



Annex to Administrative Instruction

Ref. ICC/AI/2019/006

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RULES OF PROCEDURE OF THE DISCIPLINARY ADVISORY BOARD

SECTION I: GENERAL

Rule 1: Use of terms

For the purpose of these rules of procedure, unless otherwise indicated:

"Panel" or "Panel of the DAB" shall mean a disciplinary Panel, established by the Chairperson of the DAB for consideration of a particular case or series of cases, in accordance with Chapter X of the Staff Rules of the Court. Except in case of a request pursuant to Staff Rule 110.3 (k) and (1), such a Panel shall be composed of three members, one member appointed by the Registrar, in consultation with the Presidency, one member appointed by the Prosecutor and one member elected by the Staff Representative Body.

"Allegations of unsatisfactory conduct" or "charges" refers to specific contentions describing a staff member's alleged failure to act in accordance with any official document of the Court governing rights and obligations of staff members, as provided in Staff Regulation 10.2 of the Court ("Staff Regulation") and Staff Rule 110.1, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures.

"Counsel" or "Counsels" shall mean any staff member or former staff member who has been chosen by the staff member who is the subject of the proceedings to assist or represent her/him before the Panel of the DAB at her/his own expense, in accordance with Staff Rule 110.2(d).

"Evidence" shall mean cheques, invoices, administrative forms, signed written statements by witnesses or any other document or record relevant to the alleged unsatisfactory conduct and related contentions and claims made by the Parties.

"Hearing" shall mean a proceeding conducted by a Panel of the DAB in which the Parties and witnesses are invited to participate in person, or via telephone, video or other means of communication.

"The DAB" shall mean the Disciplinary Advisory Board constituted pursuant to Staff Rule 110.3.

"Notice" shall mean a written notification sent by messenger, regular mail, pouch, fax or email. Where it is necessary to observe time-limits, notice may be given by telephone, but must subsequently be confirmed in writing.

"Members of the DAB" shall include the Chairperson, members appointed by the Registrar and Prosecutor and members elected by the Staff Representative Body, under Staff Rule 110.3(b).

"The staff member" shall mean an active or, in case of summary dismissal, former staff member, who has been notified, in writing, of the allegations of unsatisfactory conduct against her/him as provided in Staff Rule 110.1, or in accordance with ICC/AI/2005/005 and ICC/AI/2005/006.

"Parties" shall mean a staff member against whom disciplinary proceedings have been initiated and the Registrar or the Prosecutor, as appropriate, who initiated such disciplinary proceedings. Or, in case of a complaint brought before the DAB in accordance with Section 7 of ICC/AI/2005/005 or with Section 6 of ICC/AI/2005/006, "Parties" shall mean the individual who launched the complaint and the alleged harasser or the individual alleged of discriminatory conduct, respectively.

"Chairperson" shall mean the Chairperson of the DAB, elected from among the members of the DAB by majority vote.

"DAB Secretary" shall mean the Secretary or her/his alternate appointed by the Registrar in consultation with the Prosecutor to coordinate all matters related to the DAB.

"Presiding Officer" shall mean a member of the DAB appointed by the Chairperson, in consultation with its members, to preside over and direct the work of the Panel.

"Staff Rules" shall mean the Staff Rules of the International Criminal Court promulgated by the Registrar, in agreement with the Presidency and Prosecutor, and applicable to the staff members of the Court.

"These rules" shall mean the Rules of Procedure of the Disciplinary Advisory Board of the International Criminal Court.

"Time-limit" shall mean the deadline for the filing of a submission or for the taking of any other action. For the purpose of these rules, the time-limit shall take effect upon the close of business on the date on which the submission is due or the action is to be taken, in accordance with the Staff Rules, these rules, or a ruling made by the Chairperson or the Panel. If it falls on a weekend or an official holiday, the time-limit shall be deemed to extend to the close of business on the first working day thereafter.

"Working languages" shall mean English and French.

Rule 2: Interpretation

A Panel of the DAB shall, to the extent required, interpret these rules, in consultation with the Chairperson if need be.

SECTION II: PROCEDURES

Rule 3: Notification to staff member

- (a) The DAB Secretary shall inform all staff members concerned in writing about a decision of the Registrar or the Prosecutor, as appropriate, to refer a case to the DAB either in accordance with Chapter X of the Staff Rules, or Section 7 of ICC/AI/2005/005 or Section 6 of ICC/AI/2005/006. The DAB Secretary shall at the same time transmit to all staff members concerned a copy of the entire dossier of

the case as submitted to the DAB by the Registrar or the Prosecutor, as appropriate.

- (b) In addition to the above, the staff member concerned shall be provided with:
 - i. a list of the rights of the staff member, such as the right to seek the assistance of another person, who shall be an active or former staff member, in accordance with Staff Rule 110.2 (a) and Staff Rule 110.2 (d);
 - ii. a copy of these Rules of Procedure; and
 - iii. a reminder about the established deadline, if any, for submitting written observations or explanations.
- (c) The staff member concerned shall confirm receipt of the above communication in writing to the DAB Secretary.

Rule 4: Composition of the Panel

- (a) The DAB Chairperson shall constitute a Panel from among the members of the DAB with due regard to conflicts of interest, impartiality and confidentiality in accordance with Staff Rules 110.3(j) and 110.3. (1).
- (b) As soon as the Panel is constituted, the Secretary has to inform the Parties of the composition of it.
- (c) A request for disqualification of a Panel member on his or her own motion or by either party under Staff Rule 110.3 (j) shall be made in writing within three working days of receipt of notice of the composition of the Panel, and shall state the reason for requesting such disqualification. The decision on such request shall be made by the Chairperson of the DAB.

- (d) As soon as the composition of the Panel is agreed upon by both Parties, the DAB Secretary shall send the facts of the case to the members of the Panel with a date for the first meeting.
- (e) If any member of the Panel considers that she/he has a conflict of interest, she/he shall inform the Chairperson, and the Chairperson will appoint an alternate member to the Panel. The Secretary shall inform the Parties as soon as possible of the change in the composition of the Panel. The Parties shall have two days to disqualify the proposed new member of the Panel and provide her/his reasons for such a request.
- (f) As far as possible, the composition of the Panel shall not be changed until the conclusion of the consideration of the case, including the preparation of the report, except in case of conflict of interest of a member of the Panel in accordance with paragraph (e) above.

Rule 5: Notice of hearing

- (a) Proceedings shall be in written form unless the Panel decides otherwise.
- (b) If a hearing is scheduled, notice of the date, time and place shall be sent to the Parties by the DAB Secretary. For the continuation of a hearing, oral notice may be given, followed by written confirmation.

Rule 6: Submission of written material

- (a) As stated in Staff Rule 110.4(c), proceedings before the DAB shall normally be limited to the original presentation of the case together with brief statements and rebuttals, made in writing or orally if so decided by the Panel.
- (b) Each written submission shall be presented to the Panel of the DAB through the DAB Secretary. All such material which is presented to the Panel of the DAB, either prior to or during the consideration of the case, shall be submitted in the

original (where available) with six copies. Each copy shall be a complete copy of the original. The original and the required copies shall be submitted to the DAB Secretary for distribution to the other party and the members of the Panel. When an original document is not available, the Panel may require that certified true copies be submitted. The Panel may require that any document be produced by the party in possession.

- (c) Submissions to the Panel of the DAB shall normally be in English or French. The Panel may, in the interest of justice, authorise a staff member to make submissions in any other ICC official language where the circumstances so warrant. Any submitted document not in English or French shall be accompanied by a certified translation in either English or French.
- (d) A copy of each written submission and document furnished to the Panel of the DAB in connection with a case will generally be communicated by the DAB Secretary, upon receipt, to the other party. If a party or witness refuses to produce a document on the grounds of confidentiality, the Panel may demand its production for the limited purpose of determining whether its relevance overrides its confidentiality, without first transmitting a copy to the other party. Should it be so determined by the Panel, a copy of such document, or only the relevant parts thereof, shall be transmitted to the other party.

Rule 7: Rapporteur

- (a) The members of the Panel shall appoint a Rapporteur from among themselves.
- (b) The Rapporteur shall be responsible for:
 - i. compiling information;
 - ii. examining the factual basis of the case and presenting an assessment to the other Panel members based on the discussions held;

- iii. advising the Panel whether it should obtain the testimony of the staff member concerned or of other witnesses; and
- iv. drafting the report.

SECTION III: CONSIDERATION OF THE CASE

Rule 8: Initial meeting of the Panel

The initial meeting of the Panel shall be convened with maximum dispatch after the Parties have acknowledged receipt of a communication from the DAB and agreed with the proposed membership of the Panel that will consider the case. During the meeting, the Panel shall decide on the organization of its work and may decide on any further information to be requested and whether to hold a hearing.

Rule 9: Calling of witnesses

- (a) As per Staff Rule 110.4(d), the Panel may call witnesses at its sole discretion.
- (b) Testimony of the staff member concerned or of other witnesses may be by written deposition, personal appearance, by telephone or by other means of communication deemed appropriate by the Panel.

Rule 10: Notice of witnesses

The names of witnesses to be called by the Panel shall be submitted to the Parties at least five working days prior to the scheduled hearing. If it deems it necessary, the Panel may shorten the notice time.

Rule 11: Conduct of hearing

- (a) If there is no hearing, the Panel shall conduct its business *in camera*.

- (b) If a hearing is to be held, both Parties must be invited to attend and participate. A hearing may include presentations by the Parties and testimonies by witnesses or experts.
- (c) The normal sequence of a hearing is as follows:
- i. the Presiding Officer of the Panel declares the opening of the hearing. He/she shall direct that all persons involved in the DAB proceedings, - whether as the Panel members, Parties, or witnesses - observe strict confidentiality;
 - ii. the Presiding Officer shall read the allegations against the staff member;
 - iii. the Parties are invited to present their argument in full, starting with the person party who has triggered the proceedings;
 - iv. during their presentations, the Parties shall submit all the evidence which they deem relevant, including statements of their witnesses;
 - v. the Panel members may direct questions to the Parties at any point during or after the presentations. A party may put questions to the other party only after the other party's presentation, at the discretion of the Panel;
 - vi. witnesses or experts, if any, may be questioned by the Panel members and the Parties;
 - vii. additional statements may be made by the Parties at the discretion of the Panel;
 - viii. the staff member who is the subject of the proceedings shall have the opportunity to speak last.

- (d) The order of the speakers may be altered so as to accommodate special situations or requests, i.e., the appearance of witnesses or experts who are available during a limited period only.
- (e) Cross-examination is at the discretion of the Panel.

Rule 12: Additional submissions

- (a) The Panel may accept additional written or oral submissions from the Parties. It may also request the production of additional material or an oral statement from either party. The Panel may extend the time limits in order to receive these additional submissions.
- (b) Additional written submissions shall be limited to necessary information so as to avoid repetition and delay.

Rule 13: Written interrogatories

The Panel may request any necessary information from any party, witness or expert by written interrogatory. It shall have the discretion to decide whether it will seek such material through its Secretary. Copies of the questions and answers constituting the written interrogatory and reply thereto shall be provided to the Parties, each of whom will have an opportunity to comment upon it.

Rule 14: Report of the Panel

- (a) The DAB shall, by majority vote, adopt and submit a report to the Registrar or the Prosecutor, as appropriate, in accordance with Staff Rule 110.4(e).
- (b) The report of the Panel shall contain:
 - i. the charges and allegations of unsatisfactory conduct;

- ii. a summary of the staff member's response to the allegations and to the disciplinary referral, if any;
 - iii. a statement of the proceedings;
 - iv. findings indicating which of the charges, if any, appear to be supported by the evidence, including a synopsis of the evidence and the Panel's evaluation thereof;
 - v. any aggravating or mitigating factors that might be relevant;
 - vi. conclusions on the above;
 - vii. recommendations from the Panel to the Registrar or Prosecutor, as appropriate, as to what disciplinary measures, if any, should be applied; and
 - viii. a record of the votes on the advice, including any dissenting or separate opinion.
- (c) The report of the Panel shall normally be submitted to the Registrar or the Prosecutor, as appropriate, within 30 days of receipt of the referral by the DAB in accordance with Staff Rule 110.4(b). The Panel may, under exceptional circumstances, request the Registrar or the Prosecutor, as appropriate, for an extension of the time limit.
- (d) The Secretary of the DAB shall also inform the staff member of the date when the report was submitted to the Registrar or the Prosecutor, as appropriate, for final decision.

Rule 15: Base-less or malicious complaint

- (a) Before making a finding pursuant to Section 7.6 of ICC/AI/2005/-005 that a complaint for alleged harassment has been base-less or malicious, the Panel shall notify the complainant that the DAB Panel is considering such finding. The

complainant shall have the right to make a written submission to the DAB Panel, within a time period set by the DAB Panel and limited to the question of whether or not the complaint had been base less or malicious.

- (b) If the DAB Panel found a complaint made under Section 7 of ICC/AI/2005/005 or Section 6 of ICC/AI/2005/006 base-less or malicious, the Registrar or the Prosecutor, as appropriate, may initiate disciplinary proceedings against the complainant, in accordance with Article X of the Staff Regulations and Chapter X of the Rules. In this case, the newly established DAB Panel shall advise the Registrar or the Prosecutor, as appropriate, whether or not disciplinary measures shall be imposed on the complainant and, if so, what kind of disciplinary measures would be appropriate. The newly established DAB Panel shall not reconsider the findings of the previous DAB Panel.

SECTION IV: REVIEW OF SUMMARY DISMISSAL

Rule 16: Request for review

A request for review of summary dismissal shall be submitted to the Secretary of the DAB pursuant to Staff Rule 110.2 (c) within sixty days of receiving written notification of the measure. It shall include:

- i. The name and contact information of the staff member requesting review of the summary dismissal and a brief description of her/his employment history;
- ii. The name and contact information of the Counsel, if any;
- iii. A copy of the summary dismissal which the staff member requests be reviewed;
- iv. A statement of relevant facts (in chronological order) with the necessary attachments;

- iv. The contention as to the validity of her/his summary dismissal, including her/his arguments on the issue of due process;
- v. An index of all documents annexed in full and numbered; and
- vi. The signature of the requesting party, of her/his Counsel, if any, and the date of submission.

Rule 17: Procedure

The same procedure as provided in sections II and III above shall be followed, except for the conduct of the hearing which is modified as follows:

- i. The requesting party bears the initial burden of showing the invalidity or disproportionality of the summary dismissal;
- ii. The Presiding Officer of the Panel declares the opening of the hearing and requests that all persons involved in the review - whether as Panel members, Parties, or witnesses -, observe strict confidentiality;
- iii. The Presiding Officer of the Panel then invites the requesting party to make his/her presentation of the case;
- iv. The Representative of the Registrar or of the Prosecutor, as appropriate, is then invited to present his/her arguments;
- iv. The Panel members may direct questions to the Parties at any point during or after the presentations. A party may put questions to the other party only after the completion of the other party's presentation and any questions should be first addressed to the Presiding Officer who will in turn decide whether the question is relevant or not to the case;
- v. Witnesses or experts, if any, may be questioned by the Panel members;

- vii. Closing statement shall be made first by the requesting party so as to permit the Representative of the Registrar or the Prosecutor, as appropriate, to have the opportunity to speak last.

SECTION V: MISCELLANEOUS

Rule 18: Organization

- (a) The Chairperson of the DAB is appointed for two years. She/he is eligible for reappointment and shall remain in office until her/his successor is appointed as long as she/he is a staff member of the Court.
- (b) The Chairperson of the DAB, during her/his term, shall direct the work and operation of the DAB. She/ he inter alia shall:
 - i. Represent the DAB;
 - ii. Convene once a year and preside over the plenary meetings of the DAB;
 - iii. Constitute Panels of the DAB for the consideration of cases;
 - iv. Review and decide on the requests of the Parties to disqualify any member from the consideration of a specific case;
 - v. Excuse any member at that member's request from the consideration of a specific case;
 - vi. Take all procedural decision concerning individual disciplinary cases for which a Panel has not been constituted.

Rule 19: Amendments

These rules may be amended by a two-thirds majority vote of the DAB members voting at any time, at a properly convened special meeting attended by a quorum. Seven members (including alternate members) shall constitute a quorum. Any amendments to these rules thus adopted by the DAB shall take effect upon promulgation by way of an administrative instruction.