

25 March 1998

Original: English

**Preparatory Committee on the Establishment
of an International Criminal Court**
16 March-3 April 1998
Working Group on Procedural Matters

Preliminary draft consolidated text

Article 73 [48]. Appeal against judgement or sentence

1. A [decision] [conviction] under article 65 [45] may be appealed, in accordance with the Rules, as provided for below:

(a) The Prosecutor may make such an appeal on the following grounds:

- (i) procedural error,
- (ii) error of fact, or
- (iii) error of law;

(b) The convicted person or the Prosecutor on that person's behalf may make such an appeal on the following grounds:

- (i) procedural error,
- (ii) error of fact,
- (iii) error of law, or
- (iv) any other ground that affects the fairness or reliability of the proceedings or decision.

1 *bis*. (a) A sentence may be appealed, in accordance with the Rules, by the Prosecutor or the convicted person on the ground of [significant] disproportion between the crime and the sentence.

(b) If on an appeal against sentence, the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 73, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 74.

The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under article 73, paragraph 1 *bis* (a).



[1 *ter.*

Option 1

The Prosecutor or the convicted person may, in accordance with the Rules, appeal [to the Appeals Chamber] against a decision rendered *in absentia* under article 56 [37].

Option 2

The Prosecutor or the convicted person may not appeal against a decision rendered *in absentia* under article 56 [37] except that an appeal against judgement given on the merits in the absence of the accused shall be allowed if the accused accepts the judgement or was represented during the trial before the Trial Chamber by Defence Counsel appointed by the accused.]

2. (1) Unless the Trial Chamber otherwise orders, a convicted person shall remain in custody pending an appeal.

When his time in custody exceeds the sentence of imprisonment imposed, he shall be released, but if the Prosecutor is also appealing, his release may be subject to the conditions under (2) below.

(2) In case of an acquittal, the accused shall be released immediately, subject to the following:

(a) Under exceptional circumstances, and having regard, *inter alia*, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;

(b) A decision by the Trial Chamber under (a) above may be appealed in accordance with the rules.

3. Subject to the provisions of paragraph 2 (1), execution of the judgement shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

