



ICC-PIDS-PRI-1/07\_En

## **The course of action and procedure following the arrest and surrender of a suspect to the Court.**

### **Initial proceedings before the Court**

Upon the surrender of the person to the Court, the Pre-Trial Chamber will hold a hearing in the presence of the person to satisfy itself that the person has been informed of the crimes, which he is alleged to have committed, and of his rights under the Rome Statute, including the right to apply for interim release pending trial.<sup>1</sup>

### **Confirmation of charges before trial**

Within a reasonable time after the person's surrender or voluntary appearance, the Pre-Trial Chamber will hold a hearing to confirm the charges on which the Prosecutor intends to seek trial<sup>2</sup>. Exceptionally, the Pre-Trial Chamber may hold this hearing in the absence of the person charged<sup>3</sup>. At the close of the confirmation hearing the Pre-Trial Chamber may:

- a) Confirm the charges and commit the person for trial<sup>4</sup>. Upon confirmation, the Presidency of the Court will constitute a Trial Chamber responsible for subsequent proceedings.
- b) Decline to confirm the charges, a decision that does not prevent the Prosecutor from returning with a subsequent request on the basis of additional evidence<sup>5</sup>.
- c) Adjourn the hearing and ask the Prosecutor to consider providing further evidence or to pursue further investigation or, alternatively, to amend the charges because the available evidence shows a different crime<sup>6</sup>.

### **Trial**

The trial will take place at the seat of the Court, in The Hague, unless otherwise decided<sup>7</sup>. The accused must be present at the trial<sup>8</sup>, and the trial shall be held in public<sup>9</sup> except when the

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<sup>1</sup> Rome Statute, Article 60 (1)

<sup>2</sup> Rome Statute, Article 61 (1)

<sup>3</sup> Rome Statute, Article 61(2)

<sup>4</sup> Rome Statute, Article 61(7)

<sup>5</sup> Rome Statute, Articles 61(7)(b) and 61(8)

<sup>6</sup> Rome Statute, Article 61(7)(c)

<sup>7</sup> Rome Statute, Article 62

<sup>8</sup> Rome Statute, Article 63 (1)

<sup>9</sup> Rome Statute, Article 64(7)

Chambers, in order to protect safety of victims and witnesses or sensitive information to be given in evidence, determines to conduct certain proceedings in closed session<sup>10</sup>.

The accused has the right to a lawyer assigned in any case where the interests of justice so require and, if the accused cannot afford it, to have free legal assistance assigned by the Court<sup>11</sup>.

The accused shall make an admission of guilt or plead not guilty<sup>12</sup>.

- When an accused makes an admission of guilt, the Trial Chamber will consider the admission of guilt, together with any additional evidence presented and may convict the accused of that crime<sup>13</sup>.
  
- If the Trial Chamber is not satisfied that the accused understands the nature and consequences of the admission, that the admission is voluntarily made after sufficient consultation with defence counsel, or that the admission is supported by the facts of the case, it will consider the admission of guilt as not having been made, in which case the trial will be continued under the ordinary trial procedures<sup>14</sup>.
  
- Alternatively, the Trial Chamber may consider that 'a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims', and request additional evidence to be adduced or that the trial be continued under the ordinary trial procedures<sup>15</sup>.

### **Presentation of Evidence**

The parties may submit evidence relevant to the case.

Everyone shall be presumed innocent until proved guilty in accordance with the applicable law<sup>16</sup>. The burden of proof is on the Prosecutor. The accused's guilt must be proved beyond reasonable doubt<sup>17</sup>.

The accused may examine the witnesses against him or her, and obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her<sup>18</sup>.

When their personal interests are affected, victims can participate in the proceedings, as determined to be appropriate by the Court and in a manner not prejudicial to or inconsistent

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<sup>10</sup> Rome Statute, Article 68(2)

<sup>11</sup> Rome Statute, Article 67(1)(d)

<sup>12</sup> Rome Statute, Article 64(8)(a)

<sup>13</sup> Rome Statute, Articles 65(1) and 65(2)

<sup>14</sup> Rome Statute, Article 65(3)

<sup>15</sup> Rome Statute, Article 65(4)

<sup>16</sup> Rome Statute, Article 66(1)

<sup>17</sup> Rome Statute, Articles 66(2) and 66(3)

<sup>18</sup> Rome Statute, Article 67(1)(e)

with the rights of the accused and a fair and impartial trial. Their views and concerns may be presented by legal representatives<sup>19</sup>.

Once the parties have presented their evidence, the prosecution and defence present their final arguments. The defence always has the opportunity to speak last<sup>20</sup>.

The Court may order reparations to victims, including restitution, compensation and rehabilitation, and may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims<sup>21</sup>.

The sentence will be pronounced in public, and whenever possible, in the presence of the accused, as well as, victims or their legal representatives if they have taken part in the proceedings<sup>22</sup>.

### **Penalties**

The Court cannot impose the death penalty. The Court can impose terms of imprisonment of up to 30 years or, in exceptional circumstances, life imprisonment. The Court may, in addition, order a fine, forfeiture of proceeds, property or assets derived from the committed crime<sup>23</sup>.

A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated their willingness to accept sentenced persons<sup>24</sup>.

### **Appeal and Revision**

The judgement of the Trial Chamber is subject to appeal<sup>25</sup>.

The Appeals Chamber may reverse or amend the decision or sentence, or order a new trial before a different Trial Chamber. The Appeals Chamber can remand a factual issue back to the original Trial Chamber and also call evidence itself in order to determine the issue<sup>26</sup>.

It is also possible to seek revision of a conviction or sentence<sup>27</sup>.

Anyone who has been the victim of unlawful arrest or detention will have the right to compensation<sup>28</sup>.

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<sup>19</sup> Rome Statute, Article 68(3)

<sup>20</sup> Rules of Procedure and Evidence, Rule 141

<sup>21</sup> Rome Statute, Article 75(2)

<sup>22</sup> Rome Statute, Article 76(4); Rules of Procedure and Evidence, Rule 144

<sup>23</sup> Rome Statute, Article 77

<sup>24</sup> Rome Statute, Article 103(1)(a)

<sup>25</sup> Rome Statute, Article 81

<sup>26</sup> Rome Statute, Article 83

<sup>27</sup> Rome Statute, Article 84

<sup>28</sup> Rome Statute, Article 85(1)