

ANNEX A to

REFERRAL

of the Rules of Procedure and Evidence

to the Specialist Chamber of the Constitutional Court

CONFIDENTIAL

DRAFT - LIMITE

RULES OF PROCEDURE AND EVIDENCE BEFORE THE KOSOVO SPECIALIST CHAMBERS

CHAPTER 1 GENERAL PROVISIONS	1
Rule 1 Scope and Entry into Force	1
Rule 2 Use of Terms	1
Rule 3 Authentic Text	5
Rule 4 Interpretation of the Rules	5
Rule 5 Procedure in Event of Lacunae in the Rules	5
Rule 6 Non-Compliance with the Rules	6
Rule 7 Amendments to the Rules	6
Rule 8 Working Languages	7
Rule 9 Calculation and Variation of Time Limits	7
CHAPTER 2 ORGANISATION AND ADMINISTRATION OF THE SPECIALIST CHAMBERS	9
<i>Section I: Internal Functioning of the Specialist Chambers</i>	9
Rule 10 Plenary	9
Rule 11 Quorum and Vote	9
Rule 12 Consultations of the President with the Registrar and the Specialist Prosecutor	10
<i>Section II: Chambers</i>	10
Sub-Section 1: President	10
Rule 13 Functions of the President	10
Rule 14 Replacement of the President	10
Sub-Section 2: Judges	11
Rule 15 Presiding Judge	11
Rule 16 Precedence	11
Rule 17 Judge Rapporteur	11
Rule 18 Reserve Judge	11
Rule 19 Absence of a Judge	12
Rule 20 Recusal or Disqualification of Judges	12
Rule 21 Resignation or Death of a Judge	13
Rule 22 Dismissal from the Roster and Disciplinary Measures	14
<i>Section III: Registry</i>	14
Sub-Section 1: General Provisions	14
Rule 23 Judicial Support Functions of the Registrar	14
Rule 24 Record of Proceedings and Custody of Evidence	15
Sub-Section 2: Counsel	16
Rule 25 Lists of Counsel	16
Rule 26 Appointment and Assignment of Counsel	16
Sub-Section 3: Witness Protection and Support	17
Rule 27 Responsibilities of the Registrar for Witness Protection and Support	17
Sub-Section 4: Ombudsperson's Office	18
Rule 28 General Provision	18
Rule 29 Role and Functions of the Ombudsperson of the Specialist Chambers	18
CHAPTER 3 RIGHTS OF PERSONS DURING INVESTIGATION	20
<i>Section I: Investigative Measures</i>	20
Sub-Section 1: General Provisions	20
Rule 30 General Provision	20
Sub-Section 2: Special Investigative Measures	20
Rule 31 Grounds for Special Investigative Measures	20
Rule 32 Special Investigative Measures Authorised by a Panel	21
Rule 33 Special Investigative Measures Ordered by the Specialist Prosecutor	21

<i>Sub-Section 3: Searches and Seizures</i>	22
Rule 34 Search and Seizure Authorised by a Panel	22
Rule 35 Search and Seizure by the Specialist Prosecutor	22
Rule 36 Execution of Search and Seizure	23
<i>Sub-Section 4: Other Measures</i>	23
Rule 37 Exhumations and Post-Mortem Examinations	23
Rule 38 Expert Examinations	24
<i>Section II: Rights of Persons During Investigation</i>	25
Rule 39 General Provision	25
Rule 40 Rights of Suspects During Investigation	25
Rule 41 Recording of Questioning of Suspects	26
Rule 42 Confessions	26
Rule 43 Preservation of Information	27
Rule 44 Termination of the Investigation	27
CHAPTER 4 SUMMONSES, ARREST AND DETENTION	28
<i>Section I: General Provisions</i>	28
Rule 45 Basic Principles	28
Rule 46 Summonses and Other Orders	28
Rule 47 Transfer to the Specialist Chambers	28
Rule 48 Compensation for Unlawful Arrest or Detention	29
<i>Section II: Arrest</i>	29
Rule 49 Arrest Order by the Specialist Prosecutor	29
Rule 50 Arrest Warrant by the Specialist Chambers	29
Rule 51 International Arrest Warrants by the Specialist Chambers	30
Rule 52 Execution of Arrest Warrants	30
<i>Section III: Detention</i>	31
Rule 53 Detention on Remand	31
Rule 54 Review and Reconsideration of Detention on Remand	32
Rule 55 Interlocutory Appeals Against Detention on Remand	32
Rule 56 Protection of Legality Against Final Decisions on Detention on Remand	33
Rule 57 Death of a Detained Person	33
CHAPTER 5 PROVISIONS RELATED TO VARIOUS STAGES OF THE PROCEEDINGS	34
<i>Section I: General Provisions</i>	34
Rule 58 Control of Courtroom Proceedings	34
Rule 59 Duties of the Specialist Prosecutor	34
Rule 60 Abuse of Proceedings	34
Rule 61 Ineffective Assistance of Counsel	35
Rule 62 Non-Compliance with Order of a Panel	35
Rule 63 Instruments of Restraint	36
Rule 64 <i>Amicus Curiae</i>	36
Rule 65 Absence of the Accused	36
Rule 66 Medical Examination of the Suspect or the Accused	37
Rule 67 Death of an Accused	37
Rule 68 Provisional Measures for Preservation of Assets	37
Rule 69 Expedited Proceedings	38
<i>Section II: Location of Proceedings</i>	38
Rule 70 Judicial Activity away from the Seat of the Specialist Chambers	38
Rule 71 Site Visits and Witness Appearance away from the Seat of the Specialist Chambers	38
<i>Section III: Submissions and Decisions</i>	39
Rule 72 Motions and Other Submissions	39
Rule 73 Time Limits for Submissions	40
Rule 74 Interlocutory Appeals Requiring Certification	40
Rule 75 Deliberations	40
Rule 76 Power to Reconsider Decisions	40

<i>Section IV: Protection of Witnesses and Victims</i>	41
Rule 77 Protective Measures	41
Rule 78 Variation of Protective Measures.....	42
<i>Section V: Classification</i>	43
Rule 79 Classification of Filings	43
Rule 80 Classification of Records of Proceedings and Evidence	44
Rule 81 Reclassification of Records of Proceedings and Evidence	44
CHAPTER 6 INDICTMENT AND PRE-TRIAL PROCEEDINGS.....	45
<i>Section I: Indictment</i>	45
Rule 82 Functions of the Pre-Trial Judge Prior to Confirmation of the Indictment	45
Rule 83 Submission, Review and Confirmation of the Indictment	45
Rule 84 Service of Indictment	46
Rule 85 Public Nature of Indictment.....	47
Rule 86 Joinder or Severance of Indictments.....	47
Rule 87 Amendment of the Indictment.....	48
Rule 88 Withdrawal of the Indictment or Charges.....	48
<i>Section II: Initial Appearance and Plea</i>	49
Rule 89 Initial Appearance of the Accused.....	49
Rule 90 Admission of Guilt	50
Rule 91 Plea Agreement.....	50
<i>Section III: Pre-Trial Proceedings</i>	52
Rule 92 Functions of the Pre-Trial Judge after Confirmation of the Indictment.....	52
Rule 93 Status Conferences	53
Rule 94 Preliminary Motions.....	54
Rule 95 Transmission of Case File to the Trial Panel	54
<i>Section IV: Unique Investigative Opportunity</i>	55
Rule 96 General Provisions	55
Rule 97 Taking of Depositions upon Decision of the Pre-Trial Judge	56
Rule 98 Evidence Collected by Judicial Authorities of a Third State.....	57
CHAPTER 7 DISCLOSURE	58
Rule 99 Disclosure by the Specialist Prosecutor	58
Rule 100 Disclosure of Exculpatory Evidence.....	58
Rule 101 Disclosure by the Defence	59
Rule 102 Interim Non-Disclosure of Identity.....	60
Rule 103 Non-Disclosure of Reports, Memoranda or Other Internal Documents	60
Rule 104 Protected Information Not Subject to Disclosure	60
Rule 105 Other Information Not Subject to Disclosure	61
Rule 106 Procedure for Disclosure	62
Rule 107 Non-Compliance with Disclosure Obligations	62
Rule 108 Privileged Communication and Information	62
Rule 109 Continuing Nature of Disclosure Obligation.....	63
CHAPTER 8 PARTICIPATION OF VICTIMS IN THE PROCEEDINGS.....	64
Rule 110 Admission of Victims for Participation in the Proceedings.....	64
Rule 111 Modalities of Participation in the Proceedings	65
CHAPTER 9 TRIAL PROCEEDINGS	66
<i>Section I: Trial Preparation and Trial Management</i>	66
Rule 112 Assignment of Trial Panel	66
Rule 113 Management of Proceedings and Status Conferences	66
Rule 114 Trial Preparation Conference.....	67
Rule 115 Specialist Prosecutor's Preparation Conference	67
Rule 116 Defence Case and Defence Preparation Conference	68
Rule 117 Open, Private and Closed Sessions.....	69
Rule 118 Called or Summoned Witnesses.....	69
Rule 119 Non-Compliance with Witness Summonses	70

Rule 120	Adjournment of Proceedings	70
Section II: Case Presentation		71
Rule 121	Opening of the Case	71
Rule 122	Initial Information to the Accused	71
Rule 123	Opening Statements	71
Rule 124	Presentation of Evidence	72
Rule 125	Transfer of Detained Witness for Testimony before the Specialist Chambers.....	72
Rule 126	Closing of the Specialist Prosecutor's Case.....	72
Rule 127	Dismissal of Charges.....	73
Rule 128	Closing of the Defence Case	73
Rule 129	Evidence Called by the Panel.....	73
Rule 130	Motions to Supplement the Evidentiary Proceedings.....	73
Rule 131	Closing of the Evidentiary Proceedings.....	73
Rule 132	Closing Statements.....	74
Rule 133	Closing of the Case.....	74
Section III: Evidence.....		74
<i>Sub-Section 1: Admissibility and Assessment of Evidence.....</i>		<i>74</i>
Rule 134	General Provisions	74
Rule 135	Admissibility of Evidence	75
Rule 136	Assessment of Evidence for the Purposes of Judgment	75
Rule 137	Standard of Proof	76
<i>Sub-Section 2: Testimony, Statements and Other Evidence.....</i>		<i>76</i>
Rule 138	General Provisions on the Testimony of Witnesses	76
Rule 139	Statements, Questioning and Testimony of the Accused.....	77
Rule 140	Examination of Witnesses	77
Rule 141	Examination by Video-Conference	78
Rule 142	Examination of Witnesses away from the Trial Venue	78
Rule 143	Examination of Witnesses with Special Needs	79
Rule 144	Questioning of Anonymous Witnesses	79
Rule 145	Evidence in Cases of Alleged Sexual Violence	79
Rule 146	Evidence of Expert Witnesses.....	80
Rule 147	Testimony of Co-Accused.....	81
Rule 148	Self-Incrimination by a Witness	81
Rule 149	Incrimination by Family Members.....	82
Rule 150	Admission of Written Statements and Transcripts in lieu of Oral Testimony	82
Rule 151	Admission of Written Statements and Transcripts in lieu of Direct Examination	83
Rule 152	Admission of Written Statements of Unavailable Persons and of Persons Subjected to Interference	83
Rule 153	Agreed Facts	84
Rule 154	Judicial Notice	85
Section IV: Trial Judgment		85
Rule 155	Deliberations on the Trial Judgment.....	85
Rule 156	Pronouncement of the Trial Judgment	85
Rule 157	Status of the Convicted Person.....	86
Rule 158	Status of the Acquitted Person	86
Section V: Determination of Punishment.....		86
Rule 159	Sentencing Procedure.....	86
Rule 160	Determination of the Sentence.....	87
Rule 161	Pronouncement of the Sentencing Judgment.....	88
Rule 162	Imposition of Fines	88
Rule 163	Place of Imprisonment	89
Section VI: Reparations		89
Rule 164	Referral to Civil Litigation	89
Rule 165	Order for Reparations Against the Convicted Person	89
CHAPTER 10 APPELLATE PROCEEDINGS		90

<i>Section I: Second Instance Appellate Proceedings</i>	90
<i>Sub-Section 1: Interlocutory Appeals</i>	90
Rule 166 Assignment of Court of Appeals Panel to Interlocutory Appeals.....	90
Rule 167 Filing of Interlocutory Appeals.....	90
Rule 168 Suspensive Effect of Interlocutory Appeals.....	90
<i>Sub-Section 2: Appeals Against Judgments</i>	91
Rule 169 Assignment of Court of Appeals Panel to Appeals Against Judgments.....	91
Rule 170 General Provisions.....	91
Rule 171 Status of Person Pending Appeal.....	91
Rule 172 Record on Appeal.....	91
Rule 173 Notice of Appeal.....	91
Rule 174 Judge Rapporteur on Appeal.....	92
Rule 175 Pre-Appeal Conference.....	92
Rule 176 Appellate Briefs.....	92
Rule 177 Date of Appeal Hearing.....	93
Rule 178 Additional Evidence.....	93
Rule 179 Deliberations on the Appeal Judgment.....	94
Rule 180 Pronouncement of the Appeal Judgment.....	94
Rule 181 Sentencing Procedure.....	95
Rule 182 Status of the Acquitted and Convicted Persons Following the Judgment on Appeal.....	95
<i>Section II: Third Instance Appellate Proceedings</i>	95
Rule 183 General Provision.....	95
CHAPTER 11 EXTRAORDINARY LEGAL REMEDIES.....	96
<i>Section I: Reopening of Criminal Proceedings</i>	96
Rule 184 Request to Reopen Proceedings.....	96
Rule 185 Preliminary Examination of a Request to Reopen Proceedings.....	96
Rule 186 Judgment on Request to Reopen Proceedings.....	96
Rule 187 Appeals Against Judgment Following Reopening of Proceedings.....	96
<i>Section II: Extraordinary Mitigation of Punishment</i>	97
Rule 188 Request for Extraordinary Mitigation of Punishment.....	97
Rule 189 Judgment on Request for Extraordinary Mitigation of Punishment.....	97
<i>Section III: Protection of Legality</i>	97
Rule 190 Request for Protection of Legality.....	97
Rule 191 Judgment on Request for Protection of Legality.....	98
CHAPTER 12 COMMUTATION OF SENTENCE.....	99
Rule 192 Notification by States.....	99
Rule 193 General Standards on Commutation of Sentence.....	99
Rule 194 Procedure for Commutation of Sentence.....	100
CHAPTER 13 PRIMACY, COOPERATION AND JUDICIAL ASSISTANCE.....	101
<i>Section I: General Cooperation Provisions</i>	101
Rule 195 Transmission and Receipt of Communications Relating to Cooperation and Judicial Assistance.....	101
Rule 196 Request for Testimony of a Person in the Custody of the Specialist Chambers.....	101
<i>Section II: Cooperation and Judicial Assistance with Kosovo</i>	102
Rule 197 General Provisions.....	102
Rule 198 Application for Order for Information, Cooperation and Assistance.....	102
Rule 199 Order for Information, Cooperation and Assistance.....	103
Rule 200 Order for Deferral of Proceedings from Other Kosovo Courts.....	103
Rule 201 Non-Compliance with Order for Information, Cooperation and Assistance or Deferral.....	103
Rule 202 <i>Non Bis In Idem</i>	104
Rule 203 Requests for Assistance or Cooperation from Authorities of Kosovo.....	104
Rule 204 Non-binding Effect of Other Courts' Determinations.....	104
<i>Section III: International Cooperation</i>	104
Rule 205 Arrangements with Third States, International Organisations and Other Entities.....	104

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Rule 206	Non-Compliance with Arrangements	105
Rule 207	Request for Assistance from Third States, International Organisations and Other Entities	105
Rule 208	Request for Protection of Agents and Information	105

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RULES OF PROCEDURE AND EVIDENCE BEFORE THE KOSOVO SPECIALIST CHAMBERS

Chapter 1 General Provisions

Rule 1

Scope and Entry into Force

- (1) The Rules of Procedure and Evidence for the conduct of proceedings before the Specialist Chambers, save for Chapter 14 of the Rules, are adopted pursuant to Article 162(6) of the Constitution of the Republic of Kosovo and Article 19(1) of the Law on 17 March 2017 by absolute majority of the Specialist Chambers Judges sitting in Plenary, except for the Judges of the Specialist Chamber of the Constitutional Court.
- (2) Pursuant to Article 49(6) of the Law, Chapter 14 of the Rules is adopted by the Judges of the Specialist Chamber of the Constitutional Court on **DD Month YYYY** to determine the internal organisation, decision making-process and other organisational issues of the Specialist Chamber of the Constitutional Court.
- (3) The Rules shall come into force seven (7) days after the Specialist Chamber of the Constitutional Court determines pursuant to Article 19(5) of the Law that the Rules comply with Chapter II of the Constitution of the Republic of Kosovo.

Rule 2

Use of Terms

- (1) In the Rules, unless the context otherwise requires, the following terms refer to:

Accused	A natural person against whom one or more charges have been confirmed pursuant to Article 39(2) of the Law and Rule 83;
Appointing Authority	Head of the European Union Common Security and Defence Policy Mission;
Arrest Order	An order issued by the Specialist Prosecutor against a suspect or an Accused during the investigative stage pursuant to Articles 35(2)(h) and 41(6) of the Law;

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Arrest Warrant	A warrant issued by the Specialist Chambers against a suspect, Accused or witness pursuant to Article 41(6) or Article 42(8) of the Law;
Code of Judicial Ethics	Code of Judicial Ethics for Judges Appointed to the Roster of International Judges of the Kosovo Specialist Chambers;
Code of Professional Conduct	The Code of Professional Conduct for Counsel Appearing before the Specialist Chambers adopted pursuant to Rule 23(3);
Constitution	Constitution of the Republic of Kosovo;
Counsel	A person on the List of Specialist Counsel or the List of Victims' Counsel;
Defence	The suspect/Accused and/or Specialist Counsel;
Defence Office	The Office included in the Registry provided for in Article 34(7) of the Law;
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 4 November 1950;
Host State	The Kingdom of the Netherlands;
Host State Agreement	The Agreement between the Kingdom of the Netherlands and the Republic of Kosovo Concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands, signed on 15 February 2016 and entered into force on 1 January 2017;
ICCPR	International Covenant on Civil and Political Rights, adopted on 16 December 1966;
ICRC	International Committee of the Red Cross;

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Independent Representative Body of Specialist Counsel	Independent Representative Body of Specialist Counsel, established in accordance with Article 19(4) of the Law to represent the interests of Specialist Counsel and Victims' Counsel before the Specialist Chambers;
Internal Rules, Practice Directions, Policies	Any internal normative instrument, issued by the Specialist Chambers pursuant to Article 19(6) of the Law;
Investigation	All activities undertaken by the Specialist Prosecutor's Office under the Law and the Rules, or the SITF pursuant to Kosovo criminal law and procedure for the collection of information and evidence;
Judges	Independent international Judges of the Specialist Chambers, appointed pursuant to Article 28 of the Law;
Kosovo Constitutional Court	Constitutional Court of the Republic of Kosovo;
Kosovo Criminal Code	Criminal Code of the Republic of Kosovo, No. 04/L-082, adopted on 20 April 2012;
Kosovo Criminal Procedure Code	Criminal Procedure Code of Kosovo, No. 04/L-123, adopted on 13 December 2012;
Law	The Law on the Specialist Chambers and Specialist Prosecutor's Office, Law No. 05/L-053, adopted on 3 August 2015;
Panel	Any panel or individual judge assigned in accordance with Articles 25(1) and 33 of the Law, unless otherwise specified;
Party	The Specialist Prosecutor or the Defence;
Plenary	Assembly of the Judges from the Roster of International Judges, convened either as a meeting at the seat of the Specialist Chambers or consulted remotely, as decided by the President pursuant to Rule 10(5) of the Rules;

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President	The President of the Specialist Chambers appointed or elected pursuant to Article 32 of the Law;
Presiding Judge	Judge elected pursuant to Rule 15, or appointed pursuant to Article 32(1) of the Law;
Registrar	The Registrar appointed pursuant to Article 34(4) of the Law, or any of his or her staff members authorised to represent him or her in the exercise of his or her functions;
Roster	Roster of independent international Judges provided for in Article 26 of the Law;
Rules	The Rules of Procedure and Evidence in force;
Rules on Assignment	The Rules on Assignment of the Specialist Chambers Judges from the Roster of International Judges pursuant to Article 25(3) of the Law;
SITF	Special Investigative Task Force;
Special Investigative Measures	Such measures as defined in Article 87(1)(1.1 to 1.7), (1.11 and 1.12), (2), (3), (4), (5), (6), (7), (11) and (12) of the Kosovo Criminal Procedure Code;
Specialist Chambers	The Kosovo Specialist Chambers established pursuant to Article 162(1) of the Constitution and the Law;
Specialist Counsel	A person on the List of Specialist Counsel, assigned or appointed pursuant to Rule 26, as applicable;
Specialist Prosecutor	The Prosecutor appointed pursuant to Article 35(6) or (7) of the Law, or any of his or her staff members authorised by him or her to represent him or her in the exercise of his or her functions;
Suspect	A person of whom the Specialist Prosecutor has a reasonable suspicion of having committed or participated in the commission of a crime within the jurisdiction of the Specialist Chambers;

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Third State	A State or entity thereof, other than the Republic of Kosovo;
Victim	A natural person who has suffered physical, material, or mental harm as a direct result of a crime alleged in an indictment confirmed by the Pre-Trial Judge;
Victim Participating in the Proceedings	A victim who has been granted the status of victim participating in the proceedings pursuant to the Rules;
Victims' Counsel	A person on the List of Victims' Counsel, assigned pursuant to Rule 26, as applicable.

(2) In the Rules, the singular shall include the plural, and *vice versa*.

Rule 3
Authentic Text

The English version of the Rules shall be authoritative.

Rule 4
Interpretation of the Rules

- (1) The Rules shall be interpreted in a manner consonant with the framework as set out in Article 3 of the Law and, where appropriate, the Kosovo Criminal Procedure Code.
- (2) In the event of conflict between the Law and the Rules, the Law shall prevail.
- (3) Any ambiguity not settled in accordance with paragraph (1) shall be resolved by the adoption of the most favourable interpretation to the suspect or the Accused in the given circumstances.

Rule 5
Procedure in Event of Lacunae in the Rules

Where, in the course of the proceedings, a question arises which is not addressed by the Rules, the Panel shall rule in accordance with Article 19(2) and (3) of the Law, and the principles set out in Rule 4.

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Rule 6**Non-Compliance with the Rules**

¹Any non-compliance with the Rules causing material prejudice shall be raised immediately, but no later than ten (10) days after it became known. ²The Panel may also address such non-compliance *proprio motu* and take any measure deemed appropriate to ensure the integrity and fairness of the proceedings.

Rule 7**Amendments to the Rules**

- (1) ¹A Rules Committee, composed of the President and two other Judges designated by the President, shall be established after the entry into force of the Rules to examine proposals for amendments to the Rules. ²The President convenes and presides over the Rules Committee.
- (2) The Judges of the Specialist Chamber of the Constitutional Court shall not propose amendments to, or participate in, the amendment of the Rules, except for the Rules of Procedure in Chapter 14.
- (3) Any Judge on the Roster, subject to paragraph (2), the Specialist Prosecutor, the Independent Representative Body of Specialist Counsel and the Registrar may submit to the Rules Committee proposals for amendments to the Rules.
- (4) ¹Upon consultations with the Specialist Prosecutor, the Independent Representative Body of Specialist Counsel and the Registrar, the Rules Committee shall report to the Judges on proposed amendments to the Rules, at least thirty (30) days prior to the date of the Plenary. ²A summary of consultations and of the position of those consulted shall be provided to the Judges. ³The Registrar shall specifically provide his views on any amendments that are likely to have a financial implication for the Specialist Chambers.
- (5) Proposals for amendments shall be adopted by the Plenary by absolute majority of the participating Judges, pursuant to Rule 11.
- (6) ¹Following the adoption of an amendment, the President shall refer the amended Rule to the Specialist Chamber of the Constitutional Court, which shall, within thirty (30) days and in accordance with Article 19(5) of the Law, determine whether it is consistent with Chapter II of the Constitution. ²The President may also submit the reasons for the adopted amendments to the Specialist Chamber of the Constitutional Court.
- (7) ¹Adopted amendments shall come into force seven (7) days after the Specialist Chamber of the Constitutional Court determines pursuant to Article 19(5) of the Law that they comply with Chapter II of the Constitution. ²Adopted amendments and the reasons thereof shall be made public by the President after their entry into force.
- (8) ¹The amendment to the Rules shall have no effect on the validity of any procedural action of the Specialist Chambers, the Parties, Victims' Counsel or the Registrar before such amendment comes into force. ²In any event, no amendment shall operate retroactively or in any matter under consideration by a Panel to the prejudice of the rights of a suspect, an Accused, a convicted or an acquitted person.

Rule 8**Working Languages**

- (1) The official languages are those specified in Article 20 of the Law.
- (2) A suspect or the Accused shall have the right to use a language he or she understands and speaks before the Specialist Chambers.
- (3) Subject to Article 20 of the Law:
 - (a) as early in the proceedings as possible, the Panel, after hearing the Parties and, where applicable, Victims' Counsel, shall decide which working language(s) shall be used in the proceedings; and
 - (b) other persons appearing before the Specialist Chambers who do not have sufficient knowledge of these working language(s) may use a language they understand, where authorised by the Panel.
- (4) The Registrar shall make the necessary arrangements for interpretation and translation into and from the working language(s) and a language used by the Accused or suspect, as provided in the Rules or ordered by the Panel.
- (5) Time limits shall not run until a Party or other participant required to take action has received from the Registrar the translation of a document into one of the working languages, where such document was filed in a language other than one of the working languages.

Rule 9**Calculation and Variation of Time Limits**

- (1) Time limits under the Rules are calculated by calendar days.
- (2) ¹Time limits run from the first working day after the notification of the relevant filing in the working language(s) determined by the Panel. ²Where the time limit for any act prescribed by the Rules or set by a Panel runs from the occurrence of an event, the time limit runs from the first working day after that event.
- (3) ¹Time limits run from the first working day after an oral order, decision or judgment is rendered. ²If the Panel states that written reasons will follow, time limits run from the first working day after the notification of the written reasons.
- (4) The last day of a time limit prescribed under the Rules or set by a Panel, which falls on a weekend or a Specialist Chambers' official holiday, shall be considered to be the next working day.
- (5) The Panel may, *proprio motu* or upon showing of good cause:
 - (a) extend or reduce any time limit prescribed by the Rules or set by the Panel; or
 - (b) recognise as valid any act carried out after the expiration of the time limit.

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- (6) Unless otherwise ordered by a Panel, and where no prejudice is caused to the opposing Party or Victims' Counsel, a motion for variation of time may be disposed of without giving the opposing Party or Victims' Counsel, where applicable, the opportunity to be heard.

Chapter 2

Organisation and Administration of the Specialist Chambers

Section I: Internal Functioning of the Specialist Chambers

Rule 10

Plenary

- (1) The Judges shall meet in Plenary to:
 - (a) adopt and amend the Rules, subject to Article 19(1) and (5) of the Law and Rule 7(2);
 - (b) adopt and amend the Rules on Assignment;
 - (c) adopt and amend the Code of Judicial Ethics;
 - (d) elect a new President and Vice-President pursuant to Article 32(2) and (4) of the Law; and
 - (e) exercise any other functions provided for in the Law, the Rules or the Code of Judicial Ethics.
- (2) The President shall convene and preside over the Plenary.
- (3) ¹The dates of the Plenary shall be determined by the President after consultation with all Judges. Plenaries shall be held at least once every calendar year. ²Other Plenaries shall be convened if requested by at least seven Judges or whenever the exercise of the President's functions under the Law so requires.
- (4) ¹Plenaries are not public and may only be attended by persons invited by the President or by the Judges sitting in Plenary. ²A written record of the proceedings and decisions made shall be produced in English as required.
- (5) ¹Plenaries may be held remotely by electronic means. ²The President may authorise participation by video-conference.

Rule 11

Quorum and Vote

- (1) ¹The quorum for a Plenary shall be an absolute majority of the Judges. ²In cases where Judges of the Specialist Chamber of the Constitutional Court may not be present pursuant to Rule 7(2), the quorum shall be an absolute majority of the remaining Judges.
- (2) ¹The Plenary decides by the absolute majority of participating Judges. ²The President shall have the casting vote.
- (3) ¹Judges may vote by proxy, who shall be one of the other Judges authorised by written notice to the President prior to the opening of the Plenary. ²No Judge may act as a proxy for more than one Judge. ³This paragraph does not apply to any voting of the Plenary pursuant to Chapter 4 of the Code of Judicial Ethics.

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Rule 12**Consultations of the President with the Registrar and the Specialist Prosecutor**

¹Without prejudice to the independent performance of their functions, where necessary, the President and the Registrar shall consult and coordinate on the administration of judicial activity of the Specialist Chambers. ²The President may also consult with the Specialist Prosecutor when necessary on the same subject-matter.

*Section II: Chambers**Sub-Section 1: President***Rule 13****Functions of the President**

- (1) In the exercise of his or her duties in accordance with Article 32(3) of the Law, the President shall perform the following functions:
 - (a) coordinate the work of the Chambers;
 - (b) be responsible for the effective judicial activity of the Specialist Chambers and the good administration of justice;
 - (c) assign Judges to Panels in accordance with the Law and the Rules on Assignment;
 - (d) set court recess periods on a yearly basis, after consultation with the Registrar;
 - (e) represent the Specialist Chambers before Kosovo, Third States, international organisations and other entities, where the activities of the Specialist Chambers so require;
 - (f) consult and coordinate with the Registrar on any matter related to the Registrar's judicial support functions; and
 - (g) exercise all other functions conferred upon the President by the Law, the Rules, the Code of Judicial Ethics and any subsidiary regulation adopted in accordance with Article 19(6) of the Law.
- (2) The President may, in consultations with the Registrar, the Specialist Prosecutor and, where appropriate, the Judges, issue practice directions, consistent with the Law and the Rules, addressing detailed aspects of the conduct of proceedings before the Specialist Chambers.

Rule 14**Replacement of the President**

If neither the President nor the Vice-President are able to carry out their functions, subject to Article 32(4) of the Law, the most senior Judge shall assume these functions pursuant to Rule 16(2).

Sub-Section 2: Judges

Rule 15

Presiding Judge

- (1) ¹The President shall preside over any Supreme Court Panel of which he or she is a member. ²The Presiding Judge of any other Panel shall be elected by the majority of the Judges of that Panel.
- (2) ¹The Presiding Judge of a Trial Panel is elected for the entirety of the trial. ²The members of the Panel may decide to replace the Presiding Judge. ³The Presiding Judge of the Court of Appeals Panel shall be elected for each appeal.
- (3) The Presiding Judge shall coordinate the work of the Panel, liaise with the Registrar on matters related to the administration and servicing of the specific proceedings in accordance with Article 34(1) of the Law, and exercise any other functions conferred upon him or her by the Law and the Rules.
- (4) ¹As provided by the Rules or decided by the Panel, the Presiding Judge may, having informed the other members of the Panel of the course he or she intends to take, render decisions on matters related to the management of the proceedings. ²Such decisions may be reconsidered by the Panel.

Rule 16

Precedence

- (1) Except as provided for in the Rules, all Judges are equal in the exercise of their judicial functions.
- (2) ¹Following the President, Vice-President and elected Presiding Judges, precedence is determined by date of appointment. ²Judges appointed on the same date shall take precedence according to age.

Rule 17

Judge Rapporteur

- ¹The Presiding Judge, in consultation with the Judges of the Panel, may designate a Judge Rapporteur. ²The Judge Rapporteur may be entrusted with drafting a decision of the Panel or be responsible for other issues decided by the Panel.

Rule 18

Reserve Judge

- (1) ¹After the opening of the case pursuant to Rule 121, a Reserve Judge shall be present at each stage of a trial. ²He or she may pose questions during hearings and shall be present during deliberations. ³He or she may perform such other functions with the Panel as the Presiding Judge may deem necessary in consultation with the other members of the Panel.

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- (2) The Reserve Judge shall not be designated as Judge Rapporteur, shall not vote, and shall not issue any opinion on any decisions, unless and until he or she is assigned pursuant to Rule 19(5) or Rule 20 (4).

Rule 19

Absence of a Judge

- (1) Assigned Judges shall be present at each stage of the proceedings and throughout their deliberations.
- (2) ¹The absence of a Judge is subject to the authorisation of the President. ²The President shall be notified, in advance where the circumstances so allow, of any absence of an assigned Judge and shall inform the Registrar accordingly.
- (3) Where a Judge, for reasons of illness, exceptional personal circumstances or *force majeure* circumstances, is absent in a part-heard case for a period which is likely to be of short duration, and where the remaining Judges of the Panel are satisfied that it is in the interests of a fair and expeditious trial, having heard the Parties, they may order that the hearing continue in the absence of that Judge for a period of no more than five (5) working days.
- (4) ¹Where a Judge is absent in a part-heard case for a period which is likely to be longer than five (5) working days, the Panel or the remaining Judges, as applicable, shall adjourn proceedings for a period not exceeding thirty (30) working days. ²Before that decision and after hearing the Parties, the Panel or the remaining Judges, as applicable, shall dispose of those matters deemed necessary.
- (5) ¹If a Judge is unable to continue sitting for more than thirty (30) working days or permanently in a part-heard case, the remaining Judges of the Panel, having heard the Parties, shall report to the President, who shall assign the Reserve Judge or, where appropriate, another Judge to continue hearing the case. ²Pursuant to Article 33(4) of the Law, the substituted Judge shall not be reassigned to another Panel at a different phase of the same proceedings.
- (6) If a Single Judge is, for any reason, unable to continue sitting in a part-heard case for a period which is likely to be longer than of short duration, the President may assign another Single Judge to the case and, after hearing the Parties, order either a rehearing or continuation of the proceedings from that point.

Rule 20

Recusal or Disqualification of Judges

- (1) ¹A Judge shall not sit in any case in which he or she has a personal interest or has or has had any involvement which may affect or may appear to affect his or her impartiality, judicial independence or the integrity of the proceedings. ²The grounds for recusal or disqualification may include:
 - (a) personal interest in the case, including a spousal, parental or other immediate family interest, a personal, professional or subordinate relationship, with any of the Parties or

Victims' Counsel, or situations that may reasonably be perceived as giving rise to conflict of interest;

- (b) involvement other than as a Judge of the Specialist Chambers in any legal proceedings in which the suspect or Accused was or is a party;
 - (c) performance of functions, prior to his or her assignment, during which the Judge could have formed an opinion on the case in question, that could adversely affect the Judge's required impartiality; and
 - (d) any other reason which could reasonably appear to affect the Judge's impartiality.
- (2) ¹Where a Judge has reason to believe that a ground for recusal exists against him, he or she shall immediately file a strictly confidential application for recusal to the President and, if applicable, inform the Presiding Judge of the Panel accordingly. ²The President shall issue a decision in accordance with Rule 5 of the Rules on Assignment. ³The reasons for this decision shall only be made public upon consultation with the Judge concerned.
- (3) ¹A Party may apply to the President for the disqualification of a Judge immediately, but no later than ten (10) days after the grounds on which the application is based become known to the Party. ²A Judge whose disqualification is sought may recuse himself after being notified of the application for disqualification. ³If the President considers that the request is vexatious, misconceived, frivolous or lacking in substance, he or she shall summarily dismiss it as soon as possible. ⁴In any other case, the President shall assign a Panel of three Judges to determine whether the Judge should be disqualified. ⁵The Judge shall be given the opportunity to respond to the application. ⁶His or her submissions shall be provided to the Parties, who may be allowed by the Panel to make observations. ⁷The Judge shall be allowed to reply to those observations. ⁸The Panel shall take a reasoned decision as soon as possible. ⁹Such a decision shall be public, with redactions in exceptional circumstances.
- (4) ¹The Panel shall decide in each particular case whether the circumstances allow for the Judge in question to continue to participate in the proceedings whilst the matter is pending. ²Parties shall be heard on the issue before the Panel renders a decision. ³Following a recusal or a decision to disqualify a Judge, the President shall assign a Judge as replacement.
- (5) A decision under paragraphs (2) and (3) is not subject to review.
- (6) If the application concerns the President, the Vice-President shall assume the President's responsibilities under this Rule.

Rule 21

Resignation or Death of a Judge

- (1) ¹A Judge who intends to resign shall communicate his or her resignation in writing to the President. ²He or she shall endeavour to do so within ninety (90) days prior to his or her resignation taking effect. ³Before the resignation takes effect, the Judge shall discharge his or her outstanding responsibilities, if possible.
- (2) Following the resignation or death of a Judge, or the notification of such medical conditions preventing a Judge from personally submitting his or her resignation, the President shall notify

the Appointing Authority if the number of Judges on the Roster decreases below a level that would impede the operation of the Specialist Chambers.

Rule 22

Dismissal from the Roster and Disciplinary Measures

Dismissal from the Roster in accordance with Article 31(4) of the Law, any other disciplinary measure as well as the governing procedure shall be regulated in the Code of Judicial Ethics.

Section III: Registry

Sub-Section 1: General Provisions

Rule 23

Judicial Support Functions of the Registrar

- (1) ¹Pursuant to Article 34(1) of the Law, the Registrar is responsible for the administration and servicing of the Specialist Chambers and all necessary and affiliated functions. ²For this purpose, the Registrar may issue any necessary internal rules and instructions and may, where needed, consult with the President for that purpose.
- (2) The Registrar, in the execution of his or her functions as set out in the Law, the Rules and the relevant practice directions, may:
 - (a) make representations to the President or any Panel on issues arising in the context of a specific case which affect the discharge of his or her functions;
 - (b) make recommendations and representations to the Plenary regarding the functions of the Registry that affect the judicial activity of the Specialist Chambers; and
 - (c) report on his or her activities that affect the judicial functions of the Specialist Chambers to the Judges sitting in Plenary.
- (3) ¹Upon approval of the President, the Registrar shall adopt a Directive on Counsel and a Code of Professional Conduct and any amendments thereto. ²Where appropriate, the President may consult with all Judges on the Roster, the Independent Representative Body of Specialist Counsel or other relevant outside bodies.
- (4) Subject to the Rules and as directed by a Panel, the Registrar shall receive and distribute filings. The Registrar shall adopt a Practice Direction for such purposes.
- (5) ¹The Victims' Participation Office in the Registry administers the system of victim participation provided for in Article 22 of the Law and the Rules, a list of Victims' Counsel, as well as a system of payment for victim representation. ²The Victims' Participation Office shall provide assistance and advice to victims who are participating in the proceedings before the Specialist Chambers.

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- (6) The Defence Office in the Registry administers a list of Specialist Counsel eligible to practice before the Specialist Chambers, as well as a system of legal aid for representation of indigent or partially indigent suspects or Accused before the Specialist Chambers.
- (7) ¹Pursuant to Articles 34(12) and 41 of the Law, and without prejudice to judicial oversight where necessary, the Registrar is responsible for managing and administering the detention function and facilities for the Specialist Chambers in line with international standards and the Law. ²In accordance with Article 41(8) and (9) of the Law, the Registrar adopts Rules of Detention, Complaints and Disciplinary Procedures for the Detention Facilities and ensures that the detention facilities meet international standards and be inspected and monitored by any recognised international monitoring authority.
- (8) The Registrar shall take all measures within his or her responsibility to ensure that decisions of the Specialist Chambers are executed.
- (9) The Registrar shall serve as the communication channel of the Specialist Chambers to the public.

Rule 24**Record of Proceedings and Custody of Evidence**

- (1) The Registrar shall maintain a full and accurate record of the proceedings.
- (2) The Registrar shall preserve all evidence and other materials produced during the proceedings in accordance with any judicial order.
- (3) ¹The Registrar shall maintain a judicial database, which shall hold each case file brought before the Specialist Chambers. ²Public records in the judicial database shall be made available to the public.
- (4) The Registrar shall record or take minutes of the Plenary, as appropriate.

Sub-Section 2: Counsel

Rule 25

Lists of Counsel

- (1) The eligibility, required qualification and experience, as well as modalities for withdrawal and removal of Counsel shall be regulated in the Directive on Counsel.
- (2) The Registrar shall admit Counsel to the List of Specialist Counsel or to the List of Victims' Counsel if they fulfil the requirements set out in the Directive on Counsel.
- (3) Counsel on the Lists of Counsel shall be subject to the disciplinary procedures provided for in the Code of Professional Conduct for Counsel.

Rule 26

Appointment and Assignment of Counsel

- (1) ¹The Registrar shall appoint or assign Counsel from the List of Specialist Counsel to a suspect or Accused in accordance with the Directive on Counsel. ²In accordance with procedure set out in this Directive, a suspect or Accused can seek a review by the competent Panel of the decision of the Registrar on the appointment or assignment of Specialist Counsel.
- (2) In accordance with the Directive on Counsel and after having consulted with the victims participating in the proceedings and taken their views and interests into account, the Registrar shall assign Counsel for common representation from the List of Victims' Counsel pursuant to Article 22(5) of the Law and Rule 110(7).
- (3) In accordance with Articles 21(4)(e), 21(5), 38(3)(c) and 41(4)(b) of the Law, where a suspect or Accused fails to select counsel or chooses counsel not eligible to the List of Specialist Counsel, the Registrar or, where seized, the Panel shall assign Specialist Counsel to him.

Sub-Section 3: Witness Protection and Support

Rule 27

Responsibilities of the Registrar for Witness Protection and Support

- (1) The Witness Protection and Support Office in the Registry shall be responsible for protecting witnesses, victims participating in the proceedings and, where appropriate, others at risk on account of testimony given by witnesses.
- (2) The Witness Protection and Support Office shall, in particular, exercise the following functions:
 - (a) formulate strategies and provide adequate protective and security measures for witnesses, victims participating in the proceedings, and others at risk on account of testimony by witnesses, in consultation where appropriate with the Party calling the witness, including by undertaking the measures referred to in Article 23(1) of the Law;
 - (b) provide all necessary administrative and logistical assistance to witnesses appearing before the Specialist Chambers, 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; and
 - (iv) the role, rights and obligations of witnesses in the proceedings;
 - (c) assist witnesses and victims participating in the proceedings in obtaining medical, psychological and other appropriate support necessary for them to testify before the Specialist Chambers;
 - (d) ensure that called or summonsed witnesses are kept apart in a designated place or room where they shall wait until called to testify; and
 - (e) provide any additional assistance as decided by the Registrar or a Panel as is consistent with the mandate and responsibilities of the Witness Protection and Support Office.
- (3) The Witness Protection and Support Office may, on order of a Panel or *proprio motu*, conduct a psychological assessment, prior to a court appearance, on a person's fitness to appear and on any necessary protective measures.
- (4) In performing its functions, the Witness Protection and Support Office shall respect the interests of witnesses and victims participating in the proceedings, maintain confidentiality and act impartially at all times.
- (5) Subject to paragraph (4), for the purpose of fulfilment of this mandate, the Registrar may enter into relevant agreements, protocols or other arrangements with one or more of the Parties.

Sub-Section 4: Ombudsperson's Office

Rule 28

General Provision

- (1) ¹The Registry shall include an independent office for the Ombudsperson of the Specialist Chambers. ²At all times, the independence of the Ombudsperson in the exercise of any official function shall be respected.
- (2) The Ombudsperson of the Specialist Chambers shall act independently to monitor, defend and protect the fundamental rights and freedoms enshrined in Chapter II of the Constitution of Kosovo of persons interacting with the Specialist Chambers and Specialist Prosecutor's Office in accordance with the Law and the Rules.
- (3) The Ombudsperson is appointed for a period of four (4) years.
- (4) Upon appointment, the Ombudsperson of the Specialist Chambers shall make a solemn declaration before the Registrar.
- (5) In case of death, permanent or temporary disability, resignation, or dismissal by the Appointing Authority for gross misconduct, the Appointing Authority shall appoint a replacement.

Rule 29

Role and Functions of the Ombudsperson of the Specialist Chambers

- (1) ¹The Ombudsperson shall not intervene in cases or other legal proceedings before the Specialist Chambers, except in instances of unreasonable delays. ²Unless invited as *amicus curiae* pursuant to Rule 64, the Ombudsperson does not have any right of appearance before a Panel, with the exception of the Specialist Chambers of the Constitutional Court.
- (2) The Ombudsperson may, unless otherwise provided in the Rules,
 - (a) conduct inquiries into complaints received from any person asserting a violation of his or her rights by the Specialist Chambers or the Specialist Prosecutor's Office. If the complaint made on behalf of someone whose rights have alleged to have been violated, their consent is needed before any inquiry is commenced.
 - (b) enter and inspect at any time and without notice the Specialist Chambers' detention facilities to assess the conditions of detention;
 - (c) propose or facilitate mediation and reconciliation in order to resolve a complaint.
 - (d) make recommendations to the President or Specialist Prosecutor on matters falling within their functions.
- (3) A request to the Ombudsperson may be rejected if:
 - (a) it involves a case or other legal proceedings before the Specialist Chambers other an allegation of unreasonable delay;

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- (b) it does not demonstrate a violation of human rights by the Specialist Chambers.
- (c) it is incomplete or a request has not been completed following a reminder from the Ombudsperson.
- (d) other remedies have not been exhausted, except in cases of inactivity or immediate urgency in order to avoid severe damage and irreparable prejudice.

The Ombudsperson shall provide reasons for such a rejection.

- (4) ¹The Ombudsperson shall provide notice to the complainant, as well as notice to the Specialist Chambers or Specialist Prosecutor's Office, of the actions of which are the basis for such inquiry. ²The Specialist Chambers, the Specialist Prosecutor's Office or a person whose action form part of the inquiry, shall respond within 30 days from the notice provided by the Ombudsperson.
- (5) The Specialist Chambers and Specialist Prosecutor's Officer shall assist the Ombudsperson in the exercise of his or her functions, with due regard to the Rules or any orders of the Specialist Chambers, in particular on confidentiality.
- (6) The Ombudsperson shall ensure the confidentiality of all classified information received or to which his or her Office is given access.
- (7) ¹After the completion of the inquiry, the Ombudsperson shall issue a final report, which shall be submitted to the complainant, the affected body or person, and the President. ²The Reports of the Ombudsperson shall be published, with redactions where necessary.

Chapter 3 Rights of Persons During Investigation

Section I: Investigative Measures

Sub-Section 1: General Provisions

Rule 30

General Provision

- (1) In the conduct of an investigation of a crime falling within the jurisdiction of the Specialist Chambers, the Specialist Prosecutor may:
 - (a) question victims, witnesses and suspects, and record their statements;
 - (b) collect evidence and conduct on-site investigations;
 - (c) seek the assistance of Third States and international organisations or other entities;
 - (d) undertake measures provided for in Rule 31 to Rule 36;
 - (e) undertake other measures provided for in as Rule 37 to Rule 38.
- (2) During an investigation, the Specialist Prosecutor shall ensure:
 - (a) the safety and protection of victims, witnesses and other persons at risk on account of information provided, cooperation with or employment by the Specialist Prosecutor; and
 - (b) the protection of the privacy of any person.
- (3) Where investigative measures may infringe fundamental rights provided for in Chapter II of the Constitution, the Specialist Prosecutor shall request the authorization of a Panel by setting forth:
 - (a) the grounds for such measures;
 - (b) the manner in which they may infringe such rights; and
 - (c) any proposed counterbalancing safeguards.

Sub-Section 2: Special Investigative Measures

Rule 31

Grounds for Special Investigative Measures

- (1) Special investigative measures may be authorised in accordance with Articles 35(2) and 39(3) of the Law and pursuant to Rule 32 and Rule 33, where:

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- (a) there is a grounded suspicion that a crime within the jurisdiction of the Specialist Chambers has been committed, is being committed or is about to be committed; and
 - (b) information obtained from such measures, if applied, would assist the investigation of the crime and cannot be obtained by any other investigative measure or without a real risk of harm to persons or property.
- (2) A reasonable suspicion of the identity of a suspect committing or participating in the commission of the crime under paragraph (1) is not required for the authorisation of such measures.

Rule 32

Special Investigative Measures Authorised by a Panel

- (1) The Specialist Prosecutor shall request authorisation from a Panel to undertake special investigative measures.
- (2) Where the Panel is satisfied that the requirements under Rule 31(1) are met, it shall issue a decision authorizing the requested special investigative measures which shall include:
 - (a) the period for which the authorisation is granted depending on the specific circumstances of the investigation, which may not exceed sixty (60) days;
 - (b) a time limit within which the Specialist Prosecutor shall report on the implementation of the authorised measures; and
 - (c) an authorisation, where necessary, to enter, search or seize private property and take such other actions as are necessary to execute, maintain or terminate the investigative measure in question. Notice to the suspect or Accused for such authorization is not required, unless the Panel determines, in the particular circumstances of the case, that notification shall not jeopardise the effectiveness of the requested measure.

Rule 33

Special Investigative Measures Ordered by the Specialist Prosecutor

- (1) The Specialist Prosecutor may order special investigative measures where:
 - (a) the requirements under Rule 31(1) are met;
 - (b) exceptional circumstances require the immediate implementation of such measures; and
 - (c) the delay in seeking authorisation from a Panel would jeopardise the investigation or the safety of a witness, victim or other persons at risk.
- (2) The Specialist Prosecutor shall file a request to a Panel for approval of such measures immediately, and no later than twenty-four (24) hours after their initiation.
- (3) ¹The Panel seized with the request shall approve the special investigative measures only if satisfied that the conditions under paragraph (1) were met. ²If an approval is denied the Specialist Prosecutor shall immediately terminate the measures applied.

Sub-Section 3: Searches and Seizures

Rule 34

Search and Seizure Authorised by a Panel

- (1) The Specialist Prosecutor shall request authorization from a Panel for search and seizure where on the basis of the supporting material submitted with the request, a grounded suspicion has been established that:
 - (a) a crime within the jurisdiction of the Specialist Chambers has been committed, is being committed or is about to be committed; and
 - (b) the search is likely to result in the arrest of a person responsible for the crime or in the discovery and seizure of evidence essential for the investigation.
- (2) The Panel seized with the request may authorise the search and seizure if it is satisfied that the requirements under paragraph (1) are met.
- (3) ¹The Panel shall set the timeframe, duration and scope for the execution of the search and seizure. ²The Panel may impose other conditions as deemed necessary.

Rule 35

Search and Seizure by the Specialist Prosecutor

- (1) In accordance with Articles 35 and 39 of the Law, the Specialist Prosecutor may, without an authorization of a Panel, search any person or property and temporarily seize any items found during the search, if:
 - (a) the person knowingly and voluntarily consents to the search and seizure;
 - (b) a person caught in the act of committing a crime under the jurisdiction of the Specialist Chambers, is to be arrested after a pursuit;
 - (c) a person against whom an arrest warrant has been issued by a Panel is on the property to be searched; or
 - (d) it is necessary to avoid an imminent risk of serious and irreversible harm to other persons or property.
- (2) The Specialist Prosecutor shall file a request to a Panel for approval of the search and seizure immediately, and no later than twenty-four (24) hours after their initiation.
- (3) ¹The Panel shall approve the search and seizure only if satisfied that the conditions under paragraph (1) were met. ²If an approval is denied the Specialist Prosecutor shall immediately terminate the search and seizure.
- (4) Rule 36(3) to (5) shall apply *mutatis mutandis*.

Rule 36**Execution of Search and Seizure**

- (1) Prior to the execution of search and seizure, the Specialist Prosecutor shall:
 - (a) provide the person against whom the decision is directed with a certified copy thereof;
 - (b) inform the person of his or her rights under Rule 39 or Rule 40, as applicable; and
 - (c) ensure that the search and seizure is executed in the presence of the person's counsel, unless the person waives this right.
- (2) ¹Paragraph (1) may not apply if exceptional circumstances require immediate search and seizure where any delay would jeopardise the investigation or cause serious and irreversible harm to other persons or property. ²In such cases, the Specialist Prosecutor shall request the approval of a Panel immediately and no later than twenty-four (24) hours after the initiation of the search and seizure. ³If authorization is not granted, the seized items, if any, may not be admitted as evidence.
- (3) During the execution of a search and seizure, care shall be taken to avoid unnecessary damage to property.
- (4) ¹The Specialist Prosecutor shall record the time, duration, scope and all other relevant details of the search and seizure. ²Where the Panel has imposed additional conditions on the execution of the search and seizure, the implementation of such conditions shall also be recorded. ³The Specialist Prosecutor shall prepare an inventory with a detailed description of each item seized and shall retain and preserve the seized items in accordance with Rule 43.
- (5) ¹Within twenty-four (24) hours of the implementation of the search and seizure, the Specialist Prosecutor shall apply to a Panel for authorisation of the continued retention of the seized items. ²Where the Panel authorises such sequestration, it shall indicate the estimated duration thereof or, where applicable, provide for their preservation under Rule 68. ³If authorization is denied, the seized items shall be returned.

Sub-Section 4: Other Measures**Rule 37****Exhumations and Post-Mortem Examinations**

- (1) Where the Specialist Prosecutor has reasons to believe that the body of a person whose death may have been caused by a crime within the jurisdiction of the Specialist Chambers, is to be found at a specific location, he or she shall request authorisation from a Panel to conduct an examination of the grave site and exhumation, and where a body of a person is discovered, to undertake a post-mortem examination.
- (2) Where the Panel authorises such measures, Rule 199 or Rule 205, as applicable, shall apply *mutatis mutandis*.

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- (3) A post-mortem examination of a body exhumed pursuant to paragraph (1) shall be carried out by a forensic expert, approved by the Panel, with a view to establishing, *inter alia*:
- (a) the identity of the body;
 - (b) the cause and time of death; and
 - (c) the nature of any injuries.

Rule 38**Expert Examinations**

- (1) Expert examination for the collection of hair, saliva or other swab samples, which can be undertaken without bodily intrusion, may be ordered by the Specialist Prosecutor.
- (2) Expert physical examinations for the collection of blood samples, body tissue, DNA or other similar material, which cannot be undertaken without bodily intrusion, shall be undertaken by the Specialist Prosecutor only upon:
- (a) voluntary written consent of the person concerned; or
 - (b) authorisation by a Panel.
- (3) The Panel may authorise an expert physical examination under paragraph (2) where:
- (a) there is a grounded suspicion that the samples will provide evidence of a crime within the jurisdiction of the Specialist Chambers or of the identity of a person responsible for such crimes; and
 - (b) other forensic material in the custody or control of the Specialist Prosecutor can be matched to the samples authorised to be taken.
- (4) The molecular or genetic examination of materials obtained pursuant to paragraphs (1) or (2) shall be authorised by a Panel.
- (5) ¹Materials referred to in paragraphs (1) and (2) shall not be used for any purpose other than the investigation and prosecution of crimes within the jurisdiction of the Specialist Chambers. ²Such material shall be destroyed upon the conclusion of the mandate of the Specialist Prosecutor's Office or at such other time as decided by a Panel, the Specialist Prosecutor or a Residual Mechanism pursuant to Article 60 of the Law, as applicable.

Section II: Rights of Persons During Investigation

Rule 39

General Provision

During an investigation by the Specialist Prosecutor, a person:

- (a) shall not be compelled to incriminate himself or to confess guilt;
- (b) shall not be subjected to any form of coercion, inducement, undue promise, duress or threat, torture or any other form of cruel, inhumane or degrading treatment or punishment;
- (c) shall, if questioned in a language other than a language he or she understands and speaks, have, free of any cost, the assistance of an interpreter and such translations as are necessary to meet the requirements of fairness; and
- (d) shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except in accordance with the Law and the Rules.

Rule 40

Rights of Suspects During Investigation

- (1) Where the Specialist Prosecutor has a reasonable suspicion that the person has committed or participated in the commission of a crime within the jurisdiction of the Specialists Chambers, that person shall be deemed a suspect and shall, once notified, have, at a minimum, the rights provided for in Article 38(3) of the Law.
- (2) The Specialist Prosecutor shall inform the suspect of the rights under Article 38(3) of the Law prior to any questioning in a manner and in a language the suspect understands and speaks.
- (3) ¹Any investigative act requiring the presence of a suspect, in particular any questioning, confrontation, identity parade or reconstruction of a crime scene shall not proceed without the presence of Specialist Counsel. ²A suspect may waive this right provided that the Specialist Prosecutor ensures that the suspect understands the nature of this right and the consequences of waiving it. ³When providing such information, the Specialist Prosecutor shall take into account the personal circumstances of the suspect, including his or her age, mental and physical condition. ⁴A waiver and the circumstances in which it was given shall be recorded in writing by the Specialist Prosecutor and shall be signed by the suspect.
- (4) ¹A suspect shall be informed that he or she may revoke the waiver at any point during his or her interview. ²Where a suspect revokes a waiver, the questioning shall cease and shall only resume in the presence of Specialist Counsel. ³Questioning or any other act carried out prior to the revocation of the waiver shall be valid and shall not be repeated.

Rule 41**Recording of Questioning of Suspects**

- (1) ¹During the questioning of a suspect by the Specialist Prosecutor, the procedure envisaged in Rule 40 shall apply. ²The questioning shall be video-recorded, in accordance with the following procedure:
- (a) the suspect shall be informed in a language he or she understands and speaks that the questioning is to be video-recorded. In the event that the suspect objects to the questioning being video-recorded, the fact that this information has been provided and the response given by the suspect shall be recorded in writing, and signed by the suspect;
 - (b) in the event of an interruption in the course of the questioning, the Specialist Prosecutor shall record the fact and the time of the interruption before the video-recording ends, and shall note the time of resumption of the questioning in the video-recording. During any such interruption, the Specialist Prosecutor shall refrain from discussing any issue pertaining to its investigation or the position of the suspect;
 - (c) at the conclusion of the questioning, the suspect shall be given the opportunity to clarify, supplement or amend anything he or she said. The time of conclusion of the questioning shall be recorded;
 - (d) a copy of the recording shall be supplied to the suspect or his or her Specialist Counsel;
 - (e) after a copy has been made, the original recording shall be sealed in the presence of the suspect under the signature of the Specialist Prosecutor and the suspect; and
 - (f) if the Specialist Prosecutor files an indictment against the suspect, the recording shall be transcribed.
- (2) ¹A suspect may be questioned without the questioning being video-recorded pursuant to paragraph (1) where exceptional circumstances do not allow for such recording to take place. ²The Specialist Prosecutor shall record the reasons for not following the procedure in paragraph (1).
- (3) ¹Where, pursuant to paragraph (1) or (2), the questioning is not video-recorded, the Specialist Prosecutor shall prepare a written transcript of the questioning of the suspect, which shall be signed by him or her and by the suspect. ²The Specialist Prosecutor shall record any refusal by the suspect to read or sign the transcript and any reason he or she might give for it, and any other persons present shall be asked to read and sign the transcript.

Rule 42**Confessions**

An out of court confession by a suspect or Accused given during questioning by the Specialist Prosecutor shall be considered free and voluntary if the Specialist Prosecutor shows that the requirements of Rule 40 and Rule 41 have been complied with strictly.

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Rule 43**Preservation of Information**

- (1) Subject to the obligations of the Registrar pursuant to Rule 24, the Specialist Prosecutor shall be responsible for the retention, storage and security of information and physical and electronic material obtained in the course of the Specialist Prosecutor's investigations unless and until such information or material has been tendered into evidence at trial.
- (2) In addition to any electronic means used by the Specialist Chambers for the presentation of evidence, the Specialist Prosecutor shall ensure that any such material is available upon request by the Defence or the Panel.

Rule 44**Termination of the Investigation**

- (1) If the Specialist Prosecutor does not file an indictment with the Specialist Chambers pursuant to Article 38(4) of the Law within a reasonable time after the person became a suspect and was notified thereof, the suspect may request the Specialist Prosecutor to terminate the investigation against him.
- (2) If a request is rejected or not considered, the suspect may request a Single Judge, assigned pursuant to Article 25(1)(f) of the Law, to consider the matter and, if necessary, terminate the investigation against the suspect.

Chapter 4

Summonses, Arrest and Detention

Section I: General Provisions

Rule 45

Basic Principles

- (1) No person under the authority of the Specialist Chambers shall be deprived of his or her liberty, except in accordance with the Law and the Rules.
- (2) Upon request by a Party or *proprio motu*, a Panel may issue such arrest warrants, summonses, decisions or orders as may be necessary for the purposes of the investigation or for the preparation and conduct of the proceedings.

Rule 46

Summonses and Other Orders

- (1) The Registrar shall transmit any summons, decision or order issued by the Specialist Chambers to the competent authorities.
- (2) Where a summons, decision or order is transmitted to Kosovo or to a Third State which has agreed to cooperate with the Specialist Chambers, or has on any other basis assumed an obligation to provide assistance, the competent authorities shall act with due diligence to ensure its effective execution.
- (3) Where a summons, decision or order relates to a person located or last known to be located in a Third State other than those referred to in paragraph (2), the Registrar shall transmit the request for cooperation, including the summons or order to the competent authorities of that State.
- (4) ¹If the person concerned is not present where the service is to be effected, the officer effecting the service shall leave written notice directing the addressee of the summons or order to appear at a particular place at a particular date and time in order to receive the document. ²If after two such attempts within a reasonable time the addressee is not present or refuses to receive the summons or order, the officer effecting the service shall note the date, time, number of attempts and reason for refusal, if any. ³The officer shall leave the summons or order at the place, whereby the document shall be deemed served.

Rule 47

Transfer to the Specialist Chambers

- (1) Where a witness, suspect or Accused, is being proceeded following a summons, decision or order of the Specialist Chambers or the Specialist Prosecutor, or is serving a sentence in Kosovo, the Panel shall order the competent authorities to transfer the person to the Specialist Chambers without delay, and may include conditions for the transfer and further detention, after consulting with the Registrar.

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- (2) A Panel may also order or request the transfer of such a person from any Third State on the basis of an agreement of that State with Kosovo or with the Specialist Chambers or on the basis of reciprocity.

Rule 48**Compensation for Unlawful Arrest or Detention**

- (1) Upon a final decision that a person has been unlawfully arrested or detained under the authority of the Specialist Chambers, the person may file a request with the President for compensation or other appropriate redress within six (6) months of the final decision.
- (2) ¹The President shall assign a Panel which shall decide on the request after having heard the Specialist Prosecutor. ²In determining any appropriate compensation or other form of redress that may be warranted in cases under paragraph (1), the Panel shall take into consideration the consequences of the unlawful arrest and detention on the personal, family, social and professional situation of the person filing the request.

Section II: Arrest**Rule 49****Arrest Order by the Specialist Prosecutor**

- (1) Where a person is arrested upon an arrest order issued by the Specialist Prosecutor pursuant to Article 35(2)(h) and in compliance with 41(6) of the Law, the Specialist Prosecutor shall immediately inform the President and the Registrar.
- (2) ¹In accordance with Article 41(3) of the Law, any person arrested pursuant to this Rule shall be brought before a Panel within forty-eight (48) hours of his or her arrest. ²The Panel shall satisfy itself that the person has been informed of the reasons for his or her arrest as provided for in Article 41(6) of the Law and of his or her rights under the Law and the Rules. ³The Panel shall decide on the continued detention or release of the person, within forty-eight (48) hours from the moment the detained person was brought before it.
- (3) ¹Following an arrest pursuant to paragraph (1), the Specialist Prosecutor shall apply, without undue delay, to a Panel for an order for the transfer of the person to a detention facility of the Specialist Chambers. ²Where the Panel orders the transfer, the Registrar shall make the necessary arrangements with the competent authorities.

Rule 50**Arrest Warrant by the Specialist Chambers**

- (1) Upon request by the Specialist Prosecutor or *proprio motu*, a Panel may issue an arrest warrant if it is satisfied that the conditions set out in Article 41(6) of the Law are met.
- (2) The arrest warrant shall contain:

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- (a) the name of the person and any other relevant identifying information;
 - (b) a specific reference to the crimes within the jurisdiction of the Specialist Chambers for which the person's arrest is sought;
 - (c) a concise statement of the facts which are alleged to constitute those crimes; and
 - (d) where applicable, the detention facility of the Specialist Chambers to which the person shall be transferred.
- (3) The arrest warrant shall remain in effect until otherwise ordered by the Panel.

Rule 51

International Arrest Warrants by the Specialist Chambers

Upon request by the Specialist Prosecutor or *proprio motu*, a Panel may issue an international arrest warrant, to be transmitted to all States through any relevant international body.

Rule 52

Execution of Arrest Warrants

- (1) The Registrar shall transmit an arrest warrant issued by the Specialist Chambers to the competent authorities, including, as appropriate the Specialist Prosecutor.
- (2) Where an arrest warrant is transmitted to Kosovo or to a Third State which has agreed to cooperate with the Specialist Chambers, or has on any other basis assumed an obligation to provide assistance, the competent authorities shall act with due diligence to ensure the effective execution thereof.
- (3) Where an arrest warrant relates to a person located or last known to be located in a Third State other than those referred to in paragraph (2), the Registrar shall transmit the request for cooperation, including the arrest warrant to the competent authorities of that State.
- (4) ¹Where, pursuant to an arrest warrant issued by the Specialist Chambers, a person is arrested in Kosovo or a Third State, such person may be detained by the competent authorities, which shall promptly notify the Registrar, who shall immediately inform the President, the Panel and the Parties. ²The Registrar shall make the necessary arrangements for the prompt transfer of the arrested person to a detention facility of the Specialist Chambers with the competent authorities and the Host State.
- (5) ¹Kosovo authorities shall comply with a warrant, detain and transfer the person concerned without delay and under the conditions set. ²They shall not afford the person concerned any means of relief not expressly ordered in that warrant.
- (6) In accordance with Article 41(5) of the Law, any person arrested pursuant to this Rule shall be brought without undue delay before a Panel, which shall satisfy itself that the person has been informed of the reasons for his or her arrest pursuant to Article 41(4) of the Law and of his or her rights under the Law and the Rules.

Section III: Detention

Rule 53

Detention on Remand

- (1) ¹A person subject to a detention order shall be detained in accordance with Article 41(7) of the Law. ²In exceptional circumstances, the person may be held in facilities outside the Host State or Kosovo pending transfer. ³In such circumstances, the Panel may, on the application of a Party and upon consultation with the Registrar, request modification of the conditions of detention or provide comments thereon. ⁴The detained person shall at all times remain under the authority of the Specialist Chambers.
- (2) ¹Before the assignment of a Pre-Trial Judge pursuant to Article 33(1)(a) of the Law, the detention of a suspect shall be reviewed by an individual Judge assigned pursuant to Article 33(2) of the Law every two (2) months or at any time earlier, upon request by the suspect or Specialist Prosecutor, or *proprio motu*. ²In addition to the grounds provided for in Article 41(6) of the Law, each request for an extension shall be justified by investigative measures to be taken by the Specialist Prosecutor. ³The total duration of the detention under this provision shall not exceed one (1) year. ⁴At the end of this period, unless the Pre-Trial Judge has been assigned, the suspect shall be released.
- (3) Without prejudice to Article 21(4)(c) of the Law, the Panel may, upon request or *proprio motu*, rule on conditions of detention and related matters for the purposes of protecting witnesses or victims, confidential information or the integrity of the proceedings, including on the imposition of necessary and proportionate restrictions on the communications of a detained person.

Rule 54**Review and Reconsideration of Detention on Remand**

- (1) ¹After the assignment of a Pre-Trial Judge pursuant to Article 33(1)(a) of the Law and until a judgment is final, the Panel seized with a case shall review a decision on detention on remand upon the expiry of two (2) months from the last ruling on detention, in accordance with Article 41(10), (11) and (12) of the Law. ²The Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case. ³In case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.
- (2) Where new facts are discovered which render his or her continued detention unlawful, a detained person may request reconsideration of a decision on detention on remand before the Panel that rendered that decision.
- (3) Where sufficient grounds require the release of the detained person, subject to Article 41(6) of the Law, a Panel may, upon request by the detained person or *proprio motu* and having heard the Parties, at any stage of the proceedings, release the detained person.
- (4) ¹Upon request under paragraphs (2) or (3), the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the Accused during proceedings, in accordance with Article 41(12) of the Law. ²The Panel shall hear the Third State to which the detained person seeks to be released. ³A detained person shall not be released without the consent of that State. ⁴A decision shall be rendered as soon as possible and no later than three (3) days from the last submission.

Rule 55**Interlocutory Appeals Against Detention on Remand**

- (1) Appeals before the Court of Appeals against decisions relating to detention on remand shall lie as of right pursuant to Article 45(2) of the Law.
- (2) Rule 167 shall apply to an appeal against a decision to detain a person on remand.
- (3) ¹An appeal against a decision to release a person shall be filed within two (2) days of the decision. ²Any response shall be filed within one (1) day of the appeal. ³The Specialist Prosecutor is not entitled to file a reply.
- (4) ¹The appeal shall not have suspensive effect unless otherwise ordered by the Court of Appeals Panel as an exceptional measure upon a request to this effect filed with the appeal. ²Where the Specialist Prosecutor requests suspensive effect of a decision granting release, the person shall not be released unless and until the Court of Appeals Panel renders a decision denying suspensive effect. ³The Court of Appeals Panel shall dispose of an application for suspensive effect within five (5) days of the last submission.

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Rule 56**Protection of Legality Against Final Decisions on Detention on Remand**

¹In accordance with Article 48(6) of the Law, the detained person may request protection of legality against final decisions ordering or extending detention on remand under Rule 55. ²This request shall be filed with the President in accordance with Rule 190.

Rule 57**Death of a Detained Person**

¹In the event of the death of a person detained under the authority of the Specialist Chambers, the Registrar shall determine the cause of death and may order any enquiries necessary for that purpose. ²If it is determined that the death is not the result of natural causes, the Registrar shall refer the case to the competent local authorities.

Chapter 5

Provisions Related to Various Stages of the Proceedings

Section I: General Provisions

Rule 58

Control of Courtroom Proceedings

- (1) ¹The Presiding Judge shall oversee the order in the courtroom and in the public gallery, and the conduct of all participants. ²He or she shall take measures as appropriate, including the removal of a person 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.
- (2) ¹The Presiding Judge may order the temporary removal of the Accused from the courtroom and continue the proceedings in his or her absence if the Accused has persisted in disruptive conduct following a warning that such conduct may result in his or her removal from the courtroom, and provided that his or her interests are represented by Specialist Counsel. ²In such a case, the Panel shall make provisions for the Accused to observe the proceedings and instruct Specialist Counsel from outside the courtroom.
- (3) The Presiding Judge may order the personal search of any person present in the courtroom and in the public gallery if necessary for security reasons as well as for the proper administration of justice.

Rule 59

Duties of the Specialist Prosecutor

¹In performing his or her functions, the Specialist Prosecutor shall contribute to the establishment of the truth by the Specialist Chambers. ²He or she shall take measures for the protection and due respect of the victims and witnesses and for the fundamental rights of suspects and Accused.

Rule 60

Abuse of Proceedings

- (1) If a Panel finds that Counsel or Specialist Prosecutor Counsel is offensive, abusive or otherwise obstructs the proper conduct of the proceedings, or if such Counsel fails to meet the standard of professional ethics in the performance of his or her duties, the Panel may, after giving such Counsel due warning:
 - (a) impose a fine of up to EUR five hundred (500) for each instance of abuse under this paragraph;
 - (b) refuse audience to that Counsel or to Specialist Prosecutor Counsel; or
 - (c) determine, after giving Counsel and the Accused, where applicable, an opportunity to be heard, that Counsel is no longer eligible to represent a suspect or an Accused or victims

participating in the proceedings before the Specialist Chambers. In such a case, arrangements shall be made for the replacement of Counsel so that no prejudice is caused to the rights of the Accused to a fair and expeditious trial and, where applicable, to the rights of victims participating in the proceedings.

- (2) ¹The Panel shall communicate the finding under paragraph (1) to the Registrar if Counsel has been assigned by him or her or to the Specialist Prosecutor, as applicable. ²The Panel may communicate any misconduct of Counsel to the disciplinary board provided for in the Code of Professional Conduct, and to any competent body in Counsel's or Specialist Prosecutor Counsel's State of admission.
- (3) Where a finding under paragraph (1) concerns the Specialist Prosecutor, the Panel shall inform the President, who may notify the Appointing Authority thereof.

Rule 61

Ineffective Assistance of Counsel

¹The Panel may determine, after giving Counsel and the Accused, where applicable, an opportunity to be heard, that, on the grounds that representation is ineffective to the extent that equality of arms may no longer be met, Counsel shall no longer be eligible to represent a suspect or an Accused or victims participating in the proceedings before the Specialist Chambers. ²In such case, arrangements under Rule 60(1)(c) shall be made.

Rule 62

Non-Compliance with Order of a Panel

- (1) Subject to Article 42(7) and (8) of the Law, where a person other than Counsel deliberately refuses to comply with an order by a Panel accompanied by a warning of sanctions in case of breach, the Presiding Judge, having heard the person, may order:
 - (a) the interdiction of that person from the courtroom proceedings for a period not exceeding thirty (30) days;
 - (b) where applicable, the interdiction of that person from exercising his or her functions before the Panel for a period not exceeding thirty (30) days; or
 - (c) where the misconduct is of a more serious nature, the imposition of a fine up to EUR five hundred (500) for each instance of non-compliance under this paragraph.
- (2) If the Presiding Judge considers that a longer period of interdiction is appropriate, he or she shall refer the matter to the Panel, who may hold a hearing to determine whether to order a longer or permanent period of interdiction.

Rule 63**Instruments of Restraint**

¹Within the jurisdiction of the Specialist Chambers, 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 self-injury, injury to others or serious damage to property. ²Instruments of restraint shall be removed before the Accused enters the courtroom in order to appear before a Panel, unless the Panel authorised their continued use.

Rule 64***Amicus Curiae***

- (1) At any stage of the proceedings, a Panel may invite or grant leave to authorities of Kosovo, a Third State, organisation or person to submit observations as *amicus curiae* on any issue that the Panel deems appropriate and which would assist in the proper determination of the case.
- (2) The submission of any observations of *amicus curiae* shall not delay the judicial proceedings.
- (3) ¹Written observations under paragraph (1) shall be filed with the Registrar, who shall distribute the filing as ordered by the Panel. ²Where authorised by the Panel, the Parties and Victims' Counsel may respond within seven (7) days of the observations.

Rule 65**Absence of the Accused**

- (1) The Accused shall be tried in his or her presence, except as otherwise provided in the Law and the Rules.
- (2) Where the Accused is at liberty and attends the initial appearance hearing, he or she may, upon authorisation by the Panel, attend subsequent proceedings via video-conference, provided that Specialist Counsel attends the hearing in person.
- (3) ¹Where the Accused is at liberty and, without authorisation by the Panel and showing of good cause, fails to attend a hearing to which he or she has been duly summonsed in person or by video-conference, the Panel shall adjourn the hearing, issue an arrest warrant, order the Accused's detention and set a date for the resumption of the hearing. ²Upon his or her arrest, the Accused shall be brought before the Panel, which shall decide on his or her continued detention in accordance with Rule 53. ³Rule 54 to Rule 56 shall apply *mutatis mutandis*.
- (4) Where the Accused is detained and refuses to appear before the Panel, the Panel may order that the proceedings be conducted in the absence of the Accused if it is satisfied that:
 - (a) the Accused has made his or her initial appearance;
 - (b) the Accused has been duly notified that he or she is required to be present at the proceedings;
 - (c) the Accused has voluntarily and unequivocally waived, or has forfeited, his or her right to be tried in his or her presence;

- (d) the interests of the Accused are represented by his or her Specialist Counsel who attends the hearing in person; and
 - (e) the Panel is of the opinion that the presence of the Accused is not necessary for the specific hearing.
- (5) ¹The Accused shall be permitted to return to the proceedings at any time. ²His or her decision not to attend proceedings and to waive his or her right to be present shall be verified weekly by the Registrar and a report shall be made to the Panel to that effect.
- (6) Where the Accused is detained but is not physically fit to be present at the proceedings, the Panel shall make provisions for the Accused to follow the proceedings and instruct Specialist Counsel from outside the courtroom.

Rule 66

Medical Examination of the Suspect or the Accused

- (1) ¹The Panel may, upon request by a Party or *proprio motu*, order a medical, psychiatric or psychological examination of a suspect or Accused. ²In such a case, the Panel shall call an expert to assist it in its determination.
- (2) ¹Where the Panel determines that the Accused is unfit to stand trial, the proceedings shall be adjourned. ²An order for adjournment shall be reviewed by the Panel every four (4) months, or at any time earlier, upon request by the Parties or *proprio motu*, if justified by compelling reasons. ³If necessary, the Panel may order further examinations of the suspect or the Accused.

Rule 67

Death of an Accused

¹The Panel shall terminate the proceedings against an Accused upon his or her death. ²Such a decision is without prejudice to any remedy that may be sought before any domestic jurisdictions.

Rule 68

Provisional Measures for Preservation of Assets

- (1) ¹Where an arrest order or arrest warrant has been issued or an indictment has been confirmed, a Panel may, with due regard to the rights of the suspect or the Accused, order the authorities of Kosovo or request Third States to take provisional measures for the preservation of property, proceeds, and assets of the suspect or Accused used for or deriving from the commission of a crime. ²Such an order shall be without prejudice to the rights of *bona fide* third parties.
- (2) ¹Notice to the suspect or Accused is not required unless the Panel determines, in the particular circumstances of the case, that notification shall not jeopardise the effectiveness of the requested measures. ²In the latter case, the Registrar shall provide notification of the proceedings to the suspect or Accused and, as practicable, to any interested persons or interested Third States.

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- (3) If an order is made without prior notification, the Panel shall request the Registrar, as soon as the measures ordered are executed, to notify the suspect or Accused and, as practicable, interested persons or interested Third States and invite them to make observations as to whether the order should be revoked or otherwise modified.

Rule 69**Expedited Proceedings**

- (1) Where the Pre-Trial Judge confirms an indictment in respect of an offence under Article 15(2) of the Law, for the purposes of expediting proceedings, he or she may transmit the case file to a Trial Panel in accordance with Article 25(2) of the Law as soon as preliminary motions are disposed of, notwithstanding Rule 95(1).
- (2) Any Panel seized with proceedings under Article 15(2) of the Law may reduce time limits and take any other measures as deemed necessary to expedite the proceedings, with due regard to the Accused's right to a fair trial.
- (3) ¹Unless otherwise ordered by the Court of Appeals Panel, appeals against a Judgment by a Trial Panel under Article 15(2) of the Law shall be heard expeditiously on the basis of the case file. ²Such appeals may be determined entirely on the basis of written submissions.
- (4) This Rule shall be without prejudice to the expeditious conduct of other proceedings before the Specialist Chambers.

Section II: Location of Proceedings**Rule 70****Judicial Activity away from the Seat of the Specialist Chambers**

¹Pursuant to Article 26(2) of the Law, a Panel may exercise its functions at a place other than the seat of the Specialist Chambers upon authorisation by the President. ²With due regard to confidentiality and security, video-conference, email or other available electronic means may be used.

Rule 71**Site Visits and Witness Appearance away from the Seat of the Specialist Chambers**

- (1) ¹Having heard the Parties and, if necessary, other participants, a Panel may decide to exercise its functions in a specific location away from the seat of the Specialist Chambers pursuant to Article 3(6) of the Law, on an exceptional basis and if necessary in the interests of the proper administration of justice, including for the following specific purposes:
 - (a) crime site visits; and
 - (b) the inability of a witness to appear at the seat of the Specialist Chambers due to serious illness or other serious impediments, when his or her testimony has not been previously preserved.

- ²The Panel shall also determine whether alternative means for testimony, attendance of court hearings or site visits may be preferable in the circumstances.
- (2) ¹Prior to any decision pursuant to paragraph (1), a Panel shall consult with the Registrar regarding security, cost and confidentiality matters. ²If the location referred to in paragraph (1) is in a Third State, the Registrar shall also consult that State and may enter into any arrangements under Article 4 of the Law, as necessary.
 - (3) If arrangements can be made, the President shall issue an administrative decision facilitating such relocation.
 - (4) ¹The Registrar, in consultation with the President, shall issue a Practice Direction on the Conduct of Site Visits, in order to facilitate the planning of site visits and to ensure that uniform practices are followed. ²The President may hold consultations in this respect with the Specialist Prosecutor's Office and with the Independent Representative Body of Specialist Counsel.

Section III: Submissions and Decisions

Rule 72

Motions and Other Submissions

- (1) The Specialist Prosecutor and the Registrar, and, after the initial appearance of the Accused, any Party may apply before the competent Panel for a relief, except where otherwise provided by the Rules.
- (2) ¹As a general rule and at the discretion of the Panel, submissions by the Parties and participants, orders and decisions on routine matters or matters of no or limited factual or legal complexity shall be rendered orally. ²Such orders and decisions shall be accompanied or followed by written reasons where necessary for their clarity or enforcement. ³The Registrar shall keep a record of any order or decision rendered orally.
- (3) Without prejudice to paragraph (2) and unless otherwise ordered or provided in the Rules, written submissions by the Parties during the course of proceedings shall not be supplemented by oral arguments.
- (4) When a Panel finds that a submission is frivolous or is an abuse of rights or process, it may order the Registrar to withhold payment of or reduce the fees associated with that submission by Counsel, or it may inform the Specialist Prosecutor of such submissions by Specialist Prosecutor Counsel, as applicable.
- (5) ¹Parties and Victims' Counsel are not entitled to submit a motion for referral pursuant to Article 49(4) of the Law and motions filed to that effect shall not be considered. ²This shall not preclude the Panel from making a referral in accordance with Article 49(4) of the Law, or the Accused or Victims' Counsel from making a referral in accordance with Article 49(3) of the Law.

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Rule 73**Time Limits for Submissions**

¹Unless otherwise provided in the Rules, any response to a motion shall be filed within ten (10) days of the motion and any reply to a response shall be filed within five (5) days of the response. ²The Panel shall only consider a reply or parts thereof addressing new issues arising from the response. ³Applications for extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit.

Rule 74**Interlocutory Appeals Requiring Certification**

- (1) When a Party seeks to appeal a decision of a Panel for which an appeal does not lie as of right according to the Law and the Rules, that Party shall request certification from the Panel that rendered the impugned decision within seven (7) days thereof.
- (2) The Panel shall grant 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, including, where appropriate remedies could not effectively be granted after the close of the case at trial, and for which an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.
- (3) ¹The Panel shall render a reasoned decision within seven (7) days of the last submission from the Parties or Victims' Counsel, where applicable, identifying the issue(s), if any, for which certification is granted. ²Where the Panel does not render a decision within this time limit, the certification to appeal shall be considered granted.

Rule 75**Deliberations**

- (1) ¹Deliberations of a Panel shall take place in private and shall remain strictly confidential. ²Support staff of the Judges may be present during deliberations.
- (2) ¹Each Judge shall present his or her views and conclusions with regard to each issue under consideration during deliberations, and shall endeavour to share draft written opinions in advance of any decision or judgement being issued. ²The Judges of the Panel shall attempt to achieve unanimity. ³When there is no unanimity, a reasoned decision or judgment shall be taken by a majority of the Judges of the Panel. ⁴Separate or dissenting opinions may be appended.

Rule 76**Power to Reconsider Decisions**

- (1) ¹In exceptional circumstances and where a clear error of reasoning has been demonstrated or where reconsideration is necessary to avoid injustice, a Panel may, upon request by a Party or, where applicable, Victims' Counsel, or *proprio motu* after hearing the Parties, reconsider its own decisions. ²Judgements are not subject to reconsideration.

- (2) A request for reconsideration does not stay the time limits of any legal remedy.

Section IV: Protection of Witnesses and Victims

Rule 77

Protective Measures

- (1) Pursuant to Article 23(1) of the Law, a Panel may, *proprio motu* or upon request by a Party, the Witness Protection and Support Office, a witness, or Victims' Counsel, where applicable, order appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings and others at risk on account of testimony given by witnesses, provided that the measures are consistent with the rights of the Accused.
- (2) Prior to making an order, the Panel shall seek to obtain the consent of the person in respect of whom the protective measures are sought.
- (3) A motion for protective measures or parts thereof and any responses thereto may be filed confidentially and marked *ex parte*, and shall remain so classified until otherwise ordered by a Panel or reclassified pursuant to Chapter 5, Section IV.
- (4) A Panel may hold an *in camera* hearing to determine whether to order, *inter alia*:
- (a) measures to prevent the disclosure to the public of the identity or whereabouts of a witness, a victim participating in proceedings or of a person related to or associated with them, such as:
 - (i) redacting names and identifying information from the Specialist Chambers' public records;
 - (ii) non-disclosure to the public of any records identifying the witness or victim participating in the proceedings;
 - (iii) non-disclosure of any records, material or information identifying or leading to the identification of the witness to Victims' Counsel or victims participating in the proceedings;
 - (iv) giving testimony through image or voice altering devices;
 - (v) giving testimony through two-way closed circuit television; or
 - (vi) the assignment of a pseudonym;
 - (b) private or closed sessions, in accordance with Rule 117;
 - (c) special measures to facilitate the testimony of traumatised or vulnerable witnesses, including victims of sexual and gender based violence, elderly witnesses, or those under the age of 18, such as:
 - (i) attendance of a psychologist, counsellor or immediate family member during the testimony of the witness;

- (ii) one-way closed circuit television;
 - (iii) shielding the witness from the direct view of the Accused; or
 - (iv) submission of questions in advance for transmission through a Panel;
- (d) non-disclosure to the Accused by Specialist Counsel of any material or information that may lead to disclosure of the identity of a witness or victim participating in the proceedings; or
- (e) in exceptional circumstances, and subject to any necessary safeguards:
 - (i) non-disclosure to the Parties of any material or information that may lead to the disclosure of the identity of a witness or victim participating in the proceedings; or
 - (ii) total anonymity of a witness.
- (5) A Panel may order any combination of the above measures, or other measures appropriate in the specific circumstances, to protect the witness or victim participating in the proceedings.
- (6) In accordance with Article 23(2) of the Law, as a general rule, vulnerable witnesses, including victims of sexual and gender based violence and persons under the age of 18, shall be afforded the measures provided for in paragraphs (4)(a)(i) and (ii), unless they expressly object.
- (7) When ordering protective measures, a Panel shall decide whether the transcript of those proceedings relating to the evidence of the protected witness may be made available in other proceedings before the Specialist Chambers or other jurisdictions, and decide on any measure.
- (8) Prior to the testimony of a witness, the Witness Protection and Support Office shall inform the witness of:
 - (a) the risks of inadvertent or unlawful disclosure of his or her identity or testimony, despite the protective measures ordered; and
 - (b) the possibility that such protective measures may be varied pursuant to Rule 78.

Rule 78

Variation of Protective Measures

- (1) Once protective measures have been ordered by a Panel in respect of a witness, victim participating in the proceedings, or other person at risk on account of testimony given by witnesses, such measures:
 - (a) shall continue to have effect *mutatis mutandis* in any other subsequent proceedings before the Specialist Chambers or another jurisdiction unless and until they are varied in accordance with the procedure set out in this Rule; and
 - (b) shall not prevent the Specialist Prosecutor from discharging any disclosure obligations under the Rules in subsequent proceedings, provided that he or she notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered and of the obligation to abide thereby.

- (2) A Party in the initial or subsequent proceedings within the Specialist Chambers or the Registrar seeking to vary protective measures ordered shall:
- (a) apply to the Panel which ordered the protective measures; or
 - (b) if that Panel is no longer seized, apply to the Panel seized of the subsequent proceedings.
- (3) ¹A Judge or a Panel in a court in Kosovo or in a Third State, parties in proceedings before a court in Kosovo or in a Third State, when authorised by the appropriate prosecutorial or judicial authority, a victim participating in the proceedings or witness for whom protective measures have been ordered by the Specialist Chambers, may seek variation of the protective measures by applying to the President. ²The President shall:
- (a) refer the application to the Panel which ordered the protective measures; or
 - (b) assign a Single Judge to rule on the application, if that Panel is no longer seized.
- (4) Before determining an application under this Rule, the Panel or the Single Judge shall endeavour to obtain all relevant information from proceedings where protective measures have been ordered, and shall consult with any Judge who ordered protective measures if that Judge remains on the Roster.
- (5) ¹The Panel or the Single Judge determining an application under this Rule shall ensure through the Witness Protection and Support Office that the protected person has given consent to the variation of protective measures. ²In the absence of such consent, variation of protective measures may be ordered *proprio motu* if justified by exigent circumstances or where a miscarriage of justice would otherwise result.
- (6) ¹A witness, or his or her legal representative, where applicable, may waive in whole or in part protective measures granted pursuant to Rule 77, after being advised by a Panel or the Witness Protection and Support Office of the consequences thereof. ²The waiver shall be made before a Panel or in a written statement signed by the witness and by the Witness Protection and Support Office. ³The Panel shall ensure that the waiver is free and voluntary.

Section V: Classification

Rule 79

Classification of Filings

- (1) ¹Filings or parts thereof shall be classified as follows:
- (a) Public: can be disclosed to the public;
 - (b) Confidential: can only be disclosed to the Parties and authorised participants;
 - (c) Strictly confidential: can only be disclosed to a limited number of individuals, as ordered by the Specialist Chambers.

²Confidential and strictly confidential filings shall be marked *ex parte* when the Registrar is ordered not to distribute them to one or more Party or other participant in the proceedings.

- (2) The Chambers, the Registrar, the Parties and participants in the proceedings shall compile and maintain registers of persons who have or have had access to filings classified as strictly confidential.
- (3) ¹Any filing classified as confidential or strictly confidential shall state the reasons for such classification, and whether and when it may be reclassified. ²Unless and until otherwise ordered by a Panel, the filing shall be treated according to that classification.
- (4) Unless otherwise ordered by a Panel, any response, reply or other filing related to the original filing shall bear the same classification.
- (5) ¹Where the basis for the classification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification. ²A Panel may also reclassify a filing upon request by any other participant or *proprio motu*. ³In the case of an application to vary a protective measure, Rule 78 shall apply.
- (6) Unauthorised disclosure of records or information bearing the classification levels strictly confidential and confidential may lead to proceedings under Article 15(2) of the Law and Article 400(1) of the Kosovo Criminal Code for violating the secrecy of proceedings.

Rule 80

Classification of Records of Proceedings and Evidence

- (1) Any non-public record of proceedings and evidence shall indicate the reasons for such classification, and whether and when it may be reclassified.
- (2) The Registrar shall keep a record of the indicated reclassification time limits and shall notify the Panel of their expiration.
- (3) The Registrar shall issue a practice direction which ensures adequate and effective administration for the purposes of paragraph (1).

Rule 81

Reclassification of Records of Proceedings and Evidence

- (1) On an ongoing basis and before rendering its Judgment, the Panel shall review the classification of records of proceedings and evidence and, where applicable, order their reclassification.
- (2) After the final Judgment, the President may assign a Single Judge to review the records of proceedings and evidence for the purpose of reclassification.
- (3) The Single Judge may render a decision on reclassification under paragraph (2) where he or she has taken all reasonable steps to obtain the consent of any authority of Kosovo, a Third State, entity or person directly affected by such reclassification.
- (4) ¹A decision of reclassification under paragraph (3) shall come into force ninety (90) days from its filing. ²Any authority of Kosovo, Third State, entity or person directly affected by such reclassification may file a request for review of the decision by the President.

Chapter 6 Indictment and Pre-Trial Proceedings

Section I: Indictment

Rule 82

Functions of the Pre-Trial Judge Prior to Confirmation of the Indictment

- (1) The President shall assign a Pre-Trial Judge pursuant to Article 33(1)(a) of the Law to perform the functions defined in Article 39 of the Law.
- (2) Before confirmation of the indictment, the Pre-Trial Judge shall rule expeditiously on requests by the Specialist Prosecutor related to the conduct of the investigation, pursuant to Article 39 of the Law.
- (3) ¹The Pre-Trial Judge and the Specialist Prosecutor may hold meetings during the investigation and prior to the confirmation of the indictment. ²The Pre-Trial Judge shall keep a confidential and *ex parte* record of each meeting, to be reclassified where the reasons for the initial classification have ceased to exist.
- (4) All documents and information submitted by the Specialist Prosecutor to the Pre-Trial Judge during the investigation shall remain strictly confidential and *ex parte*, subject to Rule 99 and Rule 100.
- (5) The Pre-Trial Judge shall set a target date for his or her decision pursuant to Article 39(2) of the Law, which, subject to the specificities of the case, shall be no later than six (6) months from the filing of the indictment and all supporting material.

Rule 83

Submission, Review and Confirmation of the Indictment

- (1) If, in the course of an investigation, the Specialist Prosecutor is satisfied that there is a well-grounded suspicion that a suspect committed or participated in the commission of a crime within the jurisdiction of the Specialist Chambers, he or she shall notify the President, who shall assign a Pre-Trial Judge in accordance with Article 33(1)(a) of the Law.
- (2) The Specialist Prosecutor shall file the indictment confidentially and *ex parte* with the Pre-Trial Judge for a decision pursuant to Article 39(2) of the Law.
- (3) ¹The indictment filed pursuant to Article 38(4) of the Law shall set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime(s) with which the suspect is charged, in particular the alleged mode of liability in relation to the crimes charged pursuant to Article 16 of the Law. ²The indictment shall be filed together with supporting material, which shall include:
 - (a) evidentiary material supporting the material facts; and

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- (b) a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation, with particular reference to the conduct of the accused with respect to the alleged crime(s).
- (4) ¹The Pre-Trial Judge shall examine the supporting material in relation to each of the charges and shall determine whether a well-grounded suspicion has been established against the suspect. ²During such an examination, the Pre-Trial Judge may:
- (a) request or permit the Specialist Prosecutor to present additional material in support of any or all charges;
- (b) request the Specialist Prosecutor to review the indictment with the aim to provide more specificity on any or all charges, and the specific conduct of the suspect, or to ensure legal accuracy or greater clarity in the presentation of the charges; or
- (c) request the Specialist Prosecutor to reduce or narrow the charges.
- ³Detailed written records of any such occurrence shall be made and shall be included in the case file.
- (5) As a result of such an examination, pursuant to Article 39(2) of the Law, the Pre-Trial Judge shall, in a reasoned decision, confirm or dismiss the charges in whole or in part.
- (6) Upon confirmation of any charge(s) of the indictment:
- (a) the suspect shall have the status of an Accused; and
- (b) the Pre-Trial Judge may issue an arrest warrant or a summons to appear, and any other decisions or orders provided for in Article 39(3) of the Law.
- (7) Challenges by the Defence to a decision on the indictment shall be limited to those under Rule 94.
- (8) ¹The indictment as confirmed by the Pre-Trial Judge shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Specialist Chambers. ²If necessary, a translation of the indictment shall be prepared into a language the Accused understands and speaks and shall be added to each certified copy of the indictment.
- (9) The non-confirmation of any charge in an indictment shall not preclude the Specialist Prosecutor from subsequently filing an amended indictment or from including the same charge in an indictment supported by new evidentiary material.
- (10) The Registrar shall notify the President of the confirmed indictment.

Rule 84**Service of Indictment**

- (1) ¹Upon the confirmation of the indictment, without undue delay and subject to paragraphs (2) and (4), service of the indictment shall be effected personally on the Accused by the Registrar. ²The Registrar shall serve upon the Accused a certified copy of the indictment, together with a translation of the indictment into a language the Accused understands and speaks.

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- (2) Where necessary and pursuant to Rule 199, the Registrar may also effect personal service of the indictment through the assistance of the authorities of Kosovo and, upon request by the Specialist Prosecutor, may take any other measures deemed necessary to publicise the indictment.
- (3) Authorities of Kosovo requested to serve the indictment shall inform the Registrar of the measures taken within fifteen (15) days of receipt of the order for assistance.
- (4) If the Accused resides in a Third State with which the Specialist Chambers has a cooperation arrangement under Article 4 of the Law, or which has a mutual legal assistance agreement with Kosovo, personal service may be effected in accordance with that arrangement or agreement and in the presence of the Registrar.
- (5) If the Accused resides in a Third State other than those referred to in paragraph (4), the Registrar, pursuant to Article 55(1) of the Law and Rule 205, shall transmit a request for assistance and cooperation, to the competent authorities of that State in order to facilitate the service of the indictment to the Accused without undue delay.
- (6) The initial appearance pursuant to Rule 89 shall take place within seven (7) days of the service of the indictment upon the Accused or, where the Accused has absconded, within three (3) days of his or her arrest, whichever is later.

Rule 85

Public Nature of Indictment

- (1) Subject to paragraph (2), the indictment shall be made public upon confirmation by the Pre-Trial Judge.
- (2) ¹In exceptional circumstances, upon a showing of good cause by the Specialist Prosecutor before the confirmation of the indictment, the Pre-Trial Judge may, *inter alia*, for security reasons, to avoid the flight of the Accused, or to avoid any other disruptions of the proceedings or social disturbances, order the temporary non-disclosure of the indictment, related documents or information to the public until further order. ²The indictment shall in any case be made public, with redactions where necessary, no later than the Accused's initial appearance.
- (3) Notwithstanding paragraph (2), the Specialist Prosecutor may disclose an indictment or part thereof to the authorities of a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

Rule 86

Joinder or Severance of Indictments

- (1) Two or more alleged crimes and charges may be joined in one indictment, where:
 - (a) the same Accused participated in the alleged crimes;
 - (b) the crimes and charges are based on the same facts; or

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- (c) the crimes and charges form or are part of a series of alleged crimes of the same or a similar character or conduct.
- (2) At any stage of the proceedings, a Panel, after hearing the Parties, may order:
- (a) the severance of crimes or charges if the particular circumstances of the case so require; or
 - (b) that persons charged jointly be tried separately, in the interests of a fair and expeditious trial or to avoid a conflict of interests that may cause serious prejudice to an Accused.

Rule 87**Amendment of the Indictment**

- (1) In accordance with Articles 39(8) and 40(7) of the Law, the Specialist Prosecutor may amend an indictment:
- (a) at any time before its confirmation, without leave;
 - (b) between its confirmation and the assignment of the case to the Trial Panel, with leave of the Pre-Trial Judge who confirmed the indictment, after having heard the Accused; and
 - (c) after assignment of the case to a Trial Panel, with leave of that Panel, after having heard the Accused.
- (2) ¹A Panel may grant leave to amend the indictment if satisfied that the amendment is not prejudicial to or inconsistent with the rights of the Accused. ²Where the Specialist Prosecutor seeks to include new charges or substitute more serious charges, Rule 83(3) and (4) shall apply *mutatis mutandis*. ³When amended with leave, further confirmation of an indictment is not required.
- (3) If the amended indictment includes new charges or substitutes more serious charges, and the Accused has already appeared before a Panel in accordance with Rule 89, a further appearance shall be held as soon as practicable.
- (4) ¹The Defence shall be granted twenty-one (21) days to file preliminary motions pursuant to Rule 94 in respect of the new charges. ²Where necessary, a Panel may postpone the date for the opening of the case to ensure adequate time for the preparation of the Defence.
- (5) Notwithstanding paragraph (1)(b) and (c), the Specialist Prosecutor may amend the indictment without leave as part of a plea agreement pursuant to Rule 91.

Rule 88**Withdrawal of the Indictment or Charges**

- (1) The Specialist Prosecutor may, in accordance with Article 40(7) of the Law, withdraw an indictment or charges in an indictment:
- (a) at any time before its confirmation, without leave;

- (b) between its confirmation and the assignment of the case to a Trial Panel, with leave of the Pre-Trial Judge who confirmed the indictment; and
 - (c) after the assignment of the case to a Trial Panel, with leave of that Panel.
- (2) The withdrawal of the indictment or any of the charges in the indictment shall be promptly notified to the Defence.
 - (3) Notwithstanding paragraph (1)(b) and (c), the Specialist Prosecutor may withdraw charges without leave as part of a plea agreement pursuant to Rule 91.
 - (4) Following a withdrawal, the Specialist Prosecutor shall not be precluded from subsequently submitting an indictment pursuant to Rule 83, where he or she provides new evidence which was not known or available regarding the withdrawn indictment, or additional charges.

Section II: Initial Appearance and Plea

Rule 89

Initial Appearance of the Accused

- (1) ¹Pursuant to Article 39(4) of the Law and Rule 84(6), an Accused shall be brought before the Pre-Trial Judge without undue delay. ²Where the Accused has not chosen Specialist Counsel, the Registrar may temporarily designate Specialist Counsel available at short notice to represent the Accused at the initial appearance and at any further appearance as may be necessary.
- (2) Pursuant to Article 39(5) of the Law, the Pre-Trial Judge shall:
 - (a) be satisfied that the right of the Accused to counsel is respected;
 - (b) read or have the indictment read to the Accused in a language the Accused understands and speaks, and be satisfied that the Accused understands the indictment;
 - (c) inform the Accused that, within thirty (30) days of the initial appearance, he or she will be called upon to admit guilt or plead not guilty on each charge, or, if the Accused wishes to do so, that he or she may immediately admit guilt or plead not guilty;
 - (d) if the Accused admits guilt, proceed in accordance with Rule 90;
 - (e) if the Accused pleads not guilty, proceed pursuant to Rule 92;
 - (f) if the Accused fails to admit guilt or plead not guilty at the initial or any further appearance, enter a plea of not guilty on his or her behalf and proceed pursuant to Rule 92; and
 - (g) set other dates, as appropriate, in performing his or her functions under Rule 92.
- (3) No adverse inference may be drawn from the Accused's refusal to admit guilt or plead not guilty.

Rule 90**Admission of Guilt**

- (1) ¹If the Accused admits guilt, the Pre-Trial Judge shall inform the President who shall assign a Trial Panel. ²In accordance with Rule 95, the Pre-Trial Judge shall transmit the case file to the Trial Panel.
- (2) The Specialist Prosecutor may, as appropriate:
 - (a) amend the charges pursuant to Rule 87 or withdraw charges pursuant to Rule 88(3);
 - (b) propose a specific sentence or sentencing range, as appropriate; or
 - (c) not oppose the specific sentence or sentencing range proposed by Specialist Counsel.
- (3) The Trial Panel assigned by the President may pronounce a finding of guilt and set a date for the sentencing hearing, as soon as practicable, if, after hearing the Accused, it is satisfied that:
 - (a) the admission of guilt is voluntarily made;
 - (b) the Accused understands the nature and the consequences of the admission of guilt;
 - (c) the admission of guilt is unequivocal;
 - (d) there is sufficient factual basis establishing the essential facts that are required to prove the crime and the participation of the Accused; and
 - (e) the interests of justice are duly taken into account.
- (4) Where the Accused admits guilt only in respect of some of the charges, paragraphs (1) and (2) shall apply to those charges.
- (5) Where the Trial Panel is not satisfied that the conditions set out in paragraph (3) are met, it shall consider the admission of guilt as not having been made and shall order that the proceedings be continued under the ordinary procedure provided by the Law and the Rules.
- (6) The Trial Panel shall give reasons for its decision on the admission of guilt, which shall be placed on the record.

Rule 91**Plea Agreement**

- (1) At any time before the closing of the case, and preferably before the opening of the case, the Specialist Prosecutor and the Defence may reach a written plea agreement.
- (2) The plea agreement shall contain an agreement between the Specialist Prosecutor and the Defence on:
 - (a) the charges, including the Accused's participation in the crime(s) charged and mode(s) of liability; and
 - (b) a specific sentence or sentencing range, as appropriate; and

Adopted Draft

- (c) reparations.
- (3) ¹If the Specialist Prosecutor and the Defence reach a plea agreement prior to the assignment of a Trial Panel, the Pre-Trial Judge shall inform the President who shall assign a Trial Panel. ²In accordance with Rule 95, the Pre-Trial Judge shall transmit the case file to the Trial Panel.
- (4) The Trial Panel shall order the disclosure of the plea agreement in open session, or in closed session upon showing of good cause.
- (5) The Trial Panel may approve the plea agreement, if it is satisfied that:
- (a) Specialist Counsel has discussed the terms of the plea agreement with the Accused;
 - (b) the Accused understands the terms of the plea agreement;
 - (c) the Accused admits facts in respect of the charges contained in the plea agreement and has agreed to the plea agreement voluntarily, without threats or coercion;
 - (d) the Accused understands the consequences of the plea agreement and waives his or her right to be tried under the ordinary trial procedure;
 - (e) there is sufficient factual basis establishing the essential facts that are required to prove the crime and the participation of the Accused; and
 - (f) the interests of justice are duly taken into account.
- (6) ¹The Trial Panel shall not be bound by the terms of the plea agreement. ²It may propose amendments for consideration to the Specialist Prosecutor and the Defence.
- (7) ¹Where the Trial Panel is not satisfied that the conditions of paragraph (5) are met, it shall consider the plea agreement as not having been made. ²In such a case, the Trial Panel shall order that the proceedings be continued under the ordinary procedure provided by the Law and the Rules.
- (8) ¹The Trial Panel shall give reasons for its decision on the plea agreement, which shall be placed on the record. ²The decision approving the plea agreement shall have the force and effect of a final judgment and shall only be subject to the reopening of criminal proceedings pursuant to Article 48 of the Law and Rule 184.

***Section III:
Pre-Trial Proceedings***

Rule 92**Functions of the Pre-Trial Judge after Confirmation of the Indictment**

- (1) After an indictment has been confirmed pursuant to Rule 83 and after the initial appearance of the Accused pursuant to Rule 89, the Pre-Trial Judge shall coordinate communication between the Parties until the case is transmitted to the Trial Panel pursuant to Article 40(1) of the Law.
- (2) ¹The Pre-Trial Judge shall ensure that the proceedings are not unduly delayed and shall take all necessary measures for the expeditious preparation of the case for trial. ²The Pre-Trial Judge shall, *inter alia*:
 - (a) set out a calendar and working plan for any pre-trial obligations of the Parties;
 - (b) set time limits for disclosure in accordance with Chapter 7, take any measures to ensure timely disclosure, and prepare a disclosure report for the Trial Panel;
 - (c) take steps to identify and narrow down the list of issues subject to dispute between the Parties and those which are not;
 - (d) hold any hearing necessary to ensure fair and expeditious proceedings;
 - (e) set time limits for motions, until the transmission of the case file to the Trial Panel, including objections from the Parties to the admissibility of evidentiary material disclosed pursuant to Rule 99;
 - (f) decide on preliminary motions filed pursuant to Rule 94 before the transmission of the case file to the Trial Panel;
 - (g) decide on filed motions pursuant to Rule 49, Rule 53 and Rule 54;
 - (h) decide on motions related to protective measures filed before the transmission of the case file to the Trial Panel;
 - (i) decide on applications for admission as victim participating in the proceedings filed before the transmission of the case file to the Trial Panel; and
 - (j) set a target date for the readiness of the case for trial.

³In performing these functions, the Pre-Trial Judge may hear the Parties and, where applicable, Victim's Counsel in the absence of the Accused and other persons. ⁴Such a hearing may take place *in camera*. ⁵Minutes of the hearing shall be taken by the Registrar.

- (3) Having heard the Parties, the Pre-Trial Judge shall record the points of agreement on matters of law and fact.
- (4) The Pre-Trial Judge shall order the Specialist Prosecutor to file, within a set time limit:
 - (a) the Specialist Prosecutor's Pre-Trial Brief, including, for each charge, a summary of the evidence which the Specialist Prosecutor intends to present regarding the commission of

the alleged crime and the alleged mode of liability of the Accused. This brief shall include any admissions by the Defence, as well as a statement of matters that are not in dispute;

- (b) the list of witnesses the Specialist Prosecutor intends to call, including:
 - (i) the total time estimated for the presentation of the Specialist Prosecutor's case;
 - (ii) the total number of witnesses, including the number of witnesses who are expected to testify against each Accused and on each charge;
 - (iii) the name or pseudonym of each witness;
 - (iv) a summary of the facts on which each witness is expected to testify;
 - (v) the allegations in the indictment on which each witness is expected to testify, including specific references to charges and relevant paragraphs of the indictment;
 - (vi) an indication whether the witness will testify in person or give evidence through other means as provided for by the Rules; and
 - (vii) the estimated time required for the direct examination of each witness.
 - (c) the list of proposed exhibits the Specialist Prosecutor intends to present stating, where possible, any objection of the Defence regarding authenticity;
- (5) ¹After the submission by the Specialist Prosecutor of the items mentioned in paragraph (4), the Pre-Trial Judge shall invite the Defence to file, within a set time limit, a Pre-Trial Brief indicating:
- (a) in general terms, the nature of the Accused's defence;
 - (b) the charges and matters which the Accused disputes, by reference to particular paragraphs in the Specialist Prosecutor's Pre-Trial Brief, and the reasons why the Accused disputes them; and
 - (c) a list of potential witnesses the Defence intends to call, without prejudice to any subsequent amendment or filing thereof. In relation to each witness, the Defence shall specify to which particular relevant issue the evidence relates.

²In addition, within a time limit set by the Pre-Trial Judge, the Defence shall notify the Specialist Prosecutor of its intent to offer a defence of alibi or any other grounds excluding criminal responsibility, including that of diminished or lack of mental capacity, intoxication, necessity, duress, and mistake of fact or law.

Rule 93

Status Conferences

- (1) The Pre-Trial Judge shall convene a status conference as soon as possible after the initial appearance of the Accused, and thereafter as deemed necessary, in order to:
 - (a) organise exchanges between the Parties and, where applicable, Victims' Counsel so as to ensure expeditious preparation for trial;

- (b) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion; and
 - (c) review the status of the case and allow the Parties and, where applicable, Victims' Counsel the opportunity to raise issues in relation thereto.
- (2) With the written consent of the Accused, given after receiving advice from his or her Specialist Counsel, a status conference under this Rule may be conducted:
- (a) in the presence of the Accused, with his or her Specialist Counsel participating via video-conference;
 - (b) in the presence of Specialist Counsel, with the Accused participating via video-conference; and
 - (c) in the absence of the Accused, with his or her Specialist Counsel present or participating via video-conference.

Rule 94**Preliminary Motions**

- (1) The Accused may file preliminary motions before the Pre-Trial Judge in accordance with Article 39(1) of the Law, which:
- (a) challenge the jurisdiction of the Specialist Chambers;
 - (b) allege defects in the form of the indictment; and
 - (c) seek the severance of indictments pursuant to Rule 86(2).
- (2) ¹Such motions shall be in writing and shall be brought within thirty (30) days from the disclosure of all material and statements referred to in Rule 99(1)(a). ²They shall be disposed of within twenty-one (21) days of the last submission or before the opening statements pursuant to Rule 123, whichever comes first.
- (3) ¹Appeals against decisions on preliminary motions under paragraph (1)(a) shall lie as of right pursuant to Article 45(2) of the Law. ²For all other decisions rendered under paragraph (1), Rule 74 shall apply.

Rule 95**Transmission of Case File to the Trial Panel**

- (1) After receiving the filings from the Specialist Prosecutor and the Defence pursuant to Rule 92(4) and (5), and Rule 94, and within thirty (30) days of any final decision on preliminary motions, the Pre-Trial Judge shall transmit to the Trial Panel a complete case file consisting of:
- (a) the indictment as confirmed, together with the supporting material under Rule 83(3);
 - (b) all filings and material submitted through the electronic court management system;

Adopted Draft

- (c) any evidentiary material received not subject to paragraph (1)(b);
 - (d) any other correspondence with respect to the case not filed with the Court Management Unit;
 - (e) a Handover Document summarising:
 - (i) the arguments of the Parties and, where applicable, Victims' Counsel on the facts and the applicable law;
 - (ii) the points of agreement;
 - (iii) a list of the orders and decisions rendered by the Pre-Trial Judge;
 - (iv) the evidentiary material produced by each Party;
 - (v) suggestions as to the number and relevance of the witnesses to be called;
 - (vi) the questions of fact and law that are in dispute;
 - (vii) the state of advancement of the disclosure process;
 - (viii) all meetings with the Parties; and
 - (ix) any other matter that remained unresolved;
 - (f) any application and decision concerning disclosure, and
 - (g) any other material relevant to the case.
- (2) The transmission of the case file pursuant to paragraph (1) shall be completed by means of electronic access.
- (3) Prior to the transmission under paragraph (1), the Pre-Trial Judge shall provide adequate notice thereof to the President, in order to ensure the timely assignment of a Trial Panel.

Section IV: Unique Investigative Opportunity

Rule 96

General Provisions

- (1) Where the Parties consider that an investigation presents a unique opportunity to take testimony from a witness or to examine, collect or test evidence which may not be available subsequently at trial, the Pre-Trial Judge may upon the request of a Party take such measures as may be necessary to ensure the preservation of the evidence.
- (2) ¹Where an indictment has not yet been confirmed and where the Specialist Prosecutor has not sought measures pursuant to this Rule, but the Pre-Trial Judge considers that such measures are required to preserve evidence that it deems essential for the Defence at trial, it shall consult with the Specialist Prosecutor as to whether there is good reason for his or her failure to request the measures. ²If, upon consultation, the Pre-Trial Judge concludes that the Specialist Prosecutor's

failure to request such measures is unjustified, the Pre-Trial Judge may take such measures *proprio motu*.

- (3) The measures referred to in paragraph (1) include:
 - (a) upon request by the Parties or *proprio motu*, participation of the Pre-Trial Judge or of a Judge assigned by the President in a unique investigative opportunity;
 - (b) making recommendations or orders regarding procedures to be followed;
 - (c) directing that a record be made of the proceedings; and
 - (d) authorising Specialist Counsel to attend and represent the interests of the Defence.
- (4) The admissibility of evidentiary material collected or preserved for trial pursuant to this Rule shall be governed at trial by Rule 135, and given such weight as determined by the Trial Panel.

Rule 97

Taking of Depositions upon Decision of the Pre-Trial Judge

- (1) Where there is reason to believe that the evidence of a potential witness may otherwise become unavailable, the Pre-Trial Judge may decide, *proprio motu* or upon request by a Party, that a deposition be taken for use at trial, regardless of whether or not the person whose deposition is sought is able physically to appear before the Specialist Chambers to give evidence.
- (2) 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.
- (3) ¹If the motion is granted, the Party on whose request the deposition is to be taken shall give reasonable notice to the other Party and, where applicable, Victims' Counsel, which shall be given the opportunity to attend the taking of the deposition and question the person whose deposition is being taken. ²The Pre-Trial Judge may observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons.
- (4) Deposition evidence may be taken either at or away from a seat of the Specialist Chambers, and it may also be given by means of a video-conference upon request by either Party. Rule 140 shall apply *mutatis mutandis*.
- (5) ¹The Pre-Trial Judge shall ensure that the deposition is taken in accordance with the Rules, and that it is accurately recorded by the Registrar. ²This record shall include the following information:
 - (a) the questions and the answers;
 - (b) any issue raised and decision taken thereon; and
 - (c) whether issues are referred to the Trial Panel.
- (6) The Pre-Trial Judge shall transmit the record to the Trial Panel, either as part of the complete case file referred to in Rule 95 or at any later stage as appropriate.

Rule 98**Evidence Collected by Judicial Authorities of a Third State**

- (1) Where the Specialist Chambers is prevented from performing an investigative opportunity in accordance with Rule 96 on the territory of a Third State, a Panel may, upon request by the Parties or *proprio motu*, request that the judicial authorities of that State perform the unique investigative opportunity in accordance with a bilateral agreement, if any, or *ad hoc* arrangements, subject to the conditions set out in paragraphs (2) and (3).
- (2) ¹Where the competent authorities of the relevant Third State so agree, the Panel and the Parties may attend the questioning of the witness conducted by a judicial authority of that State on the basis of questions submitted by the Parties. ²The judicial authority may allow the Parties to ask questions directly to the witness.
- (3) ¹The questioning may be video-recorded by the Registrar. ²Upon request by a Party, and insofar as practicable, the Registrar shall provide a transcript of the questioning.
- (4) Subject to the consent of the relevant Third State, the Pre-Trial Judge or a Judge designated by the Presiding Judge of a Panel may attend the questioning of the witness.

Chapter 7

Disclosure

Rule 99

Disclosure by the Specialist Prosecutor

- (1) ¹Subject to the provisions of Rule 102, Rule 104 and Rule 105, the Specialist Prosecutor shall make available to the Defence and, where applicable, Victims' Counsel:
- (a) as soon as possible, but at least within thirty (30) days of the initial appearance of the Accused, the supporting material to the indictment submitted for confirmation as well as all statements obtained from the Accused; and
 - (b) within the time limit set by the Panel, and no later than thirty (30) days prior to the opening of the Specialist Prosecutor's case:
 - (i) the statements of all witnesses whom the Specialist Prosecutor intends to call to testify at trial;
 - (ii) all other witness statements, expert reports, depositions, or transcripts that the Specialist Prosecutor intends to present at trial;
 - (iii) the statements of additional Specialist Prosecutor witnesses upon the decision to call those witnesses; and
 - (iv) the exhibits that the Specialist Prosecutor intends to present at trial.

²The statements of all witnesses whom the Specialist Prosecutor intends to call to testify at trial shall be made available in a language the Accused understands and speaks.

- (2) ¹The Specialist Prosecutor shall, pursuant to Article 21(6) of the Law, provide detailed notice to the Defence of any material and evidence in his or her possession. ²The Specialist Prosecutor shall disclose to the Defence, upon request, any statements, documents, photographs and allow inspection of other tangible objects in the custody or control of the Specialist Prosecutor, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused. ³Such material and evidence shall be disclosed without delay. ⁴The Specialist Prosecutor shall immediately seize the Panel where grounds to dispute the materiality of the information exist.
- (3) ¹Disclosure pursuant to paragraph (2) shall be finalised during the pre-trial stage. ²Thereafter, the Specialist Prosecutor shall provide notice of any new disclosure accompanied by reasons for the late disclosure.

Rule 100

Disclosure of Exculpatory Evidence

Subject to Rule 104 and Rule 105, the Specialist Prosecutor shall immediately disclose to the Defence any information as soon as it is in his or her custody, control or actual knowledge, which may

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reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the Specialist Prosecutor's evidence.

Rule 101

Disclosure by the Defence

- (1) Where notice has been provided by the Defence in accordance with Rule 92(5), within a time limit set by the Panel and sufficiently in advance of the opening of the case pursuant to Rule 121 to enable the Specialist Prosecutor to respond, the Defence shall notify the Specialist Prosecutor of:
 - (a) in case of an alibi, the place(s) at which the Accused claims to have been present at the time of the alleged crime, the names and current contact information of witnesses and any other evidence on which the Accused intends to rely to establish the alibi; or
 - (b) in case of any other grounds excluding criminal responsibility, the names and current contact information of witnesses and any other evidence upon which the Accused intends to rely to establish such grounds.
- (2) Within the time limit set by the Panel, the Specialist Prosecutor shall notify the Defence of the names of the witnesses he or she intends to call in rebuttal of any evidence referred to in paragraph (1).
- (3) ¹Failure of the Defence to provide notice of alibi or any other grounds excluding criminal responsibility shall not limit the right of the Accused to rely on these grounds. Any delayed notice thereof shall be justified. ²The Trial Panel may draw negative inferences from such failure.
- (4) The Trial Panel shall *proprio motu* consider, as a matter of law, grounds under paragraph (1)(b) even if they were not advanced by the Defence.
- (5) The Defence, should it choose to present a case, shall, within the time limit set by the Panel and no later than fifteen (15) days prior to the opening of the Defence case:
 - (a) permit the Specialist Prosecutor to inspect and copy any statements, documents, photographs and other tangible objects in the Defence's custody or control, which are intended for use by the Defence as evidence at trial;
 - (b) provide to the Specialist Prosecutor the statements, if any, of all witnesses the Defence intends to call at trial, and all statements taken, which the Defence intends to present at trial; and
 - (c) provide to the Specialist Prosecutor the exhibits that the Defence intends to present at trial.
- (6) The statements of any additional witnesses shall be made available to the Specialist Prosecutor upon the decision to call those witnesses and, in any event, no later than 15 (fifteen) days prior to the date appointed for any such witness to give evidence.
- (7) Where applicable, material under paragraphs (5) and (6) shall also be made available to Victims' Counsel.

Rule 102**Interim Non-Disclosure of Identity**

- (1) ¹In exceptional circumstances, the Parties or, where applicable, Victims' Counsel may apply to the Panel for interim non-disclosure of the identity of a witness or a victim participating in the proceedings at risk until appropriate protective measures have been ordered. ²The reasoned application shall include the specific measures requested.
- (2) In the determination of interim non-disclosure of identity, the Panel may consult the Witness Protection and Support Office.
- (3) Subject to Rule 77(4)(e), the identity of the witness shall be disclosed sufficiently in advance in order to allow for the preparation of the defence.

Rule 103**Non-Disclosure of Reports, Memoranda or Other Internal Documents**

¹Subject to Rule 100, and unless otherwise ordered by a Panel, reports, memoranda or other internal documents prepared by a Party or Victims' Counsel, their assistants or representatives in connection with the investigation or preparation of a case are not subject to disclosure or notification under these Rules. ²For purposes of the Specialist Prosecutor, this includes reports, memoranda or other internal documents prepared by the SITF or its assistants or representatives in connection with its investigative work.

Rule 104**Protected Information Not Subject to Disclosure**

- (1) ¹If the Specialist Prosecutor has custody or control over information which has been provided on a confidential basis and solely for the purpose of generating new evidence, such information and its origin shall be protected under Article 58 of the Law. ²The initial material or information shall not be disclosed without the consent of the provider and shall, in any event, not be tendered into evidence without prior disclosure to the Accused.
- (2) ¹Where the information is subject to disclosure, the Specialist Prosecutor shall apply confidentially and *ex parte* to the Panel to be relieved in whole or in part of his or her obligation under Rule 99 and Rule 100 to disclose the initial material. ²The application shall include the information in question. ³The Specialist Prosecutor may also apply for counterbalancing measures pursuant to Rule 105(2).
- (3) If, after obtaining the consent of the provider of the initial material or information under paragraph (1), the Specialist Prosecutor chooses to present any of it as evidence, the Panel, notwithstanding Rule 118, Rule 119 and Rule 129, may not:
 - (a) order either Party to produce additional evidence received from the provider of the initial material or information;

Adopted Draft

- (b) summons the provider of the initial material or information as a witness or order their attendance in accordance with the Rules, for the purpose of obtaining such additional evidence; or
 - (c) order the attendance of other witnesses or require the production of documents, for the purpose of obtaining such additional evidence.
- (4) If the Specialist Prosecutor calls a witness to introduce in evidence any information provided under this Rule, the Panel may not compel that witness to answer any question relating to the information or its origin if the witness declines to answer on grounds of confidentiality.
- (5) The right of the Accused to challenge the evidence presented by the Specialist Prosecutor shall remain unaffected, subject to the limitations contained in paragraphs (3) and (4).
- (6) The provisions of this Rule shall apply *mutatis mutandis* to specific information in the custody or control of the Defence.
- (7) Nothing in paragraphs (3) and (4) shall affect the power of the Panel to exclude this evidence or to take any measures necessary to ensure the fairness of the proceedings.

Rule 105

Other Information Not Subject to Disclosure

- (1) Where information in the custody, control or actual knowledge of the Specialist Prosecutor is subject to disclosure under Rule 99 or Rule 100, but such disclosure may:
- (a) prejudice ongoing or future investigations;
 - (b) cause grave risk to the security of a witness, victim participating in the proceedings or members of his or her family; or
 - (c) be contrary for any other reason to the public interest or the rights of third parties;
- the Specialist Prosecutor may apply confidentially and *ex parte* to the Panel to withhold the information in whole or in part.
- (2) When making such an application the Specialist Prosecutor shall include the information in question, the reasons for non-disclosure, the proposed redactions, if any, and a statement relating to the proposed counterbalancing measures including:
- (a) identification of new, similar information;
 - (b) submission of a summary of the information;
 - (c) submission of the information in a redacted form; or
 - (d) stipulation of the relevant facts regarding the reasons for non-disclosure.
- (3) ¹The Panel shall consider whether the information in question is subject to disclosure pursuant to the Rules. ²Where the Panel concludes that this is the case, it shall consider the Specialist Prosecutor's application and reasons for non-disclosure together with the proposed counterbalancing measures.

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- (4) ¹The Panel may order that appropriate counterbalancing measures be taken. ²If, in the opinion of the Panel, no measures would ensure the Accused's right to a fair trial, the Specialist Prosecutor shall be given the option of either disclosing the information, or amending or withdrawing the charges to which the information relates.
- (5) The Specialist Prosecutor may apply to the President to appoint an *amicus curiae* to assist and advise the Panel on counterbalancing measures.
- (6) Paragraphs (1) to (5) shall apply *mutatis mutandis* to the Defence.

Rule 106

Procedure for Disclosure

As far as practicable, a Party shall:

- (a) fulfil all of its disclosure obligations in electronic form, together with appropriate computer software provided by the Registrar to allow for searching of the material;
- (b) provide a clear and concise description of the documents, or categories of documents, disclosed to the opposing Party; and
- (c) categorise the information in accordance with the charges in the indictment, with specific reference to the underlying crimes, contextual elements of the crimes, the alleged conduct of the Accused or, where applicable, evidence to be presented by the Specialist Prosecutor.

Rule 107

Non-Compliance with Disclosure Obligations

The Panel may decide, upon request by a Party or *proprio motu*, on measures to be taken as a result of the non-compliance with disclosure obligations pursuant to the Rules, including a stay of proceedings and the exclusion of evidence, except for exculpatory evidence.

Rule 108

Privileged Communication and Information

- (1) ¹Communications made in the context of the professional relationship between a person and his or her Specialist Counsel shall be regarded as privileged and shall only be recorded in accordance with these Rules or the Rules of Detention, Complaints and Disciplinary Procedures. ²Such communications shall not be subject to disclosure, unless:
 - (a) the person consents in writing to such disclosure;
 - (b) the person has voluntarily disclosed the content of the communications to a third party, and that third party then gives evidence of that disclosure; or
 - (c) the person intended to perpetrate a crime and the communications were in furtherance of that crime.

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- (2) Communications made in the context of professional or other confidential relationships shall be regarded as privileged, and consequently not subject to disclosure, if a Panel decides that:
 - (a) such communications are made in the course of a confidential relationship producing a reasonable expectation of privacy and non-disclosure;
 - (b) confidentiality is essential to the nature of that relationship; and
 - (c) the privilege is not unduly invoked to further an abuse or might constitute evidence of a criminal offence.
- (3) ¹A Panel shall recognise as privileged communications made in the context of the professional relationship between a person and his or her doctor, psychologist or counsellor, in particular those concerning victims, or between a person and a member of a religious clergy. ²A Panel shall recognise as privileged communications made in the context of a sacred confession where it is an integral part of the practice of that religion.
- (4) ¹A Panel shall recognise as privileged any information, documents or other evidence which came into its possession 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. ²Such information, documents or other evidence shall not be subject to disclosure at any stage of the proceedings, including by way of testimony of any present or past official or employee of the ICRC, unless:
 - (a) after consultations, the ICRC consents in writing to such disclosure, or has otherwise waived this privilege; or
 - (b) such information, documents or other evidence are contained in public statements and documents of the ICRC.
- (5) Nothing in paragraph (4) shall affect the admissibility of the same evidence obtained from a source other than the ICRC, its officials or employees, when such evidence has also been acquired by this source independently from the ICRC, its officials or employees.
- (6) If the Panel determines that ICRC information, documents or other evidence are of material importance for a particular case, consultations shall be held between the Specialist Chambers and the ICRC in order to seek to resolve the matter by cooperative means, bearing in mind the circumstances of the case, the relevance of the evidence sought, whether the evidence could be obtained from a source other than the ICRC, the interests of a fair and expeditious trial and of victims participating in the proceedings, and the performance of the functions of the Specialist Chambers and the ICRC.

Rule 109

Continuing Nature of Disclosure Obligation

¹If either Party discovers additional evidentiary material or information that should have been disclosed earlier pursuant to the Rules, that Party shall immediately disclose such evidence or information to the opposing Party and the Panel. ²The Specialist Prosecutor shall disclose to the Defence any exculpatory information referred to in Rule 100 notwithstanding the closing of the case pursuant to Rule 133 and any subsequent appeal.

Chapter 8

Participation of Victims in the Proceedings

Rule 110

Admission of Victims for Participation in the Proceedings

- (1) ¹After confirmation of the indictment by the Pre-Trial Judge pursuant to Rule 83 and sufficiently in advance of the opening of the case pursuant to Rule 121, a person claiming to be a victim of a crime alleged in the indictment may file an application for admission as a victim participating in the proceedings, specifying how he or she qualifies as a victim and providing the location and date of an alleged crime giving rise to harm. ²Application forms shall not be disclosed to the Parties.
- (2) ¹The Victims' Participation Office shall register and assess the applications and file them before the Panel together with a recommendation on admissibility and common representation, and a request for protective measures under Rule 77, as applicable. ²At the same time, the Victims' Participation Office shall submit to the Parties a confidential report thereon.
- (3) The Parties may only make submissions on legal grounds regarding admissibility and common representation.
- (4) In deciding whether a victim may participate in the proceedings, the Panel shall consider whether the applicant has provided *prima facie* evidence of the harm suffered as a direct result of a crime in the indictment.
- (5) ¹Prior to the opening of the case, the Panel shall render a reasoned decision granting or denying admission and common representation in the proceedings, as well as any request for protective measures under Rule 77, as applicable. ²The decision shall be notified to the applicant, the Victims' Participation Office and the Parties.
- (6) ¹Denied applicants may appeal as of right the decision within fourteen (14) days with the assistance, if necessary, of Counsel from the List of Victims' Counsel assigned to them as a group. ²A Party may seek certification to appeal the decision pursuant to Rule 74, but only on grounds of an error of law.
- (7) Where victims are granted the right to participate in the proceedings, the Registrar shall assign a Victims' Counsel to a group of victims participating in the proceedings in accordance with the Directive on Counsel.
- (8) The Panel, after having consulted the Victims' Participation Office, shall decide whether to divide victims participating in the proceedings into groups having common representation, and taking into consideration:
 - (a) any conflicting interests that may hinder common representation;
 - (b) any similar interests that may facilitate common representation; and
 - (c) the rights of the Accused and the interests of a fair and expeditious trial.

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- (9) Any person identified in a final judgment as a victim who has suffered direct harm as a result of the commission of crimes by an Accused convicted by the Specialist Chambers 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, in accordance with Article 22(9) of the Law.

Rule 111

Modalities of Participation in the Proceedings

- (1) Victims participating in the proceedings shall exercise their rights through an assigned Victims' Counsel during all stages of the proceedings pursuant to Articles 22(6) and 46(9) of the Law.
- (2) Victims' Counsel shall have the right to make opening and closing statements, and may be present at pre-trial and trial proceedings if deemed necessary by the Panel, in order to ensure the personal interests and rights of victims participating in the proceedings, in accordance with Article 22(3) of the Law.
- (3) ¹Victims' Counsel shall have access to confidential material, unless otherwise provided in the Rules or as determined by a Panel. ²Victims' Counsel shall keep his or her clients informed of relevant developments in the case in a manner which does not reveal confidential information.
- (4) ¹Whenever that the personal interests of victims participating in the proceedings are affected, and unless otherwise provided in the Rules, Victims' Counsel may, under the control of the Panel:
- (a) make oral and written submissions, and
 - (b) ask questions of witnesses.

²Where necessary and depending on the circumstances, the Panel shall issue specific guidelines regulating the participation of victims in the proceedings, in accordance with Article 22(3) and (6) of the Law.

- (5) ¹Where evidence was not produced by the Parties or the produced evidence does not adequately address the impact the alleged crimes have on the personal interests of victims participating in the proceedings, Victims' Counsel may request the Panel to order the submission of relevant evidence or call witnesses to testify. ²In such cases, the Panel may order Victims' Counsel to disclose relevant material to the Parties, if this material is in his or her custody or control.

Chapter 9 Trial Proceedings

Section I: Trial Preparation and Trial Management

Rule 112

Assignment of Trial Panel

- (1) ¹Pursuant to Article 33(1)(b) of the Law, the President shall assign a Trial Panel as soon as practicable. After the opening of the case pursuant to Rule 121, a Reserve Judge shall be present at each stage of a trial. ²For proceedings under Article 15(2) of the Law, the President shall assign a Trial Panel consisting of a Single Judge.
- (2) The President may also reassign a previously constituted Trial Panel where necessary in accordance with the Rules.

Rule 113

Management of Proceedings and Status Conferences

- (1) ¹The Panel shall, on an ongoing basis, take all measures and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the trial proceedings. ²The Panel, upon consultation with the Parties, shall establish a work plan indicating the obligations of the Parties and set time limits for the fulfilment of these obligations.
- (2) ¹The Panel shall hold a Trial Preparation Conference promptly upon its assignment and pursuant to Rule 114. ²Within thirty (30) days of the Trial Preparation Conference, or as directed by the Panel, the Panel shall hold a Specialist Prosecutor's Preparation Conference pursuant to Rule 115. ³Should the Defence choose to present a case, the Panel shall hold a Defence Preparation Conference pursuant to Rule 116.
- (3) Prior to the opening of the case and after hearing the Parties and, where applicable, Victims' Counsel, the Panel may give directions on the conduct of proceedings as necessary to ensure a fair and expeditious trial.
- (4) ¹After consultation with the other members of the Panel, the Presiding Judge may issue trial management orders and decisions pursuant to Rule 15(4). ²The Panel may issue orders or decisions on any matter as necessary to ensure a fair and expeditious trial. ³These may include, but are not limited to:
 - (a) disclosure obligations;
 - (b) protective measures for witnesses and victims participating in the proceedings;
 - (c) communication between Parties and witnesses;
 - (d) conditions of detention and related matters; and
 - (e) any other preparatory matters, as necessary.

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- (5) The Panel may confer on any case-related matter with the Parties by holding status conferences as necessary.

Rule 114

Trial Preparation Conference

- (1) Upon receipt of the case file pursuant to Rule 95, the Panel shall hold a Trial Preparation Conference with the Parties and, where applicable, Victims' Counsel.
- (2) ¹At the Trial Preparation Conference and after having heard the Parties, the Panel shall set a time limit for any motions to be made prior to the opening of the case. Such motions shall be determined prior to the opening of the case unless the Panel, for good cause, decides to defer the determination. ²A Party failing to raise objections or to make requests prior to trial within the time limit set by the Presiding Judge shall be precluded from raising such objections or requests, unless good cause is shown.
- (3) The Panel shall set a date by which the Defence shall indicate whether it elects:
- (a) to give an opening statement directly after the opening statements from the Specialist Prosecutor and, where applicable, Victims' Counsel;
 - (b) to give an opening statement after the closing of the Specialist Prosecutor's case and before the opening of the Defence case; or
 - (c) to give no opening statement.

Rule 115

Specialist Prosecutor's Preparation Conference

- (1) At the Specialist Prosecutor's Preparation Conference, after having heard the Parties, the Panel may:
- (a) determine the number of witnesses the Specialist Prosecutor may call and instruct him to remove repetitive witnesses;
 - (b) invite the Specialist Prosecutor to reduce or narrow the number of charges in the indictment, if applicable;
 - (c) invite the Specialist Prosecutor to determine a number of crime sites or incidents in one or more of the charges in respect of which evidence may be presented by the Specialist Prosecutor, which are reasonably representative of the crimes charged, given the relevant circumstances, including the crimes charged, their classification, scale and nature, the places where they have allegedly been committed, and the victims of the crimes;
 - (d) determine the time available to the Specialist Prosecutor for presenting evidence;
 - (e) request the Specialist Prosecutor to shorten the estimated length of the direct examination of any witness identified on the Specialist Prosecutor Witness List filed with the Pre-Trial Judge under Rule 92(4)(b); and

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- (f) verify that the disclosure obligations of the Parties have been met.
- (2) The Panel may permit, upon timely notice and a showing of good cause, the amendment of the lists of witnesses and exhibits filed pursuant to Rule 92(4)(b).
- (3) ¹The Panel shall determine the date for the opening of the case and shall make public this date and any postponements thereof. ²The opening date shall be within thirty (30) days of the Specialist Prosecutor's Preparation Conference.
- (4) Having heard the Parties, and having regard to the Pre-Trial Briefs, the Presiding Judge shall take note of the points of agreement between the Parties on matters of fact and law.
- (5) Prior to the opening of the case pursuant to Rule 121, the Panel shall set target dates for the closing of the Specialist Prosecutor's case pursuant to Rule 126 and, if possible, for the closing of the case pursuant to Rule 133.

Rule 116**Defence Case and Defence Preparation Conference**

- (1) At the latest at the closing of the Specialist Prosecutor's case or following a decision pursuant to Rule 127, if any, the Defence shall decide whether a Defence case will be presented and notify the Panel accordingly.
- (2) Should the Defence decide to present a case, the Panel shall order the filing of:
 - (a) the list of witnesses the Defence intends to call, including:
 - (i) the total time estimated for presentation of the Defence's case;
 - (ii) the total number of witnesses, including the number of witnesses who are expected to testify for each Accused and on each charge;
 - (iii) the name or pseudonym of each witness;
 - (iv) a summary of the facts on which each witness is expected to testify;
 - (v) the allegations in the indictment on which each witness is expected to testify, including specific references to charges and relevant paragraphs of the indictment;
 - (vi) an indication whether the witness will testify in person or give evidence through other means as provided for by the Rules; and
 - (vii) the estimated length of time required for the direct examination of each witness; and
 - (b) the list of proposed exhibits the Defence intends to present stating, where possible, any objection of the Specialist Prosecutor regarding authenticity.
- (3) Within seven (7) days of the Defence's filings under paragraph (2), the Panel shall hold a Defence Preparation Conference, during which, after having heard the Parties, the Panel may:

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- (a) determine the number of witnesses the Defence may call and instruct the Defence to remove repetitive witnesses;
 - (b) determine the time available for the Defence for presenting evidence;
 - (c) request the Defence to shorten the estimated length of the direct examination of any witness identified on the Defence Witness List filed under paragraph (2)(a);
 - (d) verify that disclosure obligations of the Parties have been met; and
 - (e) give any further directions as necessary to ensure a fair and expeditious trial.
- (4) ¹At the Defence Preparation Conference, the Panel shall determine the date for the opening of the Defence case, which shall be within thirty (30) days of the Defence Preparation Conference and, in any event, after the closing of the Specialist Prosecutor's case pursuant to Rule 126. ²The Panel shall set target dates for the closing of the Defence case pursuant to Rule 128 and, if possible, for the closing of the case pursuant to Rule 133.
- (5) The Panel may permit, upon timely notice and a showing of good cause, the amendment of the lists of witnesses and exhibits filed pursuant to paragraph (2).

Rule 117**Open, Private and Closed Sessions**

- (1) All proceedings before a Panel, other than deliberations, shall be held in public, unless otherwise decided by the Panel after hearing the Parties.
- (2) ¹Closed sessions shall be held *in camera*, excluding the public without visibility of, and audio broadcast outside, the courtroom, and shall be ordered in exceptional circumstances. ²Private sessions shall be held *in camera*, excluding the public from the audio broadcast outside the courtroom, and shall be ordered in exceptional circumstances. ³The reasons to hold proceedings in closed or private session shall be announced in public.
- (3) The Panel may order closed or private sessions, as appropriate, for reasons of:
 - (a) public order.
 - (b) security;
 - (c) national security interests of Kosovo or a Third State;
 - (d) non-disclosure of the identity of a witness or a victim participating in the proceedings, as provided for in Rule 77; or
 - (e) the interests of justice.

Rule 118**Called or Summoned Witnesses**

- (1) Each Party shall be responsible for calling its own witnesses in accordance with its Witness List.

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- (2) Where the Specialist Prosecutor calls a witness and the witness does not comply with that call, he or she shall be responsible for summoning that witness.
- (3) In any other cases of non-compliance by a witness, the Panel shall summons that witness upon request or *proprio motu*.
- (4) When a witness is not present in Kosovo and is not compellable through a summons, the Specialist Prosecutor and the Registrar shall seek the cooperation of Third States to facilitate the presence of the witness at the trial proceedings under Articles 55 of the Law and Rule 205.
- (5) When called or summonsed to appear, witnesses shall be instructed not to communicate with each other about their testimony or the case.

Rule 119**Non-Compliance with Witness Summonses**

- (1) If a duly summonsed witness fails to appear at trial without justification, the Panel, subject to Rule 118(4), may order or request that he or she appear on a date as specified by the Panel, informing the witness that failure to appear may be sanctioned in accordance with Articles 15(2) and 42(7) of the Law, and Rule 62.
- (2) The Panel may decide to continue the trial in the absence of the witness or may decide to adjourn the trial until the witness appears before it.

Rule 120**Adjournment of Proceedings**

- (1) The Presiding Judge may order an adjournment of the proceedings of no longer than twenty-one (21) days in order to allow for specific evidence to be collected, for witnesses to appear or for the preparation of the Specialist Prosecutor or the Defence, or for any other reason justifying the adjournment.
- (2) ¹The Panel may adjourn the trial for a period longer than twenty-one (21) days on well-founded grounds. ²It shall issue a reasoned decision thereon, specifying, if possible, a date for the resumption of the proceedings. ³The Panel may schedule periodic hearings to discuss the status of the case, pending matters and to ensure timely resumption of the trial.
- (3) During recess periods set by the President pursuant to Rule 13(1)(d), unless otherwise determined by a Panel, hearings shall be limited to urgent matters and time limits shall not be suspended.

Section II: Case Presentation

Rule 121

Opening of the Case

- (1) The Presiding Judge shall open the trial and ask the Registrar to call the case.
- (2) Thereafter, the trial shall proceed with the reading by the Specialist Prosecutor of the indictment as confirmed by the Pre-Trial Judge, or as amended at the Panel's invitation pursuant to Rule 115(1)(b) or in accordance with Rule 87.
- (3) The Presiding Judge shall be satisfied that the Accused understands the indictment and shall afford the Accused the opportunity to confirm his or her initial plea.

Rule 122

Initial Information to the Accused

- (1) The Presiding Judge shall inform the Accused of:
 - (a) his right to remain silent, without such silence being a consideration in the determination of guilt or innocence;
 - (b) his right not to be compelled to confess guilt or to testify and not to incriminate himself or his or her immediate family members;
 - (c) his right to be represented by an appointed or assigned Specialist Counsel; and
 - (d) any other right material to his or her defence, as deemed necessary.
- (2) The Accused shall be informed of his or her obligations and the measures provided for in pursuant to Rule 58(2).

Rule 123

Opening Statements

- (1) ¹Before the presentation of evidence by the Specialist Prosecutor, opening statements may be made by the Parties and Victims' Counsel. ²They shall be made orally and shall be restricted to a principled overview of the subject-matter of the case. ³They may also provide a concise explanation of the evidence to be called and how it impacts on the issues in the case. The Panel may limit the duration of opening statements.
- (2) The Defence may choose to make an opening statement either following the opening statement of the Specialist Prosecutor or after the conclusion of the presentation of evidence by the Specialist Prosecutor and before the presentation of evidence by the Defence.
- (3) ¹Victims' Counsel may make an opening statement on behalf of victims participating in proceedings relating to their personal interests in the case, in accordance with Article 22 (3) and (6) of the Law. ²Any opening statement by Victims' Counsel shall follow the

Specialist Prosecutor's opening statement and, where applicable, shall precede any opening statement by Specialist Counsel.

Rule 124

Presentation of Evidence

- (1) Each Party is entitled to present evidence relevant to the case.
- (2) Evidence at the trial shall be presented in the following sequence, unless otherwise directed by the Panel:
 - (a) evidence for the Specialist Prosecutor;
 - (b) evidence for the Defence;
 - (c) evidence called by the Panel pursuant to Rule 129;
 - (d) with leave of the Panel, Specialist Prosecutor evidence in rebuttal; and
 - (e) with leave of the Panel, Defence evidence in rejoinder.
- (3) ¹A witness called before the Trial Panel shall first be examined by the calling Party, then cross-examined by the opposing Party if it elects to exercise this right. Direct examination and cross-examination shall be allowed in each case. ²The Panel may allow redirect examination as deemed necessary. ³A Judge may at any stage put any question to the witness.

Rule 125

Transfer of Detained Witness for Testimony before the Specialist Chambers

- (1) If a person required by the Specialist Chambers or a Party to provide evidence is in detention, a Panel may order his or her temporary transfer to a detention facility of the Specialist Chambers or request that arrangements be made for him to give evidence by means of video-conference, specifying in each case any measure necessary to ensure conditions conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the person.
- (2) If authorities of a Third State, under whose jurisdiction or control the witness is detained, object to the procedures above, the Panel shall inform the Registrar, who may take any measures deemed necessary, including to enter into negotiations with a view to making the necessary arrangements.

Rule 126

Closing of the Specialist Prosecutor's Case

When there are no more witnesses to be called or other evidentiary material to be presented as part of the case of the Specialist Prosecutor, he or she shall close his or her case.

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Rule 127**Dismissal of Charges**

- (1) Immediately after the closing of the Specialist Prosecutor's case, the Defence shall notify the Panel of its intention to file a motion to dismiss any or all of the charges in the Indictment.
- (2) ¹Such motion shall be submitted within ten (10) days of the closing of the Specialist Prosecutor's case. ²The Specialist Prosecutor may file a response within ten (10) days of the motion. ³The Defence is not entitled to reply. ⁴The Panel may hear oral arguments from the Parties and, where applicable, Victims' Counsel, which it may limit to a particular charge or charges.
- (3) Having heard the Parties and, where applicable, Victims' Counsel, the Panel may dismiss some or all charges therein by oral decision, if there is no evidence capable of supporting a conviction beyond reasonable doubt on the particular charge in question.
- (4) ¹The Specialist Prosecutor may as of right appeal a decision dismissing the indictment or any charge thereof pursuant to Rule 167. ²The Defence shall not have a right to appeal a decision rejecting a request for the dismissal of the indictment.

Rule 128**Closing of the Defence Case**

When there are no more witnesses to be called or other evidence to be presented as part of the Defence case of any Accused, Specialist Counsel shall close the Defence case.

Rule 129**Evidence Called by the Panel**

After hearing the Parties and, where applicable, Victims' Counsel, the Panel may invite the submission of or *proprio motu* call additional evidence not produced by the Parties, including expert evidence, where it considers it necessary for the determination of the truth.

Rule 130**Motions to Supplement the Evidentiary Proceedings**

¹After the closing of the Defence case pursuant to Rule 128 or after hearing the evidence called by the Panel pursuant to Rule 129, the Presiding Judge shall ask the Parties if they have any motions for rebuttal or rejoinder evidence under Rule 124. ²Leave to call such evidence shall only be granted in the interests of justice and on an exceptional basis.

Rule 131**Closing of the Evidentiary Proceedings**

After ruling on motions pursuant to Rule 130 and hearing such evidence, if any, the Panel shall:

- (a) announce that the evidentiary proceedings are closed;

Adopted Draft

- (b) invite the Specialist Prosecutor and the Defence to file Final Trial Briefs within thirty (30) days;
- (c) invite Victims' Counsel to file a statement on the impact of the alleged crimes on victims participating in the proceedings within thirty (30) days; and
- (d) schedule a hearing for closing statements which shall take place within twenty-one (21) days of the filing of the briefs and statement(s) referred to in (b) and (c).

Rule 132**Closing Statements**

- (1) ¹During closing statements, the Specialist Prosecutor shall speak first, followed by Victims' Counsel and Specialist Counsel. ²The Panel may limit the duration of closing statements.
- (2) ²Closing statements may refer to admitted evidence and its reliability, the credibility of witnesses, the record of the proceedings and the applicable law. ²Illustrative material and summaries of evidence, if they are based on admitted evidence, may be used.
- (3) The Panel may seek clarification on any matters raised in the Final Trial Briefs.
- (4) ¹The Specialist Prosecutor shall have a right to respond. ²Specialist Counsel shall have the right to comment on those responses. ³The Accused shall have the right to speak last.

Rule 133**Closing of the Case**

- (1) After the closing statements, the Presiding Judge shall declare that the case is closed.
- (2) At this stage, no further submissions may be made to the Panel, unless in exceptional circumstances and on showing of good cause.
- (3) At this stage, the Panel may not receive further submissions or hear evidence, unless exceptional circumstances require otherwise.

Section III: Evidence***Sub-Section 1: Admissibility and Assessment of Evidence*****Rule 134****General Provisions**

- (1) ¹The Parties may submit evidence relevant to the case. ²In accordance with Rule 129, a Panel may order the submission of or call evidence that it considers necessary for the determination of the truth.

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- (2) A Panel shall assess freely all evidence submitted in order to determine its admissibility and weight.
- (3) A Panel shall not apply laws governing evidence, other than in accordance with Article 12 of the Law.

Rule 135**Admissibility of Evidence**

- (1) ¹Unless challenged or *proprio motu* excluded, evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect. ²In exceptional circumstances, when the Panel is satisfied that an issue was not known at the time when the evidence was submitted, it shall be raised immediately after it has become known.
- (2) Evidence obtained by means of a violation of the Law or the Rules or standards of international human rights law shall be inadmissible if:
 - (a) the violation casts substantial doubt on the reliability of the evidence; or
 - (b) the admission of the evidence would be antithetical to or would seriously damage the integrity of the proceedings.
- (3) Evidence obtained under torture or any other inhumane or degrading treatment is inadmissible and shall be excluded.
- (4) A Panel may request verification of the authenticity of evidence obtained out of court, subject to Article 37(5) of the Law.

Rule 136**Assessment of Evidence for the Purposes of Judgment**

- (1) Evidence declared inadmissible shall not be considered by the Panel.
- (2) ¹A Panel shall assess each piece of evidence in light of the entire body of evidence admitted before it at trial. ²The Panel shall carry out a holistic evaluation and weighing of all the evidence taken as a whole to establish whether or not the facts at issue have been established.
- (3) Subject to Rule 137(4), a Panel shall not impose a legal requirement that corroboration is required in order to prove any crime or criminal conduct within the jurisdiction of the Specialist Chambers, in particular crimes of sexual violence.
- (4) In determining the weight to be given to the testimony of a witness, a Panel shall assess the credibility of the witness and the reliability of his or her testimony.
- (5) Circumstantial evidence shall be assessed with caution and reasoned findings shall be provided, in particular regarding the consistency and intrinsic coherence of such evidence, where the Panel bases a conviction solely or to a decisive extent on such evidence.

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- (6) Inconsistencies in a piece of evidence do not per se require a Panel to reject it as unreliable. A Panel may accept parts of a piece of evidence and reject others.
- (7) The Panel shall take into account the manner in which the evidence was collected and the effect that this might have on the course and fairness of the proceedings.

Rule 137**Standard of Proof**

- (1) A Panel may find an Accused guilty where guilt is proved beyond reasonable doubt.
- (2) ¹The standard of proof beyond reasonable doubt shall be applied to the facts constituting the elements of the crime and of the mode of liability of the Accused as charged as well as to other facts on which the conviction depends. ²The beyond reasonable doubt requirement shall not be applied to individual pieces of evidence.
- (3) ¹In respect of circumstantial evidence, the standard of proof beyond reasonable doubt is only satisfied if the inference from that evidence is the only reasonable one that could be drawn from the evidence presented. ²If the evidence allows for other reasonable conclusion(s) to be drawn, the standard of proof beyond reasonable doubt is not satisfied.
- (4) A conviction may not be based solely or to a decisive extent on:
 - (a) the statement of a witness whom the Defence had no opportunity to examine;
 - (b) the evidence of witnesses whose identity was not disclosed to the Defence; or
 - (c) the evidence of a person under the age of 18 or a person whose judgment has been impaired, who, in the opinion of the Panel, does not understand the meaning of the duty to speak the truth.

Sub-Section 2: Testimony, Statements and Other Evidence**Rule 138****General Provisions on the Testimony of Witnesses**

- (1) ¹The testimony of a witness at trial shall be given in person, except to the extent provided under Rule 97. ²The Panel may also permit the testimony of a witness by means of video-conference pursuant to Rule 141 as well as the introduction of the witness's evidence in written or other form in accordance with the Law and the Rules and in a way not prejudicial to or inconsistent with the rights of the Accused.
- (2) Subject to paragraph (3) and Rule 146(5), every witness shall take the following solemn declaration before giving testimony:

“Conscious of the significance of my testimony and my legal responsibility, I solemnly declare that I will tell the truth, the whole truth and nothing but the truth, and that I shall not withhold anything which has come to my knowledge.”

Adopted Draft

- (3) A person under the age of 18 or a person whose judgment has been impaired and who, in the opinion of the Panel, does not understand the nature of a solemn declaration may be permitted to testify without taking such declaration if the Panel considers that the person is able to describe the matters of which he or she has knowledge and understands the meaning of the duty to speak the truth.
- (4) ¹A witness, other than an expert, who has not yet testified shall not be present during the testimony of another witness. ²A witness who has heard the testimony of another witness shall not, for that reason alone, be disqualified from testifying. ³A person who has participated in a Party's investigation shall not be precluded from being called as a witness on the ground that he or she has been present in the courtroom during the proceedings or has otherwise followed the proceedings.
- (5) The Panel may refuse to hear a witness whose name does not appear on the list of witnesses filed by the calling Party pursuant to Rule 92(4) and (5), Rule 115(2) or Rule 116(2) and (5).
- (6) ¹A witness who appears before the Panel is compellable to provide testimony, unless otherwise provided for in the Law and the Rules, in particular Rule 148. ²Rule 62 shall apply to a witness appearing before the Panel who is compellable to provide testimony.
- (7) Following his or her testimony, a witness shall leave the courtroom, unless otherwise ordered.

Rule 139 Statements, Questioning and Testimony of the Accused

- (1) During the trial proceedings, the Accused may make unsworn statements relevant to the case.
- (2) ¹The Panel may, *proprio motu* or upon request by Victims' Counsel, ask specific questions to the Accused at any stage of the proceedings. ²Before asking questions, the Panel shall inform the Accused that he or she has the right to remain silent and that no adverse inference shall be drawn from the Accused's silence.
- (3) ¹The Accused shall not be compelled to make a solemn declaration before making statements or answering questions. ²The Judges shall assess the probative value, if any, of the Accused's statements or answers to questions.
- (4) The Accused may also appear as a witness, in which case Rule 138(1) and (2) shall apply.

Rule 140

Examination of Witnesses

- (1) ¹The examining Party may ask questions to the witness and may show the witness any document or other evidence in compliance with these Rules. ²If a witness cannot recall the facts he or she has provided in a previous statement, the witness may, with the permission of the Panel, be shown documents to refresh his or her memory. ³This paragraph shall apply *mutatis mutandis* to the questioning of witnesses by Victims' Counsel.
- (2) With leave of the Panel, a Party who called a witness may question that witness about the following matters, where relevant to the witness's credibility:

- (a) evidence given by the witness that is unfavourable to the Party;
 - (b) a matter of which the witness may reasonably be supposed to have knowledge and about which it appears to the Panel that, when questioned by a Party, the witness is not making a genuine attempt to give evidence; and
 - (c) whether the witness has, at any time, made a prior inconsistent statement.
- (3) ¹Cross-examination shall be limited to the subject-matter of the direct examination and matters affecting the credibility of the witness. ²Where the witness is able to give evidence relevant to the case of the cross-examining Party, he or she may be examined on the subject-matter of that case, provided that the cross-examining Party puts to that witness the nature of that case.
- (4) Upon an objection raised by a Party or *proprio motu*, the Presiding Judge may exercise control over the mode and the order of questioning witnesses and presenting evidence so as to:
- (a) make the questioning and presentation effective for the ascertainment of the truth;
 - (b) avoid repetition, undue consumption of time and resources; and
 - (c) avoid harassment or intimidation of witnesses.

Rule 141

Examination by Video-Conference

- (1) Upon request by a Party or, where applicable, Victims' Counsel, or *proprio motu*, a Panel may order that testimony be received via video-conference, provided that such technology permits the witness to be properly examined.
- (2) The Panel, with the assistance of the Registrar, shall ensure that the venue chosen for the conduct of the video-conference testimony is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness.
- (3) The Panel shall ensure that the video-conference permits the witness to be examined by the Parties and the Panel at the time the witness so testifies.
- (4) The Registrar shall ensure the efficient and expeditious implementation of any order pursuant to paragraph (1).

Rule 142

Examination of Witnesses away from the Trial Venue

- (1) Subject to the provisions of Rule 71, a witness, who was called or summonsed at trial, but is unable to appear due to serious illness or other impediment, may be examined at the place where resides or is in care, unless his or her testimony has already been collected and preserved under Rule 97.
- (2) ¹The Specialist Prosecutor, the Defence and, where applicable, Victims' Counsel shall be informed of the time and place of the examination. ²If the Accused is in detention on remand

the Panel shall decide whether his or her presence at the examination of the witness is necessary, provided that his or her Specialist Counsel is present.

Rule 143

Examination of Witnesses with Special Needs

¹When examining a witness with special needs, which may include visual, hearing, speech or literacy limitations, appropriate adjustments shall be made to the manner of questioning. ²Where necessary, the Panel may request a person able to communicate with the witness to assist him. ³The person assisting the witness shall make a solemn declaration.

Rule 144

Questioning of Anonymous Witnesses

- (1) Upon request by a Party or, where applicable, Victims' Counsel, a Panel may decide to question a witness in the absence of the Parties and Victims' Counsel where there is a serious risk that:
 - (a) the witness or a person close to the witness may lose his or her life or suffer grave physical or mental harm as a result of his or her identity being revealed, and other measures for the protection of witnesses as provided for in Rule 77 would be insufficient to prevent such a risk; or
 - (b) imperative national security interests may be jeopardised should the witness's identity or affiliation be revealed.
- (2) ¹Where the Panel grants the request, it shall provide the Parties and, where applicable, Victims' Counsel the opportunity to convey to the witness questions which would not reveal his or her identity. ²The Panel shall transmit these questions to the witness himself. ³The Panel may also question the witness *proprio motu*. Rule 24 applies, unless the Panel orders otherwise.
- (3) ¹The Panel shall provide the Parties and, where applicable, Victims' Counsel with the transcript of the witness's answers, in which all information that would reveal or threaten to reveal the witness's identity would have been redacted. ²The Parties and, where applicable, Victims' Counsel may submit additional questions to the Panel for transmission to the witness.
- (4) ¹The Panel shall provide access to the final transcript to the Parties and, where applicable, Victims' Counsel, redacted as necessary to protect the anonymity of the witness. ²The final transcript of the witness's questioning shall form part of the record.

Rule 145

Evidence in Cases of Alleged Sexual Violence

- (1) In cases of alleged sexual violence, the Panel shall be guided by and, where appropriate, apply the following principles:

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- (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
 - (b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
 - (c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence; and
 - (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.
- (2) Evidence of prior or subsequent sexual conduct of the victim shall not be admitted in evidence.

Rule 146**Evidence of Expert Witnesses**

- (1) The final report of any expert witness to be called by a Party shall be disclosed to the opposing Party and, where applicable, to Victims' Counsel within the time limit set by the Pre-Trial Judge or the Panel pursuant to Rule 99(1)(b).
- (2) Within seven (7) days of disclosure of the report of an expert witness, or as directed by the Panel, the opposing Party shall file a notice indicating whether:
 - (a) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the expert witness report and, if so, which parts;
 - (b) it accepts the expert witness report or parts thereof; or
 - (c) it wishes to cross-examine the expert witness.
- (3) If the opposing Party accepts the expert witness report or parts thereof, the latter may be admitted into evidence by the Panel without calling the expert witness to testify in person.
- (4) If a Party exercised its rights under paragraph (2)(b) or (c), the Panel shall decide on the admissibility of the expert witness report following the testimony and questioning of the expert.
- (5) Before testifying, every expert witness shall take the following solemn declaration:

“Conscious of the significance of my testimony and my legal responsibility, I solemnly declare that I will perform my expert analysis conscientiously and to the best of my knowledge and that I will state my findings and opinion accurately and completely.”
- (6) If necessary, a Panel may authorise an expert witness who has not yet given his or her expert opinion to attend a hearing when another expert witness gives testimony on the same matter.

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Rule 147**Testimony of Co-Accused**

- (1) The Defence may:
 - (a) with the consent of a co-Accused, call him as a witness; or
 - (b) through Specialist Counsel, ask any question to a co-Accused appearing as a witness.
- (2) ¹The previous testimony of the co-Accused given during the trial may be used by the Parties in the cross-examination of another Accused or witness. ²If the testimony of a co-Accused on the same matter differs, the Panel may examine that co-Accused on this matter. ³It may also proceed with a confrontation between the co-Accused.

Rule 148**Self-Incrimination by a Witness**

- (1) ¹A witness may object to providing testimony that might tend to incriminate him. ²The calling Party or, where applicable, the Panel shall notify the witness of this right in advance of his or her testimony, in a language the witness understands and speaks.
- (2) The Panel may compel a witness to testify, having considered:
 - (a) the importance of the anticipated evidence;
 - (b) whether the witness would be providing unique evidence relevant to the case;
 - (c) the nature of the possible incrimination, if known; and
 - (d) the sufficiency of the protections for the witness, in the particular circumstances.
- (3) ¹Where the Panel decides to compel a witness to testify, it may determine that an assurance with respect to self-incrimination should be provided prior to the testimony of the witness, having *ex parte* sought the views of the Specialist Prosecutor. ²It shall assure the witness that the evidence provided in response to questions:
 - (a) shall be given *in camera* and shall not be disclosed, in any manner, to the public, Kosovo or any Third-State; and
 - (b) will not be used either directly or indirectly against that person in any subsequent prosecution before the Specialist Chambers, except under Article 15(2) of the Law and Rule 62.³Rule 203(2) shall apply.
- (4) If an issue of self-incrimination arises in the course of the proceedings, the Panel shall suspend the taking of the testimony and provide the witness with an opportunity to obtain legal advice if he or she so requests for the purposes of the application of this Rule.
- (5) The Panel may also, if deemed necessary, order the non-disclosure of any record of the evidence and any protective measures for the witness.

- (6) Where appropriate, the Panel may order the Registrar to assign Counsel to the witness so that may receive legal advice regarding the effect of his or her testimony.

Rule 149**Incrimination by Family Members**

- (1) ¹Prior to the beginning of the testimony, a Panel shall inform a witness appearing before it, who is the spouse or a first-degree lineal relative of the Accused, that he or she shall not be compelled by a Panel to make any statement that might tend to incriminate that Accused. ²The witness may choose to make such a statement.
- (2) In evaluating the testimony of a witness, a Panel may take into account that the witness referred to in paragraph (1) objected to answer a question which was intended to contradict a previous statement made by the witness, or the witness was selective in choosing which questions to answer.

Rule 150**Admission of Written Statements and Transcripts in lieu of Oral Testimony**

- (1) Subject to Rule 152, the Panel may admit in lieu of oral testimony the written statement of a witness, or a transcript of evidence provided by a witness in proceedings before the Specialist Chambers, which goes to proof of a matter other than the acts and conduct of the Accused as charged in the indictment.
- (a) Factors militating for the admission of a written statement or transcript in lieu of oral testimony include, but are not limited to circumstances in which the evidence in question:
- (i) is of a cumulative nature, in that other witnesses have given or will give oral testimony on similar facts;
 - (ii) is corroborated by evidence which the Accused could effectively confront, including through cross-examination;
 - (iii) relates to relevant historical, political or military background;
 - (iv) consists of a general or statistical analysis relating to the composition of the population in the places to which the indictment relates;
 - (v) concerns the impact of crimes on victims;
 - (vi) relates to the character of the Accused;
 - (vii) relates to factors to be taken into account in determining sentence; or
 - (viii) has been given by the witness in the presence of the Parties who have had the opportunity to examine or cross-examine him.
- (b) Factors militating against the admission of a written statement or transcript in lieu of oral testimony include instances whereby:

- (i) a Party or, where applicable, Victims' Counsel objects to the admission of the witness's evidence in written form and, demonstrates that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value;
 - (ii) the evidence contained therein is incriminatory in character or pertains to an issue central to the Specialist Prosecutor's case;
 - (iii) there are any other factors that make it appropriate for the witness to appear for cross-examination; or
 - (iv) there is an overriding public interest in the evidence in question being presented orally.
- (2) ¹The statement shall be signed by the person who records and conducts the questioning and by the person who is questioned and his or her counsel, if present, as well as, where applicable, the Specialist Prosecutor or the Judge who is present. ²The record shall note the date, time and place of, and all persons present during the questioning. ³If, in exceptional circumstances, the person has not signed the record, the reasons thereof shall be noted.
- (3) ¹After hearing the Parties, the Panel shall decide whether to request the witness to appear for cross-examination. ²It may decide, providing reasons, that the requirements of a fair and expeditious trial exceptionally warrant the admission of the statement or transcript, in whole or in part, without cross-examination. ³If the Panel decides to require the witness to appear for cross-examination, Rule 151 shall apply.

Rule 151

Admission of Written Statements and Transcripts in lieu of Direct Examination

Subject to Rule 152, the Panel may admit the written statement of a witness or transcript of evidence given by a witness in proceedings before the Specialist Chambers that goes to proof of the acts and conduct of the Accused as charged in the indictment, only if the following conditions are satisfied:

- (a) the witness is present in court;
- (b) the witness is available for cross-examination and any questioning by the Panel; and
- (c) the witness attests that the written statement or transcript accurately reflects his or her declaration and what he or she would say if examined.

Rule 152

Admission of Written Statements of Unavailable Persons and of Persons Subjected to Interference

- (1) Evidence in the form of a written statement, any other record written or otherwise expressed of what a person has said or transcript of a statement by a person who has died or who can no longer be traced with reasonable diligence, or who is by reason of physical or mental impairment unable to testify orally, may be admitted, whether or not the written statement is in the form prescribed by these Rules, if the Panel is satisfied:

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- (a) of the person's unavailability or inability to testify orally; and
 - (b) that the statement, the record or the transcript is *prima facie* reliable, having regard to the circumstances in which it was made, recorded and maintained.
- (2) The Panel may admit evidence in the form of a written statement, any other *prima facie* reliable record or transcript of a statement by a person, if it is satisfied that:
- (a) the person has failed to attend as a witness or, having attended, has not given evidence at all or in a material respect;
 - (b) the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, injury, bribery, or coercion;
 - (c) where appropriate, reasonable efforts have been made pursuant to Rule 97 and Rule 118 to secure the attendance of the person as a witness or, if in attendance, to receive from the witness all material facts known to that witness;
 - (d) the proposed evidence or evidence to the same effect cannot be otherwise obtained; and
 - (e) it is in the interests of justice.
- (3) For the purposes of paragraph (2):
- (a) an improper interference may relate *inter alia* to the physical, psychological, economic, property, or other interests of the person or of another person;
 - (b) the interests of justice include:
 - (i) the reliability of the statement or transcript, having regard to the circumstances in which it was made and recorded;
 - (ii) the apparent role in the improper interference of a Party or someone acting on behalf of a Party to the proceedings; and
 - (iii) whether other evidence to the same effect is available and whether the proposed evidence is corroborated in whole or in part.
- (4) The Panel may have regard to any relevant evidence, including written evidence, for the purpose of applying this Rule.
- (5) If the evidence goes to proof of the acts and conduct of the Accused as charged in the indictment, this may be a factor against the admission of such evidence, in whole or in part.

Rule 153**Agreed Facts**

Where the Parties have submitted points of agreement on facts pursuant to Rule 92(3) and the Presiding Judge has taken note thereof pursuant to Rule 115(4), the Panel may consider such alleged facts as being proved, unless it is of the opinion that a more complete presentation of evidence on the alleged facts is necessary.

Rule 154**Judicial Notice**

- (1) The Panel shall not require proof of facts of common knowledge but shall take judicial notice thereof.
- (2) Upon request by a Party or *proprio motu*, after hearing the Parties and, where applicable, Victims' Counsel, the Panel may, in the interests of a fair and expeditious trial, take judicial notice of adjudicated facts from other proceedings of the Specialist Chambers or from final proceedings before other Kosovo Courts or from other jurisdictions relating to matters at issue in the current proceedings, to the extent that they do not relate to the acts and conduct of the Accused as charged in the indictment.

Section IV: Trial Judgment**Rule 155****Deliberations on the Trial Judgment**

- (1) ¹After the closing of the case, the Panel shall retire to deliberate *in camera* in order to pronounce a judgment on the charges in the indictment. ²The deliberations shall remain strictly confidential.
- (2) The Panel shall decide separately on each charge, including each applicable mode of liability. In cases of joint trials, separate findings shall be made for each Accused.
- (3) A finding of guilt shall be reached only if the majority of the Panel is satisfied that guilt has been proved beyond reasonable doubt.

Rule 156**Pronouncement of the Trial Judgment**

- (1) ¹The Trial Judgment shall be pronounced within ninety (90) days of the closing of the case pursuant to Rule 133 and it may include a decision pursuant to Article 22(7) of the Law. ²Where the circumstances of the case require additional time, it shall not exceed sixty (60) days, except where a further extension is absolutely necessary. ³The decision for the extension shall be public and notified to the Parties and Victims' Counsel. ⁴Reasons shall be provided for the extension.
- (2) The Trial Judgment, or a summary thereof, shall be pronounced in public in the name of the people of Kosovo, and in the presence of the Accused, unless exceptional circumstances justify his or her absence.
- (3) ¹The Trial Judgment shall be in writing and shall contain a reasoned opinion for the findings of the Panel. ²In case of an acquittal, the Judgment may be pronounced orally followed by written reasons as soon as possible.
- (4) ¹A certified copy of the Trial Judgment and of the Judges' opinions, where applicable, shall be served on the Accused as soon as possible in a language he or she understands and speaks. ²Such

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copies shall be provided to the Defence in that language and in the language in which the Judgment was pronounced.

- (5) If the Panel finds the Accused guilty of a crime, it may issue orders under Articles 22(8) to (11) and 44(6) of the Law.
- (6) If the Panel finds the Accused guilty of one or more crime(s), it shall determine the appropriate sentence to be imposed on the Accused with the pronouncement of the Trial Judgment, unless, having heard the Parties, the Panel decides to proceed in accordance with Rule 159 and Rule 161.

Rule 157

Status of the Convicted Person

Where an Accused at liberty is convicted, the Panel may issue an arrest warrant and order his or her detention.

Rule 158

Status of the Acquitted Person

- (1) ¹Where a detained Accused is acquitted, he or she shall immediately be released, subject to paragraphs (2) and (3). ²Release shall take place in accordance with Article 41(11) of the Law.
- (2) If the Specialist Prosecutor notifies the Panel that he or she intends to appeal an acquittal at the time of its pronouncement, the Panel may, on application by the Specialist Prosecutor and after hearing the Parties, under exceptional circumstances, order the continued detention of the Accused in accordance with Article 41(6)(b)(i) and (ii) of the Law, pending the determination of the appeal.
- (3) ¹An acquitted person who is detained may appeal as of right an order pursuant to paragraph (2) before a Court of Appeals Panel. ²The Court of Appeals Panel shall rule on this appeal within fifteen (15) days of the last submission, failing which the acquitted person shall be released.

Section V: Determination of Punishment

Rule 159

Sentencing Procedure

- (1) If the Panel finds the Accused guilty of one or more crime(s), unless sentence was pronounced pursuant to Rule 156(6), the Specialist Prosecutor and the Defence may submit any relevant information that may assist the Panel in determining an appropriate sentence within fifteen (15) days of the Trial Judgment.
- (2) Subject to authorisation by the Panel, Victims' Counsel may exercise all relevant rights provided in Rule 111.

Adopted Draft

- (3) The procedure provided for in paragraphs (1) and (2) shall also apply to admission of guilt pursuant to Rule 90.
- (4) Unless otherwise decided by the Panel, the sentence shall be determined on the basis of written submissions.
- (5) For the determination of the sentence, the Panel shall rely on the evidence presented and, at the request of the Parties and, where applicable, Victims' Counsel and if necessary, it may hear additional evidence.

Rule 160**Determination of the Sentence**

- (1) ¹In determining a sentence in accordance with Article 44(1) to (4) of the Law, the Panel shall take into account and balance the factors mentioned in Article 44(5) of the Law. ²In particular, the Panel shall take into account, as appropriate:
 - (a) mitigating circumstances such as:
 - (i) the circumstances falling short of constituting grounds excluding criminal responsibility, such as those referred to in Rule 92(5); and
 - (ii) the convicted person's conduct after the act, including any efforts by the person to compensate the victims, voluntary surrender and any cooperation with the Specialist Prosecutor and the Specialist Chambers;
 - (b) aggravating circumstances, where applicable, such as:
 - (i) any relevant prior criminal convictions for crimes under the jurisdiction of the Specialist Chambers or of a similar nature;
 - (ii) abuse of power or official capacity;
 - (iii) commission or participation in the commission of the crime where the victim is particularly vulnerable or defenceless; and
 - (iv) commission or participation in the commission of the crime with particular cruelty or where there were multiple victims.
- (2) ¹Admission of guilt pursuant to Rule 90 or a plea agreement pursuant to Rule 91 shall result in a reduced sentence. ²The timing of the admission of guilt or of the plea agreement shall be taken into account.
- (3) The criminal record as well as other records of previous convictions for criminal offences of the convicted person submitted by the Specialist Prosecutor shall be considered in the determination of the sentence.
- (4) ¹The Panel shall determine a sentence in respect of each charge in the indictment under which the Accused has been convicted and shall impose a single sentence reflecting the totality of the criminal conduct of the Accused, to be served concurrently with any other sentence of imprisonment previously imposed by another Kosovo court, if applicable and unless otherwise

ordered. ²The single sentence shall not be less than the highest individual sentence determined in respect of each charge.

- (5) Life imprisonment may be imposed when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, as evidenced by the existence of one or more aggravating circumstances.
- (6) In imposing a sentence of imprisonment, the Panel shall deduct the time, if any, during which the Accused was detained in accordance with Chapter 4.

Rule 161

Pronouncement of the Sentencing Judgment

- (1) ¹If the Panel finds the Accused guilty of one or more crime(s), unless sentence was pronounced pursuant to Rule 156(6), a Sentencing Judgment shall be pronounced within thirty (30) days of the last submission from the Parties or, where applicable, Victims' Counsel or any hearing on additional evidence. ²Where the circumstances of the case require additional time, this shall not exceed thirty (30) days. ³The decision for extension shall be public and notified to the Parties and Victims' Counsel. ⁴Reasons shall be provided for the extension.
- (2) Rule 156(2) to (4) shall apply *mutatis mutandis*.

Rule 162

Imposition of Fines

- (1) A person convicted for an offence pursuant to Article 15(2) of the Law and sentenced to a fine shall pay such fine to the Registrar.
- (2) ¹In imposing a fine, the Panel shall allow the convicted person a reasonable period in which to pay the fine. ²The Panel may provide for payment of a lump sum or by way of instalments during that period.
- (3) ¹If the convicted person does not pay the fine within the time limit set by the Panel, the Panel may issue an order requiring the appearance of the convicted person before the Panel. ²Alternatively, the Panel may require the convicted person to respond in writing and to provide reasons why the fine has not been paid.
- (4) After affording the convicted person an opportunity to be heard, the Panel may determine appropriate measures to be taken, including:
 - (a) extending the time limit for payment of the fine;
 - (b) ordering the seizure of property, proceeds and assets of the convicted person to the extent necessary for the enforcement of the fine;
 - (c) converting the fine, in whole or in part, to a term of imprisonment not exceeding the maximum penalty applicable for that offence under the Kosovo Criminal Code; and

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- (d) if a term of imprisonment was imposed together with the fine, extending the term of imprisonment for a period not exceeding a quarter of such term or five (5) years, whichever is less. Any such extension may not lead to a total period of imprisonment exceeding the maximum penalty applicable for that offence under the Kosovo Criminal Code.

Rule 163**Place of Imprisonment**

- (1) ¹In accordance with Article 50(1) of the Law, having heard the Accused, the President shall decide in which State the Accused shall serve his or her sentence, from a list of States that have agreed to accept convicted persons. ²This decision is not subject to judicial review.
- (2) Transfer of the convicted person to that State shall be effected as soon as possible after the time limit for filing an appeal has elapsed or once the Sentencing Judgment has become final.
- (3) Pending finalisation of arrangements by the Registrar for transfer to the State where the sentence shall be served, the convicted person shall remain in the custody of the Specialist Chambers.

Section VI: Reparations**Rule 164****Referral to Civil Litigation**

- (1) Where a Panel has included in its Judgment the decision on victims pursuant to Article 22(9) and (10) of the Law, and upon application of Victims' Counsel pursuant to Article 22(10) of the Law, the Registrar may transmit a certified copy of this decision as well as of the Judgment to the competent authorities of the relevant Third State or directly to the victims.
- (2) For the purposes of a claim for compensation made before domestic courts, the Judgment transmitted under paragraph (1) shall be final and binding as to the criminal responsibility of the convicted person for such harm suffered.

Rule 165**Order for Reparations Against the Convicted Person**

¹If the Panel makes an order pursuant to Article 22(8) of the Law against the convicted person, upon request by Victims' Counsel, the convicted person or *proprio motu*, a Panel may appoint experts to assist it in determining the scope of any damage to, or in respect of victims and to suggest options concerning appropriate individual or collective reparations from the convicted person. ²The Panel may invite Victims' Counsel and the convicted person to make observations on expert reports.

Chapter 10 Appellate Proceedings

Section I: Second Instance Appellate Proceedings

Sub-Section 1: Interlocutory Appeals

Rule 166

Assignment of Court of Appeals Panel to Interlocutory Appeals

Pursuant to Article 33(1)(c) of the Law, the President shall assign a Court of Appeals Panel as soon as an interlocutory appeal is filed as of right or upon certification granted pursuant to Rule 74(3), or as otherwise necessary.

Rule 167

Filing of Interlocutory Appeals

- (1) ¹Where an appeal lies as of right, the Appellant may file an appeal within ten (10) days of the impugned decision. ²The opposing Party may file a response within ten (10) days of the appeal. ³The appellant may file a reply within five (5) days of the response.
- (2) ¹Where certification has been granted pursuant to Rule 74(3), the Appellant may file an appeal within ten (10) days of the certification. ²The appeal shall be filed exclusively in respect of the issues certified by the Panel. ³The Respondent may file a response within ten (10) days of the appeal. ⁴The Appellant may file a reply within five (5) days of the response.
- (3) Unless otherwise decided by the Court of Appeals Panel, interlocutory appeals shall be determined on the basis of written submissions.

Rule 168

Suspensive Effect of Interlocutory Appeals

¹Subject to Rule 55(4), interlocutory appeals shall not have suspensive effect unless otherwise ordered in the certification decision or by the Court of Appeals Panel, upon request filed prior to or with the appeal. ²Suspensive effect shall only be granted as an exceptional measure where the Appellant demonstrates that the implementation of the decision under appeal could potentially defeat the purpose of the appeal or would lead to consequences which may be irreversible.

Sub-Section 2: Appeals Against Judgments

Rule 169

Assignment of Court of Appeals Panel to Appeals Against Judgments

Pursuant to Article 33(1)(c) of the Law, the President shall assign a Court of Appeals Panel as soon as a notice of appeal is filed pursuant to Rule 173, or as otherwise necessary.

Rule 170

General Provisions

- (1) A convicted person or the Specialist Prosecutor may appeal a Judgment by the Trial Panel on the grounds provided for in Article 46(1) of the Law.
- (2) Victims' Counsel may appeal a Judgment by the Trial Panel within the limits of Article 46(9) of the Law.
- (3) The rules governing the trial proceedings shall apply *mutatis mutandis* to proceedings before the Court of Appeals Panel.

Rule 171

Status of Person Pending Appeal

Rule 53 to Rule 57, except Rule 55, shall apply *mutatis mutandis* in respect of a person pending appeal.

Rule 172

Record on Appeal

The Registrar shall certify the trial case file and shall provide the Court of Appeals Panel access thereto. The case file shall form the record on appeal.

Rule 173

Notice of Appeal

- (1) Following a judgment of acquittal pursuant to Rule 156, the Specialist Prosecutor may, within thirty (30) days of the written Trial Judgment, file a notice of appeal setting forth the grounds of appeal.
- (2) Following a judgment of conviction pursuant to Rule 156, a Party seeking to appeal either the Trial Judgment or the Sentencing Judgment, or both, shall file a notice of appeal setting forth the grounds of appeal within thirty (30) days of the written Sentencing Judgment.
- (3) ¹The Court of Appeals Panel may, on showing of good cause, authorise a variation of the grounds of appeal. ²The application for variation shall be filed as soon as the reasons thereof become known.

Rule 174**Judge Rapporteur on Appeal**

- (1) In accordance with Rule 17, the Presiding Judge of the Court of Appeals Panel may, after the filing of the notice of appeal and in consultation with the Judges of the Panel, designate from among its members a Judge Rapporteur responsible for the pre-hearing proceedings.
- (2) The Judge Rapporteur shall ensure that the proceedings are not unduly delayed and shall take any measures related to procedural matters, including the issuing of decisions, orders, and directions on behalf of the Panel with a view to preparing the case for a fair and expeditious hearing.
- (3) The Judge Rapporteur shall keep the Court of Appeals Panel regularly informed, particularly where procedural issues are in dispute and may refer such disputes to the Court of Appeals Panel.
- (4) The Court of Appeals Panel may exercise any of the functions of the Judge Rapporteur.

Rule 175**Pre-Appeal Conference**

Within twenty-one (21) days of a notice of appeal, and when deemed necessary thereafter, the Presiding Judge, or the Judge Rapporteur, if designated, shall convene a conference to allow any person in custody pending appeal the opportunity to raise issues in relation thereto, including the person's mental and physical condition.

Rule 176**Appellate Briefs**

- (1) The Appellant shall file an Appeal Brief setting out all the arguments and authorities in support of his or her grounds of appeal within sixty (60) days or, where the appeal is limited to sentencing, within thirty (30) days of the notice of appeal.
- (2) The Respondent may file a Brief in Response setting out all arguments and authorities within thirty (30) days, or where the appeal is limited to sentencing, within fifteen (15) days of the Appeal Brief.
- (3) An Appellant may file a Brief in Reply within fifteen (15) days or, where the appeal is limited to sentencing, within ten (10) days of the Brief in Response.
- (4) Where the Specialist Prosecutor appeals an acquittal, the acquitted person may, with leave of the Appeals Court Panel, file a Brief in Rejoinder within ten (10) days or, where the appeal is limited to sentencing, within five (5) days of the decision granting leave.
- (5) The Specialist Prosecutor shall make a declaration in his or her Appeal or Response Brief, as applicable, that disclosure of material in his or her custody or control has been completed at the time of filing of that brief.

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- (6) ¹Unless otherwise ordered by the Court of Appeals Panel, the Specialist Prosecutor shall, if he or she is appealing a Judgment in respect of multiple acquitted or convicted persons, file consolidated appellate briefs. ²The time limit for filing a consolidated brief shall run from the last Appeal Brief or Brief in Response of the acquitted or convicted persons, as applicable.

Rule 177

Date of Appeal Hearing

After the expiry of the time limits for the filing of the briefs provided for in Rule 176, the Court of Appeals Panel may set the date of an appeal hearing, if necessary.

Rule 178

Additional Evidence

- (1) ¹A Party or, within the limits of Article 46(9) of the Law, Victims' Counsel, may apply by motion to present additional evidence before the Court of Appeals Panel, identifying with precision the specific factual finding of the Trial Panel to which the additional evidence is directed. ²Such motions shall be filed within thirty (30) days of the Brief in Reply, unless a delay is justified on showing of good cause.
- (2) ¹The opposing Party or a co-Accused affected by the application may file a response within thirty (30) days of the motion. ²The Party seeking to admit additional evidence may file a reply within fifteen (15) days of the response.
- (3) ¹Where the Court of Appeals Panel finds that the additional evidence was not available at the time of trial and could not have been discovered with the exercise of due diligence, it shall determine whether it could have been a decisive factor in reaching a decision at trial and render a decision. ²Rule 135 shall apply *mutatis mutandis*.
- (4) ¹The Court of Appeals Panel shall endeavour to decide the motion for additional evidence prior to an appeal hearing, if any, and may provide reasons in the Appeal Judgment. ²The Panel may decide on such motion solely on the basis of the written submissions.
- (5) Where the Court of Appeals Panel admits additional evidence:
- (a) the opposing Party may apply by motion to present rebuttal material within the time limit set by the Panel in the decision admitting the additional evidence; and
 - (b) the Parties or, where applicable, Victims' Counsel, may file supplemental briefs on the impact of the additional evidence on the specific factual finding, within fifteen (15) days of:
 - (i) the expiry of the time limit set for the filing of rebuttal material, if no such material is filed; or
 - (ii) the decision on the admission of the rebuttal material.
- (6) In the Appeal Judgment, the Court of Appeals Panel shall consider any additional evidence that is admitted, along with the evidence already on the record.

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- (7) If several acquitted or convicted persons are Parties to the appeal, the evidence admitted on behalf of any one of them shall be considered with respect to all of them, where relevant and subject to Rule 179(4).

Rule 179**Deliberations on the Appeal Judgment**

- (1) After the last submission from the Parties, the Court of Appeals Panel shall retire to deliberate *in camera*.
- (2) The Court of Appeals Panel shall render an Appeal Judgment on the basis of the record on appeal, together with any additional evidence admitted under Rule 178.
- (3) ¹The Court of Appeals Panel may affirm, reverse, or revise the Judgments by the Trial Panel. ²In appropriate circumstances, the Court of Appeals Panel may order that the acquitted or convicted person be retried by the Trial Panel in accordance with Article 46(4) of the Law.
- (4) ¹Where only the convicted person has filed an appeal, the Judgment may not be reversed or revised to the detriment of that convicted person. ²The same shall apply in case of a re-trial pursuant to paragraph (3).

Rule 180**Pronouncement of the Appeal Judgment**

- (1) ¹The Appeal Judgment shall be pronounced within sixty (60) days of the last submission from the Parties. ²Where the circumstances of the case require additional time, this shall not exceed thirty (30) days, except where a further extension is absolutely necessary. ³The decision for the extension shall be public and notified to the Parties. ⁴Reasons shall be provided for the extension.
- (2) The Appeal Judgment, or a summary thereof, shall be pronounced in public in the name of the people of Kosovo, on a date notified to the Parties, and at which they shall be entitled to be present.
- (3) ¹The Appeal Judgment shall be accompanied by written reasons. ²In case of an acquittal, the Appeal Judgment may be pronounced orally, followed by written reasons as soon as possible.
- (4) ¹A copy of the Appeal Judgment and of the Judges' opinion, where applicable, shall be served on the Accused as soon as possible in a language he or she understands and speaks. ²Such copies shall be provided to the Defence in that language and in the language in which the Judgment was pronounced.
- (5) ¹If the case is returned to the Trial Panel to review its findings and the evidence based on the correct legal standard in accordance with Article 46(4) of the Law, the Court of Appeals Panel shall identify the findings which are returned for consideration. ²The Trial Panel shall only consider findings and evidence strictly relevant to them.

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Rule 181
Sentencing Procedure

Where the Court of Appeals Panel has reversed an acquittal and entered a conviction, the sentencing procedure provided in Rule 159 to Rule 161 shall, if deemed appropriate, apply *mutatis mutandis*.

Rule 182
Status of the Acquitted and Convicted Persons Following the Judgment on Appeal

- (1) A conviction imposed or a sentence pronounced by the Court of Appeals Panel shall be enforced immediately.
- (2) Where, for any reason, the acquitted or convicted person is not present when the Court of Appeals Judgment is pronounced, the Court of Appeals Panel may nonetheless pronounce its Judgment in his or her absence and shall, if it confirms or pronounces a sentence of imprisonment not yet served, issue an arrest warrant and order the detention of the convicted person.
- (3) ¹If acquitted on appeal, a person in detention shall immediately be released, unless he or she faces other charges. ²Release shall take place in accordance with Article 41(11) of the Law.

Section II: Third Instance Appellate Proceedings**Rule 183**
General Provision

- (1) A convicted person may appeal the Judgment of the Court of Appeals Panel within the limits provided for in Article 47(1) of the Law.
- (2) Pursuant to Article 33(1)(d) of the Law, the President shall assign a Supreme Court Panel as soon as a notice of appeal against a Judgment of the Court of Appeals Panel is filed, or as otherwise necessary.
- (3) Rule 170(3) to Rule 182 shall apply *mutatis mutandis* to appellate proceedings before the Supreme Court Panel.

Chapter 11

Extraordinary Legal Remedies

Section I: Reopening of Criminal Proceedings

Rule 184

Request to Reopen Proceedings

- (1) ¹A Party may request the reopening of criminal proceedings terminated by a final judgment in accordance with Article 48 of the Law. ²Any request to that effect shall be filed with the President or with an *ad hoc* Panel assigned by a Residual Mechanism if one is in place pursuant to Article 60 of the Law.
- (2) Pursuant to Article 33(1)(d) of the Law, the President shall assign a Supreme Court Panel as soon as such a request is filed.
- (3) ¹The opposing Party may file a response within thirty (30) days of the request. ²The Party seeking the reopening of the proceedings may file a reply within fifteen (15) days of the response. ³Where applicable, the Supreme Court Panel may seek the views of Victims' Counsel.

Rule 185

Preliminary Examination of a Request to Reopen Proceedings

¹Pursuant to Article 48(4) of the Law, the Supreme Court Panel shall conduct a preliminary examination to verify that the application is not frivolous or an abuse of the process, to determine whether the request has been filed by a person with legal standing, and whether the facts and evidentiary material presented in support of the request have not already been considered in the prior proceedings before the Specialist Chambers. ²A request filed by a person who does not have legal standing or which is based on facts and evidentiary material already considered shall be inadmissible.

Rule 186

Judgment on Request to Reopen Proceedings

The Supreme Court Panel may only order to reopen the proceedings in accordance with Article 48(4)(b) of the Law if the conditions set out in Article 48(2) and (3) of the Law are met.

Rule 187

Appeals Against Judgment Following Reopening of Proceedings

Where the Supreme Court Panel decides to convene a Trial Panel to conduct the reopening of proceedings pursuant to Article 48(4) of the Law, a Judgment rendered by that Trial Panel may be appealed in accordance with Chapter 10, Section I, Sub-Section 2.

Section II: Extraordinary Mitigation of Punishment

Rule 188

Request for Extraordinary Mitigation of Punishment

- (1) ¹A Party may request extraordinary mitigation of punishment in accordance with Article 48(5) of the Law. ²Any request to that effect shall be filed with the President or with an *ad hoc* Panel assigned by a Residual Mechanism, if one is in place pursuant to Article 60 of the Law.
- (2) The President shall assign a Supreme Court Panel in accordance with Article 33(1)(d) of the Law as soon as such a request is filed.
- (3) If the Supreme Court Panel deems it necessary for the determination of the request, it may hear the Specialist Prosecutor and Victims' Counsel.
- (4) Such a request shall be granted if, after the Judgment has become final, relevant circumstances have occurred which did not exist at the time the Judgment was rendered or, although such circumstances existed at the time, they were unknown, and would have led to a less severe punishment.
- (5) A request for extraordinary mitigation of punishment shall not stay the execution of the punishment.

Rule 189

Judgment on Request for Extraordinary Mitigation of Punishment

Where the Supreme Court Panel grants a request for extraordinary mitigation of punishment, it shall modify the sentence of the convicted person.

Section III: Protection of Legality

Rule 190

Request for Protection of Legality

- (1) ¹A Party may request protection of legality solely in accordance with Article 48(6) to (8) of the Law. ²Any request to that effect shall be filed with the President or with an *ad hoc* Panel assigned by a Residual Mechanism, if one is in place pursuant to Article 60 of the Law, within ninety (90) days of the final decision or judgment against which protection of legality is sought.
- (2) Pursuant to Article 33(1)(d) of the Law, the President shall assign a Supreme Court Panel as soon as such a request is filed.
- (3) ¹A request for protection of legality shall comply with Article 48(7) of the Law and shall not be filed on the ground of an erroneous or incomplete determination of the facts of the case. ²The Supreme Court Panel shall address only those violations of law alleged in the request for protection of legality.

Rule 191**Judgment on Request for Protection of Legality**

- (1) Where the Supreme Court Panel grants a request for protection of legality, depending on the nature of the violation, it shall:
 - (a) modify the impugned decision or judgment;
 - (b) annul in whole or in part the impugned decision or judgment and return the case for a new decision or retrial to the competent Panel; or
 - (c) confine itself only to establishing the existence of a violation of law.
- (2) Where the Supreme Court Panel finds that a request for protection of legality filed to the disadvantage of the Accused is well-founded, it shall only determine that the law was violated but shall not interfere in the impugned decision or judgment.

Chapter 12

Commutation of Sentence

Rule 192

Notification by States

Pursuant to Article 51(2) of the Law, the Specialist Chambers, or a Residual Mechanism if one is in place, shall request notification from the State of imprisonment if, pursuant to the applicable law of that State, the convicted person is eligible for commutation of sentence.

Rule 193

General Standards on Commutation of Sentence

- (1) The President shall have the right to commute any sentence, and shall decide on the matter after having heard the imprisoned person and upon consultation with the Judges.
- (2) After the imprisoned person has served two thirds (2/3) of the sentence, or 25 years in the case of life imprisonment, the President shall review the sentence to determine whether it should be commuted. Such a review shall not be conducted before that time.
- (3) In such a review, the President shall consider:
 - (a) whether the conduct of the imprisoned person while in detention shows a genuine dissociation from his or her crime;
 - (b) the imprisoned person's demonstration of rehabilitation;
 - (c) the prospect of the resocialization and successful resettlement of the imprisoned person;
 - (d) the gravity of the crime(s) for which the imprisoned person was convicted;
 - (e) the treatment of similarly-situated prisoners;
 - (f) whether the release of the imprisoned person would give rise to significant social instability;
 - (g) any substantial cooperation of the imprisoned person with the Specialist Prosecutor
 - (h) the voluntary assistance of the imprisoned person in enabling the enforcement of the judgments and orders of the Specialist Chambers in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims;
 - (i) any significant action taken by the imprisoned person for the benefit of the victims as well as any impact on the victims and their families as a result of the commutation of sentence;
 - (j) the individual circumstances of the imprisoned person, including a worsening state of physical or mental health or advanced age; or
 - (k) other factors establishing a clear and significant change of circumstances sufficient to justify the commutation of sentence.

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- (4) The President may impose such conditions upon the commutation of sentence, as deemed appropriate in accordance with the Practice Direction on the Commutation of Sentence issued by the President.
- (5) ¹If the President determines in his or her review under paragraph (3) that it is not appropriate to commute the sentence, he or she shall review the question of commutation of sentence every three (3) years, unless he or she establishes a shorter interval in his or her reasoned decision rendered under paragraph (3). ²In case of a significant change in circumstances, the President may permit the imprisoned person to apply for a review within the three-year period or such shorter period as may have been set by the President.

Rule 194**Procedure for Commutation of Sentence**

- (1) ¹For the application of Rule 193(3) and any review under Rule 193(5), the President may conduct a hearing. ²The President shall hear the imprisoned person and his or her Specialist Counsel, the Specialist Prosecutor, the State of enforcement and, where applicable, Victims' Counsel. ³The hearing may be conducted via video-conference or, in exceptional circumstances and subject to the Rules, in the State of enforcement by a Judge delegated by the President.
- (2) The President shall communicate the reasoned decision under paragraph (1) to all participants in the procedure as soon as possible.

Chapter 13

Primacy, Cooperation and Judicial Assistance

Section I: General Cooperation Provisions

Rule 195

Transmission and Receipt of Communications Relating to Cooperation and Judicial Assistance

- (1) ¹The Registrar shall transmit all outgoing communications, including orders, arrest warrants, summons and requests for assistance and cooperation made by the Specialist Chambers. ²It shall receive all incoming communications, including responses, documents and other information from the authorities of Kosovo and Third States to the Specialist Chambers.
- (2) The Specialist Prosecutor's Office shall transmit all outgoing communications, including orders, summons and requests for assistance and cooperation made by the Specialist Prosecutor's Office and shall receive all incoming communications, including responses, documents and other information from the authorities of Kosovo and Third States to the Specialist Prosecutor's Office.
- (3) Any request from the authorities of Kosovo to the Specialist Prosecutor's Office or the President pursuant to Article 54(9) of the Law shall be sent to the Registrar, who shall transmit the request to either the Specialist Prosecutor's Office or the President, or to both, as appropriate.
- (4) This Rule shall apply *mutatis mutandis* to requests made by or to an international organisation or any other entity or person.

Rule 196

Request for Testimony of a Person in the Custody of the Specialist Chambers

- (1) A Judge or court in Kosovo or in a Third State, or parties to criminal proceedings in Kosovo or a Third State authorised by an appropriate judicial authority ('Applicant'), may request the assistance of the Specialist Chambers in obtaining the testimony of a person in its custody ('detained person') for use in an ongoing investigation or prosecution conducted in the jurisdiction of the Applicant.
- (2) Such requests shall be submitted to the President, who shall refer the application to a Single Judge.
- (3) The Single Judge, having heard the Specialist Prosecutor and Specialist Counsel of the detained person, may grant such a request after verifying that:
 - (a) granting the request will not prejudice the rights of the detained person;
 - (b) granting the request may not prejudice ongoing investigations by the Specialist Prosecutor or proceedings before the Specialist Chambers;

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- (c) provisions and assurances are in place for ensuring compliance with any protective measures granted by the Specialist Chambers;
 - (d) granting the request will not pose a danger or risk to any victim, witness or other person; and
 - (e) there are no overriding grounds opposing the request.
- (4) ¹The assistance will be rendered by way of video-conference. ²Upon order of the Single Judge, the Registrar shall coordinate the arrangements for the video-conference and be present during the hearing.
- (5) If legal provisions in the jurisdiction of the Applicant do not allow for the testimony to be received by way of video-conference, the Single Judge may grant the Applicant access to the person to be heard on the premises of the Specialist Chambers.
- (6) In each case, the Single Judge shall be present during the hearing and shall ensure that paragraph (3)(a) to (e) are respected.
- (7) The questioning of the detained person shall be conducted directly by, or under the direction of, the Applicant in accordance with its own laws, as long as they do not contravene the Constitution or the Law.
- (8) Decisions taken under this Rule are not subject to judicial review.

Section II: Cooperation and Judicial Assistance with Kosovo

Rule 197

General Provisions

Decisions, orders or requests by any organ of the Specialist Chambers directed to any entity or person in Kosovo shall be complied with in accordance with Article 53 of the Law.

Rule 198

Application for Order for Information, Cooperation and Assistance

- (1) The Specialist Prosecutor may apply to a Panel for an order to any authority of Kosovo for information, cooperation or assistance, including regarding search and seizure, in particular in case of non-compliance or urgency.
- (2) Specialist Counsel or Victims' Counsel may also apply to a Panel for an order to any authorities of Kosovo for information, cooperation or assistance if they can show that:
 - (a) a request by Specialist Counsel or Victims' Counsel has been refused or ignored; and
 - (b) the information, cooperation or assistance is material to their respective case.

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Rule 199**Order for Information, Cooperation and Assistance**

- (1) Upon application by the Specialist Prosecutor, Specialist Counsel, Victims' Counsel or *proprio motu*, a Panel may make an order to any authority of Kosovo in relation to any form of assistance provided for in Article 53(1) of the Law.
- (2) The Panel may impose any conditions deemed necessary, including those relating to confidentiality and protective measures.
- (3) Any such order shall be complied with without undue delay, pursuant to Article 53(1) of the Law.
- (4) ¹Such an order cannot be challenged before other Kosovo courts nor can its implementation be made dependent on the approval of any other judicial authority in Kosovo. ²Any such order is binding and not subject to any conditions that are not expressly set in those orders.

Rule 200**Order for Deferral of Proceedings from Other Kosovo Courts**

- (1) Upon submission of an application for deferral to the Specialist Chambers, the President shall assign a Single Judge to determine the application in accordance with Article 10 of the Law.
- (2) Where the Single Judge determines that the deferral is appropriate, he or she shall issue an order to the court, prosecution or investigative entity concerned to defer the case to the jurisdiction of the Specialist Chambers.
- (3) ¹An order for deferral may include a request that any and all files, including the results of the investigation and the court's records and a certified copy of the judgment, if already rendered, be transmitted to the Specialist Prosecutor. ²The proceedings which are subject to the deferral order shall be suspended pending the determination by the Single Judge.
- (4) Whenever the authorities of Kosovo are served an order for deferral, they shall comply pursuant to Article 53 of the Law without undue delay and in accordance with the time limits and conditions, including confidentiality and protective measures, specified in the order.

Rule 201**Non-Compliance with Order for Information, Cooperation and Assistance or Deferral**

- (1) ¹If, after thirty (30) days of service of an order under Rule 199 or Rule 200, the competent authority of Kosovo has failed to comply with the order or has failed to show that adequate steps have been or are being taken to comply with the order, the Panel may make a judicial finding of non-cooperation. ²It shall inform the President accordingly for further action.
- (2) ¹The President may engage in consultations with the authorities of Kosovo with a view to obtaining the required compliance. ²If the requested action is nevertheless not complied with or ignored, the President may take any action deemed appropriate.

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Rule 202***Non Bis In Idem***

When the President or a Panel receives reliable information that criminal proceedings have been instituted against a person before a court in Kosovo for a conduct for which that person has already been acquitted or convicted before the Specialist Chambers, pursuant to Article 17 of the Law, the President or the Panel shall consider the matter and, where appropriate, render a reasoned decision that the pending proceedings be permanently discontinued.

Rule 203**Requests for Assistance or Cooperation from Authorities of Kosovo**

- (1) A request from the authorities of Kosovo pursuant to Article 54(9) of the Law may be granted subject to protective measures or any other conditions necessary for the protection of any witness, victim participating in the proceedings or other person at risk on account of testimony given by witnesses, or in the interests of justice.
- (2) Such a request may be refused on the basis that granting it may prejudice ongoing investigations by the Specialist Prosecutor or proceedings before the Specialist Chambers, or pose a threat to the safety and security of any person, or could otherwise reasonably be expected to prejudice the participants, the Specialist Chambers or the interests of justice.

Rule 204**Non-binding Effect of Other Courts' Determinations**

Orders or decisions of other Kosovo courts are not binding on the Specialist Chambers or the Specialist Prosecutor, in accordance with Article 10(1) of the Law.

Section III: International Cooperation**Rule 205****Arrangements with Third States, International Organisations and Other Entities**

- (1) The Specialist Chambers, through the Registrar, may invite a Third State, international organisation or any other entity to provide assistance:
 - (a) on the basis of an arrangement reached under Articles 4(2) and 55(1) of the Law; or
 - (b) on any other appropriate basis, including mutual legal assistance agreements entered into by Kosovo or requests for assistance based on the principle of reciprocity, as set out in Article 55(2) of the Law.
- (2) The Defence and Victims' Counsel may apply to a Panel to request assistance and cooperation with a Third State, international organisation or any other entity.

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- (3) Where investigations or criminal proceedings within the jurisdiction of the Specialist Chambers conducted in a Third State, could negatively impact the work of the Specialist Prosecutor or proceedings before the Specialist Chambers, the Panel may invite under paragraph (1) the Third State to defer these investigations or proceedings to the jurisdiction of the Specialist Chambers.

Rule 206

Non-Compliance with Arrangements

- (1) When a Third State, international organisation or any other entity that has an obligation to cooperate with the Specialist Chambers or Specialist Prosecutor's Office under an arrangement reached under Article 4 of the Law fails to respond or comply with a request for assistance and cooperation, the mechanism for settlement of disputes provided for in that arrangement shall apply.
- (2) Should the Specialist Chambers or Specialist Prosecutor's Office seek assistance from a Third State under a mutual legal assistance agreement between that State and Kosovo under Article 55(2) of the Law, the mechanism for settlement of disputes provided for in that agreement shall apply.
- (3) When a Third State, international organisation or any other entity that does not have an obligation to cooperate does not respond to or refuses a request for assistance and cooperation, the President, the Specialist Prosecutor or the Registrar, as appropriate, may engage in consultations with the competent authorities for the purpose of obtaining the requested cooperation.

Rule 207

Request for Assistance from Third States, International Organisations and Other Entities

- (1) A Third State, international organisation or any other entity may submit to the Specialist Chambers a request for assistance and cooperation.
- (2) Unless otherwise agreed in an arrangement for cooperation and assistance reached under Article 4 of the Law, any such request to the Specialist Chambers shall be made in one of the official languages of the Specialist Chambers, or accompanied by a translation into one of those languages.
- (3) Rule 203 shall apply *mutatis mutandis*.

Rule 208

Request for Protection of Agents and Information

- (1) Third States or international organisations may take all reasonable steps, acting in cooperation with the Specialist Prosecutor's Office, the Defence or Victims' Counsel, as appropriate, to ensure the protection of their servants, agents and confidential or sensitive information.

Adopted Draft

- (2) If a Third State or international organisation learns that information subject to Article 58 of the Law is being or is likely to be disclosed at any stage of the proceedings notwithstanding steps taken under paragraph (1), it may make an application to the President for a resolution of the matter, who shall refer the application to the competent Panel.
- (3) The Panel may afford protective measures equivalent to those provided for in Rule 77(4)(a)(i) and (ii) or, where appropriate, apply Rule 104 *mutatis mutandis*.