sentence, or
 - (iv) appeal against conviction or sentence, or both, if he has waived in writing his right to retrial. The time-limit within which to file the appeal shall run from the date of the waiver of his right to retrial.
- (D) Where, after the Prosecutor has appealed a Judgement or sentence rendered *in absentia*, the accused appears, the Appeals Chamber shall terminate appellate proceedings and remit the case to the Trial Chamber, unless the accused accepts in writing the Judgment and sentence, if any, of the Trial Chamber.
- (E) If the accused has been convicted *in absentia* by the Appeals Chamber, he may:
 - (i) accept in writing the conviction or sentence;

- (ii) request a retrial;
 - (iii) accept in writing the conviction and request a new hearing in respect of his sentence; or
 - (iv) accept the Trial Chamber's judgement of acquittal and request a new hearing on appeal.
- (F) This Rule does not apply to an accused who appointed, and was represented by, defence counsel to represent him during the trial in his absence.

Section 7: Disclosure

Rule 110

Disclosure by the Prosecutor

Subject to the provisions of Rules 115, 116, 117 and 118:

- (A) the Prosecutor shall make available to the Defence in a language which the accused understands,
 - (i) within thirty days of the initial appearance of an accused, or within any other time-limit prescribed by the Pre-Trial Judge, or in the case of joinder under Rule 70 (C) the Trial Chamber, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all statements obtained by the Prosecutor from the accused; and (amended 20 February 2013)

- (ii) within the time-limit prescribed by the Trial Chamber or by the Pre-Trial Judge, copies of: (a) the statements of all witnesses whom the Prosecutor intends to call to testify at trial; (b) all statements, depositions, or transcripts taken in accordance with Rules 93, 123, 125, 155, 156, 157 and 158; and (c) copies of the statements of additional prosecution witnesses.

(amended 30 October 2009)

- (B) The Prosecutor shall, on request, permit the Defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

Rule 111

Disclosure of Reports, Memoranda or Other Internal Documents

Reports, memoranda, or other internal documents prepared by a Party, its assistants or representatives in connection with the investigation or preparation of a case are not subject to disclosure or notification under the Rules. For purposes of the Prosecutor, this includes reports, memoranda, or other internal documents prepared by the UNIIC or its assistants or representatives in connection with its investigative work.

Rule 112

Disclosure by the Defence

- (A) At the end of the Prosecutor's case, following a Defence election to present its case, within the time-limit prescribed by the Pre-Trial Judge or the Trial Chamber, but not less than one week prior to the commencement of the Defence case, the Defence shall:

- (i) permit the Prosecutor to inspect and copy any books, documents, photographs and tangible objects in the Defence's custody or control, which are intended for use by the Defence as evidence at trial; and
 - (ii) provide to the Prosecutor copies of statements if any, of all witnesses whom the Defence intends to call to testify at trial, and copies of all statements taken in accordance with Rules 93, 123, 125, 155, 156, 157 and 158, which the Defence intends to present at trial. Copies of the statements, if any, of additional witnesses shall be made available to the Prosecutor prior to a decision being made to call those witnesses.
- (B) Within the time-limit prescribed by the Pre-Trial Judge:
- (i) the Defence shall notify the Prosecutor of its intent to offer:
 - (a) the defence of alibi, in which case the notification shall specify the place or the places at which the accused claims to have been present at the time of the alleged crime and the names and current contact information of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;
 - (b) any special defence, including that of diminished or lack of mental capacity, in which case the notification shall specify the names and current contact information of witnesses and any other evidence upon which the accused intends to rely to establish the special defence; and
 - (ii) the Prosecutor shall notify the Defence of the names of the witnesses that the Prosecutor intends to call in rebuttal of any defence plea of which the Prosecutor has received notice in accordance with paragraph (i) above.

- (C) Failure of the Defence to provide notice under this Rule shall not limit the right of the Defence to rely on the above defences.
- (D) The Trial Chamber shall consider defences available upon the evidence as a matter of law in the relevant factual circumstances, even if such a defence has not been advanced by the Defence.

Rule 112 *bis*

Disclosure by Victims Participating in the Proceedings

Where the Trial Chamber grants a victim participating in the proceedings the right to call evidence, the Chamber shall decide on the corresponding disclosure obligations that shall be imposed. (added 30 October 2009)

Rule 113

Disclosure of Exculpatory Material

- (A) Subject to the provisions of Rules 116, 117 and 118, the Prosecutor shall, as soon as practicable, disclose to the Defence any information in his possession or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the accused or affect the credibility of the Prosecutor's evidence.
- (B) Victims participating in the proceedings shall have the same obligations as set out in paragraph (A). Before disclosing to the Defence any information that victims participating in the proceedings have reason to believe falls under Rule 116 or 117, they shall disclose that material to the Prosecutor. (added 30 October 2009, amended 20 February 2013)

Rule 114

Failure to Comply with Disclosure Obligations

The Pre-Trial Judge or the Trial Chamber may decide *proprio motu*, or at the request of either Party or a victim participating in the proceedings, on sanctions to be imposed on a Party or on a victim participating in the proceedings who fails to perform its disclosure obligations pursuant to the Rules. (amended 30 October 2009)

Rule 115

Interim Non-Disclosure of Identity

(amended on 30 October 2009)

- (A) In exceptional circumstances, the Prosecutor may apply to the Pre-Trial Judge or Trial Chamber to order interim non-disclosure of the identity of a victim or witness who may be in danger or at risk until appropriate protective measures have been implemented. (amended 30 October 2009)
- (B) In the determination of interim non-disclosure of the identity, the Pre-Trial Judge or Trial Chamber may consult the Victims and Witnesses Unit. (amended 30 October 2009)
- (C) Subject to Rule 133, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.

Rule 116

Application and Grounds for Non-Disclosure

- (A) Where information in the possession of the Prosecutor is not obtained under or otherwise subject to Rule 118, and its disclosure would ordinarily be required under Rule 110 or 113, but such disclosure (i) may prejudice ongoing or future investigations, (ii) may cause grave risk to the security of a witness or his family, or (iii) for any other reasons

may be contrary to the public interest or the rights of third parties, the Prosecutor may apply *ex parte* to the Trial Chamber sitting *in camera* to be relieved in whole or in part of an obligation under the Rules to disclose that material. When making such application the Prosecutor shall provide the Trial Chamber with the information that is sought to be kept confidential, together with a statement relating to the proposed counterbalancing measures including, *inter alia*: identification of new, similar information; provision of the information in summarised or redacted form; or stipulation of the relevant facts. (amended 10 November 2010)

- (B) The Trial Chamber shall decide whether the information that is the subject of the application would ordinarily have to be disclosed in the absence of an application under this Rule. If this is the case, the Trial Chamber shall consider *ex parte* the Prosecutor's statement relating to proposed counterbalancing measures including, *inter alia*: identification of new similar information; provision of the information in summarised or redacted form; or stipulation of the relevant facts.
- (C) The Trial Chamber may order that appropriate counterbalancing measures be taken. If no such measures are sufficient to protect the accused's right to a fair trial, the Prosecutor shall be given the option of either amending or withdrawing the charges to which the material relates or disclosing the material.
- (D) The Trial Chamber's decision may be appealed within seven days. (amended 20 February 2013)
- (E) The foregoing provisions shall also apply *mutatis mutandis* to the Defence and victims participating in the proceedings.

Rule 117

Security Interests of States and Other International Entities

- (A) Where information in the possession of the Prosecutor is not obtained under or otherwise subject to Rule 118, and its disclosure would ordinarily be required under Rule 110 or 113, but such disclosure may affect the security interests of a State or international entity, the Prosecutor may apply *ex parte* to the Pre-Trial Judge sitting in camera for an order to be relieved of his obligation to disclose in whole or in part, or subject to counterbalancing measures provided for in Rule 116(A). (amended 5 June 2009)
- (B) The Pre-Trial Judge shall notify the Trial Chamber of such application and of any order and decision in this respect.
- (C) Rule 116(B), (C), (D) and (E) shall apply *mutatis mutandis*.

Rule 118

Information never Subject to Disclosure without Consent of Provider

- (A) Where the Prosecutor is in possession of information which was provided on a confidential basis and which affects the security interests of a State or international entity or an agent thereof, he shall not disclose that information or its origin without the consent of the person or entity providing the information.
- (B) Where, in the Prosecutor's view, confidential information provided to him by a person or entity under paragraph (A) contains information referred to in Rule 113, the Prosecutor shall take reasonable steps to obtain the consent of the provider to (i) disclose that information or the fact of its existence to the accused or (ii) provide an alternative form of disclosure such as: identification of new similar information; provision of the information in summarised or redacted form; or stipulation of the relevant facts. If the Prosecutor

obtains such consent, the Prosecutor shall make the disclosure that has been consented to without delay.

- (C) In the absence of such consent, the Prosecutor shall notify the Pre-Trial Judge of the existence of information for which the Prosecutor has not obtained the provider's consent for disclosure. The notification to the Pre-Trial Judge may be made *ex parte* and in camera and shall not include (i) the original information provided to the Prosecutor on a confidential basis or (ii) any information concerning or indicating its origin. It shall include (i) an overview of the steps the Prosecutor has taken to obtain the consent of the provider; (ii) the reasons why the information would normally be required to be disclosed pursuant to Rule 113; and (iii) a list of appropriate counterbalancing measures, if any, including amending or withdrawing one or more charges in the indictment. (amended 5 June 2009)
- (D) The Pre-Trial Judge shall take any action appropriate under the circumstances, including ordering counterbalancing measures, such as the amendment or withdrawal of one or more charges in the indictment.
- (E) If, after obtaining the consent of the person or entity providing the information under paragraph (A), the Prosecutor elects to present as evidence any testimony, document or other information so provided, neither the Pre-Trial Judge nor the Trial Chamber, notwithstanding Rule 165, may order either Party to produce additional evidence received from the person or entity providing the initial information, nor may the Pre-Trial Judge or the Trial Chamber, for the purpose of obtaining such additional evidence, summon that person or a representative of that entity as a witness or order their attendance. Neither the Pre-Trial Judge nor the Trial Chamber may use its power to order the attendance of witnesses or to require production of documents in order to compel the production of such additional evidence.
- (F) If the Prosecutor calls a witness to introduce in evidence any information provided under this Rule, neither the Pre-Trial Judge nor the Trial Chamber may compel that witness to

answer any question relating to the information or its origin if the witness declines to answer on grounds of confidentiality.

- (G) The right of the accused to challenge the evidence presented by the Prosecutor shall remain unaffected, subject only to the limitations contained in paragraphs (E) and (F). (amended 5 June 2009)
- (H) The provisions of this Rule shall apply *mutatis mutandis* to specific information in the possession of the Defence. (amended 20 February 2013)
- (I) Nothing in paragraphs (E) and (F) above shall affect the power of the Pre-Trial Judge or the Trial Chamber under Rule 149(D) to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. (amended 5 June 2009)
- (J) The Pre-Trial Judge shall notify the Trial Chamber of any notification under paragraph (C) and of any order and decision in this respect. (amended 30 October 2009 and 20 February 2013)
- (K) The Pre-Trial Judge's decision may be appealed within seven days. The Appeals Chamber shall rule on such appeal without access to the confidential information or any information concerning or indicating its origin. (amended 20 February 2013)

Rule 119

Special Counsel

- (A) In the interests of justice, the Prosecutor or the Defence may apply to the President to appoint a Special Counsel to provide advice to the Pre-Trial Judge in the performance of his functions under Rule 118(C). (amended 5 June 2009)

- (B) If the President agrees, he shall appoint a Special Counsel from a confidential list of persons who have been approved for this purpose by the entity providing the information on a confidential basis. (amended 5 June 2009)
- (C) The Special Counsel shall review the information that the provider has not consented to being disclosed under Rule 118(C) and shall review the list of counterbalancing measures proposed by the Prosecutor under Rule 118(C). Following this review, after consulting with the Prosecutor, the Special Counsel shall advise the Pre-Trial Judge of the counterbalancing measures that are the most appropriate to protect the rights of the accused to a fair trial under the circumstances and the Pre-Trial Judge shall issue any appropriate order in this regard.
- (D) Any order of the Pre-Trial Judge under paragraph (C) may be appealed within seven days, but the Appeals Chamber shall not have access to the original information provided to the Prosecutor on a confidential basis or any information concerning or indicating its origin. (amended 20 February 2013)
- (E) The Pre-Trial Judge shall notify the Trial Chamber of any advice by Special Counsel made under this Rule and of any order and decision in this respect.

Rule 120

Continuing Nature of Disclosure Obligation

If either Party discovers additional evidence or information which should have been disclosed earlier pursuant to the Rules, that Party shall immediately disclose that evidence or information to the other Party and the Pre-Trial Judge or the Chamber. The Prosecutor shall disclose to the other Party any information referred to in Rule 113 notwithstanding the completion of the trial and any subsequent appeal.

Rule 121
Procedure for Disclosure

- (A) A Party may choose to fulfil some or all of its disclosure obligations in electronic form, together with appropriate computer software to allow for searching of the material.
- (B) A Party shall, as far as practicable, provide information identifying documents, or classes of documents, disclosed to the other Party.

Rule 122
Agreements as to Evidence

The Prosecutor and the Defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or elsewhere is not contested, and, accordingly, a Chamber may consider such alleged fact as being proved, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims.

Section 8: Depositions

Rule 123
Taking of Depositions upon Order of the Pre-Trial Judge

- (A) Where there is reason to believe that the evidence of a potential witness may otherwise become unavailable, the Pre-Trial Judge may order, on request of a Party, that a deposition be taken for use at trial, whether or not the person whose deposition is sought is able physically to appear before the Tribunal to give evidence.
- (B) The motion for the taking of a deposition shall indicate the name and whereabouts of the person whose deposition is sought, the date and place at which the deposition is to be

taken, a statement of the matters on which the person is to be examined and of the circumstances justifying the taking of the deposition.

- (C) If the motion is granted, the Party at whose request the deposition is to be taken shall give reasonable notice to the other Party as well as to any victim participating in the proceedings, who shall be given the opportunity to attend the taking of the deposition and question the person whose deposition is being taken. Where the Pre-Trial Judge takes the deposition *proprio motu* notice thereof shall be given to the Parties and to the victims participating in the proceedings.
- (D) Deposition evidence may be taken either at or away from the seat of the Tribunal, and it may also be given by means of a video-conference.
- (E) The Pre-Trial Judge shall ensure that the deposition is taken in accordance with the Rules, and he shall make a record of the deposition. This record shall include the following information:
 - (i) the questions and the answers;
 - (ii) any issue raised; and
 - (iii) whether and how he ruled on any issue raised or whether issues are referred to the Trial Chamber

He shall transmit the record to the Trial Chamber, either as part of the complete file referred to in Rule 95 or at any other stage. (amended 30 October 2009)

Rule 124

Testimony by Video-Conference Link

At the request of either Party, the Pre-Trial Judge or a Chamber may, in the interests of justice, order that testimony be received via video-conference link.

Rule 125

Evidence Collected by Judicial Authorities of a State

- (A) Where the relevant State objects to the taking of testimony in accordance with Rule 123 or 124, judicial authorities of that State may, at the request of either Party and subject to the conditions set out in paragraphs (B) and (C), collect testimony in accordance with a bilateral agreement, if any, or *ad hoc* arrangements.
- (B) The judicial authorities of the State concerned shall allow the Party calling the witness as well as the other Party and, if held necessary by the Pre-Trial Judge or a Chamber, legal representatives of victims participating in the proceedings, to attend the questioning of the witness by a judicial authority of the State on the basis of questions submitted to that authority by the Parties or the legal representative. Where the law of the State concerned so permits, the judicial authority shall also allow them to ask questions directly to the witness.
- (C) The questioning shall be video-recorded or audio-recorded by a member of the Registry staff.
- (D) Subject to the consent of the relevant State, the Pre-Trial Judge or a Judge appointed by the Presiding Judge of a Chamber may attend the questioning of the witness, if necessary.
- (E) At the request of a Party or a legal representative of a victim participating in the proceedings, the Registry shall provide a transcript of the questioning.

Section 9: Motions

Rule 126

Motions Requiring Certification

- (A) This Rule applies to all motions other than preliminary motions, motions relating to release, and others for which an appeal lies as of right according to these Rules. (amended 10 November 2010)
- (B) After a case is assigned to the Trial Chamber, either Party may apply by motion for appropriate ruling or relief. Such a motion shall be oral unless decided otherwise by the Trial Chamber. (amended 30 October 2009 and 10 November 2010)
- (C) Decisions on all motions under this rule are without interlocutory appeal save with certification, if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.
- (D) Requests for certification under paragraph (C) shall be filed within seven days of the filing of the impugned decision.
- (E) If certification is granted, a Party shall appeal to the Appeals Chamber within seven days of the filing of the decision to certify.
- (F) An appeal shall not, of itself, have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules.
- (G) When a Chamber finds that a motion or other filing is frivolous or is an abuse of process, the Registrar shall withhold payment of fees associated with the production of that motion or other filing and the costs thereof.

Section 10: Conferences

Rule 127

Pre-Trial Conference

- (A) Prior to the commencement of the trial, the Trial Chamber shall hold one or more *inter partes* Pre-Trial Conferences, as needed.
- (B) The Trial Chamber may give such directions necessary or desirable to ensure a fair, impartial, and expeditious trial.
- (C) The powers of the Trial Chamber under paragraph (B) shall include:
 - (i) calling upon the Prosecutor to shorten the estimated length of the examination-in-chief for some or all witnesses;
 - (ii) determining the number of witnesses the Prosecutor may call; and
 - (iii) determining the time available to the Prosecutor for the presentation of evidence.

Rule 128

Functions that May Be Exercised after Close of the Prosecutor's Case

After the close of the Prosecutor's case and upon a Defence election to present its case, the Trial Chamber shall order the Defence to file the following:

- (i) a list of witnesses the Defence intends to call with:
 - (a) the name or pseudonym of each witness;

- (b) a summary of the facts on which each witness is expected to testify;
 - (c) the points in the indictment as to which each witness is expected to testify, including specific reference to counts and relevant paragraphs in the indictment;
 - (d) the total number of witnesses and the number of witnesses who are expected to testify for each accused and on each count;
 - (e) an indication as to whether the witness will testify in person or pursuant to Rules 93, 123, 124, 125, 155, 156, 157 and 158;
 - (f) the estimated length of time required for examination in chief of each witness and the total time estimated for presentation of the Defence's case; and
- (ii) a list of exhibits the Defence intends to offer in its case, stating, where possible, whether the Prosecutor has any objection as to authenticity. The Defence shall serve on the Prosecutor copies of the exhibits so listed.

Rule 129

Pre-Defence Conference

- (A) Prior to the commencement by the Defence of its case, the Trial Chamber shall hold one or more *inter partes* Pre-Defence Conferences, as needed.
- (B) The Trial Chamber may give such directions necessary or desirable to ensure a fair, impartial and expeditious trial. (corrected in the English and Arabic version 8 February 2012)
- (C) The powers of the Trial Chamber under paragraph (B) shall include:

- (i) calling upon the Defence to shorten the estimated length of the examination-in-chief for some or all witnesses;
- (ii) determining the number of witnesses the Defence may call; and
- (iii) determining the time available to the Defence for the presentation of evidence.

PART 6
PROCEEDINGS BEFORE THE TRIAL CHAMBER

Section 1: General Provisions

Rule 130

Conduct of Proceedings

(amended 30 October 2009)

- (A) The Trial Chamber, after hearing the parties, may give directions on the conduct of the proceedings as necessary and desirable to ensure a fair, impartial, and expeditious trial. These may include *inter alia* orders relating to disclosure and directions to the Parties regarding communication between Parties and witnesses.
- (B) Rules that govern proceedings before the Pre-Trial Judge, except for those under Rules 93, 117 and 118, shall apply *mutatis mutandis* to proceedings before the Trial Chamber after submission of the file to the Trial Chamber.

Rule 131

Third Parties and *Amicus Curiae*

- (A) The Trial Chamber may decide, after hearing the Parties, that it would assist the proper determination of the case to invite or grant leave to a State, organisation or person to make written submissions on any issue, or to allow a State, organisation or person to appear before it as *amicus curiae*.
- (B) The Parties shall have the opportunity to respond to any submissions made by *amicus curiae* or third parties under paragraph (A).

Rule 132

Medical Examination of the Accused

The Trial Chamber may, *proprio motu* or at the request of a Party, order a medical, psychiatric or psychological examination of the accused. In such a case, unless the Trial Chamber otherwise orders, the Registrar shall entrust this task to one or several experts whose names appear on a list previously drawn up by the Registry and approved by the Council of Judges.

Rule 133

Measures for the Protection of Victims and Witnesses

- (A) The Trial Chamber may, *proprio motu* or at the request of a Party, the victim or witness concerned, the Victims' Participation Unit or the Victims and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused. (amended 30 October 2009 and 8 February 2012)
- (B) A Party requesting the Trial Chamber to order protective measures shall seek to obtain the consent of the person in respect of whom the protective measures are sought. (added 30 October 2009)
- (C) The Trial Chamber may hold an *in camera* proceeding to determine whether to order:
 - (i) measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness, by means such as:
 - (a) expunging names and identifying information from the Tribunal's public records;

- (b) non-disclosure to the public of any records identifying the victim or witness;
 - (c) applying image- or voice- altering devices.
 - (d) giving testimony through closed circuit television or video-conference link; and
 - (e) assignment of a pseudonym.
- (ii) closed sessions;
 - (iii) appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television or shielding the accused from the direct view of the witness.

(amended 30 October 2009)

- (D) The Victims and Witnesses Unit shall ensure that the witness has been informed, before giving evidence, that his testimony and identity may be disclosed at a later date in other proceedings before the Tribunal pursuant to paragraph (F) below. (amended and renumbered 30 October 2009)
- (E) A Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation. (renumbered 30 October 2009)
- (F) When making an order under paragraph (A) above, the Trial Chamber shall, wherever appropriate, state in the order whether the transcript of those proceedings relating to the evidence of the witness to whom the measures relate shall be made available for use in other proceedings before the Tribunal. (renumbered 30 October 2009)

- (G) Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures:
- (i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the "subsequent proceedings"), unless and until they are varied in accordance with the procedure set out in this Rule; but (amended 20 February 2013)
 - (ii) shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the subsequent proceedings, provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings.
- (renumbered 30 October 2009)
- (H) A Party to the subsequent proceedings seeking to vary protective measures ordered in the first proceedings, after having sought the consent of the witness in respect of whom the submission is made, must apply to the Chamber seized of the subsequent proceedings. (amended and renumbered 30 October 2009; amended 20 February 2013)
- (I) Before determining an application under paragraph (H) above, the Chamber seized of the subsequent proceedings shall obtain all relevant information from the first proceedings and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal. (renumbered 30 October 2009; amended 20 February 2013)
- (J) The Chamber determining an application under paragraph (H) shall ensure, with the assistance of the Victims and Witnesses Unit where necessary, that the protected victim or witness has consented to the variation of the protective measures. In exceptional circumstances, the Chamber may *proprio motu* order the variation of protective measures without this consent. (added 20 February 2013)

- (K) An application to a Chamber to vary protective measures in respect of a victim or witness may be dealt with either by the Chamber or by a Judge of that Chamber, and any reference in this Rule to "a Chamber" shall include a reference to "a Judge of that Chamber". (renumbered 30 October 2009; amended and renumbered 20 February 2013)

Rule 134

Contempt of the Tribunal

(Deleted and moved on 10 November 2010)

Rule 135

Payment of Fines

(amended 20 February 2013)

- (A) In imposing a fine under Rules 60 *bis* or 152, the Contempt Judge shall specify the time for its payment.
- (B) Where a fine imposed under Rules 60 *bis* or 152 is not paid within the time specified, the Contempt Judge imposing the fine may issue an order requiring the person on whom the fine is imposed to appear before, or to respond in writing to, the Tribunal to explain why the fine has not been paid.
- (C) After affording the person on whom the fine is imposed an opportunity to be heard, the Contempt Judge may make a decision that appropriate measures be taken, including:
- (i) extending the time for payment of the fine;
 - (ii) requiring the payment of the fine to be made in instalments;

- (iii) in consultation with the Registrar, requiring that the moneys owed be deducted from any outstanding fees owing to the person by the Tribunal where the person is a counsel retained by the Tribunal pursuant to the Directive on the Appointment and Assignment of Defence Counsel;
 - (iv) converting the whole or part of the fine to a term of imprisonment not exceeding twelve months.
- (D) In addition to a decision under paragraph (C), the Contempt Judge may find the person in contempt of the Tribunal and impose a new penalty, applying Rule 60 *bis* (H), if that person was able to pay the fine within the specified time and has wilfully failed to do so. This penalty for contempt of the Tribunal shall be additional to the original fine imposed.
- (E) The Contempt Judge may, if necessary, issue an arrest warrant to secure the person's presence where he fails to appear before or respond in writing pursuant to an order under paragraph (B). A State or authority to whom such a warrant is addressed shall, subject to Rules 20 and 21, act promptly and with all due diligence to ensure proper and effective execution thereof.
- (F) Where, under this Rule, a penalty of imprisonment is imposed, or a fine is converted to a term of imprisonment, the provisions of the relevant Rules shall apply *mutatis mutandis*.
- (G) A finding of contempt or a penalty imposed under this Rule may be appealed under Rule 60 *bis* (M).

Rule 136
Open Sessions

All proceedings before a Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise decided by the Chamber after hearing the Parties.

Rule 137
Closed Sessions

The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:

- (i) public order or morality;
- (ii) security;
- (iii) a State's national security interests;
- (iv) non-disclosure of the identity of a victim or witness as provided for in Rule 133;
or
- (v) the interests of justice.

Rule 138
Control of Proceedings

- (A) The Trial Chamber may exclude a person from the courtroom in order to protect the right of the accused to a fair and public trial, or to maintain the dignity and decorum of the proceedings.
- (B) The Trial Chamber may order the removal of an accused from the courtroom and continue the proceedings in the absence of the accused if the accused has persisted in disruptive conduct following a warning that such conduct may result in the removal of the accused from the courtroom.

- (C) If the accused was representing himself until that point, counsel shall be appointed to represent him in accordance with Rule 59.

Rule 139

Records of Proceedings and Evidence

- (A) The Registrar shall make and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, unless the Chamber otherwise directs, video recordings.
- (B) The Trial Chamber, after hearing the Parties and giving due consideration to any matters relating to witness or victim protection, may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist.
- (C) The Registrar shall retain and preserve all physical evidence produced during the proceedings, subject to any Practice Direction or any order which a Chamber may at any time make with respect to the control or disposition of physical evidence produced during proceedings before that Chamber.
- (D) Photography, video-recording or audio-recording of the trial, other than by the Registrar, may be authorised at the discretion of the Trial Chamber.
- (E) After a case is closed, original evidence retained by the Registry may be released to the owner upon written judicial authorisation. Upon receiving judicial authorisation, the Registry shall release the evidence only after ensuring a certified copy of the original is preserved in the record of the proceedings. (added 10 November 2010)

Rule 140

Power to Reconsider Decisions

A Chamber may, *proprio motu* or at the request of a Party with leave of the Presiding Judge, reconsider a decision, other than a Judgement or sentence, if necessary to avoid injustice.

Section 2: Case Presentation

Rule 141

Joint and Separate Trials

The Trial Chamber may order that persons accused jointly under Rule 70 be tried separately if it considers it necessary in order to avoid a conflict of interest that might cause serious prejudice to an accused, or to protect the interests of justice.

Rule 142

Instruments of Restraint

Within the jurisdiction of the Tribunal, instruments of restraint, such as handcuffs, shall be used only on the order of the Registrar as a precaution against escape, or in order to prevent an accused from self-injury, injury to others or to prevent serious damage to property. Instruments of restraint shall be removed when the accused appears before a Chamber, unless the Chamber authorises their continued use.

Rule 143

Opening Statements

Each Party and victim participating in the proceedings may make an opening statement. The Defence may, however, elect to make its statement after the conclusion of the Prosecutor's presentation of evidence and before the presentation of evidence for the defence.

Rule 144

Statements and Questioning of the Accused

- (A) The accused may make statements to the Trial Chamber at any stage of the proceedings, provided such statements are relevant to the case at issue.
- (B) The Judges of the Trial Chamber or the Appeals Chamber, *proprio motu*, or at the request of a Party or of a legal representative of a victim participating in the proceedings, may ask specific questions to the accused at any stage of the proceedings. Before asking questions, the Judges shall inform the accused that he has the right to remain silent and shall not draw any adverse inference from a decision of the accused to exercise this right.
- (C) The accused shall not be compelled to make a solemn declaration before making statements or answering questions but may elect to do so. The Judges shall decide on the probative value, if any, of the accused's statements or answers to questions.
- (D) If the accused so desires, he may appear as a witness in his own defence.

Rule 145
Questioning of Witnesses

- (A) Where the Trial Chamber considers that the file submitted by the Pre-Trial Judge enables it to adopt the mode of proceeding outlined in Article 20(2) of the Statute, after the opening statements of the Parties and of any victim participating in the proceedings, each witness shall first be questioned by the Presiding Judge and any other member of the Chamber, then by the Party that has called the witness, and subsequently cross-examined by the other Party, if the other Party elects to exercise its right of cross-examination. The witness may also subsequently be re-examined by the calling Party.

- (B) Where the Trial Chamber considers that the file submitted by the Pre-Trial Judge is not such as to enable it to adopt the mode of proceeding envisaged in Article 20(2) of the Statute, after the opening statements of the Parties and of any victim participating in the proceedings, the witnesses called before the Trial Chamber shall first be examined by the Party that called them, then cross-examined by the other Party, if the other Party elects to exercise its right of cross-examination. The witness may also subsequently be re-examined by the calling Party. The Presiding Judge and other members of the Trial Chamber may at any time ask questions.

- (C) The Trial Chamber may decide to depart from the modes of proceeding provided for in paragraphs (A) and (B) wherever it considers that this is required by the interests of justice.

Rule 146
Presentation of Evidence

- (A) Each Party is entitled to call witnesses and present evidence. Victims participating in the proceedings may, on notice to the Prosecutor and Defence, request the Trial Chamber to call witnesses.

- (B) Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:
- (i) evidence for the Prosecutor;
 - (ii) evidence called by the Trial Chamber at the request of victims participating in the proceedings;
 - (iii) evidence for the defence;
 - (iv) Prosecutor's evidence in rebuttal; (corrected in the English version 8 February 2012)
 - (v) rebuttal evidence called at the request of victims participating in the proceedings;
 - (vi) defence evidence in rejoinder.

Rule 147
Closing Arguments

- (A) After the presentation of all the evidence, the Prosecutor may present a closing argument. Whether or not the Prosecutor does so, victims participating in the proceedings and the Defence may make closing arguments. The Prosecutor may present a rebuttal argument to which the Defence may present a rejoinder.
- (B) Each Party and the victims participating in the proceedings may file a Final Trial Brief no later than five days prior to presenting closing arguments.
- (C) The accused may make a final statement on matters relevant to the trial.

Rule 148
Deliberations

- (A) When both Parties have completed their presentation of the case, the Presiding Judge shall declare the hearing closed, and the Trial Chamber shall deliberate in private. A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.
- (B) The Trial Chamber shall vote separately on each charge contained in the indictment. If two or more accused are tried together, separate findings shall be made as to each accused.

Section 3: Rules of Evidence

Rule 149
General Provisions

- (A) A Chamber shall apply the rules of evidence set forth in these Rules and, in case of a lacuna, provisions of the Lebanese Code of Criminal Procedure consistent with the highest standards of international criminal procedure.
- (B) In cases not otherwise provided for in these Rules or in the Lebanese Code of Criminal Procedure, a Chamber shall apply rules of evidence which best favour a fair determination of the matter before it and are consonant with the highest standards of international criminal procedure.
- (C) A Chamber may admit any relevant evidence which it deems to have probative value.
- (D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. In particular, the Chamber may exclude evidence gathered

in violation of the rights of the suspect or the accused as set out in the Statute and the Rules.

- (E) A Chamber may request verification of the authenticity of evidence obtained out of court.
- (F) A Chamber may receive the evidence of a witness orally or, pursuant to Rules 93, 123, 125, 155, 156, 157 and 158 in written or other form.
- (G) A Chamber shall record the reasons for any ruling it makes on evidentiary matters.

Rule 150

Testimony of Witnesses

- (A) Every witness shall, before giving evidence, make the following solemn declaration: "I solemnly declare that I will speak the truth, the whole truth and nothing but the truth".
- (B) A child under 18 years of age who, in the opinion of the Chamber, does not understand the nature of a solemn declaration, shall be permitted to testify without that formality, if the Chamber is of the opinion that the child is sufficiently mature to be able to report the facts of which the child had knowledge and understands the duty to tell the truth. A judgement, however, cannot be based on such testimony alone.
- (C) A witness, other than an expert, who has not yet testified, shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not, for that reason alone, be disqualified from testifying.
- (D) A victim participating in the proceedings may be permitted to give evidence if a Chamber decides that the interests of justice so require. (amended 8 February 2012)

- (E) A person who has participated in a Party's investigation shall not be precluded from being called as a witness on the ground that he has been present in the courtroom during the proceedings or has otherwise followed the proceedings.
- (F) A witness may object to making any statement that might tend to incriminate him. The Chamber may, however, subject to Rule 118(E), compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than contempt or false testimony.
- (G) Upon an objection raised by a Party, the Chamber may exercise control over the mode and order of questioning witnesses and presenting evidence so as to:
 - (i) make the questioning and presentation effective for the ascertainment of the truth;
and
 - (ii) avoid needless consumption of time and resources.(amended 30 October 2009)
- (H) The Chamber may refuse to hear a witness whose name does not appear on the list of witnesses compiled pursuant to Rules 91 and 128.
- (I) Cross-examination shall be limited to the subject-matter of the evidence-in-chief and matters affecting the credibility of the witness and, where the witness is able to give evidence relevant to the case for the cross-examining Party, to the subject-matter of that case.
- (J) In the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining Party, counsel shall put to that witness the nature of the case of the Party for whom that counsel appears which contradicts the evidence given by the witness.

- (K) The Chamber may, in the exercise of its discretion, permit enquiry into additional matters.

Rule 151

Transfer of Detained Witnesses

- (A) Any detained person whose personal appearance as a witness has been ordered by the Tribunal shall be transferred temporarily to a detention facility of the Tribunal, conditional upon the person's return within the period decided by the Tribunal.
- (B) The transfer order shall be issued by the Trial Chamber when it is satisfied that the following conditions have been met:
- (i) the presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
 - (ii) transfer of the witness will not extend the period of detention as imposed by the requested State.
- (C) The Registrar shall transmit the order of transfer to the national authorities of the State on whose territory, or under whose jurisdiction or control, the witness is detained and to any transit State through whose territory the witness will be transferred. Transfer shall be arranged by the national authorities concerned in liaison with the Host State and the Registrar. (amended 10 November 2010)
- (D) The Registrar shall ensure the proper conduct of the transfer, including the supervision of the witness in the detention facility of the Tribunal; the Registrar shall remain abreast of any changes which might occur regarding the conditions of detention provided for by the

requested State and which may possibly affect the length of the detention of the witness in the detention facility and, as promptly as possible, shall inform the Chamber.

- (E) On expiration of the period decided by the Tribunal for the temporary transfer, the detained witness shall be remanded to the authorities of the requested State, whether or not within that period such State has decided to release the witness.
- (F) If, by the end of the period decided by the Tribunal, the presence of the detained witness continues to be necessary, a Judge or Chamber may extend the period on the same conditions as stated in paragraph (B).

Rule 152

False Testimony under Solemn Declaration

(amended 20 February 2013)

- (A) A Judge or Chamber, *proprio motu* or at the request of a Party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so. A Judge or Chamber having strong grounds for believing that a witness has knowingly and wilfully given false testimony shall refer the matter to the President for referral to a Contempt Judge.
- (B) The Contempt Judge may:
 - (i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony; or
 - (ii) where the Prosecutor, in the view of the Contempt Judge, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Contempt Judge as to

whether there are sufficient grounds for instigating proceedings for false testimony.

- (C) If the Contempt Judge considers that there are sufficient grounds to proceed against a person for giving false testimony, he may:
 - (i) in circumstances described in paragraph (B) (i), direct the Prosecutor to prosecute the matter; or
 - (ii) in circumstances described in paragraph (B) (ii), issue an order in lieu of an indictment and direct *amicus curiae* to prosecute the matter.
- (D) Rules 61 to 67 shall apply *mutatis mutandis* to proceedings under this Rule.
- (E) Any person indicted for false testimony shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned counsel in accordance with Rule 59.
- (F) The Contempt Judge shall hear the trial of a witness indicted for false testimony and determine the conviction and sentence, if any. These proceedings shall not suspend any proceedings before a Judge or Chamber, unless the Judge or Chamber so decides. The Judge or Chamber shall decide whether to render a Judgement and sentence, if any, before a final decision has been delivered on the false testimony charges.
- (G) The maximum penalty for false testimony under solemn declaration shall be a fine of 100,000 Euros or a term of imprisonment of seven years, or both. The payment of any fine imposed shall be paid to the Registrar to be held in the account referred to in Rule 60 *bis* (H).
- (H) Paragraphs (B) to (G) apply *mutatis mutandis* to a person who knowingly and willingly makes a false statement in a statement taken in accordance with Rules 93, 123, 125, 155,

156, 157 and 158 which the person knows or has reason to know may be used as evidence in proceedings before the Tribunal.

- (I) A decision of the Contempt Judge finalising a case of false testimony may be appealed under Rule 60 *bis* (M).

Rule 153
Confessions

A confession by a suspect or accused given during questioning by the Prosecutor shall, provided the requirements of Rule 66 or 85 have been strictly complied with, be presumed to have been free and voluntary unless the contrary is proven.

Rule 154
Admission of Documents

Subject to Rules 155, 156 and 158, the Trial Chamber may admit evidence in the form of a document or other record, consistently with Rule 149(C) and (D). (amended 30 October 2009 and 10 November 2010)

Rule 155
Admission of Written Statements and Transcripts in lieu of Oral Testimony

- (A) Subject to Rule 158, the Trial Chamber may admit in lieu of oral testimony the evidence of a witness in the form of a written statement, or a transcript of evidence which was given by a witness in proceedings before the Tribunal, which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment. (amended 30 October 2009 and 10 November 2010)

- (i) Factors in favour of admitting evidence in the form of a written statement include, but are not limited to circumstances in which the evidence in question:
 - (a) is of a cumulative nature, in that other witnesses have given or will give oral testimony of similar facts;
 - (b) relates to relevant historical, political or military background;
 - (c) consists of a general or statistical analysis relating to the composition of the population in the places to which the indictment relates;
 - (d) concerns the impact of crimes upon victims;
 - (e) relates to issues of the character of the accused;
 - (f) relates to factors to be taken into account in determining sentence; or
 - (g) has been given by the witness in the presence of the Parties who have had the opportunity to examine or cross-examine him.

- (ii) Factors against admitting evidence in the form of a written statement include whether:
 - (a) there is an overriding public interest in the evidence in question being presented orally;
 - (b) a Party or a victim participating in the proceedings, who objects, can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or

- (c) there are any other factors that make it appropriate for the witness to appear for cross-examination.

(amended 30 October 2009)

- (B) As a general rule, the statement must have been signed by the person who records and conducts the questioning and by the person who is questioned and his counsel, if present, as well as, where applicable, the Prosecutor or the judge who is present. The record shall note the date, time and place of, and all persons present during, the questioning. If, in exceptional circumstances, the person has not signed the record, reasons shall be noted.
(amended 10 November 2010)

- (C) The Trial Chamber shall decide, after hearing the parties, whether to require the witness to appear for cross-examination. It may decide, providing reasons, that the interests of justice and the demands of a fair and expeditious trial exceptionally warrant the admission of the statement or transcript, in whole or in part, without cross-examination. If the Chamber decides to require the witness to appear for cross-examination, Rule 156 applies.

Rule 156

Written Statements and Transcripts in lieu of Examination in Chief

Subject to Rule 158, the Trial Chamber may admit the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal that goes to proof of the acts and conduct of the accused as charged in the indictment, only if the following conditions are satisfied:

- (i) the witness is present in court;

- (ii) the witness is available for cross-examination and any questioning by the Judges;
and
- (iii) the witness attests that the written statement or transcript accurately reflects that witness's declaration and what the witness would say if examined.

(amended 30 October 2009 and 10 November 2010)

- (B) [Deleted] (repealed and moved on 10 November 2010)

Rule 157

Taking of Depositions upon Order of the Trial Chamber

Where it is in the interests of justice to do so, the Trial Chamber may order that depositions be taken according to the procedure in Rule 123 (B), (C) and (D), *mutatis mutandis*.

Rule 158

Unavailable Persons

(amended 10 November 2010)

- (A) Evidence in the form of a written statement, any other reliable record of what a person has said, written or otherwise expressed, or transcript of a statement by a person who has died, who can no longer with reasonable diligence be traced, or who is for good reason otherwise unavailable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rules 93, 123, 155, 156 and 157 if the Trial Chamber:
 - (i) is satisfied of the person's unavailability; and

- (ii) finds that the statement, the record or the transcript is reliable, taking into account how it was made and maintained.
- (B) In considering the application of Rule 149(D) to this Rule, the Chamber shall take into account whether the evidence in question goes to proof of acts and conduct of the accused as charged in the indictment.

Rule 159

Statements of Anonymous Witnesses

- (A) The statement of a witness made pursuant to Rule 93 before the Pre-Trial Judge shall be subject to Rule 149(D). (added 30 October 2009)
- (B) A conviction may not be based solely, or to a decisive extent, on the statement of a witness made pursuant to Rule 93. (renumbered 30 October 2009)

Rule 160

Judicial Notice

- (A) The Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.
- (B) At the request of a Party or *proprio motu*, the Trial Chamber, after hearing the Parties, may decide, in the interests of a fair and expeditious trial, to take judicial notice of adjudicated facts from other proceedings of the Tribunal or from proceedings of national and international jurisdictions relating to matters at issue in the current proceedings, to the extent that they do not relate to acts and conduct of the accused that is being tried. (amended 30 October 2009)

Rule 161

Testimony of Expert Witnesses

- (A) The full statement of any expert witness to be called by a Party shall be disclosed to the opposing Party and to the victims participating in the proceedings within the time-limit prescribed by the Pre-Trial Judge or Trial Chamber. (amended 30 October 2009)

- (B) Within thirty days of disclosure of the statement of the expert witness, or such other time prescribed by the Pre-Trial Judge or the Trial Chamber, the opposing Party shall file a notice indicating whether:
 - (i) it accepts the expert witness statement;

 - (ii) it wishes to cross-examine the expert witness; or

 - (iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the report and, if so, which parts.

- (C) If the opposing Party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

Rule 162

Exclusion of Certain Evidence

- (A) No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.

- (B) In particular, evidence shall be excluded if it has been obtained in violation of international standards on human rights, including the prohibition of torture.

Rule 163

Legal Professional Privilege

Communications made in the context of the professional relationship between a person and his legal counsel shall be regarded as privileged and consequently not subject to disclosure at trial, unless:

- (i) the client consents to such disclosure;
- (ii) the client has voluntarily disclosed the content of the communications to a third party, and that third party then gives evidence of that disclosure; or
- (iii) the client intended to perpetrate a crime and the communications were in furtherance of that crime.

Rule 164

Privilege of the International Red Cross and Red Crescent Movement

The Tribunal shall regard as privileged, and consequently not subject to disclosure, including by way of testimony of present or past official or employee of the International Committee of the Red Cross (ICRC), any information, documents or other evidence which it came into possession of in the course, or as a consequence, of the performance by the ICRC of its functions under the Statutes of the International Red Cross and Red Crescent Movement.

Rule 165

Power of Chambers to Order Production of Additional Evidence

After hearing the Parties, the Trial Chamber may, *proprio motu* or at the request of a Party, order either Party or a victim participating in the proceedings to produce additional evidence. It may, after hearing the Parties, *proprio motu* summon witnesses and order their attendance.

Rule 166

Protection Programme

(amended 30 October 2009)

- (A) The Registrar shall establish a protection programme within the Victims and Witnesses Unit for the purpose of protecting individuals through relocation to Third States. The Registrar shall take all necessary measures to arrange relocation to Third States of individuals and their close relations who, following the determination by the Registrar, are at risk of imminent serious harm or death as a result of their interaction with the Tribunal. All procedures and administrative functions in relation to the Protection Programme shall remain confidential. (amended and renumbered 30 October 2009)
- (B) A Party or a legal representative may submit an application to the Registrar on behalf of an individual for inclusion into the protection programme.(added 30 October 2009)

Section 4: Judgement

Rule 167

Judgement of Acquittal at Close of Prosecutor's Case

At the close of the Prosecutor's case, the Trial Chamber may, by oral decision and after hearing submissions of the Parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction on that count.

Rule 168

Judgement

- (A) The Judgement shall be pronounced in public, on a date of which notice shall have been given to the Parties and victims participating in the proceedings, and at which they shall be entitled to be present, subject to the provisions of Rule 173(B).
- (B) The Judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion, in writing, to which separate or dissenting opinions may be appended.
- (C) A copy of the Judgement and of the Judges' opinions in a language that the accused understands shall, as soon as possible, be served on the accused if he is in custody. Copies thereof, in that language and in the language in which they were delivered, shall also be provided to counsel for the accused, if any, as soon as possible.
- (D) Where an accused has been acquitted or convicted, the Registrar shall take all reasonable steps to notify him of the judgement and sentence, if any.

Rule 169

Status of Convicted Person Pending Sentencing

Where an accused who has attended trial proceedings while at liberty is convicted, the Trial Chamber may issue an arrest warrant or order his detention pending sentencing proceedings.

Rule 170

Status of Acquitted Person

- (A) Subject to paragraphs (B) and (C), in the case of an acquittal or the upholding of a challenge to jurisdiction, the accused, if in custody, shall be released. The release shall not be into the Host State without its consent.
- (B) If, at the time the judgment of acquittal is pronounced, the Prosecutor advises the Trial Chamber that it intends to appeal the judgement of acquittal, the Trial Chamber may, on application by the Prosecutor and after hearing the Parties, issue an order for the continued detention of the accused, pending the determination of the appeal.
- (C) An acquitted person detained pursuant to paragraph (B) may file an appeal against the order before the Appeals Chamber. The Appeals Chamber shall rule on such appeal within fifteen days, failing which he shall be released.
- (D) Following a final judgment of acquittal of an accused before the Tribunal or a final decision that an accused before the Tribunal has been illegally arrested or detained under the authority of the Tribunal as a result of a serious miscarriage of justice, he may file a request to the President for compensation or other appropriate redress within six months of the issuance of the final judgment or decision. (added 10 November 2010)
- (E) The President shall assign the request to a Chamber composed of three Judges. The Chamber shall decide on the request after having heard the Prosecutor. In ruling on any

appropriate compensation or other form of redress that might be warranted in cases under paragraph (D), the Chamber shall take into consideration the consequences of the miscarriage of justice on the personal, family, social and professional situation of the person filing the request. (added 10 November 2010)

Section 5: Sentencing and Penalties

Rule 171

Sentencing Procedure

- (A) If the Trial Chamber finds the accused guilty of a crime, the Prosecutor and the Defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence. (amended 30 October 2009)
- (B) Subject to authorisation by the Trial Chamber, victims participating in the proceedings may exercise all the rights provided in Rule 87(C). (amended 30 October 2009)
- (C) The procedure provided for in paragraphs (A) and (B) also applies if the Trial Chamber convicts the accused following a guilty plea.
- (D) The Trial Chamber shall impose a sentence in respect of each count in the indictment upon which the accused has been convicted and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused.
- (E) The sentence shall be pronounced in public and, wherever possible, in the presence of the accused as well as of the victims participating in the proceedings.

Rule 172

Penalties

- (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24(2), of the Statute, as well as factors such as:
 - (i) any aggravating circumstances;
 - (ii) any mitigating circumstances, including substantial cooperation with the Prosecutor by the convicted person before or after conviction;
 - (iii) the general practice regarding prison sentences in Lebanon;
 - (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served.
- (C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained for the investigation of crimes within the jurisdiction of the Tribunal, any custody pending surrender to the Tribunal or custody pending trial or appeal. (amended 30 October 2009)

Rule 173

Status of the Convicted Person

- (A) The sentence shall begin to run from the day it is pronounced. However, as soon as notice of appeal against the judgement or the sentence is given, the enforcement of any conviction or sentence shall thereupon be stayed until the appeal judgement, the

convicted person meanwhile remaining in detention, as provided in Rule 101, and subject to Rule 102.

- (B) If, by a previous decision of the Pre-Trial Judge or a Chamber, the convicted person has been released or is, for any other reason, at liberty and is not present when the Judgement and sentence, if any, is pronounced, the Trial Chamber shall issue a warrant for the convicted person's arrest. On arrest, the convicted person shall be notified of the conviction and sentence, and the procedure provided in Rule 174 shall be followed.

Rule 174

Place of Imprisonment

- (A) Imprisonment shall be served in a State designated by the President of the Tribunal from a list of States that have indicated their willingness to accept convicted persons.
- (B) Transfer of the convicted person to that State shall be effected as soon as possible after the time-limit for appeal has elapsed.
- (C) Pending the finalisation of arrangements for his transfer to the State where his sentence shall be served, the convicted person shall remain in the custody of the Tribunal.

Rule 175

Supervision of Imprisonment

All sentences of imprisonment shall be supervised by the Tribunal or a body designated by it.

PART 7
APPELLATE PROCEEDINGS

Rule 176
General Provision

- (A) An appeal may be lodged on the following grounds:
 - (i) An error on a question of law invalidating the decision;
 - (ii) An error of fact that has occasioned a miscarriage of justice.
- (B) The rules of procedure and evidence that govern proceedings in the Trial Chamber shall apply *mutatis mutandis* to proceedings in the Appeals Chamber.

Rule 176 bis
Preliminary Questions

(added 10 November 2010 and corrected 29 November 2010)

- (A) The Appeals Chamber shall issue an interlocutory decision on any question raised by the Pre-Trial Judge under Rule 68(G), without prejudging the rights of any accused.
- (B) Before rendering its decision, the Appeals Chamber shall hear the Prosecutor and the Head of Defence Office in public session.
- (C) The accused has the right to request the reconsideration of the interlocutory decision under paragraph A, pursuant to Rule 140 without the need for leave from the presiding Judge. The request for reconsideration shall be submitted to the Appeals Chamber no later than thirty days after disclosure by the Prosecutor to the Defence of all material and statements referred to in Rule 110(A)(i).

Rule 177
Notice of Appeal

- (A) Following a Judgement of acquittal, the Prosecutor may, not more than thirty days from the date on which the judgement was pronounced, file a notice of appeal setting forth the grounds of appeal. (added 30 October 2009, amended 20 February 2013)

- (B) Following a Judgement of conviction pursuant to Rule 168, a Party seeking to appeal either the Judgement or the sentence shall be permitted to file a notice of appeal following the pronouncement of the sentence pursuant to Rule 171. In such cases the notice of appeal setting forth the ground of appeal, shall be filed not more than thirty days from the date on which the sentence was pronounced. (added 30 October 2009)

- (C) The notice of appeal shall also identify the order, decision or ruling challenged, with specific reference to the date of its filing and/or the transcript page, and indicate the substance of the alleged errors and the relief sought. The Appeals Chamber may, on good cause being shown by motion, authorise a variation of the grounds of appeal. (amended and renumbered 30 October 2009)

Rule 178
State Request for Review

- (A) A State directly affected by an interlocutory decision of the Pre-Trial Judge or of the Trial Chamber may, within fifteen days from the date of the decision, file a request for review of the decision by the Appeals Chamber if that decision concerns issues of general importance relating to the powers of the Tribunal.

- (B) The Party upon whose motion the Trial Chamber issued the impugned decision shall be heard by the Appeals Chamber. The other Party may be heard if the Appeals Chamber considers that the interests of justice so require.
- (C) The Appeals Chamber may, at any stage, suspend the execution of the impugned decision.
- (D) Rule 187 shall apply *mutatis mutandis*.

Rule 179
Record on Appeal

The record on appeal shall consist of the trial record, as certified by the Registrar.

Rule 180
Copies of Record

The Registrar shall make a sufficient number of copies of the record on appeal for the use of the Judges of the Appeals Chamber and of the Parties.

Rule 181
Pre-Appeal Conference

The Appeals Chamber or the Presiding Judge may convene a conference, within six weeks of the filing of a notice of appeal and thereafter within eight weeks after the last pre-appeal conference, to allow any person in custody pending appeal the opportunity to raise issues in relation thereto, including the mental and physical condition of that person.

Rule 182
Appellant's Brief

- (A) An Appellant's brief setting out all the arguments and authorities shall be filed within seventy-five days of filing of the notice of appeal pursuant to Rule 177. Where limited to sentencing, an Appellant's brief shall be filed within thirty days of filing of the notice of appeal pursuant to Rule 177.
- (B) Where the Prosecutor is the Appellant, the Prosecutor shall make a declaration in the Appellant's brief that disclosure has been completed with respect to the material available to the Prosecutor at the time of filing the brief.

Rule 183
Respondent's Brief

- (A) A Respondent's brief of argument and authorities shall be filed within sixty days of filing of the Appellant's brief. Where limited to sentencing, a Respondent's brief shall be filed within twenty-one days of filing of the Appellant's brief.
- (B) Where the Prosecutor is the Respondent, the Prosecutor shall make a declaration in the Respondent's brief that disclosure has been completed with respect to the material available to the Prosecutor at the time of filing the brief.

Rule 184
Brief in Reply

An Appellant may file a brief in reply within fifteen days of filing of the Respondent's brief. Where limited to sentencing, a brief in reply shall be filed within ten days of filing of the Respondent's brief.

Rule 185
Date of Hearing

After the expiry of the time-limits for filing the briefs provided for in Rules 182, 183 and 184, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the Parties.

Rule 186
Additional Evidence

- (A) A Party may apply by motion to present additional evidence before the Appeals Chamber. Such motion shall clearly identify, with precision, the specific finding of fact made by the Trial Chamber to which the additional evidence is directed.
- (B) The other Party may file a response within thirty days and the Party seeking to admit additional evidence may file a reply within fifteen days.
- (C) If the Appeals Chamber finds that the additional evidence was not available at trial and could not have been discovered with the application of due diligence and is relevant and credible, it shall determine whether it could have been a decisive factor in reaching the decision at trial and issue a decision. If in that decision the Appeals Chamber admits any additional evidence, it shall set a time limit for the filing of any rebuttal material.
- (D) Once the Appeals Chamber has issued a decision admitting any additional evidence, the other Party may present rebuttal evidence. The Appeals Chamber shall rule on the admissibility of that rebuttal material.
- (E) Once the Appeals Chamber has issued a decision admitting additional evidence, Parties may file supplemental briefs on the impact of such evidence within thirty days of the expiry of the time limit set for the filing of rebuttal material, if no such material is filed,

or if rebuttal material is filed, within thirty days of the decision on the admissibility of that material.

- (F) The Appeals Chamber shall consider any additional evidence that is admitted and any rebuttal material that is admitted, along with that already on the record, to arrive at a final judgement.
- (G) The Appeals Chamber may decide the motion prior to the appeal, or at the time of the hearing on appeal. It may decide the motion with or without an oral hearing.
- (H) If several accused are Parties to the appeal, the additional evidence admitted on behalf of any one of them shall be considered with respect to all of them, where relevant.

Rule 187

Expedited Appeals Procedure

- (A) Unless the Appeals Chamber otherwise orders, appeals which may be filed as of right under these Rules and appeals against a Judgement under Rules 60 *bis* and 152 shall be heard expeditiously on the basis of the original record of the Pre-Trial Judge or the Trial Chamber. Appeals may be determined entirely on the basis of written briefs.
- (B) Rules 180 to 185 shall not apply to such appeals.

Rule 188

Judgement on Appeal

- (A) The Appeals Chamber shall render an Appeal Judgement on the basis of the record on appeal, together with such additional evidence and rebuttal evidence as has been admitted under Rule 186.

- (B) The Appeal Judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed, as soon as possible, by a reasoned opinion, in writing, to which separate or dissenting opinions may be appended.
- (C) The Appeals Chamber may affirm, reverse, or revise the Judgement and/or sentence. In the interests of justice, the Appeals Chamber may order that the accused be retried by a Trial Chamber.
- (D) The Appeal Judgement shall be pronounced in public, on a date of which notice shall have been given to the Parties and to the victims participating in the proceedings, and at which they shall be entitled to be present.

Rule 189

Status of the Accused following Appeal

- (A) A conviction which is upheld or imposed or a sentence pronounced or confirmed by the Appeals Chamber shall run from the time of the Appeal Judgement.
- (B) Where the accused is not present when the Appeal Judgement is due to be delivered, either having been previously acquitted on all charges or for any other reason, the Appeals Chamber may deliver its Appeal Judgement in the absence of the accused and shall, if it pronounces a conviction, order the arrest or surrender of the accused to the Tribunal.
- (C) If acquitted, an accused in detention must, unless facing other charges, immediately be released. The release shall not be into the Host State without its consent. (amended 30 October 2009)

PART 8
REVIEW PROCEEDINGS

Rule 190
Request for Review

- (A) Where, following a final judgement, material new evidence has been discovered which was not known to the moving Party at the time of the proceedings, could have decisively affected the judgement, and could not have been discovered through the exercise of due diligence, the Defence or, within one year after the final judgement has been pronounced, the Prosecutor, may make a motion to the Chamber that rendered the judgment for review of the conviction, acquittal, or sentence. If, at the time of the request for review, any of the Judges who constituted the original Chamber are no longer Judges of the Tribunal, the President shall request the Secretary-General to appoint a Judge or Judges in their place, in conformity with the procedure foreseen in the Statute. (amended 30 October 2009)
- (B) Any brief in response to a request for review shall be filed within sixty days of the filing of the request.
- (C) Any brief in reply shall be filed within thirty days of the filing of the response.

Rule 191
Preliminary Examination

If a majority of Judges of the Chamber constituted pursuant to Rule 190 agree that the new evidence, if proved, could have been a decisive factor in reaching a decision, the Chamber shall review the judgement and pronounce a further judgement after hearing the Parties.

Rule 192

Appeals

The Judgement of the Trial Chamber on review may be appealed in accordance with the provisions of Part Seven. (amended 30 October 2009)

Rule 193

Return of Case to Trial Chamber

If the judgement to be reviewed is under appeal at the time the motion for review is filed, the Appeals Chamber may return the case to the Trial Chamber for disposition of the motion.

PART 9
PARDON AND COMMUTATION OF SENTENCE

Rule 194
Notification by States

If, according to the law of the State of imprisonment, a convicted person is eligible for pardon or commutation of sentence, the State shall notify the Tribunal of such eligibility.

Rule 195
Determination by the President

The President shall, upon such notice, determine, in consultation with the members of the Council of Judges and the Judges of the sentencing Chamber, whether pardon or commutation is appropriate.

Rule 196
General Standards for Granting Pardon or Commutation

In determining whether pardon or commutation is appropriate, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor.