Number 30 *of* 2006

INTERNATIONAL CRIMINAL COURT ACT 2006

REVISED

Updated to 17 May 2021

This Revised Act is an administrative consolidation of the *International Criminal Court Act 2006*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Residential Tenancies Act 2021* (5/2021), enacted 30 March 2021, and all statutory instruments up to and including *European Union (European Arrest Warrant Act 2003) (Amendment) Regulations 2021* (S.I. No. 150 of 2021), made 26 March 2021, were considered in the preparation of this Revised Act.

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Number 30 *of* 2006

INTERNATIONAL CRIMINAL COURT ACT 2006

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Number 30 *of* 2006

INTERNATIONAL CRIMINAL COURT ACT 2006

REVISED

Updated to 17 May 2021

AN ACT TO PROVIDE FOR THE PUNISHMENT BY COURTS IN THE STATE AND BY COURTS-MARTIAL OF GENOCIDE, CRIMES AGAINST HUMANITY, WAR CRIMES AND OTHER OFFENCES WITHIN THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT, WHICH WAS ESTABLISHED UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, DONE AT ROME ON 17 JULY 1998; TO ENABLE EFFECT TO BE GIVEN TO REQUESTS BY THAT COURT FOR ASSISTANCE IN THE INVESTIGATION OR PROSECUTION OF THOSE OFFENCES, INCLUDING REQUESTS TO ARREST AND SURRENDER PERSONS, TO FREEZE ASSETS AND TO ENFORCE ANY FINES OR FORFEITURES IMPOSED BY IT; TO MAKE PROVISION IN RELATION TO ANY SITTINGS OF THE COURT THAT MAY BE HELD IN THE STATE; AND TO PROVIDE FOR RELATED MATTERS.

[31*st October*, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

C1 References to "Department of Justice, Equality and Law Reform" and "Minister for Justice, Equality and Law Reform" construed (2.04.2011) by *Justice and Law Reform (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 138 of 2011), in effect as per art. 1(2).

4. In an enactment or instrument made under an enactment—

(*a*) references to the Department of Justice and Law Reform shall be construed as references to the Department of Justice and Equality;

(*b*) references to the Minister for Justice and Law Reform shall be construed as references to the Minister for Justice and Equality.

Editorial Notes:

E1 Previous affecting provision: references to "Department of Justice, Equality and Law Reform" and "Minister for Justice, Equality and Law Reform" construed (2.06.2010) by *Justice, Equality and Law Reform (Alteration of Name of Department and Title of Minister) Order 2010* (S.I. No. 216 of 2010), in effect as per art. 1(2).

PART 1

Preliminary and General

Short title.

1.— This Act may be cited as the International Criminal Court Act 2006.

Interpretation (general).

2.— (1) In this Act, unless the context otherwise requires—

"act", except where the context otherwise requires, includes omission, and references to conduct are to be construed accordingly;

"Act of 1994" means the Criminal Justice Act 1994;

"ancillary offence" shall be construed in accordance with *section 8 (1)* ;

"another state" means a state other than the State;

"Article" means an Article of the Statute;

"document" includes—

(*a*) a map, plan, graph, drawing, photograph, photographic negative, record, book, periodical or pamphlet, and

(*b*) where appropriate, any tape, computer disk or other thing on which data capable of conversion into any permanent legible form is stored;

"Elements of Crimes" means Elements of Crimes (including any amendments thereto) adopted under Article 9;

"Extradition Acts" means the Extradition Acts 1965 to 2001;

"functions" includes powers and duties, and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the performance of the duties;

"ICC offence" has the meaning given to it by *section 9 (1)* ; " Minister " means the Minister for Justice, Equality and Law Reform;

"Pre-Trial Chamber" means the Pre-Trial Chamber of the International Criminal Court;

"prison" means a place of custody administered by or on behalf of the Minister and includes—

(*a*) F1**[**...**]**

(*b*) a place provided under section 2 of the Prisons Act 1970,

(*c*) a place specified under section 3 of the Prisons Act 1972, and

(*d*) a remand centre designated under section 88 of the Children Act 2001;

"property" includes—

(*a*) money and all other property, real or personal, movable or immovable,

(*b*) choses in action and any other intangible or incorporeal property, and

(*c*) proceeds of the disposal of property;

"Prosecutor" means the Prosecutor of the International Criminal Court;

"remand institution" means an institution (other than a prison) within the meaning of the Criminal Justice Act 1960;

"Rules of Procedure and Evidence" means the Rules of Procedure and Evidence (including any amendments thereto) adopted under Article 51;

"Statute" means the Rome Statute of the International Criminal Court, done at Rome on 17 July 1998;

"surrender order" means an order of the High Court under *section 25* for the surrender of a person.

(2) Nothing in this Act (except in so far as may be required by *section 18*) prevents the surrender of a person in accordance with the Extradition Acts or the European Arrest Warrant Act 2003.

(3) In this Act, unless the context otherwise requires—

(*a*) a reference to a section or Part is to a section or Part of this Act,

(*b*) a reference to a subsection, paragraph or subparagraph is to a subsection, paragraph or subparagraph of the provision in which the reference occurs,

(*c*) a reference to a Schedule is to a Schedule to this Act, and

(*d*) a reference to any enactment is a reference to that enactment as amended or adapted by or under any subsequent enactment.

Annotations

Amendments:

F1 Deleted (7.04.2017) by *Prisons Act 2015* (57/2015), s. 18, S.I. No. 134 of 2017.

Interpretation by courts of Act and Statute.

3.— (1) In interpreting the Act and Statute a court, where necessary, may—

(*a*) take account of the Rules of Procedure and Evidence, the Elements of Crimes and any relevant judgment or decision of the International Criminal Court,

(*b*) take account of any other relevant judgment, and

(*c*) consider the *travaux préparatoires* relating to the Statute and the published views of commentators on its text and give them such weight as may appear to the court to be appropriate in the circumstances.

(2) For the purposes of its application in relation to the State references in the Statute to a State Party, requested state or custodial state shall be construed, where the context so permits—

(*a*) as references to the State, or

(*b*) where the provisions in which the references occur require, or may require, the performance on behalf of the State of executive functions, as references to the Minister.

(3) Judicial notice shall be taken of the Statute.

(4) The text of the Statute in the English language is set out in *Schedule 1* for convenience of reference.

(5) In this section "court" means a court in the State and includes a court-martial, whether held within or outside the State.

Requests by International Criminal Court.

4.— (1) In relation to any request by the International Criminal Court for the arrest and surrender, or the provisional arrest, of a person or for assistance under Article 93 (other forms of co-operation) the Minister may presume, unless he or she has any information to the contrary, that the request—

(*a*) has been duly made and transmitted in accordance with the relevant provisions of the Statute, and

(*b*) is being made in connection with the investigation or prosecution of offences within the jurisdiction of the Court.

(2) (*a*) Where a request by the Court involves the disclosure of information and such a disclosure would in the Minister's opinion be prejudicial to the interests of the security of the State, he or she shall—

(i) in accordance with Article 93.5, consider whether the information can be provided subject to specified conditions or whether the assistance concerned can be provided at a later date or in an alternative manner, and

(ii) if of opinion that the information cannot be so provided, act in conjunction with the Prosecutor, the defendant's legal advisers or the Pre-Trial Chamber or Trial Chamber of the Court to seek to resolve the issue in accordance with paragraph 5 of Article 72.

(*b*) Where the Minister becomes aware that such information is, or is likely to be, disclosed in an investigation or proceedings instituted by the Court, he or she shall, in accordance with paragraph 4 of that Article, intervene in order to obtain a resolution of the issue.

(*c*) If—

(i) the issue remains unresolved, and

(ii) the Minister is of opinion that there are no means by which, or conditions under which, the information could be disclosed without prejudicing the interests of the security of the State,

the Minister shall—

(I) notify the Prosecutor or the Court of that opinion and of the specific reasons for it unless to do so would itself necessarily result in prejudicing those interests, and

(II) participate in any consultations requested by the Court under Article 72.7(*a*)(i) in relation to the issue.

(*d*) For the purposes of this subsection Article 72 and paragraphs 4 and 5 of Article 93 shall have effect with any necessary modifications.

(*e*) In any proceedings a document purporting to be signed by the Minister and to certify that in his or her opinion—

(i) disclosure of information in compliance with a request from the Court, or

(ii) as the case may be, any further such disclosure,

would be prejudicial to the interests of the security of the State shall be admissible in evidence, without further proof, of that opinion.

(*f*) In this subsection references to the disclosure of information include references to the provision of documents, and cognate words shall be construed accordingly.

(3) Where compliance with a request by the Court is prohibited under the law of the State on the basis of a fundamental legal principle of general application, the Minister shall, in accordance with Article 93.3, consult with the Court to try to resolve the matter.

(4) If a request for assistance is refused, the Minister shall inform the Court or the Prosecutor of the reasons for the refusal.

(5) In accordance with Article 93.8 the Minister—

(*a*) may, when necessary, transmit information or documents to the Prosecutor on a confidential basis for use by him or her solely for the purpose of generating new evidence, and

(*b*) may subsequently consent to their disclosure.

(6) Any request mentioned in *subsection (1)* and any supporting or related documents shall constitute official information within the meaning of the Official Secrets Act 1963.

(7) Competing requests for assistance from the Court and from another state pursuant to an international obligation of the State, other than requests for surrender or extradition, shall be dealt with by the Minister in accordance with Article 93.9.

Expenses.

5.— The expenses incurred in the administration of this Act (including the contribution of the State to the funds of the International Criminal Court under Article 115 but excluding costs to be borne by the Court under Article 100) shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART 2

Domestic Jurisdiction in ICC Offences

Interpretation (*Part 2*).

6.— (1) In this Part, unless the context otherwise requires—

"court" means, as appropriate, the Central Criminal Court, Special Criminal Court or, in relation to persons subject to military law, a court-martial, whether held inside or outside the State;

"crime against humanity" means any of the acts specified in Article 7;

"genocide" means any of the acts specified in Article 6;

"war crime" means any of the acts specified in Article 8.2 (except subparagraph (*b*)(xx)).

(2) In Articles 7 and 8 references to murder shall be construed as references to the killing of a person in such circumstances as would, if committed in the State, constitute murder.

Genocide, crimes against humanity and war crimes.

7.— (1) Any person who commits genocide, a crime against humanity or a war crime is guilty of an offence.

(2) The Genocide Act 1973 (the "1973 Act") is repealed.

(3) The repeal effected by *subsection (2)* is without prejudice to the obligations of the State under the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly of the United Nations on 9 December 1948, the text of which is set out in *Schedule 4*.

(4) Notwithstanding *subsection (2)* , proceedings under the 1973 Act may be taken after the passing of this Act for an offence under that Act committed before such passing.

Annotations

Editorial Notes:

E2 Obligation imposed on applicant for, or holder of, licence granted under *Taxi Regulation Act 2013* (37/2013), s. 9, to notify licencing authority of fact of conviction in respect of offence under section (6.04.2014) by *Taxi Regulation Act 2013* (37/2013), s. 31(1), S.I. No. 163 of 2014.

E3 Offence under section included in definition of "specified offence" for purposes of *Taxi Regulation Act 2013* (37/2013), s. 30 (6.04.2014) by *Taxi Regulation Act 2013* (37/2013), s. 30 and sch., S.I. No. 163 of 2014.

E4 Offence under section included in definition of "relevant offence" for purposes of *Criminal Procedure Act 2010* (27/2010), Part 3 (1.09.2010) by *Criminal Procedure Act 2010* (27/2010), s. 7 and sch., S.I. No. 414 of 2010.

E5 Offence under section included in definition of "relevant offence" for purposes of *Defence Act 1954* (18/1954), s. 192, by *Defence Act 1954* (18/1954), s. 192(1A), as inserted (1.09.2008) by *Defence (Amendment) Act 2007* (24/2007), s. 42, S.I. No. 254 of 2008.

Offences ancillary to genocide, crimes against humanity and war crimes.

8.— (1) Any person who does any act specified in paragraph 3 of Article 25 (crimes ancillary to genocide, crimes against humanity and war crimes) is guilty of an offence (in this Act referred to as an "ancillary offence").

(2) *Subsection (1)* is without prejudice to section 7 (penalties for assisting offenders) of the Criminal Law Act 1997.

Annotations

Editorial Notes:

E6 Obligation imposed on applicant for, or holder of, licence granted under *Taxi Regulation Act 2013* (37/2013), s. 9, to notify licencing authority of fact of conviction in respect of offence under section (6.04.2014) by *Taxi Regulation Act 2013* (37/2013), s. 31(1), S.I. No. 163 of 2014.

E7 Offence under section included in definition of "specified offence" for purposes of *Taxi Regulation Act 2013* (37/2013), s. 30 (6.04.2014) by *Taxi Regulation Act 2013* (37/2013), s. 30 and sch., S.I. No. 163 of 2014.

E8 Offence under section included in definition of "relevant offence" for purposes of *Criminal Procedure Act 2010* (27/2010), Part 3 (1.09.2010) by *Criminal Procedure Act 2010* (27/2010), s. 7 and sch., S.I. No. 414 of 2010.

E9 Offence under section included in definition of "relevant offence" for purposes of *Defence Act 1954* (18/1954), s. 192, by *Defence Act 1954* (18/1954), s. 192(1A), as inserted (1.09.2008) by *Defence (Amendment) Act 2007* (24/2007), s. 42, S.I. No. 254 of 2008.

Proceedings for ICC offence.

9.— (1) In this Act "ICC offence" means genocide, a crime against humanity, a war crime or an ancillary offence.

(2) No further proceedings (other than a remand in custody or on bail) shall be taken in relation to a person charged with an ICC offence except by or with the consent of the Director of Public Prosecutions.

(3) Proceedings for an ICC offence committed outside the State may be taken in any place in the State, and the offence may for all incidental purposes be treated as having been committed in that place.

(4) Without prejudice to *section 7 (4)* , proceedings may not be taken in respect of conduct constituting an ICC offence if the conduct occurred before the passing of this Act.

Penalty for ICC offence.

10.— (1) A person convicted of an ICC offence is liable—

(*a*) to imprisonment for life if—

(i) the offence involves murder, or

(ii) a term of life imprisonment would be justified by the extreme gravity of the offence and the individual circumstances of the convicted person,

(*b*) in any other case, to imprisonment for a term not exceeding 30 years,

(*c*) to a fine in accordance with the criteria provided for in the Rules of Procedure and Evidence, and

(*d*) if the person has obtained property as a result of or in connection with the offence, to having a confiscation order made in respect of him or her under section 9 of the Act of 1994.

(2) In determining the penalty to be imposed the court shall take account of the provisions of Article 78 (determination of the sentence).

(3) Sums recovered under a confiscation order made in relation to an ICC offence shall, if the court so directs, be applied wholly or partly in reparation to victims of the conduct constituting the offence.

Offences against administration of justice.

11.— (1) It shall be an offence for a person to do intentionally any of the acts mentioned in paragraph 1 of Article 70 (offences against the administration of justice) in relation to proceedings—

(*a*) before the International Criminal Court, or

(*b*) before a court for an ICC offence,

and for the purposes of the proceedings mentioned in *paragraph (b)* references to the International Criminal Court in paragraph 1 and the first sentence of paragraph 2 of that Article shall be construed as references to a court.

(2) (*a*) A person convicted of an offence under *subsection (1) (b)* is liable—

(i) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(*b*) Subject to *paragraph (a) (i)* , the amount of any fine to be imposed shall be determined having regard to the Rules of Procedure and Evidence.

(3) No further proceedings (other than a remand in custody or on bail) shall be taken in relation to a person charged with an offence under this section except by or with the consent of the Director of Public Prosecutions.

Extra-territorial jurisdiction.

12.— (1) An Irish national who does an act outside the State that, if done within it, would constitute an ICC offence or an offence under *section 11 (1)* is guilty of that offence and liable to the penalty provided for it.

(2) *Subsection (1)* also applies in relation to a person of any other nationality who does an act outside the State that, if done within it, would constitute both—

(*a*) a war crime under subparagraph (*a*) (grave breaches of the Geneva Conventions) or (*b*) (other specified serious violations of the laws and customs applicable in international armed conflict) of Article 8.2, and

(*b*) an offence under section 3 (grave breaches of the Geneva Conventions and Protocol I thereto) of the Geneva Conventions Act 1962.

(3) An act which—

(*a*) is done outside the State on board an Irish ship or Irish controlled aircraft, and

(*b*) if done within it, would constitute an ICC offence,

is deemed for the purposes of this Act to have been done within the State.

(4) The reference in *subsection (2) (b)* to section 3 of the Geneva Conventions Act 1962 is to that section as amended by section 3 of the Geneva Conventions (Amendment) Act 1998 and by *paragraph 2* of *Schedule 3.*

(5) In this section—

"Irish controlled aircraft" has the meaning given to it by section 1(1) of the Air Navigation and Transport Act 1973;

"Irish ship" has the meaning given to it by section 9 of the Mercantile Marine Act 1955.

Annotations

Amendments:

F2 Substituted by *Merchant Shipping (Registration of Ships) Act 2014* (43/2014), s. 68 and sch. 4, not commenced as of date of revision.

Modifications (not altering text):

C2 Prospective affecting provision: definition of "Irish ship" substituted by *Merchant Shipping (Registration of Ships) Act 2014* (43/2014), s. 68 and sch. 4, not commenced as of date of revision.

Extra-territorial jurisdiction.

(5) In this section— ...

F2**[** 'Irish ship' means an Irish ship within the meaning of section 33 of the Merchant Shipping (Registration of Ships) Act 2014.**]**

Applicable law.

13.— (1) The law (including common law) of the State shall, subject to *subsection (2)* , apply in determining whether a person has committed an offence under this Part.

(2) Article 27 (application of Statute to all persons without any distinction based on official capacity) and paragraphs (*a*) and (*b*) of Article 28 (responsibility of commanders and other superiors for crimes within the jurisdiction of the International Criminal Court) shall apply, as appropriate and with any necessary modifications, in relation to any such determination.

(3) This section is without prejudice to *section 3 (1)* .

Protection of victims and witnesses.

14.— (1) In proceedings for an offence under this Part—

(*a*) the measures specified in paragraphs 1 and 5 of Article 68 (protection of victims and witnesses and their participation in proceedings) shall, where appropriate, be taken during the investigation and prosecution of the offence, and

(*b*) the court concerned shall, where appropriate, take the measures specified in paragraphs 1 to 3 and 5 of that Article.

(2) Any such measures or the manner in which they are taken shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

(3) An application may be made in any such proceedings by or on behalf of the Director of Public Prosecutions for necessary measures to be taken for the protection of any servants or agents of the State involved in the proceedings and for the protection of confidential or sensitive information; and the court may grant the application if satisfied that it is in the interests of justice to do so.

PART 3

Requests by International Criminal Court for Arrest and Surrender of Persons

Interpretation (*Part 3*).

15.— In this Part—

F3**[** 'appeal proceedings' means proceedings relating to—

(a) a complaint under Article 40.4.2° of the Constitution (including any proceedings on appeal from a decision on the complaint),

(b) an appeal on a point of law to the Court of Appeal against a surrender order or an appeal to that Court against a refusal of such an order, or

(c) an appeal to the Supreme Court (whether under Article 34.5.4° or on an appeal from a decision of the Court of Appeal);**]**

"provisional arrest warrant" means a warrant issued under *section 22 (1)* ;

"state of enforcement" means a state (other than the State) which is designated by the International Criminal Court under Article 103(1) from a list of states which have indicated to the Court their willingness to accept persons sentenced by it.

Annotations

Amendments:

F3 Substituted (28.10.2014) by *Court of Appeal Act 2014* (18/2014), s. 74(3) and sch. 2 item 6, S.I. No. 479 of 2014.

Effect of release under this Part.

16.— Where—

(*a*) a person whose surrender has been requested by the International Criminal Court for an offence within its jurisdiction is in custody under this Part, and

(*b*) the person is also in custody for another offence,

his or her release under this Part shall not affect his or her custody for that other offence.

Request for arrest and surrender.

17.— (1) A request by the International Criminal Court for the arrest and surrender of a person shall be communicated to the Minister in accordance with Articles 87, 89 and 91.

(2) The request shall be accompanied by—

(*a*) as accurate a description as possible of the person whose surrender is requested, together with any other information that will help to establish the person's identity and probable location,

(*b*) a brief statement of the facts of the case and their legal characterisation,

(*c*) the original or a certified copy of the warrant of arrest, and

(*d*) if the request relates to a person who has been convicted by the Court—

(i) the original or a certified copy of any previous warrant of arrest,

(ii) the original or a certified copy of the judgment of conviction,

(iii) information establishing that the person sought is the person referred to in the judgment, and

(iv) the original or a certified copy of any sentence imposed and, in the case of a sentence of imprisonment, a statement of any period already served and the period remaining to be served.

(3) If the information furnished by the Court is in the Minister's opinion insufficient, the Minister may request it to supply further information or documents.

(4) The Minister shall consult with the Court under Article 97 in relation to any difficulties that may impede or prevent the execution of a request.

(5) The Minister may act on a request or supporting document which otherwise complies with this section notwithstanding that it was received by him or her before the passing of this Act.

(6) An amended warrant of arrest shall be treated as if it were a new warrant, without prejudice to the validity of anything done under the old warrant.

Conflicting requests.

18.— (1) In this section "surrender proceedings" means proceedings before the High Court for the surrender of a person to another state following receipt of—

(*a*) a request under the Extradition Acts for his or her extradition to another state, or

(*b*) a F4**[**relevant arrest warrant**]** (within the meaning of the European Arrest Warrant Act 2003) in respect of the person.

(2) Where the Minister receives a request from the International Criminal Court for the arrest and surrender of a person under Article 89 and—

(*a*) surrender proceedings in respect of the person have been instituted but have not been determined, or

(*b*) the person is awaiting surrender to another state under the Extradition Acts or the European Arrest Warrant Act 2003,

then, pending a decision by the Minister in accordance with Article 90 on whether priority should be given to the request—

(i) the Minister shall notify the High Court of the request, and, on receipt of the notification, the Court may adjourn the proceedings for such period or periods

as it thinks fit and remand the person in custody or, subject to *section 26 (2)* , on bail, or

(ii) as the case may be, the person shall not be so surrendered.

(3) If the Minister decides in accordance with Article 90 that priority should be given to the request from the International Criminal Court and—

(*a*) the surrender proceedings have been so adjourned, the Minister shall cause the High Court to be notified of his or her decision, and, on receipt of the notification, the Court may order that the proceedings be discontinued and that the person concerned be brought before it to be dealt with in accordance with *section 25* , or

(*b*) the person is awaiting surrender to another state, the person shall not be so surrendered, and *sections 19* , *20* , *23* and *25* shall have effect in relation to the case.

(4) If, having consulted the International Criminal Court, the Minister decides in accordance with Article 90 that priority should not be given to the Court's request—

(*a*) the Minister shall cause the High Court to be notified accordingly, or

(*b*) if the person is awaiting surrender to another state, *subsection (2) (ii)* shall cease to have effect in relation to the person concerned.

(5) A discontinuance of surrender proceedings under *subsection (3) (a)* in respect of an offence is not a bar to instituting fresh such proceedings for it.

(6) This section has effect notwithstanding anything in the Extradition Acts and is without prejudice to F4**[**section 30(2)**]** of the European Arrest Warrant Act 2003.

Annotations

Amendments:

F4 Substituted (30.03.2021) by *European Union (European Arrest Warrant Act 2003) (Amendment) Regulations 2021* (S.I. No. 150 of 2021), reg. 18(a), (b), in effect as per reg. 1(2).

Certificate by Minister of making of request.

19.— (1) On receiving a request from the International Criminal Court for the arrest and surrender of a person the Minister shall, subject to this Part, certify that the request has been duly made.

(2) The Minister—

(*a*) may postpone action on the request until—

(i) the Court has determined any challenge to the admissibility of the case or to its jurisdiction (whether or not the challenge is a challenge by the Minister under Article 19(2)(*b*) to the admissibility of the case on the ground that it is being, or has been, investigated), or

(ii) the completion of any consultation between the Minister and the Court under Article 97 in relation to any difficulties that may impede or prevent the execution of the request,

and

(*b*) may, where the person concerned is being investigated or proceeded against in relation to an offence that is not an ICC offence, postpone such action in accordance with Article 94.1.

(3) In deciding under *subsection (2) (b)* whether to postpone action on a request the Minister shall have regard to the seriousness of the offence referred to in that subsection.

(4) If the Minister decides under *subsection (2) (b)* not to postpone action on a request, any proceedings referred to in that subsection that are pending shall, on the application of the Director of Public Prosecutions, be withdrawn, with liberty to re-enter.

(5) The Minister, if he or she decides to grant a request for the surrender of a person who is being proceeded against or is serving a sentence for an offence that is not an ICC offence, shall consult the Court in accordance with Article 89.4.

(6) The Minister shall not take action on a request if informed by the Court that it has determined that the case is inadmissible or that it is not proceeding further with the request for any other reason.

(7) In *subsection (2) (b)* "proceedings" does not include proceedings against a person under the Extradition Acts or the European Arrest Warrant Act 2003.

Issue of arrest warrant.

20.— (1) On production to the High Court of—

(*a*) a certificate by the Minister under *section 19* that a request has been duly made by the International Criminal Court for the arrest and surrender of a person, and

(*b*) copies of the request and of the accompanying documents and any other related documents,

the Court shall issue a warrant for the person's arrest, addressed to the Commissioner of the Garda Síochána.

(2) A document purporting to be—

(*a*) a certificate referred to in *subsection (1) (a)* , or

(*b*) a copy of any document referred to in *subsection (1) (b)* ,

is admissible, without further proof, as evidence of the matters mentioned in it.

(3) The Court shall cause the Minister to be notified forthwith of the issue of the warrant.

Request for provisional arrest.

21.— (1) This section applies where the Minister receives from the International Criminal Court a request, made in accordance with Article 92, for the provisional arrest of a person.

(2) If, where this section applies, it appears to the Minister that application should be made for a warrant for the person's provisional arrest, the Minister shall communicate the request to the Commissioner of the Garda Síochána, and the Commissioner shall cause such an application to be made to the High Court under *section 22* .

Issue of provisional arrest warrant.

22.— (1) The High Court may issue a warrant (in this Part referred to as a "provisional arrest warrant") for the arrest of a person on the sworn information of a member of the Garda Síochána not below the rank of inspector that he or she has reason to believe—

(*a*) that the International Criminal Court has made a request under Article 92 for the provisional arrest of the person on grounds of urgency,

(*b*) that the person is in, or on the way to, the State,

(*c*) that the person—

(i) is accused or suspected by that Court of having committed an ICC offence or an offence under *section 11 (1) (a)* , or

(ii) has been convicted by it of such an offence,

and

(*d*) that a request for the arrest and surrender of the person will be duly made.

(2) The Court shall cause the Minister to be informed forthwith of the issue of the warrant.

(3) Where, at any time before the execution of the warrant, it appears to the Minister that a request for the surrender of the person named in it will not be received from the International Criminal Court or that proceedings will not be instituted by it against the person, the Minister may by order cancel the warrant and shall forthwith cause the High Court to be notified accordingly.

(4) A provisional arrest warrant may be issued in respect of a person notwithstanding the previous issue or refusal of a warrant for the person's arrest under this Part.

Execution of arrest warrants.

23.— (1) A member of the Garda Síochána may execute a warrant issued under *section 20* or *22* even if the warrant is not in the member's possession.

(2) The member executing the warrant shall show the warrant to the arrested person and give him or her a copy of it—

(*a*) at the time of the arrest, or

(*b*) if the warrant or copy is not then in the member's possession, within 24 hours after the arrest.

(3) For the purpose of arresting a person under the warrant the member may enter (by force, if necessary) and search any place where the person is or where the member, with reasonable cause, suspects the person to be.

(4) The arrested person shall be brought before the High Court as soon as possible and be provided, where necessary, with a competent interpreter.

(5) The Court shall order that legal aid be provided for the arrested person if it appears to it that the person’s means are insufficient to enable him or her to obtain such aid.

(6) On the making of such an order the arrested person shall be entitled to free legal aid in the proceedings and for that purpose section 3 of the Criminal Justice (Legal Aid) Act 1962 shall apply, with the necessary modifications, in relation to the person as if he or she had been granted a legal aid (trial on indictment) certificate under that section.

Proceedings after provisional arrest.

24.— (1) Subject to *subsection (2)* , where—

(*a*) a person arrested under a provisional arrest warrant is brought before the High Court, and

(*b*) a certificate under *section 19* in respect of the person is not produced to it,

the Court shall remand the person in custody or, subject to *section 26 (2)* , on bail until the certificate is produced.

(2) Where a certificate under *section 19* is not produced to the Court within such period from the date of the provisional arrest as is specified for the time being in the

Rules of Procedure and Evidence for the receipt by a requested state of a request for surrender, the person, if in custody, shall be released.

Surrender order.

25.— (1) (*a*) Subject to *subsection (2)* , on application by or on behalf of the Minister for the surrender of a person arrested under *section 23* , the High Court may, if satisfied that the arrested person is the person named or described in the warrant of arrest and surrender issued by the International Criminal Court, make an order (in this Part referred to as a "surrender order") for the surrender of the person either—

(i) into the custody of that Court, or

(ii) if that Court so directs in the case of a person convicted by it, into the custody of the state of enforcement,

in accordance with arrangements to be made by the Minister.

(*b*) Where the application relates to a person arrested under a provisional arrest warrant, copies of the request by the International Criminal Court for his or her surrender and of the accompanying documents and any other related documents, together with a certificate by the Minister under *section 19* that the request has been duly made, shall be produced to the High Court.

(*c*) In accordance with paragraph 4, second sentence, of Article 59 the High Court may not consider whether the warrant of arrest was properly issued in accordance with paragraphs 1(*a*) and 1(*b*) of Article 58.

(2) (*a*) The High Court shall adjourn the proceedings pending the outcome of—

(i) any challenge before the International Criminal Court to the admissibility of a case on grounds referred to in Article 17 or 89(2) or to that Court's jurisdiction in the case, or

(ii) a challenge to admissibility made before the High Court on the basis of the principle of *ne bis in idem*, as provided for in Article 89(2),

and remand the arrested person in custody or, subject to *section 26 (2)* , on bail.

(*b*) The High Court shall cause the Minister to be informed of any challenge mentioned in *paragraph (a) (ii)* .

(*c*) On being so informed, the Minister shall consult the International Criminal Court and then inform the High Court either—

(i) that there is an existing ruling of the International Criminal Court in relation to the admissibility of the case, or

(ii) that that Court is considering the challenge.

(3) The High Court, whether or not it makes a surrender order, may, and on the application of the arrested person shall—

(*a*) determine—

(i) whether *section 23 (2)* was complied with in relation to the execution of the warrant of arrest, and

(ii) whether any other rights of the person in relation to the arrest have been respected,

(*b*) make a declaration to that effect, and

(*c*) notify the Minister accordingly,

and the Minister shall transmit a copy of the notification to the International Criminal Court.

(4) On making a surrender order the High Court shall—

(*a*) inform the arrested person that he or she will not be surrendered, except with his or her consent, before 15 days have elapsed from the date of the order,

(*b*) also inform the person of the provisions of Article 40.4.2° of the Constitution (which relates to the making of a complaint to the High Court by or on behalf of a person alleging that he or she is unlawfully detained), and

(*c*) cause a copy of the order to be sent forthwith to the Minister.

(5) A surrender order shall provide for the committal of the arrested person to a prison or, if the person is not more than 21 years of age, to a remand institution (within the meaning of the Criminal Justice Act 1960) while awaiting the surrender.

(6) An appeal shall lie to the Supreme Court against a surrender order only on a point of law.

(7) (*a*) If an appeal is to be brought against a refusal of the High Court to make a surrender order and the Court is so informed without delay, the Court shall remand the arrested person in custody or, subject to *section 26 (2)* , on bail, until the appeal has been finally determined.

(*b*) If not so informed, the Court shall order that the arrested person be released.

(8) Sections 10 and 11 (transfer and lawful custody of remanded persons) of the Criminal Justice Act 1960 apply to a person committed or remanded to a remand institution under this section.

Adjournment and remand.

26.— (1) In relation to a person who is before it under this Part the High Court may, subject to *subsection (2)* , exercise its powers of adjournment and remand, including, but not limited to, the powers it has in that respect in relation to a person sent forward to the Central Criminal Court for trial.

(2) (*a*) The High Court—

(i) shall cause any application for bail by such a person brought before it to be notified to the Pre-Trial Chamber and the Minister, and

(ii) shall, in reaching a decision on the application—

(I) have regard to the principles set out in paragraph 4, first sentence, of Article 59, and

(II) give full consideration to any recommendations made by the Chamber in relation to the application.

(*b*) If bail is granted, the Minister shall provide any periodic reports requested by the Chamber under Article 59.6.

(*c*) Bail may not be granted under this subsection to a person who is serving a sentence of imprisonment or detention.

Time lapse before surrender.

27.— Subject to *section 29* , a person who has been committed under a surrender order shall not be surrendered to the International Criminal Court before—

(*a*) 15 days have elapsed since the date of the order, or

(*b*) proceedings (including any appeal proceedings) in connection with the request for arrest and surrender have been finally determined,

whichever is the later.

Removal to hospital or other place.

28.— (1) The Minister may order that a person committed under a surrender order be removed to a hospital or other place if of opinion that it is necessary to do so in the interests of the person's health.

(2) A person so removed shall continue to be in lawful custody while in the hospital or other place.

Consent to surrender.

29.— (1) A person arrested in accordance with a warrant issued under *section 20* or *22* may consent to be surrendered to the custody of the International Criminal Court or, in the case of a person convicted by it, of the state of enforcement.

(2) The person shall give notice of intention to consent to surrender—

(*a*) if in custody, to the prison governor, member of the Garda Síochána or other person in whose custody the person is, and

(*b*) if on bail, to any member of the Garda Síochána.

(3) The consent must be given and recorded before the High Court and be given voluntarily and in full awareness of the consequences.

(4) Where, by reason of a physical or mental condition, it is inappropriate for the person to consent to being surrendered, the consent may be given by a person who is deemed appropriate for that purpose by the High Court.

(5) On the recording of consent to surrender the High Court shall—

(*a*) if a surrender order has not been made in relation to the person, make a surrender order, and

(*b*) if such an order has been made, order that the person be returned to custody to await his or her surrender.

(6) (*a*) A person who has consented to surrender in accordance with this section may, at any time up to the making of an order by the Minister under *section 30* , withdraw the consent.

(*b*) On such withdrawal the person—

(i) if the surrender order was made after the consent was given, shall be brought before the High Court and be dealt with by that Court as if he or she had not so consented, or

(ii) in any other case, shall await surrender in accordance with this Part.

(7) The person who receives notice of intention to consent to surrender or is informed of the withdrawal of the consent shall forthwith notify the Minister accordingly.

Surrender.

30.— (1) Subject to this Part, the Minister may by order direct that a person who has been committed under a surrender order shall be surrendered to the custody of another person who in the Minister's opinion has been duly authorised in that behalf by the International Criminal Court or the state of enforcement, as the case may be, and the person shall be surrendered accordingly.

(2) The authorised person shall receive, hold in custody and convey out of the State the person so surrendered.

(3) A person who escapes from the custody of the authorised person shall be liable to be retaken in the same manner as any person who escapes from lawful custody.

Postponement of surrender.

31.— (1) The Minister may postpone the making of an order under *section 30* —

(*a*) until the International Criminal Court has determined any challenge to the admissibility of the case or to its jurisdiction, or

(*b*) in consultation with the Court, where the person concerned is being investigated or proceeded against in relation to an offence that is not an ICC offence, until the conclusion or discontinuance of the investigation or proceedings.

(2) If the Minister decides under *subsection (1) (b)* not to postpone the making of the order, any proceedings referred to in that subsection that are pending shall, on the application of the Director of Public Prosecutions, be withdrawn, with liberty to re-enter.

(3) In deciding whether to postpone surrender under *subsection (1) (b)* the Minister shall have regard to the seriousness of the conduct constituting the offence referred to in that subsection.

(4) (*a*) This subsection applies on the expiration of a period of postponement mentioned in *subsection (1)* .

(*b*) The Minister—

(i) if the postponement arises under *subsection (1) (a)* and the Court has determined that the case is inadmissible or not within its jurisdiction, shall order that the person, if in custody, be released, or

(ii) in any other case, shall, subject to this Part, make an order under *section 30* in respect of the person concerned.

(5) In *subsection (1) (b)* "proceedings" does not include proceedings against a person under the Extradition Acts or the European Arrest Warrant Act 2003.

Release by order of Minister.

32.— Without prejudice to *sections 31 (4) (b) (i)* and *35 (2)* , the Minister may, after consultation with the International Criminal Court, order the release from custody of a person who has been committed under a surrender order if of opinion—

(*a*) that, in the light of information received after the making of the surrender order, the surrender is prohibited by this Act, or

(*b*) that the request for the surrender is not being proceeded with.

Release by order of High Court.

33.— (1) This section applies where a person awaiting surrender under this Part is not surrendered and conveyed out of the State within one month after—

(*a*) the making of the surrender order,

(*b*) the conclusion of any appeal proceedings, or

(*c*) the expiration of any period of postponement mentioned in *section 31 (1)* ,

whichever is the later.

(2) Where this section applies but subject to *subsection (3)* , the High Court may, on application by or on behalf of the person concerned and on notice to the Minister, order that the person be released from custody.

(3) If the Court is satisfied—

(*a*) that the person's state of health or other circumstances beyond the control of the Minister or the International Criminal Court or, as the case may be,

the state of enforcement have prevented the person from being surrendered under this Part, and

(*b*) that it is likely that within a reasonable time those circumstances will no longer apply,

it may fix a period within which the person may be so surrendered, and the person shall be released if not surrendered within that period or any extension thereof which may be directed by the Court from time to time in accordance with this section.

(4) *Subsection (2)* is without prejudice to *section 35 (2)* .

Release not a bar to subsequent arrest or surrender.

34.— The cancellation under *section 22 (3)* of a warrant for the provisional arrest of a person or the release of a person under *section 24 (2)* , *32* or *33 (2)* is not a bar to the person's arrest or surrender in accordance with any subsequent request from the International Criminal Court.

Imprisoned or detained persons whose surrender requested.

35.— (1) This section applies to a person who is subject to a surrender order and is also liable to serve, or is serving, a sentence of imprisonment or detention.

(2) A person to whom this section applies shall continue to be liable to serve, or continue to serve, the sentence.

(3) The surrender order may provide—

(*a*) for the person's return to the State in accordance with arrangements made by the Minister with the International Criminal Court or, as the case may be, with the state of enforcement, and

(*b*) for his or her transfer in custody from the state of enforcement to the place of imprisonment or detention.

(4) A period in custody arising from the request for surrender, except any period in the custody of the International Criminal Court or state of enforcement under a sentence of detention imposed by the Court, shall be reckoned as a period served under the sentence of imprisonment or detention.

(5) If a sentence of imprisonment or detention expires while the sentenced person is being detained by or on the order of the International Criminal Court, the Minister shall notify the Court accordingly.

Rule of specialty.

36.— (1) Subject to *subsection (2)* and in accordance with Article 101, a person surrendered to the International Criminal Court shall not be proceeded against, punished or detained, whether by the Court or an enforcement state, for any offence committed before his or her surrender other than that for which the surrender was requested.

(2) The Minister may, if so requested by the Court and having received such information or assurances from it as he or she considers necessary, waive the requirements of *subsection (1)* in a particular case.

PART 4

Requests to Freeze Assets and Enforce Orders of International Criminal Court

Interpretation (*Part 4*).

37.— In this Part, unless the context otherwise requires—

"Act of 1988" means the Bankruptcy Act 1988;

"defendant" means a person in relation to whom the Minister has received a request from the International Criminal Court for the freezing of property or the enforcement of an ICC order;

"enforceable ICC order" means an ICC order in relation to which an enforcement order has been made;

"enforcement order" means an order under *section 40 (3)* for the enforcement of an ICC order;

"freezing order" means an order under *section 38 (4)* ;

"gift caught by this Part" means a gift—

(*a*) which was made by the defendant in proceedings for an ICC offence at any time after the commission of the offence or, if there is more than one such offence, the earliest of the offences to which the proceedings for the time being relate, and

(*b*) which the court considers it appropriate in all the circumstances to take into account;

"ICC order" has the meaning given to it by *section 40 (1)* ;

"realisable property" means—

(*a*) any property held by a defendant, and

(*b*) any property held by a person to whom a defendant has directly or indirectly made a gift caught by this Part,

but does not include any property subject to—

(i) an order under section 4 or 4A of the Proceeds of Crime Act 1996,

(ii) forfeiture under an enforceable ICC order,

(iii) an order under section 30 (forfeiture orders) of the Misuse of Drugs Act 1977,

(iv) a confiscation order, or a forfeiture order, within the meaning of the Act of 1994, or

(v) a confiscation co-operation order or an external forfeiture order, as referred to in section 46 or 47 of that Act;

"registered land" means land whose owner is, or is deemed to be, registered under the Registration of Title Act 1964.

Freezing orders.

38.— (1) This section applies where the Minister receives a request from the International Criminal Court under Article 93.1(*k*) to freeze the property of a person, including any articles used in the commission of an ICC offence, for the purpose of its eventual forfeiture.

(2) Where this section applies, the Minister shall, subject to *section 4* , send a copy of the request and any accompanying documents to the Commissioner of the Garda Síochána.

(3) (*a*) The Commissioner shall thereupon cause a member of the Garda Síochána not below the rank of inspector to apply to the High Court for an order under *subsection (4)* .

(*b*) If the applicant—

(i) believes that the person to whom the request relates owns any land (whether or not the applicant believes that the person owns other land), and

(ii) is aware of its location,

the applicant shall state in the application that he or she so believes and specify the location of the land.

(4) (*a*) On such an application the High Court may make an order (in this Part referred to as a "freezing order") prohibiting any person from dealing with the property of the person to whom the request relates if the Court is satisfied—

(i) that this section applies in relation to the property, and

(ii) either—

(I) that the International Criminal Court has imposed a fine, or made a reparation or forfeiture order, in the proceedings concerned, or

(II) that there are reasonable grounds for believing that that Court may impose a fine, or make such an order, in those proceedings.

(*b*) For the purposes of *paragraph (a)* dealing with property held by any person includes—

(i) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt, or

(ii) removing the property from the State.

(*c*) A freezing order may be subject to such conditions and exceptions as may be specified in it, including the making of such provision as the Court may think fit for the living expenses and legal expenses of any person.

(*d*) In *paragraph (a) (ii) (I)* "proceedings" includes an investigation by the International Criminal Court of an ICC offence.

(*e*) If *subsection (3) (b)* applies, the freezing order shall include the statement mentioned in that subsection.

(5) In exercising its powers under this section the High Court shall pay due regard to the rights of any third parties.

(6) A freezing order may apply—

(*a*) to all realisable property held by a specified person, whether the property is described in the order or not, and

(*b*) to realisable property held by a specified person, being property transferred to him or her after the making of the order.

(7) A freezing order—

(*a*) may be made *ex parte* and otherwise than in public,

(*b*) may provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct,

(*c*) may be discharged or varied in relation to any property, and

(*d*) shall be discharged on the application of the International Criminal Court or on the conclusion of the proceedings before that Court in relation to which the order was made.

(8) For the purposes of *subsection (7) (d)* , proceedings before the International Criminal Court have concluded—

(*a*) where the Court determines not to make an ICC order, on the date of the determination,

(*b*) where the Court makes such an order—

(i) on the date of the final determination of an application under *section 40* for its enforcement, or

(ii) on the issue by the Minister of a certificate that a request is unlikely to be received from the International Criminal Court for the enforcement of the order.

(9) An application to discharge or vary a freezing order may be made by any person affected by it.

(10) Where the High Court has made a freezing order arising from a request related to the investigation of an ICC offence, it may discharge the order if the investigation is not completed within such time as it considers reasonable.

(11) Where the High Court has made a freezing order, the Court may at any time appoint a receiver—

(*a*) to take possession of any realisable property, and

(*b*) in accordance with the Court's directions, to manage or otherwise deal with it,

subject to such exceptions and conditions as may be specified by the Court and to provision being made for the expenses and remuneration of the receiver, and may require any person having possession or control of such property to deliver it to the receiver.

(12) Where the High Court has made a freezing order, a member of the Garda Síochána or an officer of customs and excise may, for the purpose of preventing any realisable property being removed from the State, seize the property.

(13) Property seized under *subsection (12)* shall be dealt with in accordance with the High Court's directions.

(14) Section 60 (voidance of dispositions designed to frustrate confiscation, etc.) of the Act of 1994 shall have effect as if the references to confiscation included references to a freezing order.

Registration of freezing orders.

39.— (1) (*a*) Where a freezing order is made in relation to land, or an order is made varying or discharging such an order, the registrar of the High Court shall send to the Registrar of Titles and Deeds a notice of the making of the order, together with a copy of the order.

(*b*) If it appears from the freezing order, or the Registrar is otherwise aware, that the land is registered land, the Registrar shall thereupon—

(i) cause an entry to be made in the register kept under the Registration of Title Act 1964 inhibiting, until the order is discharged, any dealing with any registered land or charge which appears to be affected by it, and

(ii) if the order is subsequently varied or discharged, cause the entry to be varied accordingly or cancelled, as the case may be.

(*c*) Where *paragraph (b)* does not apply, the Registrar shall thereupon cause the notice of the making, variation or discharge of the freezing order to be

registered in the Registry of Deeds pursuant to the Registration of Deeds Act 1707.

(*d*) If and for as long as the offices of Registrar of Titles and the Registrar of Deeds are not held by the same person—

(i) the reference in *paragraph (a)* to the Registrar of Titles and Deeds shall be construed as a reference to the Registrar of Titles and the Registrar of Deeds,

(ii) the reference in *paragraph (b)* to the Registrar shall be construed as a reference to the Registrar of Titles, and

(iii) the reference in *paragraph (c)* to the Registrar shall be construed as a reference to the Registrar of Deeds.

(2) (*a*) Where a freezing order is made which affects an interest in a company or its property, or an order is made varying or discharging such an order, the registrar of the High Court shall send to the Registrar of Companies a notice of the making of the order, together with a copy of the order.

(*b*) On receipt of those documents the Registrar of Companies shall, if the company is a registered company, cause the notice to be entered in the Register of Companies and—

(i) if the company is an existing company, as defined in section 2(1) of the Companies Act 1963, send a copy of the notice to each director and the secretary of the company at the company's registered office,

(ii) in any other case, send a copy of the notice by post to the person resident in the State who has been authorised to accept, on behalf of the company concerned, service of process and any notices required to be served on it.

(*c*) In this subsection—

"Register of Companies" means the Register of Companies maintained under the Companies Acts 1963 to 2005;

"registered company" means—

(i) a company formed and registered under those Acts,

(ii) an existing company, as defined in section 2(1) of the Companies Act 1963, or

(iii) a company registered under Part XI of that Act or the European Communities (Branch Disclosure) Regulations 1993 (S.I. No. 395 of 1993).

Annotations

Modifications (not altering text):

C3 Term "registered company" construed (1.06.2015) by *Companies Act 2014* (38/2014), s. 6(1), S.I. No. 169 of 2015.

Construction of references in other Acts to companies registered under Companies (Consolidation) Act 1908 and Act of 1963

6. (1) References in any Act, other than this Act, to a company formed and registered, or registered, under the Companies (Consolidation) Act 1908 or the Act of 1963 shall, unless the contrary intention appears, be read as references to a company formed and registered, or registered, under whichever of those Acts is appropriate or this Act.

(2) Subsection (1) applies despite section 26(2)(f) of the Interpretation Act 2005 (which provides that where an Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be read as references to the provisions of the new Act relating to the same subject-matter as that of the former Act).

Enforcement of ICC orders.

40.— (1) This section applies where the Minister has received a request from the International Criminal Court for the enforcement of an order of the Court (in this Part referred to as an "ICC order") imposing a fine or forfeiture or providing for reparation to, or in respect of, victims.

(2) (*a*) Where this section applies, the Minister shall, subject to *section 4* , cause an application to be made to the High Court for enforcement of the ICC order.

(*b*) If the applicant—

(i) believes that the person against whom the order was made owns any land (whether or not the applicant believes that the person owns other land), and

(ii) is aware of its location,

the applicant shall state in the application that he or she so believes and specify the location of the land.

(3) (*a*) On such an application the High Court may, subject to *subsection (4)* , make an order (in this Part referred to as an "enforcement order") for the enforcement of the ICC order.

(*b*) If *subsection (2) (b)* applies, the enforcement order shall include the statement referred to in that subsection.

(4) The High Court shall make an enforcement order only if—

(*a*) the ICC order, or

(*b*) the conviction in respect of which it was made,

is in force and not subject to further appeal and if—

(i) a reasonable opportunity has been given for persons holding an interest in any property concerned to make representations to the High Court, and

(ii) where the ICC order imposes a fine, its enforcement will not prejudice the rights of *bona fide* third parties.

(5) If the ICC order has been partly complied with, the High Court shall make an enforcement order only in relation to the part not complied with.

(6) Where the enforceable ICC order relates to the payment of a fine or other sum, the order shall be enforced in accordance with its terms as if it were an order of the High Court for the payment to the State of the sum payable under the ICC order or of any lesser sum remaining due under it.

(7) Where the enforceable ICC order relates to the forfeiture of property—

(*a*) the order shall operate to deprive the person to whom it relates of his or her rights, if any, in the property, and

(*b*) the order shall be enforced in accordance with its terms as if it were an order of the High Court for the forfeiture of the property.

(8) Nothing in *subsection (6)* or *(7)* authorises a person to be imprisoned.

(9) Subject to *subsection (10)* , if at any time after the making of the enforcement order it is reported to the High Court that any sum payable under the ICC order remains unpaid, the Court may, without prejudice to the validity of anything previously done under the order or to its future enforcement, order that the person to whom the ICC order relates be imprisoned for a period not exceeding that set out in the second column of the table to this section opposite the amount outstanding under the ICC order.

(10) An order under *subsection (9)* of this section shall not be made unless the person to whom the ICC order relates has been given a reasonable opportunity to make representations to the Court.

(11) Section 60 (voidance of dispositions designed to frustrate confiscation, etc.) of the Act of 1994 shall have effect as if the reference to forfeiture included a reference to an enforceable ICC order.

(12) Money or other property received under an enforceable ICC order shall, without prejudice to *section 49 (1)* , be dealt with in accordance with the directions of the International Criminal Court.

(13) *Section 39* shall apply in relation to the registration of enforcement orders as it does in relation to the registration of freezing orders and shall have effect accordingly, with any necessary modifications.

Table

Amount outstanding under ICC order	Period of imprisonment
Not exceeding €650	45 days
Exceeding €650 but not exceeding €1,300	3 months
Exceeding €1,300 but not exceeding €3,250	4 months
Exceeding €3,250 but not exceeding €6,500	6 months
Exceeding €6,500 but not exceeding €13,000	9 months
Exceeding €13,000 but not exceeding €26,000	12 months
Exceeding €26,000 but not exceeding €65,000	18 months
Exceeding €65,000 but not exceeding €130,000	2 years
Exceeding €130,000 but not exceeding €325,000	3 years
Exceeding €325,000 but not exceeding €1,300,000	5 years
Exceeding €1,300,000	10 years

Realisation of property.

41.— (1) Where an enforcement order which is not subject to appeal has not been satisfied, the High Court may exercise the powers conferred by this section.

(2) Where *subsection (1)* applies, the Court may, in relation to any realisable property—

(*a*) appoint a person to be a receiver in respect of it,

(*b*) empower the receiver to take possession of it, subject to such conditions or exceptions as the Court may specify,

(*c*) order any person having possession or control of it to deliver it to the receiver,

(*d*) empower the receiver to realise it in such manner as the Court may direct,

(*e*) order any person holding an interest in it to make to the receiver such payment as the Court may direct in respect of any beneficial interest held in it by the defendant or, as the case may be, by the recipient of any gift caught by this Act, and

(*f*) on the payment being made, by order transfer, grant or extinguish any such beneficial interest.

(3) The Court shall not exercise the powers conferred by this section unless a reasonable opportunity has been given to persons holding any interest in the property concerned to make representations to it in relation to such exercise.

Exercise of powers by High Court or receiver.

42.— (1) In this section "powers" means the powers conferred on the High Court by *section 38 (11)* or *41 (2)* or on a receiver appointed under either of those provisions.

(2) Subject to *subsection (3)* , the powers shall be exercised with a view to—

(*a*) securing that the property covered by an order under either of those provisions is available to satisfy any order of the International Criminal Court imposing a fine or forfeiture or providing for reparation to, or in respect of, victims,

(*b*) in the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part, realising no more than the value for the time being of the gift,

(*c*) allowing any person, other than the defendant or the recipient of any such gift, to retain or recover the value of any property held by him or her.

(3) In exercising the powers no account shall be taken of any obligations of the defendant or of the recipient of any such gift that conflict with the obligation to satisfy the freezing order or ICC order concerned.

Receivers: supplementary provision.

43.— A receiver who—

(*a*) takes any action in relation to property which is not realisable property, being an action which a receiver would be entitled to take if it were realisable property, and

(*b*) believes, and has reasonable grounds for believing, that he or she is entitled to take that action in relation to that property,

is not liable to any person in respect of any loss or damage resulting from the action except in so far as the loss or damage is caused by his or her negligence.

Bankruptcy of defendant, etc.

44.— (1) Where a person who holds realisable property is adjudicated bankrupt, the following property is excluded from the property of the bankrupt for the purposes of the Act of 1988:

(*a*) any property for the time being subject to—

(i) a freezing order made before the order of adjudication, or

(ii) an ICC order which is the subject of an enforcement order made before the order of adjudication;

(*b*) any property realised by virtue of *section 38 (11)* or *41 (2)* and for the time being in the hands of a receiver.

(2) Where a person was adjudicated bankrupt before the passing of this Act, the powers of the High Court or a receiver under either of those sections shall not be exercised in relation to property of the bankrupt for the purposes of the Act of 1988.

(3) Where a person is adjudicated bankrupt and has directly or indirectly made a gift caught by this Part—

(*a*) any decision as to whether the gift is void shall not be made under section 57, 58 or 59 of the Act of 1988 in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a freezing order or an enforceable ICC order, and

(*b*) any such decision made after the discharge of the freezing order or enforceable ICC order shall take into account any realisation under this Part of property held by the person to whom the gift was made.

(4) Where a petition in bankruptcy was presented, or an adjudication in bankruptcy made, before 1 January 1989, this section shall have effect with the modification that for references to the property of the bankrupt for the purposes of the Act of 1988 there shall be substituted references to the property of the bankrupt vesting in the assignees for the purposes of the law of bankruptcy in force before that date.

Property dealt with by Official Assignee.

45.— (1) Without prejudice to the generality of any provision of any other enactment, where—

(*a*) the Official Assignee or a trustee appointed under Part V of the Act of 1988 seizes or disposes of any property in relation to which his or her functions are not exercisable because it is for the time being subject to a freezing order or an enforceable ICC order, and

(*b*) at the time of the seizure or disposal he or she believes, and has reasonable grounds for believing, that he or she is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of the property,

he or she—

(i) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his or her negligence, and

(ii) has a lien on the property, or the proceeds of its sale, for such of his or her expenses as were incurred in connection with the bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his or her remuneration as may reasonably be assigned for his or her acting in connection with those proceedings.

(2) Where the Official Assignee or a trustee appointed as aforesaid—

(*a*) incurs expenses in respect of such property, and

(*b*) does not know, and does not have reasonable grounds for believing, that the property is for the time being subject to a freezing order or an enforceable ICC order,

he or she is entitled (whether or not he or she has seized or disposed of the property so as to have a lien) to payment of those expenses under *section 49* .

Winding up of company holding realisable property.

46.— (1) In this section—

"company" means any company which may be wound up under the Companies Acts 1963 to 2005;

"relevant time" means—

(*a*) where no order for the winding up of the company has been made, the time of the passing of the resolution for its voluntary winding up,

(*b*) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution

had been passed by the company, the time of the passing of the resolution, and

(*c*) in any other case where such an order has been made, the time of the making of the order.

(2) Where realisable property is held by a company and an order for its winding up has been made or a resolution for its voluntary winding up has been passed by it, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

(*a*) property for the time being subject to—

(i) a freezing order which was made before the relevant time, or

(ii) an ICC order which is the subject of an enforcement order made before that time,

(*b*) any property realised by virtue of such an order for the time being in the hands of a receiver appointed under this Part.

(3) Where an order for the winding up of a company has been made or such a resolution passed, the powers of the High Court or of such a receiver shall not be exercised in relation to any realisable property held by the company concerned—

(*a*) so as to inhibit the exercise of those powers for the purpose of distributing any property held by the company to the company's creditors, or

(*b*) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

Interest on sums unpaid under enforcement orders.

47.— (1) If any sum required to be paid by a person under an enforceable ICC order is not paid when it is required to be paid (whether forthwith on the making of the enforcement order concerned or at a time specified in the ICC order), the person shall be liable to pay interest on the sum for the period for which it remains unpaid.

(2) The amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from the person under the enforceable ICC order.

(3) The rate of interest shall be that for the time being applicable to a High Court civil judgment debt.

Currency of payments under enforcement orders.

48.— (1) An amount payable in the State under an enforceable ICC order shall be paid in euro.

(2) If the amount payable is expressed in the enforceable ICC order in a currency other than the euro, the payment shall be made on the basis of the exchange rate prevailing, on the date the enforcement order is made, between the euro and that currency.

(3) For the purposes of this section a certificate purporting to be signed by an officer of an authorised institution and to state the exchange rate prevailing on a specified date between a specified currency and the euro shall be admissible in any proceedings, without further proof, as evidence of the facts stated in the certificate.

(4) In this section, "authorised institution" means—

(*a*) a person who holds or has held a licence from the F5**[**Central Bank of Ireland**]** under section 9 of the Central Bank Act 1971,

(*b*) a person referred to in section 7(4) of that Act, or

(*c*) a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992)) which has been authorised by that Authority to carry on the business of a credit institution in accordance with the supervisory enactments within the meaning of those Regulations.

Annotations

Amendments:

F5 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(14) and sch. 2 part 14 item 22, S.I. No. 469 of 2010.

Application of proceeds of realisation.

49.— (1) Money paid or recovered in respect of an enforceable ICC order (including any variation of such an order) may, to any extent necessary, be applied to meet expenses incurred in exercising any powers under this Act and the remuneration of any person employed for that purpose.

(2) Any such money shall, after payment of any such expenses or remuneration, be transferred, in accordance with the directions of the Minister, to the International Criminal Court or, if so ordered by that Court, directly to the Trust Fund provided for in Article 79 for the benefit of victims of crimes within its jurisdiction and of families of those victims.

PART 5

Other Requests

Identification evidence.

50.— (1) F6**[**In this section and in *section 50A*]—

F7**[**'Act of 2014' means the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014;**]**

"bodily sample" means any of the following:

(*a*) a sample of blood, hair, urine or saliva;

(*b*) a nail clipping or any material found under a nail;

(*c*) a swab from any part of the body;

(*d*) a footprint or a similar impression of any part of the body, including a dental impression;

F6**[**'consent', subject to *subsections (1B)* and *(1J)*, means—

(a) subject to *paragraph (b)*, in the case of a person who has attained the age of 18 years, the consent in writing of the person,

(b) in the case of a protected person—

(i) the consent in writing of a parent or guardian of the person, or

(ii) an order of the District Court under *section 50A* authorising the taking of the identification evidence concerned from the person,

(c) in the case of a child (other than a protected person)—

(i) who has attained the age of 14 years, the consent in writing of the child and either—

(I) the consent in writing of a parent or guardian of the child, or

(II) an order of the District Court under *section 50A* authorising the taking of the identification evidence concerned from the child,

(ii) who has not attained the age of 14 years, either—

(I) the consent in writing of a parent or guardian of the child, or

(II) an order of the District Court under *section 50A* authorising the taking of the identification evidence concerned from the child;**]**

"dentist" means a person whose name is entered for the time being in the Register of Dentists maintained under the Dentists Act 1985;

F7**[**'DNA' means deoxyribonucleic acid;

'DNA profile', in relation to a person, means information comprising a set of identification characteristics of the non-coding part of DNA derived from an examination and analysis of a bodily sample from the person and that is capable of comparison with similar information derived from an examination and analysis of another sample of biological material for the purpose of determining whether or not that other sample could relate to that person;**]**

"doctor" means a person whose name is entered for the time being in the General Register of Medical Practitioners established under section 26 of the Medical Practitioners Act 1978;

F7**[**'guardian', in relation to a child (including a protected person who is a child), has the meaning it has in the Act of 2014;**]**

F6**[**'identification evidence', in relation to a person, means—

(a) a fingerprint, palm print, iris identification or photograph of the person, or

(b) a bodily sample from the person or the DNA profile of the person generated from such a sample,

and includes any related records.**]**

F7**[**'non-coding part of DNA', in relation to a person, means the chromosome regions of the person's DNA that are not known to provide for any functional properties of the person;

'nurse' means a person whose name is entered for the time being in the nurses' division of the register of nurses and midwives established under section 46 of the Nurses and Midwives Act 2011;

'parent', in relation to a protected person or child, has the meaning it has in the Act of 2014;

'protected person' means, subject to *subsection (1A)*, a person (including a child) who, by reason of a mental or physical disability—

(a) lacks the capacity to understand the general nature and effect of the taking of identification evidence from him or her, or

(b) lacks the capacity to indicate (by speech, sign language or any other means of communication) whether or not he or she consents to identification evidence being taken from him or her;

'retention period' means—

(a) in the case of identification evidence, other than a fingerprint, palm print, iris identification or photograph of a person, the period from the taking of the evidence concerned to the latest date for the destruction of that evidence under *subsection (12)*, and

(b) in the case of identification evidence consisting of a fingerprint, palm print, iris identification or photograph of a person (including any related records)—

(i) 6 years from the taking of the evidence concerned from the person, or

(ii) if the person falls under *paragraph (c)* or *(d)* of *subsection (12)*, 3 months from the quashing or reversing, as the case may be, of the conviction concerned,

whichever is the later.**]**

F8**[**(1A) The reference in the definition of 'protected person' in subsection (1) to a mental or physical disability in relation to a person (including a child) shall be construed as not including a reference to the person being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances.

(1B) Where, in relation to the ICC offence concerned, identification evidence is to be taken from a protected person or a child, the consent in writing of a parent or guardian of the protected person or child shall not be sought from a parent or guardian of the protected person or child, as the case may be, if—

(a) he or she is the victim of that offence in circumstances in which the protected person is suspected of having committed that offence,

(b) he or she has been arrested in respect of that offence,

(c) a member of the Garda Síochána (in this section called 'a member') not below the rank of inspector has reasonable grounds for suspecting him or her of complicity in that offence, or

(d) a member not below the rank of inspector has reasonable grounds for believing that he or she is likely to obstruct the course of justice.

(1C) *Subsection (1B)* shall not prevent a parent or guardian of a protected person or a child who does not fall under paragraph *(a), (b), (c)* or *(d)* of that subsection from giving the consent required.

(1D) Before a member seeks the consent in writing of a parent or guardian of a protected person to the taking of identification evidence from the person, the member shall inform the parent or guardian of the matters referred to in *subsection (4)* in relation to the person.

(1E) Before a member seeks the consent in writing of a parent or guardian of a child to the taking of identification evidence from the child, the member shall inform the parent or guardian of the matters referred to in *subsection (4)* in relation to the child.

(1F) If a person withdraws a consent he or she had given to the taking of identification evidence under this section (or if the withdrawal of that consent can reasonably be inferred from the conduct of the person) before or during the taking of the identification evidence, that withdrawal of consent shall be treated as a refusal to give consent to the taking of that identification evidence.

(1G) A withdrawal of consent under *subsection (1F)* shall be recorded in writing by a member as soon as practicable after such withdrawal.

(1H) Subject to *subsections (1L)* and *(1M)*, the consent of a person to the taking of identification evidence under this section may not be withdrawn after the identification evidence has been taken.

(1I) In this section references to a person giving his or her consent in writing to the taking of identification evidence under this section (whether from the person himself or herself or another person) shall include references to—

(a) the person signing a document, or

(b) in case the person is unable to write, the person making his or her mark on a document,

to indicate his or her consent.

(1J) In the application of this section and *section 50A* in relation to a protected person or a child who is married, the references to a parent or guardian of the person or child, as the case may be, shall be construed as references to his or her spouse.

(1K) The identification evidence concerned shall, if it is reasonably practicable to do so, be taken from a protected person or a child in the presence of the person who gave consent under this section for the taking of that identification evidence from the protected person or child, as the case may be, unless the protected person or child indicates that he or she does not wish to have that person present.

(1L) If identification evidence taken under this section and transmitted pursuant to a request relates to a person who was not, at the time the evidence was taken, suspected of having committed the ICC offence concerned, the person, or another person who gave consent to the taking of the identification evidence from the person, may by notice in writing sent or given to the Commissioner request the destruction of the evidence.

(1M) The Commissioner shall, following the receipt of a notice under *subsection (1L)*, inform the Minister of it and the Minister shall, subject to an order made under *subsection (13A)*, request the Court to which the evidence concerned was transmitted to destroy the evidence as soon as practicable and, in any event, to do so not more than 4 months after the receipt by the Commissioner of the notice under *subsection (1L)*.

(1N) In this section a reference to identification evidence in the possession of the Garda Síochána shall include a reference to identification evidence in the possession of Forensic Science Ireland of the Department of Justice and Equality.**]**

(2) Subject to *section 4* , the Minister may, in pursuance of a request from the International Criminal Court under Article 93.1(*a*) for assistance in obtaining identification evidence, send the request to the Commissioner of the Garda Síochána for necessary action, if satisfied as to the matters mentioned in *subsection (3)* .

(3) The matters referred to in *subsection (2)* are—

(*a*) that any identification evidence provided will be used only for the investigation or prosecution of an ICC offence, and

F9**[**(*b*) that the evidence—

(i) will be returned by the Court—

(I) when no longer required for that purpose, unless the Minister indicates otherwise, or

(II) when requested by the Minister for the purposes of destroying the evidence—

(A) to comply with a request to do so by or on behalf of the person to whom the identification evidence relates, or

(B) in accordance with section 4 of the Criminal Justice (Forensic Evidence) Act 1990, Part 10 of the Act of 2014 or any statutory

provision providing for the destruction of fingerprints, palm prints or photographs of persons, as may be appropriate,

or

(ii) will be dealt with in accordance with *subsections (12)* and *(13)*.**]**

(4) If or in so far as the identification evidence requested is not in the possession of the Garda Síochána, the Commissioner shall instruct a member F10**[**...**]** to inform the person who is to provide the evidence—

(*a*) of the nature of the evidence,

(*b*) that it has been requested by the International Criminal Court in connection with the investigation or prosecution of an offence within its jurisdiction,

(*c*) that he or she is not obliged to provide the evidence, F10**[**...**]**

F11**[**(*d*) that, if he or she does consent to provide it, it may be given in evidence in proceedings before the Court, and**]**

F12**[**(*e*) that the evidence may be destroyed in accordance with this section.**]**

(5) F13**[**Subject to *subsections (1B)* to *(1K)*, if a person consents to provide the evidence**]**, the member may take the evidence, or cause it to be taken, in compliance with the request and any requirements specified in the request in relation to its taking.

(6) If a person who is to provide the identification evidence is in custody—

(*a*) evidence may be taken under this section only if it relates to an offence other than that for which the person is in custody, and

(*b*) any evidence provided may be taken where the person is in custody or at another place.

(7) A bodily sample consisting of blood, pubic hair or a swab from a body orifice (other than the mouth) or a genital region may be taken under this section only by a doctor F14**[**or nurse**]**, and a dental impression may be so taken only by a dentist or doctor.

(8) If required by the Court, the Commissioner may arrange for a forensic test to be performed on a swab from a body orifice or a genital region.

(9) A sample of hair other than pubic hair may be taken under this section by cutting hairs or by plucking hairs singly with their roots and, where hairs are plucked, no more shall be plucked than the person taking the sample reasonably considers to be necessary to constitute a sufficient sample for the purpose of forensic testing or comparison purposes.

(10) The following particulars shall be recorded by the member who takes identification evidence—

(*a*) the place, time and date at which it was taken,

(*b*) the result of any forensic test on the evidence,

(*c*) any other relevant particulars, including any specified by the Court,

and the record shall include a copy of the consent to the taking of the evidence.

(11) The Commissioner shall send to the Minister any identification evidence—

(*a*) in the possession of the Garda Síochána, or

(*b*) taken under *subsection (5)* , together with a copy of the record made under *subsection (10)* ,

for transmission to the Court.

F15**[**(11A) Subject to *subsections (12)* and *(13)*, any identification evidence taken under *subsection (5)* that is transmitted to the Court and returned by it when no longer required for the purpose specified in the request shall be destroyed as soon as practicable after its return.

(11B) The provisions of subsections (7), (8), (9) and (11) of section 3, and section 97, of the Act of 2014 insofar as they apply to the destruction of samples and DNA profiles of persons under that Act shall apply, with any necessary modifications, in relation to the destruction of identification evidence, other than fingerprints, palm prints, iris identifications or photographs of persons, under *subsection (11A)*.

(11C) The provisions of section 8H of the Criminal Justice Act 1984 insofar as they apply to the destruction of fingerprints, palm prints or photographs of persons shall apply, with any necessary modifications, in relation to the destruction of fingerprints, palm prints, iris identifications or photographs of persons under *subsection (11A)*.**]**

F16**[**(12) When transmitting the identification evidence to the Court the Minister shall, if *subsection (3)(b)(i)* does not apply and subject to *subsection (13)*, obtain an assurance that the evidence, as well as the record of any analysis of the evidence, or any other record relating to it, that may be made by the Court, will be destroyed when no longer required for the purpose specified in the request concerned and, in any event, not later than the expiration of the period of 3 months from the date on which any of the following circumstances first apply to the person the subject of that request:

(a) proceedings for an ICC offence are not instituted against that person within the period of 12 months from the taking of the identification evidence concerned from him or her and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found;

(b) proceedings for an ICC offence have been instituted against that person and he or she is acquitted or the charge against him or her is dismissed or the proceedings are discontinued;

(c) that person is convicted of an ICC offence and the conviction is quashed; or

(d) that person is convicted of an ICC offence and the conviction is reversed following an application pursuant to Article 84.**]**

F17**[**(13) The Minister may, at the request of the Court and having consulted the Commissioner, direct that the retention period in respect of identification evidence transmitted to the Court be extended in accordance with an order made under *subsection (13A)*.**]**

F18**[**(13A) If a judge of the District Court is satisfied, on an application in that behalf by the Commissioner, that there is good reason why identification evidence transmitted pursuant to a request should not be destroyed by the Court in accordance with *subsection (12)*, or a request to do so under *subsection (1L)*, the judge may make an order authorising the retention of the identification evidence for such purpose permitted by this section for such period as he or she considers appropriate.

(13B) If the Commissioner intends to make an application under *subsection (13A)*, he or she shall inform by notice in writing the person from whom the identification evidence concerned was taken, and any person who gave consent to the taking of that identification evidence from that person, of that intention.

(13C) If, on an application under *subsection (13A)*, the person from whom the identification evidence was taken, or any other person who gave consent to the taking

of that identification evidence from that person, applies to be heard by the judge of the District Court, an order shall not be made under that subsection unless a reasonable opportunity has been given to that person to be heard.

(13D) An application under *subsection (13A)* shall be made to a judge of the District Court who is assigned to the district court district in which the person from whom the identification evidence concerned was taken resides.

(13E) An application under *subsection (13A)* shall be heard otherwise than in public.

(13F) In determining an application under *subsection (13A)*, a judge of the District Court may make such order as to costs as the judge considers appropriate.

(13G) A notice under *subsection (13B)* may be sent or given to a person in one of the following ways:

(a) by delivering it to the person or his or her solicitor;

(b) by addressing it to the person and leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address or by addressing it to his or her solicitor and leaving it at the solicitor's office;

(c) by sending it to the person by post in a prepaid registered letter to the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, to that address or to his or her solicitor at the solicitor's office.**]**

Annotations

Amendments:

F6 Substituted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(a)(i), (iii), (iv), S.I. No. 508 of 2015.

F7 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(a)(ii), S.I. No. 508 of 2015.

F8 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(b), S.I. No. 508 of 2015.

F9 Substituted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(c), S.I. No. 508 of 2015.

F10 Deleted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(d)(i), (ii), S.I. No. 508 of 2015.

F11 Substituted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(d)(iii), S.I. No. 508 of 2015.

F12 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(d)(iii), S.I. No. 508 of 2015.

F13 Substituted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(e), S.I. No. 508 of 2015.

F14 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(f), S.I. No. 508 of 2015.

F15 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(g), S.I. No. 508 of 2015.

F16 Substituted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(h), S.I. No. 508 of 2015.

F17 Substituted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(i), S.I. No. 508 of 2015.

F18 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 139(j), S.I. No. 508 of 2015.

Modifications (not altering text):

C4 Application of section extended (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 4(2), S.I. No. 508 of 2015.

Transmission or provision of samples taken under Part 2 or 4, and DNA profiles generated from such samples, under other enactments

4. ...

(2) A sample taken from a person under Part 2 or 4, and the DNA profile (if any) generated from the sample in respect of the person, may be transmitted to the International Criminal Court pursuant to a request under section 50 of the Act of 2006.

...

C5 Term "General Register of Medical Practitioners" construed (3.07.2008) by *Medical Practitioners Act 2007* (25/2007), s. 108(2), S.I. No. 231 of 2008.

Construction of references to registered medical practitioner and Medical Council, etc.

108.— ...

(2) Every reference to the General Register of Medical Practitioners contained in any other enactment or any statutory instrument shall be construed as a reference to any division of the register.

...

Editorial Notes:

E10 Conditions imposed on taking of certain identification evidence under Act (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 155, S.I. No. 508 of 2015.

Application for court order authorising taking of identification evidence from protected person or child

F19[**50A.**— (1) If—

(a) a member of the Garda Síochána is unable, having made reasonable efforts to do so, to contact a parent or guardian of a protected person or child, as the case may be, for the purposes of ascertaining whether or not he or she consents to the taking of the identification evidence concerned from the person or child, as the case may be, under *section 50*,

(b) subject to *subsection (1C)* of *section 50*, the circumstances referred to in *subsection (1B)* of that section exist in relation to a parent or guardian of a protected person or child, as the case may be, or

(c) a protected person or child, as the case may be, does not have, or a member of the Garda Síochána not below the rank of inspector cannot, having made reasonable efforts to do so, ascertain within a reasonable period whether the person or child, as the case may be, has, a living parent or guardian from whom consent to the taking of the identification evidence concerned from the person or child, as the case may be, may be sought under *section 50*,

a member of the Garda Síochána not below the rank of inspector may apply to a judge of the District Court for an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be.

(2) A member of the Garda Síochána who intends to make an application under *subsection (1)* shall inform the protected person or child, as the case may be, concerned of that intention.

(3) A judge of the District Court may order—

(a) that an application under *subsection (1)* shall be heard otherwise than in public, or

(b) that a parent or guardian of the protected person or child, as the case may be, concerned to whom *section 50(1B)* applies shall be excluded from the Court during the hearing of the application,

or both if—

(i) on an application in that behalf by a member of the Garda Síochána not below the rank of inspector, the judge is satisfied that it is desirable to do so in order to avoid a risk of prejudice to the investigation or prosecution of the ICC offence concerned in connection with which the identification evidence concerned has been sought pursuant to the request, or

(ii) the judge considers that it is otherwise desirable in the interests of justice to do so.

(4) A judge of the District Court shall, for the purposes of determining an application under *subsection (1)* —

(a) be satisfied that the request for the identification evidence concerned complies with *subsections (2)* and *(3)* of *section 50*, and

(b) have regard to—

(i) the nature and seriousness of the ICC offence concerned being investigated or prosecuted by the Court,

(ii) in so far as they can be ascertained, the wishes of the protected person or child, as the case may be, concerned regarding whether the identification evidence concerned should be taken from him or her, and

(iii) whether it would be in the interests of justice in all the circumstances of the case, having due regard to the best interests of the protected person or child, as the case may be, concerned, to make an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be, concerned,

before making an order under this section.

(5) If, on an application under *subsection (1)*, a parent or guardian of the protected person or child, as the case may be, concerned applies to be heard by the judge of the District Court, an order shall not be made under this section unless a reasonable opportunity has been given to the parent or guardian, as the case may be, of that person or child, as the case may be, to be heard.

(6) A judge of the District Court may, if he or she considers it appropriate to do so, make an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be, concerned in accordance with section 50.

(7) An application under *subsection (1)* shall be made to a judge of the District Court who is assigned to the district court district in which the protected person or child concerned resides.**]**

Annotations

Amendments:

F19 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 140, S.I. No. 508 of 2015.

Editorial Notes:

E11 The section heading is adapted from that of the amending section in the absence of one included in the amendment.

Locating persons and identifying or locating property, etc.

51.— (1) If, in accordance with paragraphs (*a*), (*g*) and (*i*) of Article 93, the International Criminal Court requests assistance in relation to—

(*a*) locating persons or identifying or locating items of property,

(*b*) examining places or sites, including the exhumation and examination of grave sites, or

(*c*) providing records or other documents,

the Minister shall, subject to *section 4* and *subsection (2)* , send the request to the Commissioner of the Garda Síochána, and the Commissioner shall arrange for compliance with it.

(2) The Minister shall not proceed in accordance with *subsection (1)* unless the Court undertakes—

(*a*) that any material that may be furnished in response to the request will not, without the Minister's consent, be used for any purpose other than that specified in the request, and

(*b*) that the material will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless the Minister indicates that its return is not required.

(3) The Commissioner shall report to the Minister on the outcome of the action taken by the Garda Síochána on the request, and the Minister shall transmit the report to the International Criminal Court.

(4) A member of the Garda Síochána shall not enter any premises or place in furtherance of the request without the consent of the occupier or a warrant or an order under this section authorising the entry.

(5) A judge of the District Court, on production by a member of the Garda Síochána of a copy of the request from the International Criminal Court and of any accompanying documents, may issue a warrant for the search of any premises or place if satisfied that there are reasonable grounds for believing—

(*a*) that entry to the premises or place is necessary for the purposes of complying with the request, and

(*b*) that the occupier thereof either—

(i) has not consented to the entry, or

(ii) is unlikely in the circumstances of the case to consent and that seeking consent might seriously prejudice compliance with the request.

(6) (*a*) This subsection applies where—

(i) the request relates to particular material or material of a particular description, and

(ii) it appears to the judge that there are reasonable grounds for believing—

(I) that the person named in the request possesses the material, and

(II) that he or she has not agreed to produce it or is unlikely in the circumstances of the case to do so and, in the latter case, that seeking consent might seriously prejudice compliance with the request.

(*b*) Where this subsection applies, the judge may order that the person named in the request shall, on production by a member of the Garda Síochána of a copy of the order—

(i) produce the material to the member for the member to take away, or

(ii) give the member access to the material within the period specified in the order.

(*c*) The order shall also provide that in default of compliance a member of the Garda Síochána shall search the premises concerned, and for that purpose the member may exercise the powers of search given by *subsection (7)* .

(*d*) The judge may vary or discharge the order.

(7) A warrant under *subsection (5)* shall be expressed and operate to authorise a named member of the Garda Síochána, accompanied by such other persons as may be necessary and on production of the warrant—

(*a*) to enter, within 7 days after the date of issue of the warrant, the premises or place named in the warrant, if necessary by the use of reasonable force,

(*b*) to search the premises or place and any person found there,

(*c*) where necessary to comply with the request and subject to *subsection (12)* , to excavate the place or any part of it,

(*d*) to examine, seize and retain any material or other thing found there, or in the possession of a person present there at the time of the search, which the member reasonably believes to be evidence of or relating to the commission of an ICC offence or whose retention is necessary to comply with the request, and

(*e*) to take such other steps as appear to the member to be necessary for preserving any such material or thing and preventing interference with it.

(8) Where material referred to in *subsection (6)* or *(7) (d)* consists of material in non-legible form, the warrant or order shall have effect as an order to produce the material, or give access to it, in a form which is legible and in which it can be taken away.

(9) A warrant or an order under this section—

(*a*) does not confer any right to examine, seize or retain documents—

(i) which in the Minister's opinion are prejudicial to the security of the State, or

(ii) which are subject to legal privilege,

or to have the documents produced or to be given access to them, and

(*b*) subject to *paragraph (a)* and *subsection (10)* , has effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed under any enactment or rule of law.

(10) Where the Court requests disclosure of any information or document which has been supplied in confidence to a Government department or other authority by or on behalf of the government of another state, the Minister shall in accordance with Article 73 (third-party information or documents)—

(*a*) if that state is a party to the Statute, either consent to disclosure or undertake to resolve the issue of disclosure with the Court, subject to Article 72 (protection of national security information), or

(*b*) in any other case, inform the Court that it is unable to provide the document or information because of the obligation of confidentiality to that government.

(11) A person who obstructs or hinders a member of the Garda Síochána in the conduct of a search under this section is guilty of an offence and liable on summary conviction to a fine not exceeding €1,500 or imprisonment for a period of 6 months or both.

(12) (*a*) A body may not be exhumed by the Garda Síochána from a place named in the warrant without an authorisation to do so by order of the Minister, on notice to the coroner for the coroner's district concerned.

(*b*) On such an exhumation the coroner concerned shall have the like powers and duties as if the body had not been buried.

(13) Any material seized or obtained by virtue of this section may, subject to *section 4* , be transmitted to the International Criminal Court in accordance with the directions of the Minister, given after consultation with it.

(14) Where material obtained in response to the request consists of a document, the original or a copy shall be transmitted to the International Criminal Court and, where the material consists of any other article, the article itself or a description, photograph or other representation of it shall be so transmitted.

(15) For the purposes of obtaining any information that is necessary to comply with a request from the International Criminal Court for assistance in locating persons, the Commissioner of the Garda Síochána, if of opinion that there is information as to the whereabouts or place of work of those persons in the possession or procurement of any person or body, may serve a notice on the person or body, requiring the person or body to provide in writing any such information within such time as may be specified in the notice.

(16) A person shall not be prevented from complying with such a notice by any enactment or rule of law preventing or restricting the disclosure of information (except information which in the Minister's opinion is prejudicial to the security of the State or which is subject to legal privilege).

(17) A person or body who or which does not, without reasonable excuse, comply with such a notice is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

Taking of evidence.

52.— (1) This section applies where the Minister receives from the International Criminal Court a request under Article 93.1(*b*) for—

(*a*) the taking of evidence, including testimony on oath, from persons other than persons suspected of having committed an ICC offence or persons being investigated or prosecuted by the Court, or

(*b*) the production of evidence, including expert opinions and reports necessary to the Court.

(2) Where this section applies, the Minister may, subject to *section 4* —

(*a*) request the President of the District Court to nominate a judge of that Court to receive the evidence to which the request relates, and

(*b*) send the judge a copy of the request and of any accompanying or related documents.

(3) For the purposes of this section the nominated judge—

(*a*) shall have the powers of the District Court in criminal proceedings, including its powers—

(i) in relation to securing the attendance of witnesses, the production of documents or other articles, the taking of evidence on oath and, subject to *subsection (4)* , compelling witnesses to give evidence or produce documents or other things and the conduct generally of the proceedings for the taking of evidence, and

(ii) under any enactment or rule of law relating to the protection of witnesses against intimidation,

and

(*b*) may, if of opinion that it is necessary to protect—

(i) victims or witnesses or a person alleged to have committed an ICC offence, or

(ii) confidential or sensitive information,

direct that the proceedings before him or her, or any part of them, be held otherwise than in public.

(4) The judge shall inform a person in relation to whom this section applies of the rights referred to in paragraph 1 of Article 55 (rights of persons during an investigation).

(5) A person is not compelled to give in the proceedings any evidence which he or she could not be compelled to give in criminal proceedings in the State.

(6) Subject to *subsection (5)* , any person who is summoned to give evidence in the proceedings and who, without reasonable excuse, fails or refuses to answer any question or to comply with a requirement to produce any document or other thing is guilty of an offence and liable, on summary conviction, to a fine not exceeding €1,500 or imprisonment for a term not exceeding 6 months or both.

(7) If at any stage of the proceedings it appears that there are grounds for suspecting that the person has committed an ICC offence, the judge shall—

(*a*) inform the person of his or her rights under paragraph 2 of Article 55,

(*b*) where necessary, order that the person be provided a competent interpreter, and

(*c*) order that legal aid be provided for the person if it appears to the judge that the person's means are insufficient to enable him or her to obtain such aid.

(8) On the making of an order under *subsection (7) (c)* the person shall be entitled to free legal aid in the proceedings and for that purpose section 2 of the Criminal Justice (Legal Aid) Act 1962 shall apply, with the necessary modifications, in relation to the person as if he or she had been granted a legal aid (District Court) certificate under that section.

(9) The judge shall—

(*a*) send the record of any evidence received under this section to the Minister for transmission to the Court, and

(*b*) supply any certificate or other form of authentication in relation to the evidence as may be required for compliance with the request.

(10) In *subsection (3) (a) (ii)* "enactment" includes the Criminal Law (Rape) Acts 1981 and 1990, Criminal Evidence Act 1992, Criminal Justice Act 1999 and Children Act 2001.

Questioning.

53.— (1) This section applies where the Minister receives from the International Criminal Court a request under Article 93.1(*c*) for the questioning of any person who is suspected of having committed an ICC offence.

(2) Where this section applies, the Minister shall, subject to *section 4* , send a copy of the request and any accompanying documents to the Commissioner of the Garda Síochána.

(3) The Commissioner shall arrange for the questioning of the person concerned by a member or members of the Garda Síochána in a Garda station.

(4) The person shall not be questioned in pursuance of the request unless he or she—

(*a*) consents to be questioned,

(*b*) has been informed of his or her rights, as referred to in Article 55,

(*c*) is provided, where necessary, with a competent interpreter and legal assistance in accordance with paragraph 2 of that Article.

(5) The consent may be given either—

(*a*) by the person concerned, or

(*b*) where, by reason of the person's physical or mental condition or his or her youth, it would be inappropriate for the person to act for himself or herself, by an appropriate person acting on the person's behalf.

(6) The questioning shall be videorecorded and the recording, together with any form of authentication specified in the request, sent by the Commissioner to the Minister for transmission to the Court.

(7) The questioning shall, subject to this section, be conducted in accordance with any directions in that regard contained in the request.

Service of documents.

54.— (1) A request from the International Criminal Court for the service of documents, including summonses or other judicial documents, may, subject to *section 4* , be sent by the Minister to the Commissioner of the Garda Síochána.

(2) The Commissioner shall—

(*a*) cause the documents to be served in accordance with the request by a member of the Garda Síochána and send proof of the service to the Minister for transmission to the Court, or

(*b*) if it is not possible to effect service, notify the Minister accordingly, stating the reason for the non-service.

(3) If the document to be served is a summons requiring attendance before the Court as a witness, it shall be accompanied by a notice stating—

(*a*) that the person on whom it is served may wish to seek advice as to the possible consequences of failure to comply with the summons,

(*b*) that under the Statute the person may not have the same rights and privileges in proceedings before the International Criminal Court as those of witnesses in criminal proceedings before a court in the State, and

(*c*) that, as the case may be, the Court—

(i) has provided an assurance to the person that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded his or her departure from the State, or

(ii) has authority under Article 93.2 to do so.

Temporary transfer of prisoner.

55.— (1) This section applies where the Minister receives a request from the International Criminal Court under Article 93.1(*f*) for the temporary transfer to it of a person in custody in the State for identification purposes or for obtaining testimony or other assistance.

(2) The Minister may, subject to *section 4* , by order require such a person—

(*a*) to be taken in custody from the place in which he or she is detained to a place of departure from the State for delivery into the custody of a person authorised in that behalf by the Court, and

(*b*) on the person's return from the Court, to be taken back in custody to the place where he or she was detained unless, in the case of a person serving a sentence of imprisonment or detention, the sentence has expired.

(3) An order under this section—

(*a*) may be made—

(i) only with the person's consent, or

(ii) where it appears to the Minister inappropriate for the person to give consent by reason of the person's physical or mental condition or his or her youth, only if consent has been given by a person appearing to the Minister to be an appropriate person to do so,

and

(*b*) may make the transfer subject to conditions, including conditions relating to—

(i) the return of the person to the State, and

(ii) the person's custody while outside the State.

(4) A person (other than a member of the Garda Síochána) who has custody under *subsection (2)* of a person who is being taken from or to the place where he or she is or was detained is deemed for the purposes of that subsection to be such a member.

(5) If a person escapes from custody or is unlawfully at large while in transit in the State to or from the Court, he or she may be arrested without warrant by a member of the Garda Síochána or other person in whose custody he or she is and taken to any place to which he or she may be taken in accordance with an order under this section.

(6) (*a*) A person who is serving a sentence of imprisonment or detention or who is otherwise in custody shall continue to serve the sentence or to remain in custody while the person is in transit to or from the place of departure or is in the custody of the Court.

(*b*) The Minister shall inform the Court of the date of expiry of any such sentence.

(7) In this section "custody" includes custody in the State while awaiting trial or sentence or in default of paying a fine or other sum due under an order of a court.

Transit.

56.— (1) In this section "transferee" means a person who—

(*a*) is being surrendered to the International Criminal Court under Article 89 by another state,

(*b*) is in custody in another state and is being temporarily transferred to the Court under Article 93.7, or

(*c*) is being transferred in accordance with Part 10 of the Statute between the Court and another state, or between such other states, to serve a sentence of imprisonment imposed by the Court,

and in relation to whom a request for transit has been transmitted in accordance with Article 87.

(2) Subject to Article 89.3, the Minister shall authorise transit through the State of a transferee unless transit would, in the Minister's opinion, impede or delay the surrender.

(3) The Minister may—

(*a*) attach to the authorisation any conditions that he or she considers to be necessary, and

(*b*) arrange for the person, while in transit through the State, to be supervised by a member of the Garda Síochána.

(4) A transferee—

(*a*) shall, in accordance with Article 89.3(*c*), be detained on arrival in the State by a member of the Garda Síochána, and

(*b*) is deemed to be in the custody of that member or of any other such member for the time being supervising the transferee.

(5) In addition to the information required by Article 89.3(*b*) to be contained in a request by the Court for transit, the Minister may require the Court to supply such further information in relation to the circumstances of the surrender or transfer of the transferee concerned as the Minister considers to be necessary or expedient.

(6) (*a*) This subsection applies where a person referred to in any paragraph of *subsection (1)* is on board an aircraft which makes an unscheduled landing in the State.

(*b*) Where this subsection applies, the Minister may—

(i) require that the Court, in accordance with Article 89.3(*e*), submit a request for transit of the person concerned within the period of 96 hours commencing at the time of the unscheduled landing, and

(ii) inform the Court that, if the request is not received within that period, the person will be released.

(*c*) If the request is not received by the Minister before the end of the period mentioned in *paragraph (b) (ii)* , the Minister shall order the person's release.

(*d*) The release is not a bar to the arrest of the person on foot of a subsequent request from the Court for his or her surrender.

(*e*) *Subsections (2)* to *(5)* apply in relation to such a person as they apply in relation to a transferee.

Act not to limit provision of other assistance.

57.— Nothing in this Act shall be construed as preventing the provision to the International Criminal Court of assistance (other than assistance provided for under this Act) which is not prohibited by any other enactment or any rule of law.

PART 6

Miscellaneous

Sittings in State of International Criminal Court.

58.— (1) The International Criminal Court, while sitting in the State, may perform its functions under the Statute, and the provisions of the Statute in that behalf, including those relating to the Prosecutor and Part 8 thereof (appeal against or revision of decisions of a Trial Chamber of the Court), shall have effect accordingly.

(2) Orders made by the Court during a trial before it while so sitting (including orders for imprisonment or detention) shall have effect for all purposes as if they were orders made by the Central Criminal Court, and any relevant enactments and statutory instruments (including rules of court) shall have effect accordingly, with the necessary modifications.

(3) Any judgment, order or determination of the Court while so sitting is not subject to review by a court in the State.

Investigations in State by Prosecutor.

59.— (1) Subject to *section 4* , the Prosecutor—

(*a*) may conduct investigations in the State—

(i) in accordance with Part 9 (International Cooperation and Judicial Assistance) of the Statute, or

(ii) in the circumstances mentioned in Article 57.3(*d*), if authorised by the Pre-Trial Chamber to do so,

and

(*b*) may directly execute in the State a request by the International Criminal Court for assistance, subject to compliance with paragraphs 4 and 5 of Article 99.

(2) Article 55 (rights of persons during an investigation) shall have effect in relation to such investigations.

Immunities and privileges relating to International Criminal Court.

60.— (1) The International Criminal Court, its judges, the Prosecutor, Deputy Prosecutor, Registrar, other members of its staff and those other persons mentioned in Article 48 and the Agreement on the Privileges and Immunities of the International Criminal Court shall, in the absence of any waiver, have the privileges, immunities and facilities necessary for the purposes specified in relation to them in that Article or in the Agreement.

(2) For the purposes of *subsection (1)* Article 48 and the Agreement shall have effect in relation to the State.

(3) Judicial notice shall be taken of the Agreement.

(4) For convenience of reference the text of the Agreement in the English language is set out in *Schedule 2*.

State or diplomatic immunity, etc.

61.— (1) In accordance with Article 27, any diplomatic immunity or state immunity attaching to a person by reason of a connection with a state party to the Statute is not a bar to proceedings under this Act in relation to the person.

(2) In this section—

"diplomatic immunity" means any privilege or immunity attaching to a person by or under section 5 of the Diplomatic Relations and Immunities Act 1967;

"state immunity" means any privilege or immunity attaching to a head of state or the prime minister, foreign minister or other representative, official or agent of a state—

(*a*) by virtue of any enactment (except section 5 or 6 of the said Act of 1967), or

(*b*) under any rule of law;

"state party to the Statute" includes a state which has accepted the jurisdiction of the International Criminal Court in accordance with Article 12 (preconditions to the exercise of jurisdiction).

Requests to International Criminal Court for assistance.

62.— (1) This section applies where an investigation is taking place, or a prosecution has been instituted, in the State in respect of an ICC offence or other serious offence.

(2) Where this section applies, the Minister may request the International Criminal Court, in accordance with Article 93.10, to provide assistance in connection with the investigation or prosecution.

(3) In this section "serious offence" means an offence for which a person of full capacity and not previously convicted may be punished by a term of imprisonment for a term of 5 years or by a more severe penalty.

Evidence in proceedings.

63.— (1) In any proceedings—

(*a*) a document purporting—

(i) to be a request by the International Criminal Court for the arrest and surrender, or provisional arrest, of a person, or for any other form of assistance, or

(ii) to be a document (other than a document mentioned in *paragraph (b)*) supplied by the Court in relation to the request,

and to be signed by an officer of the Court is admissible, without further proof, as evidence of the request or document and of the matters mentioned in it,

(*b*) a document purporting—

(i) to be a copy of a warrant of arrest and surrender issued by the International Criminal Court or of a judgment or an order of the Court, and

(ii) to have been certified to be a true copy by an officer of the Court,

is admissible in evidence, without further proof, as a true copy of the warrant,

(*c*) a document purporting—

(i) to be a translation of a document mentioned in *paragraph (a)* or *(b)* , and

(ii) to be certified as correct by a person appearing to be competent to do so,

is admissible, without further proof, as evidence of the translation,

(*d*) a document purporting to be a copy of the Rules of Procedure and Evidence or of the Elements of Crimes is admissible, without further proof, as evidence of those Rules or Elements,

(*e*) a document purporting to be a document received from the Court by fax is presumed, until the contrary is shown, to be the original document sent by the Court,

(*f*) a document purporting to be a certificate by the Minister that a state is or is not a state party to the Statute is admissible, without further proof, as evidence of that matter, and

(*g*) a document purporting to be a certificate by the Minister under *section 38 (8) (b) (ii)* is admissible, without further proof, as evidence of the matters mentioned in it.

(2) In any proceedings against a person for an offence under this Act a certificate purporting to be signed by an officer of the Department of Foreign Affairs and stating that—

(*a*) a passport was issued by the Department to the person on a specified date, and

(*b*) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish national,

is admissible, without further proof, as evidence that the person was an Irish national on the date he or she is alleged to have committed the offence.

(3) In any proceedings it shall be presumed, until the contrary is shown, that requests by the Court for the arrest and surrender, or the provisional arrest, of a person or for any assistance under Article 93—

(*a*) have been duly made and transmitted in accordance with the relevant provisions of the Statute, and

(*b*) are being made in connection with the investigation or prosecution of offences within the jurisdiction of the Court.

Regulations.

64.— (1) The Minister may from time to time make such regulations as appear to him or her to be necessary or expedient for giving full effect to this Act or any provision of it.

(2) Without prejudice to the generality of the foregoing, the regulations may provide for—

(*a*) matters ancillary to the execution of requests by the Court for assistance,

(*b*) (i) retaining, preserving or protecting documents or other articles seized or otherwise obtained in the course of complying with a request by the Court for assistance,

(ii) sending them to the Court, and

(iii) where appropriate, returning them to the person from whom they were seized or disposing of them otherwise,

(*c*) matters necessary or expedient for giving full effect to any investigations or sittings of the International Criminal Court in the State, and

(*d*) the text for the time being of the Rules of Procedure and Evidence and the Elements of Crimes.

(3) Regulations under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which that House has sat after they are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done under them.

Amendment of International War Crimes Tribunals Act 1998.

65.— Section 7 (request for extradition of same person) of the International War Crimes Tribunals Act 1998 is amended by the substitution of the following paragraph for paragraph (*b*):

"(*b*) proceedings relating to a European arrest warrant within the meaning of the European Arrest Warrant Act 2003, unless the High Court has made an order under section 15 or subsection (1) or (2) of section 16 of that Act for the person's surrender,".

Consequential amendments.

66.— *Schedule 3* shall have effect in relation to the amendments of enactments provided for therein.

Section 3 (4) .

SCHEDULE 1

Statute of the International Criminal Court, done at Rome on 17 July 1998

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT*

PREAMBLE

The States Parties to this Statute,

Conscious 1 that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows

PART 1. ESTABLISHMENT OF THE COURT

Article 1

The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute,

and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2

Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3

Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").

2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.

3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4

Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(*a*) The crime of genocide;

(*b*) Crimes against humanity;

(*c*) War crimes;

(*d*) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(*a*) Killing members of the group;

(*b*) Causing serious bodily or mental harm to members of the group;

(*c*) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(*d*) Imposing measures intended to prevent births within the group;

(*e*) Forcibly transferring children of the group to another group.

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(*a*) Murder;

(*b*) Extermination;

(*c*) Enslavement;

(*d*) Deportation or forcible transfer of population;

(*e*) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(*f*) Torture;

(*g*) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(*h*) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(*i*) Enforced disappearance of persons;

(*j*) The crime of apartheid;

(*k*) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(*a*) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(*b*) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(*c*) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(*d*) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(*e*) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(*f*) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(*g*) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(*h*) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(*i*) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(*a*) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(*b*) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which

are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(*f*), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(*c*) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(*d*) Paragraph 2(*c*) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(*e*) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(*f*), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(*f*) Paragraph 2(*e*) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2(*c*) and (*e*) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 9

Elements of Crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

(*a*) Any State Party;

(*b*) The judges acting by an absolute majority;

(*c*) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11

Jurisdiction ratione temporis

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12

Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (*a*) or (*c*), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(*a*) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(*b*) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Article 13

Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(*a*) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(*b*) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(*c*) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14

Referral of a situation by a State Party

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 15

Prosecutor

1. The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.

6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

Article 16

Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 17

Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(*a*) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(*b*) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(*c*) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(*d*) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(*a*) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(*b*) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(*c*) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 18

Preliminary rulings regarding admissibility

1. When a situation has been referred to the Court pursuant to article 13(*a*) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13(*c*) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.

4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.

5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.

6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.

7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of additional significant facts or significant change of circumstances.

Article 19

Challenges to the jurisdiction of the Court or the admissibility of a case

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.

2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:

(*a*) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;

(*b*) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or

(*c*) A State from which acceptance of jurisdiction is required under article 12.

3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1(*c*).

5. A State referred to in paragraph 2(*b*) and (*c*) shall make a challenge at the earliest opportunity.

6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.

7. If a challenge is made by a State referred to in paragraph 2(*b*) or (*c*), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.

8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:

(*a*) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;

(*b*) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and

(*c*) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.

9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.

10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.

11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

Article 20

Ne bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

(*a*) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

(*b*) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Article 21

Applicable law

1. The Court shall apply:

(*a*) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(*b*) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

(*c*) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

Article 22

Nullum crimen sine lege

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.

2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 23

Nulla poena sine lege

A person convicted by the Court may be punished only in accordance with this Statute.

Article 24

Non-retroactivity *ratione personae*

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.

2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25

Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(*a*) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(*b*) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(*c*) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(*d*) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(*e*) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(*f*) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26

Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27

Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(*a*) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(*b*) With respect to superior and subordinate relationships not described in paragraph (*a*), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 29

Non-applicability of statute of limitations

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30

Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(*a*) In relation to conduct, that person means to engage in the conduct;

(*b*) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

Article 31

Grounds for excluding criminal responsibility

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:

(*a*) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;

(*b*) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;

(*c*) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;

(*d*) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

(i) Made by other persons; or

(ii) Constituted by other circumstances beyond that person's control.

2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.

3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

Article 32

Mistake of fact or mistake of law

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

Article 33

Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(*a*) The person was under a legal obligation to obey orders of the Government or the superior in question;

(*b*) The person did not know that the order was unlawful; and

(*c*) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 34

Organs of the Court

The Court shall be composed of the following organs:

(*a*) The Presidency;

(*b*) An Appeals Division, a Trial Division and a Pre-Trial Division;

(*c*) The Office of the Prosecutor;

(*d*) The Registry.

Article 35

Service of judges

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.

2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.

3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.

4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49.

Article 36

Qualifications, nomination and election of judges

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.

2. (*a*) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.

(*b*) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.

(*c*) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (*b*), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and article 37, paragraph 2;

(ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (*b*) and (*c*)(i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (*a*) and (*b*). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.

3. (*a*) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

(*b*) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(*c*) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. (*a*) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:

(i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or

(ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.

(*b*) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.

(*c*) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.

5. For the purposes of the election, there shall be two lists of candidates:

List A containing the names of candidates with the qualifications specified in paragraph 3(*b*)(i); and

List B containing the names of candidates with the qualifications specified in paragraph 3(*b*)(ii).

A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.

6. (*a*) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting.

(*b*) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (*a*) until the remaining places have been filled.

7. No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

8. (*a*) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:

(i) The representation of the principal legal systems of the world;

(ii) Equitable geographical representation; and

(iii) A fair representation of female and male judges.

(*b*) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

9. (*a*) Subject to subparagraph (*b*), judges shall hold office for a term of nine years and, subject to subparagraph (*c*) and to article 37, paragraph 2, shall not be eligible for re-election.

(*b*) At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years.

(*c*) A judge who is selected to serve for a term of three years under subparagraph (*b*) shall be eligible for re-election for a full term.

10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

Article 37

Judicial vacancies

1. In the event of a vacancy, an election shall be held in accordance with article 36 to fill the vacancy.

2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36.

Article 38

The Presidency

1. The President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.

2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.

3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for:

(*a*) The proper administration of the Court, with the exception of the Office of the Prosecutor; and

(*b*) The other functions conferred upon it in accordance with this Statute.

4. In discharging its responsibility under paragraph 3(*a*), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

Article 39

Chambers

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (*b*). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.

2. (*a*) The judicial functions of the Court shall be carried out in each division by Chambers.

(*b*) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;

(ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;

(iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence;

(*c*) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.

3. (*a*) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.

(*b*) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.

4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or *vice versa*, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

Article 40

Independence of the judges

1. The judges shall be independent in the performance of their functions.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.

4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

Article 41

Excusing and disqualification of judges

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.

2. (*a*) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.

(*b*) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.

(*c*) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

Article 42

The Office of the Prosecutor

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.

2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.

3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.

5. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.

6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.

7. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, *inter alia*, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.

8. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.

(*a*) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article;

(*b*) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter;

9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

Article 43

The Registry

1. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42.

2. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.

3. The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.

5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.

6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

Article 44

Staff

1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.

2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, *mutatis mutandis*, to the criteria set forth in article 36, paragraph 8.

3. The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.

4. The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor.

Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties.

Article 45

Solemn undertaking

Before taking up their respective duties under this Statute, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

Article 46

Removal from office

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person:

(*a*) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or

(*b*) Is unable to exercise the functions required by this Statute.

2. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot:

(*a*) In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges;

(*b*) In the case of the Prosecutor, by an absolute majority of the States Parties;

(*c*) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.

3. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.

4. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

Article 47

Disciplinary measures

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

Article 48

Privileges and immunities

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.

3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.

4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.

5. The privileges and immunities of:

(*a*) A judge or the Prosecutor may be waived by an absolute majority of the judges;

(*b*) The Registrar may be waived by the Presidency;

(*c*) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;

(*d*) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

Article 49

Salaries, allowances and expenses

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

Article 50

Official and working languages

1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.

2. The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.

3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

Article 51

Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Rules of Procedure and Evidence may be proposed by:

(*a*) Any State Party;

(*b*) The judges acting by an absolute majority; or

(*c*) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.

4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.

5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

Article 52

Regulations of the Court

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.

2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.

3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.

PART 5. INVESTIGATION AND PROSECUTION

Article 53

Initiation of an investigation

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:

(*a*) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;

(*b*) The case is or would be admissible under article 17; and

(*c*) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (*c*) above, he or she shall inform the Pre-Trial Chamber.

2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:

(*a*) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;

(*b*) The case is inadmissible under article 17; or

(*c*) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime;

the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (*b*), of his or her conclusion and the reasons for the conclusion.

3. (*a*) At the request of the State making a referral under article 14 or the Security Council under article 13, paragraph (*b*), the Pre-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.

(*b*) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on paragraph 1(*c*) or 2(*c*). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber.

4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

Article 54

Duties and powers of the Prosecutor with respect to investigations

1. The Prosecutor shall:

(*a*) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;

(*b*) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and

(*c*) Fully respect the rights of persons arising under this Statute.

2. The Prosecutor may conduct investigations on the territory of a State:

(*a*) In accordance with the provisions of Part 9; or

(*b*) As authorized by the Pre-Trial Chamber under article 57, paragraph 3(*d*).

3. The Prosecutor may:

(*a*) Collect and examine evidence;

(*b*) Request the presence of and question persons being investigated, victims and witnesses;

(*c*) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;

(*d*) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;

(*e*) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and

(*f*) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

Article 55

Rights of persons during an investigation

1. In respect of an investigation under this Statute, a person:

(*a*) Shall not be compelled to incriminate himself or herself or to confess guilt;

(*b*) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;

(*c*) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent 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 on such grounds and in accordance with such procedures as are established in this Statute.

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

(*a*) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;

(*b*) To remain silent, without such silence being a consideration in the determination of guilt or innocence;

(*c*) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and

(*d*) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

Article 56

Role of the Pre-Trial Chamber in relation to a unique investigative opportunity

1. (*a*) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.

(*b*) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.

(*c*) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in response to a summons in connection with the investigation referred to in subparagraph (*a*), in order that he or she may be heard on the matter.

2. The measures referred to in paragraph 1(*b*) may include:

(*a*) Making recommendations or orders regarding procedures to be followed;

(*b*) Directing that a record be made of the proceedings;

(*c*) Appointing an expert to assist;

(*d*) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been designated, appointing another counsel to attend and represent the interests of the defence;

(*e*) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;

(*f*) Taking such other action as may be necessary to collect or preserve evidence.

3. (*a*) Where the Prosecutor has not sought measures pursuant to this article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor's failure to request the measures. If upon consultation, the Pre-Trial Chamber concludes that the Prosecutor's failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.

(*b*) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.

4. The admissibility of evidence preserved or collected for trial pursuant to this article, or the record thereof, shall be governed at trial by article 69, and given such weight as determined by the Trial Chamber.

Article 57

Functions and powers of the Pre-Trial Chamber

1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.

2. (*a*) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.

(*b*) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.

3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:

(*a*) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;

(*b*) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;

(*c*) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information;

(*d*) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9.

(*e*) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1(*k*), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

Article 58

Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:

(*a*) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and

(*b*) The arrest of the person appears necessary:

(i) To ensure the person's appearance at trial,

(ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or

(iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

2. The application of the Prosecutor shall contain:

(*a*) The name of the person and any other relevant identifying information;

(*b*) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed;

(*c*) A concise statement of the facts which are alleged to constitute those crimes;

(*d*) A summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes; and

(*e*) The reason why the Prosecutor believes that the arrest of the person is necessary.

3. The warrant of arrest shall contain:

(*a*) The name of the person and any other relevant identifying information;

(*b* A specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and

(*c*) A concise statement of the facts which are alleged to constitute those crimes.

4. The warrant of arrest shall remain in effect until otherwise ordered by the Court.

5. On the basis of the warrant of arrest, the Court may request the provisional arrest or the arrest and surrender of the person under Part 9.

6. The Prosecutor may request the Pre-Trial Chamber to amend the warrant of arrest by modifying or adding to the crimes specified therein. The Pre-Trial Chamber shall so amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed the modified or additional crimes.

7. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear. The summons shall contain:

(*a*) The name of the person and any other relevant identifying information;

(*b*) The specified date on which the person is to appear;

(*c*) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and

(*d*) A concise statement of the facts which are alleged to constitute the crime.

The summons shall be served on the person.

Article 59

Arrest proceedings in the custodial State

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.

2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:

(*a*) The warrant applies to that person;

(*b*) The person has been arrested in accordance with the proper process; and

(*c*) The person's rights have been respected.

3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.

4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1(*a*) and (*b*).

5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.

6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.

7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

Article 60

Initial proceedings before the Court

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.

2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58,

paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

Article 61

Confirmation of the charges before trial

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.

2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:

(*a*) Waived his or her right to be present; or

(*b*) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:

(*a*) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and

(*b*) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.

5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.

6. At the hearing, the person may:

(*a*) Object to the charges;

(*b*) Challenge the evidence presented by the Prosecutor; and

(*c*) Present evidence.

7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:

(*a*) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;

(*b*) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;

(*c*) Adjourn the hearing and request the Prosecutor to consider:

(i) Providing further evidence or conducting further investigation with respect to a particular charge; or

(ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.

9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.

11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

PART 6. THE TRIAL

Article 62

Place of trial

Unless otherwise decided, the place of the trial shall be the seat of the Court.

Article 63

Trial in the presence of the accused

1. The accused shall be present during the trial.

2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

Article 64

Functions and powers of the Trial Chamber

1. The functions and powers of the Trial Chamber set out in this article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:

(*a*) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;

(*b*) Determine the language or languages to be used at trial; and

(*c*) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.

4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.

5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.

6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

(*a*) Exercise any functions of the Pre-Trial Chamber referred to in article 61, paragraph 11;

(*b*) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;

(*c*) Provide for the protection of confidential information;

(*d*) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;

(*e*) Provide for the protection of the accused, witnesses and victims; and

(*f*) Rule on any other relevant matters.

7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.

8. (*a*) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65 or to plead not guilty.

(*b*) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.

9. The Trial Chamber shall have, *inter alia*, the power on application of a party or on its own motion to:

(*a*) Rule on the admissibility or relevance of evidence; and

(*b*) Take all necessary steps to maintain order in the course of a hearing.

10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

Article 65

Proceedings on an admission of guilt

1. Where the accused makes an admission of guilt pursuant to article 64, paragraph 8(*a*), the Trial Chamber shall determine whether:

(*a*) The accused understands the nature and consequences of the admission of guilt;

(*b*) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and

(*c*) The admission of guilt is supported by the facts of the case that are contained in:

(i) The charges brought by the Prosecutor and admitted by the accused;

(ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts; and

(iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.

2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.

4. Where the Trial Chamber is of the opinion 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, the Trial Chamber may:

(*a*) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or

(*b*) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.

5. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

Article 66

Presumption of innocence

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.

2. The onus is on the Prosecutor to prove the guilt of the accused.

3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

Article 67

Rights of the accused

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(*a*) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;

(*b*) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

(*c*) To be tried without undue delay;

(*d*) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;

(*e*) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;

(*f*) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks;

(*g*) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;

(*h*) To make an unsworn oral or written statement in his or her defence; and

(*i*) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

Article 68

Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.

5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

Article 69

Evidence

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.

2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of *viva voce* (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.

3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.

4. The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.

6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:

(*a*) The violation casts substantial doubt on the reliability of the evidence; or

(*b*) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

Article 70

Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:

(*a*) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;

(*b*) Presenting evidence that the party knows is false or forged;

(*c*) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;

(*d*) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;

(*e*) Retaliating against an official of the Court on account of duties performed by that or another official;

(*f*) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.

2. The principles and procedures governing the Court's exercise of jurisdiction over offences under this article shall be those provided for in the Rules of Procedure and Evidence. The conditions for providing international cooperation to the Court with respect to its proceedings under this article shall be governed by the domestic laws of the requested State.

3. In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.

4. (*a*) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;

(*b*) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

Article 71

Sanctions for misconduct before the Court

1. The Court may sanction persons present before it who commit misconduct, including disruption of its proceedings or deliberate refusal to comply with its directions, by administrative measures other than imprisonment, such as temporary or permanent removal from the courtroom, a fine or other similar measures provided for in the Rules of Procedure and Evidence.

2. The procedures governing the imposition of the measures set forth in paragraph 1 shall be those provided for in the Rules of Procedure and Evidence.

Article 72

Protection of national security information

1. This article applies in any case where the disclosure of the information or documents of a State would, in the opinion of that State, prejudice its national security interests. Such cases include those falling within the scope of article 56, paragraphs 2 and 3, article 61, paragraph 3, article 64, paragraph 3, article 67, paragraph 2, article 68, paragraph 6, article 87, paragraph 6 and article 93, as well as cases arising at any other stage of the proceedings where such disclosure may be at issue.

2. This article shall also apply when a person who has been requested to give information or evidence has refused to do so or has referred the matter to the State on the ground that disclosure would prejudice the national security interests of a State and the State concerned confirms that it is of the opinion that disclosure would prejudice its national security interests.

3. Nothing in this article shall prejudice the requirements of confidentiality applicable under article 54, paragraph 3(*e*) and (*f*), or the application of article 73.

4. If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this article.

5. If, in the opinion of a State, disclosure of information would prejudice its national security interests, all reasonable steps will be taken by the State, acting in conjunction with the Prosecutor, the defence or the Pre-Trial Chamber or Trial Chamber, as the case may be, to seek to resolve the matter by cooperative means. Such steps may include:

(*a*) Modification or clarification of the request;

(*b*) A determination by the Court regarding the relevance of the information or evidence sought, or a determination as to whether the evidence, though relevant, could be or has been obtained from a source other than the requested State;

(*c*) Obtaining the information or evidence from a different source or in a different form; or

(*d*) Agreement on conditions under which the assistance could be provided including, among other things, providing summaries or redactions, limitations on disclosure, use of *in camera* or *ex parte* proceedings, or other protective measures permissible under the Statute and the Rules of Procedure and Evidence.

6. Once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests, it shall so notify the Prosecutor or the Court of the specific reasons for its decision, unless a specific description of the reasons would itself necessarily result in such prejudice to the State's national security interests.

7. Thereafter, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused, the Court may undertake the following actions:

(*a*) Where disclosure of the information or document is sought pursuant to a request for cooperation under Part 9 or the circumstances described in paragraph 2, and the State has invoked the ground for refusal referred to in article 93, paragraph 4:

(i) The Court may, before making any conclusion referred to in subparagraph 7(*a*)(ii), request further consultations for the purpose of considering the State's representations, which may include, as appropriate, hearings *in camera* and *ex parte*;

(ii) If the Court concludes that, by invoking the ground for refusal under article 93, paragraph 4, in the circumstances of the case, the requested State is not acting in accordance with its obligations under this Statute, the Court may refer the matter in accordance with article 87, paragraph 7, specifying the reasons for its conclusion; and

(iii) The Court may make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances; or

(*b*) In all other circumstances:

(i) Order disclosure; or

(ii) To the extent it does not order disclosure, make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances.

Article 73

Third-party information or documents

If a State Party is requested by the Court to provide a document or information in its custody, possession or control, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, it shall seek the consent of the originator to disclose that document or information. If the originator is a State Party, it shall either consent to disclosure of the information or document or undertake to resolve the issue of disclosure with the Court, subject to the provisions of article 72. If the originator is not a State Party and refuses to consent to disclosure, the requested State shall inform the Court that it is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator.

Article 74

Requirements for the decision

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.

2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.

3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.

4. The deliberations of the Trial Chamber shall remain secret.

5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

Article 75

Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

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

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.

5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.

6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

Article 76

Sentencing

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.

2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.

3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.

4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

PART 7. PENALTIES

Article 77

Applicable penalties

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:

(*a*) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

(*b*) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

2. In addition to imprisonment, the Court may order:

(*a*) A fine under the criteria provided for in the Rules of Procedure and Evidence;

(*b*) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Article 78

Determination of the sentence

1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.

3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1(*b*).

Article 79

Trust Fund

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.

2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

Article 80

Non-prejudice to national application of penalties and national laws

Nothing in this Part affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this Part.

PART 8. APPEAL AND REVISION

Article 81

Appeal against decision of acquittal or conviction or against sentence

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:

(*a*) The Prosecutor may make an appeal on any of 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 an appeal on any of 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.

2. (*a*) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of 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 81, paragraph 1(*a*) or (*b*), and may render a decision on conviction in accordance with article 83;

(*c*) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2(*a*).

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

(*b*) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (*c*) below;

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

(i) 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;

(ii) A decision by the Trial Chamber under subparagraph (*c*)(i) may be appealed in accordance with the Rules of Procedure and Evidence.

4. Subject to the provisions of paragraph 3(*a*) and (*b*), execution of the decision or sentence shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

Article 82

Appeal against other decisions

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

(*a*) A decision with respect to jurisdiction or admissibility;

(*b*) A decision granting or denying release of the person being investigated or prosecuted;

(*c*) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;

(*d*) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

2. A decision of the Pre-Trial Chamber under article 57, paragraph 3(*d*), may be appealed against by the State concerned or by the Prosecutor, with the leave of the Pre-Trial Chamber. The appeal shall be heard on an expedited basis.

3. An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.

4. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

Article 83

Proceedings on appeal

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.

2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:

(*a*) Reverse or amend the decision or sentence; or

(*b*) Order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.

4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.

5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

Article 84

Revision of conviction or sentence

1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's

behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the grounds that:

(*a*) New evidence has been discovered that:

(i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and

(ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;

(*b*) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;

(*c*) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under article 46.

2. The Appeals Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

(*a*) Reconvene the original Trial Chamber;

(*b*) Constitute a new Trial Chamber; or

(*c*) Retain jurisdiction over the matter,

with a view to, after hearing the parties in the manner set forth in the Rules of Procedure and Evidence, arriving at a determination on whether the judgement should be revised.

Article 85

Compensation to an arrested or convicted person

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.

3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 86

General obligation to cooperate

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

Article 87

Requests for cooperation: general provisions

1. (*a*) The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession.

Subsequent changes to the designation shall be made by each State Party in accordance with the Rules of Procedure and Evidence.

(*b*) When appropriate, without prejudice to the provisions of subparagraph (*a*), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.

2. Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession.

Subsequent changes to this choice shall be made in accordance with the Rules of Procedure and Evidence.

3. The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.

4. In relation to any request for assistance presented under this Part, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under this Part shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families.

5. (*a*) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.

(*b*) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.

6. The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.

7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

Article 88

Availability of procedures under national law

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.

Article 89

Surrender of persons to the Court

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.

2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of *ne bis in idem*as provided in article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.

3. (*a*) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.

(*b*) A request by the Court for transit shall be transmitted in accordance with article 87. The request for transit shall contain:

(i) A description of the person being transported;

(ii) A brief statement of the facts of the case and their legal characterization; and

(iii) The warrant for arrest and surrender;

(*c*) A person being transported shall be detained in custody during the period of transit;

(*d*) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State;

(*e*) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (*b*). The transit State shall detain the person being transported until the request for transit is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.

4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

Article 90

Competing requests

1. A State Party which receives a request from the Court for the surrender of a person under article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.

2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:

(*a*) The Court has, pursuant to article 18 or 19, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or

(*b*) The Court makes the determination described in subparagraph (*a*) pursuant to the requested State's notification under paragraph 1.

3. Where a determination under paragraph 2(*a*) has not been made, the requested State may, at its discretion, pending the determination of the Court under paragraph 2(*b*), proceed to deal with the request for extradition from the requesting State but shall not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.

4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court, if the Court has determined that the case is admissible.

5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.

6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:

(*a*) The respective dates of the requests;

(*b*) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and

(*c*) The possibility of subsequent surrender between the Court and the requesting State.

7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:

(*a*) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;

(*b*) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or to extradite the person to the requesting State. In making its decision, the requested State shall consider

all the relevant factors, including but not limited to those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.

8. Where pursuant to a notification under this article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the Court of this decision.

Article 91

Contents of request for arrest and surrender

1. A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1(*a*).

2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under article 58, the request shall contain or be supported by:

(*a*) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;

(*b*) A copy of the warrant of arrest; and

(*c*) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.

3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain or be supported by:

(*a*) A copy of any warrant of arrest for that person;

(*b*) A copy of the judgement of conviction;

(*c*) Information to demonstrate that the person sought is the one referred to in the judgement of conviction; and

(*d*) If the person sought has been sentenced, a copy of the sentence imposed and, in the case of a sentence for imprisonment, a statement of any time already served and the time remaining to be served.

4. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2(*c*). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

Article 92

Provisional arrest

1. In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in article 91.

2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:

(*a*) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;

(*b*) A concise statement of the crimes for which the person's arrest is sought and of the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;

(*c*) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and

(*d*) A statement that a request for surrender of the person sought will follow.

3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.

4. The fact that the person sought has been released from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and surrender of that person if the request for surrender and the documents supporting the request are delivered at a later date.

Article 93

Other forms of cooperation

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:

(*a*) The identification and whereabouts of persons or the location of items;

(*b*) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;

(*c*) The questioning of any person being investigated or prosecuted;

(*d*) The service of documents, including judicial documents;

(*e*) Facilitating the voluntary appearance of persons as witnesses or experts before the Court;

(*f*) The temporary transfer of persons as provided in paragraph 7;

(*g*) The examination of places or sites, including the exhumation and examination of grave sites;

(*h*) The execution of searches and seizures;

(*i*) The provision of records and documents, including official records and documents;

(*j*) The protection of victims and witnesses and the preservation of evidence;

(*k*) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and

(*l*) Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.

2. The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State.

3. Where execution of a particular measure of assistance detailed in a request presented under paragraph 1, is prohibited in the requested State on the basis of an existing fundamental legal principle of general application, the requested State shall promptly consult with the Court to try to resolve the matter. In the consultations, consideration should be given to whether the assistance can be rendered in another manner or subject to conditions. If after consultations the matter cannot be resolved, the Court shall modify the request as necessary.

4. In accordance with article 72, a State Party may deny a request for assistance, in whole or in part, only if the request concerns the production of any documents or disclosure of evidence which relates to its national security.

5. Before denying a request for assistance under paragraph 1(*l*), the requested State shall consider whether the assistance can be provided subject to specified conditions, or whether the assistance can be provided at a later date or in an alternative manner, provided that if the Court or the Prosecutor accepts the assistance subject to conditions, the Court or the Prosecutor shall abide by them.

6. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.

7. (*a*) The Court may request the temporary transfer of a person in custody for purposes of identification or for obtaining testimony or other assistance. The person may be transferred if the following conditions are fulfilled:

(i) The person freely gives his or her informed consent to the transfer; and

(ii) The requested State agrees to the transfer, subject to such conditions as that State and the Court may agree.

(*b*) The person being transferred shall remain in custody. When the purposes of the transfer have been fulfilled, the Court shall return the person without delay to the requested State.

8. (*a*) The Court shall ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request.

(*b*) The requested State may, when necessary, transmit documents or information to the Prosecutor on a confidential basis. The Prosecutor may then use them solely for the purpose of generating new evidence.

(*c*) The requested State may, on its own motion or at the request of the Prosecutor, subsequently consent to the disclosure of such documents or information. They may then be used as evidence pursuant to the provisions of Parts 5 and 6 and in accordance with the Rules of Procedure and Evidence.

9. (*a*) (i) In the event that a State Party receives competing requests, other than for surrender or extradition, from the Court and from another State pursuant to an international obligation, the State Party shall

endeavour, in consultation with the Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.

(ii) Failing that, competing requests shall be resolved in accordance with the principles established in article 90.

(*b*) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.

10. (*a*) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.

(*b*) (i) The assistance provided under subparagraph (*a*) shall include, *inter alia*:

a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and

b. The questioning of any person detained by order of the Court;

(ii) In the case of assistance under subparagraph (*b*)(i)a:

a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;

b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of article 68.

(*c*) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this Statute.

Article 94

Postponement of execution of a request in respect of ongoing investigation or prosecution

1. If the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the requested State may postpone the execution of the request for a period of time agreed upon with the Court. However, the postponement shall be no longer than is necessary to complete the relevant investigation or prosecution in the requested State. Before making a decision to postpone, the requested State should consider whether the assistance may be immediately provided subject to certain conditions.

2. If a decision to postpone is taken pursuant to paragraph 1, the Prosecutor may, however, seek measures to preserve evidence, pursuant to article 93, paragraph 1(*j*).

Article 95

Postponement of execution of a request in respect of an admissibility challenge

Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19.

Article 96

Contents of request for other forms of assistance under article 93

1. A request for other forms of assistance referred to in article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1(*a*).

2. The request shall, as applicable, contain or be supported by the following:

(*a*) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;

(*b*) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;

(*c*) A concise statement of the essential facts underlying the request;

(*d*) The reasons for and details of any procedure or requirement to be followed;

(*e*) Such information as may be required under the law of the requested State in order to execute the request; and

(*f*) Any other information relevant in order for the assistance sought to be provided.

3. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2(*e*). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

4. The provisions of this article shall, where applicable, also apply in respect of a request for assistance made to the Court.

Article 97

Consultations

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter. Such problems may include, *inter alia*:

(*a*) Insufficient information to execute the request;

(*b*) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the requested State is clearly not the person named in the warrant; or

(*c*) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

Article 98

Cooperation with respect to waiver of immunity and consent to surrender

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

Article 99

Execution of requests under articles 93 and 96

1. Requests for assistance shall be executed in accordance with the relevant procedure under the law of the requested State and, unless prohibited by such law, in the manner specified in the request, including following any procedure outlined therein or permitting persons specified in the request to be present at and assist in the execution process.

2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.

3. Replies from the requested State shall be transmitted in their original language and form.

4. Without prejudice to other articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:

(*a*) When the State Party requested is a State on the territory of which the crime is alleged to have been committed, and there has been a determination of admissibility pursuant to article 18 or 19, the Prosecutor may directly execute such request following all possible consultations with the requested State Party;

(*b*) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.

5. Provisions allowing a person heard or examined by the Court under article 72 to invoke restrictions designed to prevent disclosure of confidential information connected with national security shall also apply to the execution of requests for assistance under this article.

Article 100

Costs

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:

(*a*) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody;

(*b*) Costs of translation, interpretation and transcription;

(*c*) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court;

(*d*) Costs of any expert opinion or report requested by the Court;

(*e*) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and

(*f*) Following consultations, any extraordinary costs that may result from the execution of a request.

2. The provisions of paragraph 1 shall, as appropriate, apply to requests from States Parties to the Court. In that case, the Court shall bear the ordinary costs of execution.

Article 101

Rule of speciality

1. A person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.

2. The Court may request a waiver of the requirements of paragraph 1 from the State which surrendered the person to the Court and, if necessary, the Court shall provide additional information in accordance with article 91. States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so.

Article 102

Use of terms

For the purposes of this Statute:

(*a*) " surrender " means the delivering up of a person by a State to the Court, pursuant to this Statute.

(*b*) " extradition " means the delivering up of a person by one State to another as provided by treaty, convention or national legislation.

PART 10. ENFORCEMENT

Article 103

Role of States in enforcement of sentences of imprisonment

1. (*a*) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.

(*b*) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.

(*c*) A State designated in a particular case shall promptly inform the Court whether it accepts the Court's designation.

2. (*a*) The State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, the State of enforcement shall take no action that might prejudice its obligations under article 110.

(*b*) Where the Court cannot agree to the circumstances referred to in subparagraph (*a*), it shall notify the State of enforcement and proceed in accordance with article 104, paragraph 1.

3. In exercising its discretion to make a designation under paragraph 1, the Court shall take into account the following:

(*a*) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, as provided in the Rules of Procedure and Evidence;

(*b*) The application of widely accepted international treaty standards governing the treatment of prisoners;

(*c*) The views of the sentenced person;

(*d*) The nationality of the sentenced person;

(*e*) Such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate in designating the State of enforcement.

4. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State, in accordance with the conditions set out in the headquarters agreement referred to in article 3, paragraph 2. In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the Court.

Article 104

Change in designation of State of enforcement

1. The Court may, at any time, decide to transfer a sentenced person to a prison of another State.

2. A sentenced person may, at any time, apply to the Court to be transferred from the State of enforcement.

Article 105

Enforcement of the sentence

1. Subject to conditions which a State may have specified in accordance with article 103, paragraph 1(*b*), the sentence of imprisonment shall be binding on the States Parties, which shall in no case modify it.

2. The Court alone shall have the right to decide any application for appeal and revision. The State of enforcement shall not impede the making of any such application by a sentenced person.

Article 106

Supervision of enforcement of sentences and conditions of imprisonment

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.

2. The conditions of imprisonment shall be governed by the law of the State of enforcement and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.

3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

Article 107

Transfer of the person upon completion of sentence

1. Following completion of the sentence, a person who is not a national of the State of enforcement may, in accordance with the law of the State of enforcement, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the State of enforcement authorizes the person to remain in its territory.

2. If no State bears the costs arising out of transferring the person to another State pursuant to paragraph 1, such costs shall be borne by the Court.

3. Subject to the provisions of article 108, the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

Article 108

Limitation on the prosecution or punishment of other offences

1. A sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.

2. The Court shall decide the matter after having heard the views of the sentenced person.

3. Paragraph 1 shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

Article 109

Enforcement of fines and forfeiture measures

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.

2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.

3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgement of the Court shall be transferred to the Court.

Article 110

Review by the Court concerning reduction of sentence

1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.

2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.

3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.

4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:

(*a*) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;

(*b*) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court 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; or

(*c*) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.

5. If the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.

Article 111

Escape

If a convicted person escapes from custody and flees the State of enforcement, that State may, after consultation with the Court, request the person's surrender from the State in which the person is located pursuant to existing bilateral or multilateral arrangements, or may request that the Court seek the person's surrender, in accordance with Part 9. It may direct that the person be delivered to the State in which he or she was serving the sentence or to another State designated by the Court.

PART 11. ASSEMBLY OF STATES PARTIES

Article 112

Assembly of States Parties

1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.

2. The Assembly shall:

(*a*) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;

(*b*) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;

(*c*) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;

(*d*) Consider and decide the budget for the Court;

(*e*) Decide whether to alter, in accordance with article 36, the number of judges;

(*f*) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;

(*g*) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.

3. (*a*) The Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms.

(*b*) The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.

(*c*) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.

4. The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.

5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.

6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.

7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:

(*a*) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting;

(*b*) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.

8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

9. The Assembly shall adopt its own rules of procedure.

10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations.

PART 12. FINANCING

Article 113

Financial Regulations

Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by this Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties.

Article 114

Payment of expenses

Expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be paid from the funds of the Court.

Article 115

Funds of the Court and of the Assembly of States Parties

The expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, as provided for in the budget decided by the Assembly of States Parties, shall be provided by the following sources:

(*a*) Assessed contributions made by States Parties;

(*b*) Funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council.

Article 116

Voluntary contributions

Without prejudice to article 115, the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

Article 117

Assessment of contributions

The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

Article 118

Annual audit

The records, books and accounts of the Court, including its annual financial statements, shall be audited annually by an independent auditor.

PART 13. FINAL CLAUSES

Article 119

Settlement of disputes

1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.

2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

Article 120

Reservations

No reservations may be made to this Statute.

Article 121

Amendments

1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.

2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.

3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.

4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.

5. Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding

a crime covered by the amendment when committed by that State Party's nationals or on its territory.

6. If an amendment has been accepted by seven-eighths of States Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from this Statute with immediate effect, notwithstanding article 127, paragraph 1, but subject to article 127, paragraph 2, by giving notice no later than one year after the entry into force of such amendment.

7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.

Article 122

Amendments to provisions of an institutional nature

1. Amendments to provisions of this Statute which are of an exclusively institutional nature, namely, article 35, article 36, paragraphs 8 and 9, article 37, article 38, article 39, paragraphs 1 (first two sentences), 2 and 4, article 42, paragraphs 4 to 9, article 43, paragraphs 2 and 3, and articles 44, 46, 47 and 49, may be proposed at any time, notwithstanding article 121, paragraph 1, by any State Party. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations or such other person designated by the Assembly of States Parties who shall promptly circulate it to all States Parties and to others participating in the Assembly.

2. Amendments under this article on which consensus cannot be reached shall be adopted by the Assembly of States Parties or by a Review Conference, by a two-thirds majority of States Parties. Such amendments shall enter into force for all States Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

Article 123

Review of the Statute

1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.

2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary-General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.

3. The provisions of article 121, paragraphs 3 to 7, shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

Article 124

Transitional Provision

Notwithstanding article 12, paragraphs 1 and 2, a State, on becoming a party to this Statute, may declare that, for a period of seven years after the entry into force of this Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory. A declaration under this article may be withdrawn at any time. The provisions of this article shall be reviewed at the Review Conference convened in accordance with article 123, paragraph 1.

Article 125

Signature, ratification, acceptance, approval or accession

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.

2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 126

Entry into force

1. This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 127

Withdrawal

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

Article 128

Authentic texts

The original of this Statute, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Statute.

DONE at Rome, this 17th day of July 1998.

Section *60* .

SCHEDULE 2

Agreement on the Privileges and Immunities of the International Criminal Court

AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL CRIMINAL COURT

UNITED NATIONS
2002

AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL CRIMINAL COURT

The States Parties to the present Agreement,

Whereas the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries established the International Criminal Court with the power to exercise its jurisdiction over persons for the most serious crimes of international concern;

Whereas article 4 of the Rome Statute provides that the International Criminal Court shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes;

Whereas article 48 of the Rome Statute provides that the International Criminal Court shall enjoy in the territory of each State Party to the Rome Statute such privileges and immunities as are necessary for the fulfilment of its purposes;

Have agreed as follows:

Article 1

Use of terms

For the purposes of the present Agreement:

(*a*) "The Statute" means the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court;

(*b*) "The Court" means the International Criminal Court established by the Statute;

(*c*) "States Parties" means States Parties to the present Agreement;

(*d*) "Representatives of States Parties" means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations;

(*e*) "Assembly" means the Assembly of States Parties to the Statute;

(*f*) "Judges" means the judges of the Court;

(*g*) "The Presidency" means the organ composed of the President and the First and Second Vice-Presidents of the Court;

(*h*) "Prosecutor" means the Prosecutor elected by the Assembly in accordance with article 42, paragraph 4, of the Statute;

(*i*) "Deputy Prosecutors" means the Deputy Prosecutors elected by the Assembly in accordance with article 42, paragraph 4, of the Statute;

(*j*) "Registrar" means the Registrar elected by the Court in accordance with article 43, paragraph 4, of the Statute;

(*k*) "Deputy Registrar" means the Deputy Registrar elected by the Court in accordance with article 43, paragraph 4, of the Statute;

(*l*) "Counsel" means defence counsel and the legal representatives of victims;

(*m*) "Secretary-General" means the Secretary-General of the United Nations;

(*n*) "Representatives of intergovernmental organizations" means the executive heads of intergovernmental organizations, including any official acting on his or her behalf;

(*o*) "Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961;

(*p*) "Rules of Procedure and Evidence" means the Rules of Procedure and Evidence adopted in accordance with article 51 of the Statute.

Article 2

Legal status and juridical personality of the Court

The Court shall have international legal personality and shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. It shall, in particular, have the capacity to contract, to acquire and to dispose of immovable and movable property and to participate in legal proceedings.

Article 3

General provisions on privileges and immunities of the Court

The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

Article 4

Inviolability of the premises of the Court

The premises of the Court shall be inviolable.

Article 5

Flag, emblem and markings

The Court shall be entitled to display its flag, emblem and markings at its premises and on vehicles and other means of transportation used for official purposes.

Article 6

Immunity of the Court, its property, funds and assets

1. The Court, and its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except insofar as in any particular case the Court has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, funds and assets of the Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. To the extent necessary to carry out the functions of the Court, the property, funds and assets of the Court, wherever located and by whomsoever held, shall be exempt from restrictions, regulations, controls or moratoria of any nature.

Article 7

Inviolability of archives and documents

The archives of the Court, and all papers and documents in whatever form, and materials being sent to or from the Court, held by the Court or belonging to it, wherever located and by whomsoever held, shall be inviolable. The termination or absence of such inviolability shall not affect protective measures that the Court may order pursuant to the Statute and the Rules of Procedure and Evidence with regard to documents and materials made available to or used by the Court.

Article 8

Exemption from taxes, customs duties and import or export restrictions

1. The Court, its assets, income and other property and its operations and transactions shall be exempt from all direct taxes, which include, *inter alia*, income tax, capital tax and corporation tax, as well as direct taxes levied by local and provincial authorities. It is understood, however, that the Court shall not claim exemption from taxes which are, in fact, no more than charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

2. The Court shall be exempt from all customs duties, import turnover taxes and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Court for its official use and in respect of its publications.

3. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of a State Party, except under conditions agreed with the competent authorities of that State Party.

Article 9

Reimbursement of duties and/or taxes

1. The Court shall not, as a general rule, claim exemption from duties and/or taxes which are included in the price of movable and immovable property and taxes paid for services rendered. Nevertheless, when the Court for its official use makes major purchases of property and goods or services on which identifiable duties and/or taxes are charged or are chargeable, States Parties shall make appropriate administrative arrangements for the exemption of such charges or reimbursement of the amount of duty and/or tax paid.

2. Goods purchased under such an exemption or reimbursement shall not be sold or otherwise disposed of, except in accordance with the conditions laid down by the State Party which granted the exemption or reimbursement. No exemption or

reimbursement shall be accorded in respect of charges for public utility services provided to the Court.

Article 10

Funds and freedom from currency restrictions

1. Without being restricted by financial controls, regulations or financial moratoriums of any kind, while carrying out its activities:

(*a*) The Court may hold funds, currency of any kind or gold and operate accounts in any currency;

(*b*) The Court shall be free to transfer its funds, gold or its currency from one country to another or within any country and to convert any currency held by it into any other currency;

(*c*) The Court may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities;

(*d*) The Court shall enjoy treatment not less favourable than that accorded by the State Party concerned to any intergovernmental organization or diplomatic mission in respect of rates of exchange for its financial transactions.

2. In exercising its rights under paragraph 1, the Court shall pay due regard to any representations made by any State Party insofar as it is considered that effect can be given to such representations without detriment to the interests of the Court.

Article 11

Facilities in respect of communications

1. The Court shall enjoy in the territory of each State Party for the purposes of its official communications and correspondence treatment not less favourable than that accorded by the State Party concerned to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.

2. No censorship shall be applied to the official communications or correspondence of the Court.

3. The Court may use all appropriate means of communication, including electronic means of communication, and shall have the right to use codes or cipher for its official communications and correspondence. The official communications and correspondence of the Court shall be inviolable.

4. The Court shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges, immunities and facilities as diplomatic couriers and bags.

5. The Court shall have the right to operate radio and other telecommunication equipment on any frequencies allocated to it by the States Parties in accordance with their national procedures. The States Parties shall endeavour to allocate to the Court, to the extent possible, frequencies for which it has applied.

Article 12

Exercise of the functions of the Court outside its headquarters

In the event that the Court, pursuant to article 3, paragraph 3, of the Statute, considers it desirable to sit elsewhere than at its headquarters at The Hague in the Netherlands, the Court may conclude with the State concerned an arrangement concerning the provision of the appropriate facilities for the exercise of its functions.

Article 13

Representatives of States participating in the Assembly and its subsidiary organs and representatives of intergovernmental organizations

1. Representatives of States Parties to the Statute attending meetings of the Assembly and its subsidiary organs, representatives of other States that may be attending meetings of the Assembly and its subsidiary organs as observers in accordance with article 112, paragraph 1, of the Statute, and representatives of States and of intergovernmental organizations invited to meetings of the Assembly and its subsidiary organs shall, while exercising their official functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(*a*) Immunity from personal arrest or detention;

(*b*) Immunity from legal process of every kind in respect of words spoken or written, and all acts performed by them in their official capacity; such immunity shall continue to be accorded notwithstanding that the persons concerned may have ceased to exercise their functions as representatives;

(*c*) Inviolability of all papers and documents in whatever form;

(*d*) The right to use codes or cipher, to receive papers and documents or correspondence by courier or in sealed bags and to receive and send electronic communications;

(*e*) Exemption from immigration restrictions, alien registration requirements and national service obligations in the State Party they are visiting or through which they are passing in the exercise of their functions;

(*f*) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(*g*) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys under the Vienna Convention;

(*h*) The same protection and repatriation facilities as are accorded to diplomatic agents in time of international crisis under the Vienna Convention;

(*i*) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic agents enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise as part of their personal baggage) or from excise duties or sales taxes.

2. Where the incidence of any form of taxation depends upon residence, periods during which the representatives described in paragraph 1 attending the meetings of the Assembly and its subsidiary organs are present in a State Party for the discharge of their duties shall not be considered as periods of residence.

3. The provisions of paragraphs 1 and 2 of this article are not applicable as between a representative and the authorities of the State Party of which he or she is a national or of the State Party or intergovernmental organization of which he or she is or has been a representative.

Article 14

Representatives of States participating in the proceedings of the Court

Representatives of States participating in the proceedings of the Court shall, while exercising their official functions, and during their journey to and from the place of the proceedings, enjoy the privileges and immunities referred to in article 13.

Article 15

Judges, Prosecutor, Deputy Prosecutors and Registrar

1. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words which had been spoken or written and acts which had been performed by them in their official capacity.

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families forming part of their households shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Court is sitting. On journeys in connection with the exercise of their functions, the judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall in all States Parties through which they may have to pass enjoy all the privileges, immunities and facilities granted by States Parties to diplomatic agents in similar circumstances under the Vienna Convention.

3. If a judge, the Prosecutor, a Deputy Prosecutor or the Registrar, for the purpose of holding himself or herself at the disposal of the Court, resides in any State Party other than that of which he or she is a national or permanent resident, he or she shall, together with family members forming part of his or her household, be accorded diplomatic privileges, immunities and facilities during the period of residence.

4. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families forming part of their households shall be accorded the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

5. Paragraphs 1 to 4 of this article shall apply to judges of the Court even after their term of office has expired if they continue to exercise their functions in accordance with article 36, paragraph 10, of the Statute.

6. The salaries, emoluments and allowances paid to the judges, the Prosecutor, the Deputy Prosecutors and the Registrar by the Court shall be exempt from taxation. Where the incidence of any form of taxation depends upon residence, periods during which the judges, the Prosecutor, the Deputy Prosecutors and the Registrar are present in a State Party for the discharge of their functions shall not be considered as periods of residence for purposes of taxation. States Parties may take these salaries, emoluments and allowances into account for the purpose of assessing the amount of taxes to be applied to income from other sources.

7. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former judges, Prosecutors and Registrars and their dependants.

Article 16

Deputy Registrar, staff of the Office of the Prosecutor and staff of the Registry

1. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy such privileges, immunities and facilities as are necessary for the independent performance of their functions. They shall be accorded:

(*a*) Immunity from personal arrest or detention and from seizure of their personal baggage;

(*b*) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after termination of their employment with the Court;

(*c*) Inviolability for all official papers and documents in whatever form and materials;

(*d*) Exemption from taxation on the salaries, emoluments and allowances paid to them by the Court. States Parties may take these salaries, emoluments and allowances into account for the purpose of assessing the amount of taxes to be applied to income from other sources;

(*e*) Exemption from national service obligations;

(*f*) Together with members of their families forming part of their household, exemption from immigration restrictions or alien registration;

(*g*) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the official concerned;

(*h*) The same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank of diplomatic missions established in the State Party concerned;

(*i*) Together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(*j*) The right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up post in the State Party in question and to re-export their furniture and effects free of duties and taxes to their country of permanent residence.

2. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former Deputy Registrars, members of the staff of the Office of the Prosecutor, members of the staff of the Registry and their dependants.

Article 17

Personnel recruited locally and not otherwise covered by the present Agreement

Personnel recruited by the Court locally and not otherwise covered by the present Agreement shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity for the Court. Such immunity shall continue to be accorded after termination of employment with the Court for activities carried out on behalf of the Court. During their employment, they shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the Court.

Article 18

Counsel and persons assisting defence counsel

1. Counsel shall enjoy the following privileges, immunities and facilities to the extent necessary for the independent performance of his or her functions, including the time spent on journeys, in connection with the performance of his or her functions and subject to production of the certificate referred to in paragraph 2 of this article:

(*a*) Immunity from personal arrest or detention and from seizure of his or her personal baggage;

(*b*) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by him or her in official capacity, which immunity shall continue to be accorded even after he or she has ceased to exercise his or her functions;

(*c*) Inviolability of papers and documents in whatever form and materials relating to the exercise of his or her functions;

(*d*) For the purposes of communications in pursuance of his or her functions as counsel, the right to receive and send papers and documents in whatever form;

(*e*) Exemption from immigration restrictions or alien registration;

(*f*) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the counsel concerned;

(*g*) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(*h*) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Upon appointment of counsel in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court, counsel shall be provided with a certificate under the signature of the Registrar for the period required for the exercise of his or her functions. Such certificate shall be withdrawn if the power or mandate is terminated before the expiry of the certificate.

3. Where the incidence of any form of taxation depends upon residence, periods during which counsel is present in a State Party for the discharge of his or her functions shall not be considered as periods of residence.

4. The provisions of this article shall apply *mutatis mutandis* to persons assisting defence counsel in accordance with rule 22 of the Rules of Procedure and Evidence.

Article 19

Witnesses

1. Witnesses shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Court for purposes of giving evidence, including the time spent on journeys in connection with their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

(*a*) Immunity from personal arrest or detention;

(*b*) Without prejudice to subparagraph (*d*) below, immunity from seizure of their personal baggage unless there are serious grounds for believing that

the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned;

(*c*) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their testimony, which immunity shall continue to be accorded even after their appearance and testimony before the Court;

(*d*) Inviolability of papers and documents in whatever form and materials relating to their testimony;

(*e*) For purposes of their communications with the Court and counsel in connection with their testimony, the right to receive and send papers and documents in whatever form;

(*f*) Exemption from immigration restrictions or alien registration when they travel for purposes of their testimony;

(*g*) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Witnesses who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that their appearance is required by the Court and specifying a time period during which such appearance is necessary.

Article 20

Victims

1. Victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Court, including the time spent on journeys in connection with their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

(*a*) Immunity from personal arrest or detention;

(*b*) Immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned;

(*c*) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their appearance before the Court, which immunity shall continue to be accorded even after their appearance before the Court;

(*d*) Exemption from immigration restrictions or alien registration when they travel to and from the Court for purposes of their appearance.

2. Victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying their participation in the proceedings of the Court and specifying a time period for that participation.

Article 21

Experts

1. Experts performing functions for the Court shall be accorded the following privileges, immunities and facilities to the extent necessary for the independent exercise of their functions, including the time spent on journeys in connection with their functions, subject to production of the document referred to in paragraph 2 of this article:

(*a*) Immunity from personal arrest or detention and from seizure of their personal baggage;

(*b*) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of the performance of their functions for the Court, which immunity shall continue to be accorded even after the termination of their functions;

(*c*) Inviolability of papers and documents in whatever form and materials relating to their functions for the Court;

(*d*) For the purposes of their communications with the Court, the right to receive and send papers and documents in whatever form and materials relating to their functions for the Court by courier or in sealed bags;

(*e*) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the expert concerned;

(*f*) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(*g*) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(*h*) Exemption from immigration restrictions or alien registration in relation to their functions as specified in the document referred to in paragraph 2 of this article.

2. Experts who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that they are performing functions for the Court and specifying a time period for which their functions will last.

Article 22

Other persons required to be present at the seat of the Court

1. Other persons required to be present at the seat of the Court shall, to the extent necessary for their presence at the seat of the Court, including the time spent on journeys in connection with their presence, be accorded the privileges, immunities and facilities provided for in article 20, paragraph 1, subparagraphs (*a*) to (*d*), of the present Agreement, subject to production of the document referred to in paragraph 2 of this article.

2. Other persons required to be present at the seat of the Court shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary.

Article 23

Nationals and permanent residents

At the time of signature, ratification, acceptance, approval or accession, any State may declare that:

(*a*) Without prejudice to paragraph 6 of article 15 and paragraph 1(*d*) of article 16, a person referred to in articles 15, 16, 18, 19 and 21 shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only the following privileges and immunities to the extent necessary for the independent performance of his or her functions or his or her appearance or testimony before the Court:

(i) Immunity from personal arrest and detention;

(ii) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by that person in the performance of his or her functions for the Court or in the course of his or her appearance or testimony, which immunity shall continue to be accorded even after the person has ceased to exercise his or her functions for the Court or his or her appearance or testimony before it;

(iii) Inviolability of papers and documents in whatever form and materials relating to the exercise of his or her functions for the Court or his or her appearance or testimony before it;

(iv) For the purposes of their communications with the Court and for a person referred to in article 19, with his or her counsel in connection with his or her testimony, the right to receive and send papers in whatever form.

(*b*) A person referred to in articles 20 and 22 shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only the following privileges and immunities to the extent necessary for his or her appearance before the Court:

(i) Immunity from personal arrest and detention;

(ii) Immunity from legal process in respect of words spoken or written and all acts performed by that person in the course of his or her appearance before the Court, which immunity shall continue to be accorded even after his or her appearance before the Court.

Article 24

Cooperation with the authorities of States Parties

1. The Court shall cooperate at all times with the appropriate authorities of States Parties to facilitate the enforcement of their laws and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities referred to in the present Agreement.

2. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying privileges and immunities under the present Agreement to respect the laws and regulations of the State Party in whose territory they may be on the business of the Court or through whose territory they may pass on such business. They also have a duty not to interfere in the internal affairs of that State.

Article 25

Waiver of privileges and immunities provided for in articles 13 and 14

Privileges and immunities provided for in articles 13 and 14 of the present Agreement are accorded to the representatives of States and intergovernmental organizations not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the work of the Assembly, its subsidiary organs and the Court. Consequently, States Parties not only have the right but are under a duty to waive the privileges and immunities of their representatives in any case where, in the opinion of those States, they would impede the course of justice and can be waived without prejudice to the purpose for which the privileges and immunities are accorded. States not party to the present Agreement and intergovernmental organizations are granted the privileges and immunities provided for in articles 13 and 14 of the present Agreement on the understanding that they undertake the same duty regarding waiver.

Article 26

Waiver of privileges and immunities provided for in articles 15 to 22

1. The privileges and immunities provided for in articles 15 to 22 of the present Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. Such privileges and immunities may be waived in accordance with article 48, paragraph 5, of the Statute and the provisions of this article and there is a duty to do so in any particular case where they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

2. The privileges and immunities may be waived:

(*a*) In the case of a judge or the Prosecutor, by an absolute majority of the judges;

(*b*) In the case of the Registrar, by the Presidency;

(*c*) In the case of the Deputy Prosecutors and the staff of the Office of the Prosecutor, by the Prosecutor;

(*d*) In the case of the Deputy Registrar and the staff of the Registry, by the Registrar;

(*e*) In the case of personnel referred to in article 17, by the head of the organ of the Court employing such personnel;

(*f*) In the case of counsel and persons assisting defence counsel, by the Presidency;

(*g*) In the case of witnesses and victims, by the Presidency;

(*h*) In the case of experts, by the head of the organ of the Court appointing the expert;

(*i*) In the case of other persons required to be present at the seat of the Court, by the Presidency.

Article 27

Social security

From the date on which the Court establishes a social security scheme, the persons referred to in articles 15, 16 and 17 shall, with respect to services rendered for the Court, be exempt from all compulsory contributions to national social security schemes.

Article 28

Notification

The Registrar shall communicate periodically to all States Parties the categories and names of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar, the staff of the Office of the Prosecutor, the staff of the Registry and counsel to whom the provisions of the present Agreement apply. The Registrar shall also communicate to all States Parties information on any change in the status of these persons.

Article 29

Laissez-passer

The States Parties shall recognize and accept the United Nations laissez-passer or the travel document issued by the Court to the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry as valid travel documents.

Article 30

Visas

Applications for visas or entry/exit permits, where required, from all persons who are holders of the United Nations laissez-passer or of the travel document issued by the Court, and also from persons referred to in articles 18 to 22 of the present Agreement who have a certificate issued by the Court confirming that they are travelling on the business of the Court, shall be dealt with by the States Parties as speedily as possible and granted free of charge.

Article 31

Settlement of disputes with third parties

The Court shall, without prejudice to the powers and responsibilities of the Assembly under the Statute, make provisions for appropriate modes of settlement of:

(*a*) Disputes arising out of contracts and other disputes of a private law character to which the Court is a party;

(*b*) Disputes involving any person referred to in the present Agreement who, by reason of his or her official position or function in connection with the Court, enjoys immunity, if such immunity has not been waived.

Article 32

Settlement of differences on the interpretation or application of the present Agreement

1. All differences arising out of the interpretation or application of the present Agreement between two or more States Parties or between the Court and a State Party shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 of this article within three months following a written request by one of the parties to the difference, it shall, at the request of either party, be referred to an arbitral tribunal according to the procedure set forth in paragraphs 3 to 6 of this article.

3. The arbitral tribunal shall be composed of three members: one to be chosen by each party to the difference and the third, who shall be the chairman of the tribunal, to be chosen by the other two members. If either party has failed to make its appointment of a member of the tribunal within two months of the appointment of a member by the other party, that other party may invite the President of the International Court of Justice to make such appointment. Should the first two members fail to agree upon the appointment of the chairman of the tribunal within two months following their appointment, either party may invite the President of the International Court of Justice to choose the chairman.

4. Unless the parties to the difference otherwise agree, the arbitral tribunal shall determine its own procedure and the expenses shall be borne by the parties as assessed by the tribunal.

5. The arbitral tribunal, which shall decide by a majority of votes, shall reach a decision on the difference on the basis of the provisions of the present Agreement and the applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the parties to the difference.

6. The decision of the arbitral tribunal shall be communicated to the parties to the difference, to the Registrar and to the Secretary-General.

Article 33

Applicability of the present Agreement

The present Agreement is without prejudice to relevant rules of international law, including international humanitarian law.

Article 34

Signature, ratification, acceptance, approval or accession

1. The present Agreement shall be open for signature by all States from 10 September 2002 until 30 June 2004 at United Nations Headquarters in New York.

2. The present Agreement is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General.

3. The present Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Secretary-General.

Article 35

Entry into force

1. The present Agreement shall enter into force thirty days after the date of deposit with the Secretary-General of the tenth instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to the present Agreement after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the Agreement shall enter into force on the thirtieth day following the deposit with the Secretary-General of its instrument of ratification, acceptance, approval or accession.

Article 36

Amendments

1. Any State Party may, by written communication addressed to the Secretariat of the Assembly, propose amendments to the present Agreement. The Secretariat shall circulate such communication to all States Parties and the Bureau of the Assembly with a request that States Parties notify the Secretariat whether they favour a Review Conference of States Parties to discuss the proposal.

2. If, within three months from the date of circulation by the Secretariat of the Assembly, a majority of States Parties notify the Secretariat that they favour a Review Conference, the Secretariat shall inform the Bureau of the Assembly with a view to convening such a Conference in connection with the next regular or special session of the Assembly.

3. The adoption of an amendment on which consensus cannot be reached shall require a two-thirds majority of States Parties present and voting, provided that a majority of States Parties is present.

4. The Bureau of the Assembly shall immediately notify the Secretary-General of any amendment that has been adopted by the States Parties at a Review Conference. The Secretary-General shall circulate to all States Parties and signatory States any amendment adopted at a Review Conference.

5. An amendment shall enter into force for States Parties which have ratified or accepted the amendment sixty days after two thirds of the States which were Parties at the date of adoption of the amendment have deposited instruments of ratification or acceptance with the Secretary-General.

6. For each State Party ratifying or accepting an amendment after the deposit of the required number of instruments of ratification or acceptance, the amendment shall enter into force on the sixtieth day following the deposit of its instrument of ratification or acceptance.

7. A State which becomes a Party to the present Agreement after the entry into force of an amendment in accordance with paragraph 5 shall, failing an expression of different intention by that State:

(*a*) Be considered a Party to the present Agreement as so amended; and

(*b*) Be considered a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

Article 37

Denunciation

1. A State Party may, by written notification addressed to the Secretary-General, denounce the present Agreement. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in the present Agreement to which it would be subject under international law independently of the present Agreement.

Article 38

Depositary

The Secretary-General shall be the depositary of the present Agreement.

Article 39

Authentic texts

The original of the present Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General.

IN WITNESS THEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.

Section 66 .

SCHEDULE 3

Consequential Amendments

1. The Defence Act 1954 is amended—

(*a*) in subsection (3) (as substituted by section 56 of the Criminal Justice (Terrorist Offences) Act 2005) of section 169, by substituting the following paragraph for paragraph (*c*):

"(*c*) if convicted of an offence under section 3 of the Geneva Conventions Act 1962 or an offence under *section 7* (genocide, crimes against humanity and war crimes) or *8* (ancillary offences) of the *International Criminal Court Act 2006*, be liable—

(i) to imprisonment for life—

(I) if the offence involves murder or, in the case of an offence committed outside the State, the killing of a person in such circumstances as would constitute murder if the offence were committed within the State, or

(II) if a term of life imprisonment would be justified by the extreme gravity of the offence and the individual circumstances of the convicted person,

or

(ii) in any other case, to imprisonment for a term not exceeding thirty years;",

and

(*b*) in subsections (2)(*c*) and (3) of section 192 (as amended by section 5 of the Genocide Act 1973, section 6(*b*) of the Criminal Justice (United Nations Convention against Torture) Act 2000, section 6(*b*) of the Criminal Justice (Safety of United Nations Workers) Act 2000 and section 56 of the Criminal Justice (Terrorist Offences) Act 2005), by substituting the following for "genocide":

"an offence under section 3, as amended, of the Geneva Conventions Act 1962 or an offence under *section 7* (genocide, crimes against humanity and war crimes) or *8* (ancillary offences) of the *International Criminal Court Act 2006*".

2. Section 3 (grave breaches of Scheduled Conventions) of the Geneva Conventions Act 1962 is amended in subsection (1) (as substituted by section 3 of the Geneva Conventions (Amendment) Act 1998), by deleting the words from "shall be guilty" to the end of the subsection and substituting:

"shall be guilty of an offence and on conviction—

(*a*) shall be sentenced to imprisonment for life—

(i) if the offence involves murder or, in the case of an offence committed outside the State, the killing of a person in such circumstances as would constitute murder if the offence were committed within the State, or

(ii) if a term of life imprisonment would be justified by the extreme gravity of the offence and the individual circumstances of the convicted person,

or

(*b*) in any other case, shall be sentenced to imprisonment for a term not exceeding 30 years".

3. Section 11 (political offences) of the Extradition Act 1965 is amended by the insertion of the following subsection after subsection (2):

"(3) (*a*) This subsection applies to an offence of which a person is accused or has been convicted outside the State and the act constituting which would, if done within the State, constitute an offence under—

(i) section 3 (grave breaches of Scheduled Conventions) of the Geneva Conventions Act 1962, as amended by section 3 of the Geneva Conventions (Amendment) Act 1998, and

(ii) *section 7* (genocide, crimes against humanity and war crimes) or *8* (ancillary offences) of the *International Criminal Court Act 2006*.

(*b*) For the purposes of this Part and without prejudice to section 3 (certain offences not to be regarded as political offences) of the Extradition (European Convention on the Suppression of Terrorism) Act 1987, an offence to which this subsection applies shall not be regarded as a political offence or an offence connected with a political offence.".

4. The Diplomatic Relations and Immunities Act 1967 is amended by the insertion of the following section after section 2:

"Application of *International Criminal Court Act 2006*.

2A.– Parts II to VIII of this Act are without prejudice to *sections 60* (immunities and privileges relating to International Criminal Court) and *61* (state or diplomatic immunity, etc.) of the *International Criminal Court Act 2006*.".

5. The Criminal Procedure Act 1967 is amended—

(*a*) in section 13(1) (as amended by section 6 of the Genocide Act 1973, section 8 of the Criminal Justice (United Nations Convention against Torture) Act 2000, section 7 of the Criminal Justice (Safety of United Nations Workers) Act 2000 and section 59(*a*) of the Criminal Justice (Terrorist Offences) Act 2005), by substituting the following for "genocide":

"an offence under *section 7* (genocide, crimes against humanity and war crimes) or *8* (ancillary offences) of the *International Criminal Court Act 2006*",

and

(*b*) in section 29(1), by substituting the following paragraph for paragraph (*g*) (inserted by section 7 of the Genocide Act 1973):

"(*g*) an offence under section 3, as amended, of the Geneva Conventions Act 1962 or an offence under *section 7* or *8* of the *International Criminal Court Act 2006*.".

6. The Schedule to the Bail Act 1997 is amended by the insertion of the following after paragraph 6:

"*Genocide, crimes against humanity, war crimes and ancillary offences*

6A. An offence under *section 7* or *8* of the *International Criminal Court Act 2006*.".

Section 7(3).

SCHEDULE 4

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 9 DECEMBER 1948

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilised world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(*a*) Killing members of the group;

(*b*) Causing serious bodily or mental harm to members of the group;

(*c*) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(*d*) Imposing measures intended to prevent births within the group;

(*e*) Forcibly transferring children of the group to another group.

Article III

The following acts shall be punishable:

(*a*) Genocide;

(*b*) Conspiracy to commit genocide;

(*c*) Direct and public incitement to commit genocide;

(*d*) Attempt to commit genocide;

(*e*) Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.

Article VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procés-verbal* and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

(*a*) Signatures, ratifications and accessions received in accordance with article XI;

(*b*) Notifications received in accordance with article XII;

(*c*) The date upon which the present Convention comes into force in accordance with article XIII;

(*d*) Denunciations received in accordance with article XIV;

(*e*) The abrogation of the Convention in accordance with article XV;

(*f*) Notifications received in accordance with article XVI.

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Number 30 *of* 2006

INTERNATIONAL CRIMINAL COURT ACT 2006

REVISED

Updated to 17 May 2021

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions. A version without annotations, showing only textual amendments, is also available.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Prisons Act 2015* (57/2015)
- *Merchant Shipping (Registration of Ships) Act 2014* (43/2014)
- *Companies Act 2014* (38/2014)
- *Court of Appeal Act 2014* (18/2014)
- *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014)

- *Taxi Regulation Act 2013* (37/2013)
- *Criminal Procedure Act 2010* (27/2010)
- *Central Bank Reform Act 2010* (23/2010)
- *Medical Practitioners Act 2007* (25/2007)
- *Defence (Amendment) Act 2007* (24/2007)
- *Defence Act 1954* (18/1954)

All Acts up to and including *Residential Tenancies Act 2021* (5/2021), enacted 30 March 2021, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Union (European Arrest Warrant Act 2003) (Amendment) Regulations 2021* (S.I. No. 150 of 2021)
- *Justice and Law Reform (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 138 of 2011)
- *Justice, Equality and Law Reform (Alteration of Name of Department and Title of Minister) Order 2010* (S.I. No. 216 of 2010)

All statutory instruments up to and including *European Union (European Arrest Warrant Act 2003) (Amendment) Regulations 2021* (S.I. No. 150 of 2021), made 26 March 2021, were considered in the preparation of this revision.