ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT ACT, 2017

No. 1 **of 2023**

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation

PART II — *International crimes*

3. Genocide
4. Crimes against humanity
5. War crimes
6. Interpretation of provisions relating to international crimes
7. Additional crimes under international law
8. Conspiracy
9. Other ancillary offences
10. Mental element
11. Superior orders not a defence
12. Responsibility of commanders and other superiors
13. Jurisdiction
14. Institution of prosecutions
15. Statute of limitations not applicable to crimes under this Act

PART III — *Cooperation with and assistance to the ICC*

16. Application
17. Requests for assistance
18. Making of requests
19. Confidentiality of requests
20. State or diplomatic immunity
21. Response to requests

PART IV — *Arrest and surrender of persons to the ICC*

22. Request for arrest and surrender
23. Refusal of request for arrest and surrender
24. Postponement of execution of request for arrest and surrender
25. Competing requests
26. Official capacity not a bar to arrest and surrender
27. Provisional arrest
28. Rights of arrested person
29. Person arrested on provisional warrant
30. Application for bail
31. Surrender hearing
32. Magistrate not to inquire into validity of warrant
33. Surrender by consent
34. Effect of delivery order
35. Procedure where magistrate refuses order
36. Discharge of person not surrendered
37. Discharge of person no longer required to be surrendered
38. Request for temporary surrender
39. Request for transit through Botswana of person to ICC

PART V — *Requests for other types of assistance*

40. Assistance in locating or identifying persons or objects
41. Assistance in taking evidence
42. Assistance in production of documents and articles
43. Applicable law
44. Assistance in questioning persons
45. Assistance in arranging service of documents
46. Assistance in facilitating the voluntary appearance of witnesses
47. Witnesses' consent required
48. Director of Public Prosecutions to assist in facilitating appearance of witnesses
49. Request for assistance by ICC in facilitating temporary transfer of prisoner
50. Consent of prisoner on transfer
51. Arrangement of transfer of prisoner
52. Effect of transfer on prisoner's sentence
53. Assistance in examining places or sites
54. Assistance involving search and seizure
55. Assistance involving the use of other domestic investigative procedures
56. Assistance in protecting victims and witnesses and preserving evidence
57. Request for assistance in the restraining and confiscation of property
58. Refusal of request
59. Postponement of execution of request for assistance
60. Verification or authentication of material
61. Transmission of material to ICC

62. Issuance of certificate
63. Request for assistance from ICC

PART VI — *Enforcement of sentences or orders of the ICC in Botswana*

64. Application of Part
65. Botswana may act as State of enforcement
66. Request for sentence to be served in Botswana
67. Prisoner to be held in custody
68. Transfer of prisoner to ICC for review of sentence
69. Transfer of prisoner to another State to complete sentence
70. Special rules in certain cases
71. Immigration permit not required
72. Enforcement of fines
73. Enforcement of forfeiture orders
74. Transfer of funds realised to ICC
75. Orders for forfeiture of property on conviction by ICC
76. Enforcement of orders for victim reparation
77. Assistance in enforcement of restraining order

PART VII — *National security*

78. National security

PART VIII — *Investigations and sittings of the ICC in Botswana*

79. Investigations of ICC in Botswana
80. ICC sittings in Botswana
81. ICC powers while sitting in Botswana
82. Power of ICC to administer oaths in Botswana
83. Orders made by ICC not subject to review
84. Power to hold ICC prisoners in custody in Botswana
85. Removal of ICC prisoner

PART IX — *Miscellaneous provisions*

86. Legal personality of ICC and privileges and immunities of ICC officials
87. Administration of justice offences
88. Regulations

SCHEDULES

An Act to provide for the domestication of the Rome Statute of the International Criminal Court, which was ratified by Botswana on 8th September, 2000.

Date of Assent: 22.02.2023
Date of Commencement: ON NOTICE
ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and commencement

1. This Act may be cited as the Rome Statute of the International Criminal Court Act, 2017, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

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

"Agreement on the Privileges and Immunities of the ICC" means the agreement set out in Schedule II to this Act;

"confiscation order" means an order authorising a police officer to search for any property and to confiscate the property if found or any other property that the police officer reasonably believes may relate to a request from the ICC;

"conventional international law" means a convention, treaty or other international agreement to which Botswana is a party and for the time being in force;

"crime within the jurisdiction of the ICC" means a crime over which the ICC has jurisdiction under article 5 of the Statute, or an offence against the administration of justice over which the ICC has jurisdiction under article 70 of the Statute;

"Geneva Conventions" means the four Geneva Conventions adopted on 12 August 1949, the additional protocols to those Conventions and any future amendments to the Conventions;

"ICC" means the International Criminal Court established under the Statute;

"ICC prisoner" means a person on whom a sentence of imprisonment has been imposed by the ICC and includes a person who is held in custody at the request of the ICC during a sitting of the ICC in Botswana;

"Pre-Trial Chamber" means the Pre-Trial Chamber of the ICC;

"property" means any description of movable or immovable property, whether corporeal or incorporeal, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and also includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise;

"Prosecutor" means the Prosecutor of the ICC;

"restraining order" means an order issued by the ICC prohibiting any person from dealing in the property specified in the order other than in accordance with the conditions and exceptions specified in the order;

"Rules" means the Rules of Procedure and Evidence adopted under article 51 of the Statute; and

"Statute" means the Rome Statute of the ICC set out in Schedule I to this Act and any future amendments to the Statute.

(2) For the purposes of this Act —

(*a*) a reference in this Act to a request by the ICC for assistance includes a reference to a request by the ICC for cooperation;

(*b*) a reference in this Act to a request by the ICC for assistance under a specified provision or in relation to a particular matter includes a reference to a request by the ICC for cooperation under that provision or in relation to that matter;

(*c*) a reference in this Act to a figure in brackets immediately following the number of an article of the Statute is a reference to the paragraph of that article with the number corresponding to the figure in brackets; and

(*d*) a reference in this Act to a sentence of imprisonment imposed by the ICC includes a reference to a sentence of imprisonment extended by the ICC, whether for the non-payment of a fine or otherwise.

PART II — *International crimes*

Genocide

3. (1) A person who, in Botswana or elsewhere —

(*a*) commits genocide; or

(*b*) conspires or agrees with another person to commit genocide,

whether that genocide is to be committed in Botswana or elsewhere, commits an offence and is liable to the penalty specified in subsection (3).

(2) For the purposes of this section, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, and includes —

(*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; and

(*e*) forcibly transferring children of the group to another group.

(3) A person who is convicted of genocide —

(*a*) which involves murder shall be sentenced to death, except where extenuating circumstances are proved; and

(*b*) which involves any other offence under this section shall be subject to the penalty imposed in accordance with the laws of Botswana.

Crimes against humanity

4. (1) A person who, in Botswana or elsewhere, commits a crime against humanity commits an offence and is liable to the penalty specified in subsection (4).

(2) For the purposes of this section, a "crime against humanity" means any of the following crimes when committed intentionally as part of a widespread or systematic attack directed against any civilian population —

(*a*) murder;
(*b*) extermination;
(*c*) enslavement;
(*d*) deportation or forcible transfer of a 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 sterilisation, 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, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this section or any crime within the jurisdiction of the ICC;
(*i*) enforced disappearance of persons;
(*j*) the crime of apartheid; and
(*k*) other inhumane offences of a similar character which intentionally cause great suffering, or serious injury to the body or to the mental or physical health of persons.

(3) For the purposes of this section —

"attack directed against any civilian population" means a course of conduct involving the multiple commission of offences referred to in subsection (2) against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack;

"deportation or forcible transfer of a population" means the forced displacement of persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without lawful grounds permitted under international law;

"enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political organisation, 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;

"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;

"extermination" includes the intentional infliction of conditions of life, such as the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

"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;

"persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

"the crime of apartheid" means inhumane acts of a character similar to those referred to in subsection (2), committed in the context of an institutionalised 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; and

"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 an accused person, but does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

(4) A person who is convicted of a crime against humanity —

(*a*) which involves murder shall be sentenced to death, except where extenuating circumstances are proved; and

(*b*) which involves any other offence under this section shall be subject to the penalty imposed in accordance with the laws of Botswana.

War crimes

5. (1) A person who, in Botswana or elsewhere, commits a war crime commits an offence and is liable to the penalty specified in subsection (4).

(2) For the purposes of this section, "a war crime" means —

(*a*) grave breaches of the Geneva Conventions, and includes any of the following offences against persons or property protected under the provisions of the relevant Geneva Convention —

(i) willful killing,

(ii) torture or inhuman treatment, including biological experiments,

(iii) willfully 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 any other protected person to serve in the forces of a hostile power,

(vi) willfully depriving a prisoner of war or any other protected person the right to a fair and regular trial,

(vii) unlawful deportation or transfer or unlawful confinement, and

(viii) the taking of hostages;

(*b*) serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, and includes any of the following offences —

(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, materials, 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 personnel, installations, materials, 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,

(v) 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,

(vi) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives,

(vii) killing or wounding a combatant who, having laid down his or her arms or having no longer any means of defence, has surrendered at his or her discretion,

(viii) 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,

(ix) 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,

(x) 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, where such buildings, monuments, hospitals and places are not military objectives,

(xi) 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 treatment of the person concerned nor carried out in his or her interest, and which cause or may cause death to or seriously endanger the health of such person or persons,

(xii) killing or wounding treacherously individuals belonging to a hostile nation or army,

(xiii) declaring that no quarter will be given,

(xiv) destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war,

(xv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of a hostile party,

(xvi) compelling the nationals of a hostile party to take part in the operations of war directed against their own country, even if they were in the hostile party's service before the commencement of the war,

(xvii) pillaging a town or place, even when taken by assault,

(xviii) employing poison or poisoned weapons,

(xix) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices,

(xx) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which do not entirely cover the core or are pierced with incisions,

(xxi) 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 any annex to the Statute,

(xxii) committing outrages upon personal dignity, in particular humiliating and degrading treatment,

(xxiii) committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined under section 4 (3), enforced sterilisation, or any other form of sexual violence in contravention of the Geneva Conventions,

(xxiv) utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxv) 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,

(xxvi) intentionally using the starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as those provided for under the Geneva Conventions, and

(xxvii) conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities; and

(*c*) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions, and includes any of the following offences 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, mutilation, cruel treatment and torture,

(ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment,

(iii) the taking of hostages, and

(iv) the passing of sentences and the carrying out of executions without a previous judgment pronounced by a lawfully constituted court, affording all judicial guarantees which are generally recognised as indispensable.

(3) Subject to the provisions of subsection (2), subsection (2) (*c*) applies to armed conflicts not of an international character and shall 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.

(4) A person who is convicted of a war crime —

(*a*) which involves murder shall be sentenced to death, except where extenuating circumstances are proved; or

(*b*) which involves any other offence under this section shall be subject to the penalty imposed in accordance with the laws of Botswana.

Interpretation of provisions relating to international crimes

6. In the interpretation and application of the provisions of sections 3, 4 and 5 of this Act, a court shall take into account any Elements of Crimes adopted and amended under article 9 of the Statute.

Additional crimes under international law

7. (1) Notwithstanding the provisions of sections 3, 4 and 5 —

"crime against humanity" also includes any other act which, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of it being criminal according to the general principles of law recognised by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission;

"genocide" also includes any other act which, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of it being criminal according to the general principles of law recognised by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission; and

"war crime" also includes any other act committed during an armed conflict which, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

(2) A person who is convicted of any crime under subsection (1) —

(*a*) which involves murder shall be sentenced to death, except where extenuating circumstances are proved; or

(*b*) which involves any other offence under this section, shall be subject to the penalty imposed in accordance with the laws of Botswana.

Conspiracy

8. A person who conspires in Botswana to commit an offence under this Part, in or outside the territory of Botswana, or who conspires outside Botswana to commit an offence under this Part in Botswana commits an offence and is liable to the same penalty as the penalty prescribed for the offence.

Other ancillary offences

9. A person who —

(*a*) attempts to commit;

(*b*) counsels or procures the commission of;

(*c*) orders, incites, solicits or induces the commission of;

(*d*) aids or abets or otherwise assists in the commission or attempted commission of;

(*e*) is an accessory after the fact in relation to; and

(*f*) intentionally contributes in any other way to the commission or attempted commission of,

an offence under this Part, commits an offence and is liable to the same penalty as the penalty prescribed for the offence.

Mental element

10. (1) Unless otherwise provided in the Statute, the elements of crimes, or customary international law, a person shall be regarded as having committed an act which constitutes an offence under this Part if such person has committed such act with intent and knowledge.

(2) For the purposes of this section —

(*a*) a person has intent —

(i) in relation to conduct, if he or she means to engage in such conduct, or

(ii) in relation to a consequence, if he or she means to cause the consequence or is aware that it will occur in the ordinary course of events; and

(*b*) "knowledge" means awareness that a circumstance exists or that a consequence will occur in the ordinary course of events.

Superior orders not a defence

11. (1) It shall not be a defence to an offence under this Part for a person charged with the offence to plead that he or she committed the act constituting such offence pursuant to an order by a Government or a superior, whether military or civilian unless —

(*a*) the person was under a legal obligation to obey the order 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 section, orders to commit genocide or a crime against humanity shall be regarded as being manifestly unlawful.

Responsibility of commanders and other superiors

12. (1) A military commander or a person effectively acting as a military commander shall be liable for an offence under this Part committed by forces under his or her effective command and control or as the case may be, under his or her effective authority and control, as a result of his or her failure to exercise control over such forces where —

(*a*) he or she either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offence; and

(*b*) he or she failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of such offence or to submit the matter to the competent authorities for investigation or prosecution.

(2) A superior not described in subsection (1) shall be liable for an offence under this Part committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control over such subordinates where —

(*a*) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offence;

(*b*) the offences concerned activities that were within the superior's effective responsibility and control; and

(*c*) the superior failed to take necessary and reasonable measures within his or her power to prevent or repress the commission of the offence or to submit the matter to the competent authorities for investigation or prosecution.

(3) A person liable under this section for an offence under this Part shall, for the purposes of this Part, be regarded as having aided, abetted, counselled or procured the commission of that offence.

Jurisdiction

13. Where an act constituting an offence under this Part is committed by any person outside the territory of Botswana, proceedings may be instituted against that person for that offence in Botswana, if —

(*a*) the person is a citizen or permanent resident of Botswana;

(*b*) the person has committed the offence against a citizen or permanent resident of Botswana; or

(*c*) the person is, after the commission of the offence, present in Botswana.

Institution of prosecutions

14. (1) Any prosecution for an offence under this Part shall not be instituted in any court in Botswana except with the consent of the Director of Public Prosecutions.

(2) The Chief Justice shall, in writing and after consultation with the Director of Public Prosecutions, designate an appropriate court in which to conduct a prosecution against any person charged with an offence under this Part.

(3) Where the Director of Public Prosecutions declines to prosecute a person under this section, he or she shall notify the Registrar of the ICC of such decision.

(4) A decision by the Director of Public Prosecutions not to prosecute a person under this section does not preclude the prosecution of that person by the ICC.

Statute of limitations not applicable to crimes under this Act
Cap. 13:01

15. The Prescriptions Act or any other statutory limitation shall not be applicable to offences under this Part.

PART III — *Cooperation with and assistance to the ICC*

Application

16. (1) This Part shall apply to all requests for assistance received under Parts IV, V and VI.

(2) Parts IV, V and VI shall apply to every request made by the ICC, whether the acts under investigation or subject to prosecution are alleged to have been committed before or after the date on which this Act came into force.

(3) Part VI shall apply to the enforcement of every sentence, penalty or order of the ICC, whether the offence to which the sentence, penalty or order relates was committed before or after the date on which this Act came into force.

(4) Part VIII shall apply to every investigation or sitting of the ICC whether the alleged offence or the offence to which the investigation or sitting relates was committed before or after the date on which this Act came into force.

Requests for assistance

17. A request for assistance is a request made by the ICC to the Director of Public Prosecutions or to the Commissioner of Police, as the case may be, in respect of an investigation or prosecution that the Prosecutor is conducting or is proposing to conduct, in relation to a crime within the jurisdiction of the ICC, for —

(*a*) assistance in respect of any one or more of the following —

(i) the provisional arrest, arrest and surrender to the ICC of a person in relation to whom the ICC has issued an arrest warrant or given a judgment of conviction,

(ii) the identification and whereabouts of persons or the location of property,

(iii) the taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the ICC,

(iv) the questioning of any person being investigated or prosecuted,

(v) the service of documents, including judicial documents,

(vi) facilitating the voluntary appearance of persons, other than prisoners, as witnesses or experts before the ICC,

(vii) the temporary transfer of prisoners,

(viii) the examination of places or sites, including the exhumation and examination of gravesites,

(ix) the execution of searches and seizures,

(x) the provision of records and documents, including official records and documents,

(xi) the protection of victims and witnesses and the preservation of evidence, and

(xii) the identification, tracing and restraining, or seizure of proceeds of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and

(*b*) any other type of assistance that is not prohibited by the laws of Botswana with a view to facilitating the investigation or prosecution of crimes within the jurisdiction of the ICC and the enforcement of orders of the ICC made after convictions for such offences.

Making of requests

18. (1) Subject to subsection (2), a request for assistance by the ICC shall be made, in writing, to the Director of Public Prosecutions or to the Commissioner of Police, as the case may be.

(2) A request for provisional arrest under article 92 of the Statute or an urgent request for other forms of assistance under article 93 of the Statute may be made using any medium capable of delivering a written record, including facsimile or electronic mail.

(3) Where a request is made, or supporting documents transmitted, by the use of facsimile or electronic mail, this Act shall apply as if the documents so sent were the originals and a copy of the facsimile or electronic mail shall be receivable in evidence.

(4) If a request is made by the use of facsimile or electronic mail in accordance with subsection (2), it shall be followed by a written request under subsection (1).

Confidentiality of requests

19. A request for assistance and any document or part of a document supporting the request shall be kept confidential by any person dealing with the request in whole or in part, except to the extent that disclosure is necessary for execution of the request.

State or diplomatic immunity Cap. 39:01 Cap.02:05

20. (1) Notwithstanding the provisions of the Diplomatic Immunities and Privileges Act or the National Assembly (Powers and Privileges) Act, any state or diplomatic immunity attaching to a person or premises by reason of a connection with a State Party to the Statute or a State with respect to which the United Nations Security Council has referred a situation to the ICC shall not prevent proceedings under this Act, in relation to that person.

(2) If a request for provisional arrest, arrest and surrender or other assistance would require Botswana to act inconsistently with its obligations with respect to the state or diplomatic immunity of a person or property of another State which is not a party to the Statute, the Director of Public Prosecutions or the Commissioner of Police, as the case may be, shall refuse or postpone the assistance requested until he or she is satisfied that the ICC has, in accordance with article 98 (1) of the Statute, obtained the cooperation of the State for the waiver of the immunity.

(3) If a request for provisional arrest or arrest and surrender would require Botswana to act inconsistently with its obligations under an international agreement with a State which is not a party to the Statute pursuant to which the consent of the sending State is required to surrender a person of that State to the ICC, the Director of Public Prosecutions or the Commissioner of Police, as the case may be, shall refuse or postpone the assistance requested until he or she is satisfied that the ICC has, in accordance with article 98 (2) of the Statute, obtained the cooperation of the sending State for the giving of consent for the surrender.

Response to requests

21. (1) The Director of Public Prosecutions or the Commissioner of Police, as the case may be, shall notify the ICC without undue delay, of his or her response to a request for assistance and the outcome of any action that has been taken to execute the request.

(2) The Director of Public Prosecutions or the Commissioner of Police, as the case may be, shall, before deciding to postpone or refuse a request, consult with the ICC to ascertain whether the assistance sought can be provided —

(*a*) subject to conditions;

(*b*) at a later date; or

(*c*) in an alternative manner.

(3) Where the Director of Public Prosecutions or the Commissioner of Police, as the case may be, decides, in accordance with the Statute and this Act, to refuse or postpone the assistance requested, in whole or in part, the notification to the ICC shall set out the reasons for such decision.

(4) The Director of Public Prosecutions or the Commissioner of Police, as the case may be, shall set out in the notification to the ICC under subsection (3), the reasons for the inability to execute a request for assistance, if the request cannot be executed for any other reason.

(5) In the case of an urgent request for assistance, any documents or evidence transmitted in response shall, if the ICC so requests, be sent expeditiously to the ICC.

Request for arrest and surrender

22. (1) Subject to the provisions of sections 23 and 24, where the Director of Public Prosecutions receives a request for the arrest and surrender of a person alleged to have committed a crime within the jurisdiction of the ICC or on whom a judgment of conviction has been imposed by the ICC the Director of Public Prosecutions shall, if satisfied that the request is supported by the information and documents required by article 91 of the Statute, transmit the request and any supporting documents to a magistrate.

(2) Upon receipt of a request under subsection (1), the magistrate shall —

(*a*) if the request is accompanied by a warrant of arrest issued by the ICC, endorse the warrant for execution by a police officer in any part of Botswana; or

(*b*) if the request is accompanied by a judgment of conviction by the ICC, issue a warrant for the arrest of the person to whom the judgment relates, for execution by a police officer in any part of Botswana.

Refusal of request for arrest and surrender

23. (1) The Director of Public Prosecutions shall refuse a request for arrest and surrender, at any time before the surrender of the person, if —

(*a*) the ICC has determined that the case to which the request relates is inadmissible on any ground; or

(*b*) the ICC advises that it does not intend to proceed with the request for any reason, including but not limited to a determination by the ICC that article 98 of the Statute applies to the execution of the request.

(2) The Minister may refuse a request for arrest and surrender of a person, at any time before the surrender of the person if —

(*a*) there is a competing request from one or more States not party to the Statute for the extradition of the person for the same conduct as that which constitutes the crime for which the ICC seeks the person's surrender and a decision to extradite to a State is made in accordance with article 90 of the Statute and section 25 of the Act; or

(*b*) there is a competing request from one or more States not party to the Statute for the extradition of the person for different conduct from that which constitutes the crime for which the ICC requests the person's surrender and a decision to extradite to a State is made in accordance with article 90 of the Statute and section 25 of the Act.

(3) If the Director of Public Prosecutions, under subsection (1), or the Minister, under subsection (2), decides to refuse a request for arrest and surrender in accordance with subsections (1) or (2) after transmitting a request under section 22, the Director of Public Prosecutions shall notify the magistrate who may cancel any warrant or delivery order issued by the magistrate and ensure the person's release from custody on conditions prescribed in relation to bail arising from that warrant or order.

Postponement of execution of request for arrest and surrender

24. (1) The Director of Public Prosecutions may postpone the execution of a request for arrest and surrender at any time before the surrender of the person if —

(*a*) a determination on admissibility is pending before the ICC;

(*b*) the request would interfere with an investigation or prosecution in Botswana involving a different offence from that for which surrender to the ICC is requested; or

(*c*) the Director of Public Prosecutions is consulting with the ICC under section 20 as to whether or not article 98 of the Statute applies to the execution of the request.

(2) If the execution of the request for arrest and surrender is postponed under subsection (1) (*a*) and the ICC decides that the case is admissible, the Director of Public Prosecutions shall proceed with the execution of a request as soon as possible after the decision of the ICC.

(3) If the execution of the request for arrest and surrender is postponed under subsection (1) (*b*), the Director of Public Prosecutions shall consult with the ICC and agree on a period of time for postponement of the execution of the request in accordance with article 94 of the Statute; and the Director of Public Prosecutions shall proceed with executing the request after the lapse of that period, unless otherwise as agreed with the ICC.

(4) If the execution of the request for arrest and surrender is postponed under subsection (1) (*c*) and the ICC decides to proceed with the request, the Director of Public Prosecutions shall proceed with the execution of the request as soon as possible after the decision of the ICC.

(5) Where the Director of Public Prosecutions decides to postpone executing a request for arrest and surrender in accordance with this section after he or she has transmitted a request under section 22, the Director of Public Prosecutions shall —

(*a*) notify the magistrate of the postponement and the magistrate shall adjourn any pending proceedings until further notice from the Director of Public Prosecutions; or

(*b*) notify the magistrate as soon as possible whether or not to proceed with the execution of the request, and the magistrate shall proceed accordingly with the execution of the request or the discharge of the person.

(6) A decision by the Director of Public Prosecutions to postpone the execution of a request shall not affect the validity of any act that has been done or any warrant or order made under this Part prior to the decision to execute the request, and any such warrant or order shall remain in force unless cancelled by the magistrate in accordance with subsection (5) (*b*).

Competing requests

25. (1) Where a request for arrest and surrender of a person is received from the ICC and one or more States also request the extradition of the person for the same conduct as that which constitutes the crime for which the ICC seeks the person's surrender, the Minister shall —

(*a*) notify the ICC and the requesting State of that fact; and

(*b*) determine whether the person is to be surrendered to the ICC or to the requesting State.

(2) Where the request for extradition of a person for the same conduct as that which constitutes the crime for which the ICC seeks the person's surrender is made by a State which is a party to the Statute, priority shall be given to the request from the ICC if the ICC has determined under articles 17 to 19 of the Statute that the case is admissible:

Provided that where an admissibility decision is pending before the ICC, a person shall not be extradited under the Extradition Act until the ICC makes a decision on admissibility under articles 17 and 18 of the Statute and determines that the case is inadmissible.

Cap. 09:03

(3) Where the request for extradition of a person for the same conduct as that which constitutes the crime for which the ICC seeks the person's surrender is made by a State which is not a party to the Statute, priority shall be given to the request for arrest and surrender from the ICC, and the ICC has determined under articles 17, 18 and 19 of the Statute that the case is admissible.

(4) Where the request for extradition of a person for the same conduct as that which constitutes the crime for which the ICC seeks the person's surrender is made by a State which is not a party to the Statute and the ICC has determined under articles 17, 18 and 19 of the Statute that the case is admissible, the Minister shall determine whether the person is to be surrendered to the ICC or extradited to the requesting State taking into consideration 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;

(*c*) the nationality of the victims and the person sought to be extradited; and

(*d*) the possibility of subsequent surrender to the ICC or the requesting State.

(5) Where a request for arrest and surrender of a person is received by the Minister from the ICC and one or more States also request the extradition of the person for conduct other than that which constitutes the crime for which the ICC seeks the person's surrender, priority shall be given to the request from the ICC.

(6) Where a request for surrender of a person is received by the Minister from the ICC and one or more States also request the extradition of the person for conduct other than that which constitutes the crime for which ICC seeks the person's surrender, the Minister shall determine whether the person is to be surrendered to the ICC or extradited to a requesting State taking into consideration all the relevant factors referred to in subsection (4) as well as the relative nature and gravity of the conduct in question.

Official capacity not a bar to arrest and surrender
Cap. 39:01
Cap. 02:05

26. (1) Subject to section 20, the existence of any immunity or special procedural rule attaching under the Diplomatic Immunities and Privileges Act and the National Assembly (Powers and Privileges) Act to a person shall not be a ground for —

(*a*) refusing or postponing a request by the ICC for the arrest and surrender of that person; and

(*b*) holding that that person is ineligible for arrest and surrender to the ICC.

(2) Where —

(*a*) state or diplomatic immunity attaches to a person by reason of a connection with a State other than a State Party to the Statute; and

(*b*) waiver of that immunity is obtained by the ICC in relation to a request for that person's surrender,

the waiver shall be treated as extending to proceedings under this Part in connection with that request.

(3) A certificate by the Minister —

(*a*) that a State is or is not a party to the Statute; or

(*b*) that the United Nations Security Council has referred a situation to the ICC with respect to a State; or

(*c*) that there has been a waiver under subsection (2), is conclusive evidence of that fact for the purposes of this Part.

(4) The Director of Public Prosecutions may in any particular case, after consultation with the ICC and the State concerned, direct that proceedings, or further proceedings under this Part which, except for proceedings under subsection (2), would be prevented by state or diplomatic immunity attaching to a person shall not be taken against that person.

Provisional arrest

27. (1) Where the Director of Public Prosecutions receives a request from the ICC for the provisional arrest of a person under article 92 of the Statute, the Director of Public Prosecutions shall, if satisfied that the request is supported by the information required under article 92 (2) of the Statute, direct that the person be arrested.

(2) Where a person has been provisionally arrested under this section, and the Director of Public Prosecutions receives a formal request for arrest and surrender as provided for under article 91 of the Statute, the Director of Public Prosecutions shall immediately send a notice to a magistrate together with the request, stating under oath or affirmation that he or she has reason to believe that —

(*a*) the request of the ICC has been made on grounds of urgency for the arrest of a person who is suspected or accused of having committed a crime under the Statute or who has been convicted by the ICC;

(*b*) a warrant of arrest or a judgment of conviction by the ICC against the person in question exists;

(*c*) a formal request for the surrender of the person to the ICC will be made later;

(*d*) the person concerned is in or on his or her way to Botswana; and

(*e*) the purpose of the arrest is to bring the person concerned before the ICC or to take him or her to a place where he or she is to undergo imprisonment under a sentence of the ICC, as the case may be.

(3) A magistrate may, in accordance with subsection (2), issue a warrant for the arrest of that person and notify the Director of Public Prosecutions that such a warrant has been issued, and the provisions of subsection (1) shall *mutatis mutandis* apply.

Rights of arrested person

28. (1) A person arrested under a warrant obtained in accordance with section 22 or pursuant to a direction issued by the Director of Public Prosecutions under section 27 shall be brought before a magistrate within 48 hours.

(2) The magistrate may, of his or her own motion or at the request of the person arrested, determine —

(*a*) whether the person was lawfully arrested in accordance with the warrant or the direction; and

(*b*) whether the person's rights have been respected in the course of the arrest.

(3) In making a determination under subsection (2), the magistrate shall apply the principles applicable to judicial review.

(4) Where the magistrate determines that —

(*a*) the person was not lawfully arrested; or

(*b*) the person's rights were not respected,

the magistrate shall make a declaration to that effect to the Director of Public Prosecutions with any explanation required and may grant appropriate relief pending the surrender hearing under section 31.

(5) The magistrate shall send the declaration made under subsection (4) to the Director of Public Prosecutions, and the Director of Public Prosecutions shall transmit the declaration to the ICC.

Person arrested on provisional warrant

29. (1) Where a person has been provisionally arrested in accordance with section 27, the magistrate shall not proceed under section 31 unless —

(*a*) the magistrate has received a notice from the Director of Public Prosecutions that the request for surrender and supporting documents required under article 91 of the Statute have been received by the Director of Public Prosecutions; and

(*b*) the relevant documents have been transmitted to the magistrate by the Director of Public Prosecutions under section 27 (2).

(2) The magistrate may adjourn the proceedings pending the receipt of the notice and documents under subsection (1).

(3) Where the magistrate has not received the notice specified in subsection (1) within 60 days of the date of the provisional arrest of the person, the magistrate shall release the person from custody or on bail, unless satisfied that the period for submission of the notice should be extended in the interests of justice.

(4) The release of a person under subsection (3) shall be without prejudice to any subsequent proceedings that may be brought for the arrest and surrender of the person to the ICC whether for the same facts and offence or not.

Application for bail

30. (1) A person brought before a magistrate under section 28 may apply for bail under this Act.

(2) Where an application for bail is made under subsection (1), the magistrate shall adjourn the hearing of the application and notify the Director of Public Prosecutions.

(3) The Director of Public Prosecutions shall, on receipt of a notification under subsection (2), consult immediately with the ICC to obtain any recommendations from the Pre-Trial Chamber under article 59 (5) of the Statute, and shall convey those recommendations to the magistrate.

(4) The magistrate shall give full consideration to any recommendations conveyed to him or her under subsection (3) before making a decision on the application for bail.

(5) Where no recommendations are received from the ICC within seven days of the Director of Public Prosecutions being notified of the application for bail, the magistrate may proceed to hear the application.

Cap. 08:02

(6) Notwithstanding the provisions of the Criminal Procedure and Evidence Act with regard to bail hearings, a magistrate shall not release a person brought before him or her under section 28 on bail, unless the magistrate is satisfied that, having regard to the crimes alleged to have been committed by that person, there are urgent and exceptional circumstances that justify the person's release on bail and that there are sufficient safeguards to ensure that Botswana will be able to fulfill its obligations under the Statute to surrender such person to the ICC.

Surrender hearing

31. (1) The magistrate before whom a person arrested under section 22 or 27 is brought shall satisfy himself or herself that —

(*a*) there is a warrant of arrest issued by the ICC or a judgment of conviction by the ICC, in respect of that person; and

(*b*) the warrant or judgment relates to the person before the magistrate.

(2) Upon the magistrate being satisfied of the matters referred to in subsection (1) with respect to the arrested person, the magistrate shall, subject to section 29, issue a delivery order in respect of that person in accordance with article 59 (7) of the Statute.

(3) Where the magistrate issues a delivery order under subsection (2), the magistrate shall —

(*a*) transmit the delivery order to the Commissioner of Police for execution;

(*b*) commit the person to custody pending the execution of the delivery order by the Commissioner of Police;

(*c*) send a copy of the delivery order to the Director of Public Prosecutions; and

(*d*) inform the person in a language understood by the person of his or her right to make an application to the appropriate court for a mandate in the nature of a writ of habeas corpus.

(4) Where the person who is the subject of a delivery order —

(*a*) is in custody, the magistrate shall order the continued detention of the person under the delivery order and notify the Commissioner of Prisons and the officer in charge of the prison where the person is held in custody, of the delivery order; or

(*b*) is not in custody, the magistrate shall, subject to any order with regard to bail, commit the person to custody and shall notify the Commissioner of Prisons and the officer in charge of the prison.

(5) Subject to subsection (6), the Commissioner of Police shall make arrangements with the ICC for the execution of the delivery order as soon as possible, and shall notify the Director of Public Prosecutions when the person has been surrendered to the ICC or the State of enforcement, in execution of the delivery order.

(6) Subject to section 33, the Commissioner of Police shall not make arrangements with the ICC for the execution of the delivery order until —

(*a*) after the expiration of the period prescribed by law for making an application for habeas corpus by the person to whom the order relates; or

(*b*) after the final determination of the application for habeas corpus, if an application for habeas corpus is made by the person within the stipulated period.

(7) A delivery order issued under this section is sufficient authority for holding the person specified in the order in custody until his or her delivery to the ICC.

(8) In deciding whether to make a delivery order under this section, a magistrate shall not —

(*a*) require evidence to establish that the trial of the person for the crime that he or she is alleged to have committed is justified before the ICC or would be justified under the laws of Botswana if the act constituting such crime had been committed in Botswana; and

(*b*) receive evidence with respect to, nor adjudicate on, any claim by the person that he or she has been previously tried or convicted for the conduct for which the ICC seeks surrender of the person.

(9) Where the person makes a claim under subsection (8) (*b*), the magistrate shall advise the Director of Public Prosecutions of the person's claim, and the Director of Public Prosecutions shall transmit the information to the ICC.

Magistrate not to inquire into validity of warrant

32. In proceedings under this Part, the magistrate shall not inquire into, receive any evidence regarding, or make any decisions as to, the validity of any warrant or order issued or made by the ICC.

Surrender by consent

33. (1) A person may at any time notify a magistrate that he or she consents to being surrendered to the ICC for the crime or crimes for which the ICC seeks the surrender of the person.

(2) The magistrate may accept the notification of consent under subsection (1) if —

(*a*) the person is before the magistrate when notification of the consent to surrender is given; and

(*b*) the magistrate is satisfied that the person has freely consented to the surrender in full knowledge of the consequences of surrender.

(3) Nothing in this section shall be construed as preventing a person, in respect of whom the magistrate has made a delivery order under section 31, from subsequently notifying the Director of Public Prosecutions that he or she consents to surrender.

(4) For the avoidance of doubt, a person arrested under a provisional warrant under section 27, may consent to surrender before a request for surrender is received, in which case the magistrate may make the order specified under subsection (5).

(5) Where the consent to surrender has been given, the magistrate shall immediately make a delivery order under section 31(2) and such of the provisions of sections 31 and 32 as are applicable shall apply to the person.

Effect of delivery order

34. (1) A delivery order is sufficient authority for any person to receive the person to whom the order relates, keep the person in custody and convey the person to the place where he or she is to be delivered to the custody of the ICC or of the State of enforcement, in accordance with arrangements made by the Commissioner of Police.

(2) A person in respect of whom a delivery order is in force shall be deemed to be in legal custody pending delivery up under the order.

(3) If a person in respect of whom a delivery order is in force escapes or is unlawfully at large, he or she may be arrested without warrant and taken to the place where he or she is required to be or to be taken.

Procedure where magistrate refuses order

35. (1) Where a magistrate refuses to issue a delivery order under section 31, the magistrate shall make an order remanding the person in custody for 14 days, and shall notify the Director of Public Prosecutions or the Commissioner of Police, as the case may be, of the decision and of the reasons for the decision.

(2) The Director of Public Prosecutions may appeal to the High Court against the decision of the magistrate refusing to make a delivery order.

(3) Where the magistrate is informed that an appeal is to be taken against his or her decision, the order remanding the person arrested shall continue to have effect until the appeal is determined and the person is either discharged or the delivery order is executed.

(4) The High Court may —

(*a*) allow the appeal, in which case it may make a delivery order or remit the case to the magistrate to make a delivery order in accordance with its decision; or

(*b*) dismiss the appeal, in which case the person shall be discharged in accordance with its decision.

(5) Where the High Court has dismissed an appeal under subsection (4) (*b*), the Director of Public Prosecutions may appeal the decision of the High Court to the Court of Appeal, within 15 days of the decision of the High Court.

(6) Where the Court of Appeal dismisses the appeal of the Director of Public Prosecutions under subsection (5), the person shall be discharged in accordance with the decision of the Court of Appeal.

Discharge of person not surrendered

36. (1) If a person in respect of whom a surrender order has been made, is not surrendered within 60 days after the expiration of a period of 15 days from making an application for habeas corpus or, if such an application is made within 60 days, after the final determination of the application, that person or someone duly authorised by him or her may make an application to the magistrate who made the surrender order, for the person's discharge.

(2) On an application made under this section, the magistrate shall order the person's discharge unless reasonable cause is shown for the delay.

(3) The discharge of a person under subsection (2) shall be without prejudice to any subsequent proceedings that may be brought for the arrest and surrender of the person to the ICC whether for the same facts and offence or not.

Discharge of person no longer required to be surrendered

37. (1) Where the ICC informs the Director of Public Prosecutions that the person arrested upon the request of the ICC is no longer required to be surrendered, the Director of Public Prosecutions shall notify the magistrate of that fact and the magistrate shall on receipt of the notification make an order for the discharge of the person.

(2) The discharge of a person under subsection (1) shall be without prejudice to any subsequent proceedings that may be brought for the arrest and surrender of the person to the ICC whether for the same facts and offence or not.

Request for temporary surrender

38. (1) Where a request for arrest and surrender by the ICC relates to a crime within the jurisdiction of the ICC but the person is subject to proceedings for a different offence in Botswana which have not been disposed of or is liable to serve a sentence of imprisonment imposed by a court in Botswana for a different offence, the Minister may authorise the temporary surrender of that person to the ICC.

(2) The Minister may, before making an authorisation under subsection (1), seek an undertaking from the ICC that the person shall be returned on completion of proceedings before the ICC or service of sentence imposed by the ICC, as the case may be.

(3) Subsections (2), (3), (4) and (5) of section 51 shall apply to an authorisation under subsection (1) with any necessary modifications.

Request for transit through Botswana of person to ICC

39. (1) Subject to subsection (4), where the Commissioner of Police receives a request from the ICC for transit through the territory of Botswana of a person being —

(*a*) surrendered or transferred by another State to the ICC;

(*b*) transferred from the ICC to a State of enforcement; or

(*c*) transferred to or from the State of enforcement as a result of a review hearing or other appearance by the person before the ICC,

the Commissioner of Police shall accede to the request for transit and the person shall be deemed, during transit, to be in lawful custody in Botswana and may be held in any police station, prison or any other place of detention which may be designated by the Commissioner of Police in consultation with the other relevant authorities.

(2) If the person referred to in subsection (1) arrives in Botswana without prior consent to transit, a police officer may at the request of the officer who has custody of the person being transported, hold the person in custody for a maximum period of 96 hours pending receipt by the Commissioner of Police of a request under subsection (1).

(3) An authorisation for transit shall not be required if the person being transported is transported by air and no landing is scheduled on the territory of Botswana.

(4) Notwithstanding subsection (1), the Commissioner of Police may refuse a request for transit through Botswana if he or she considers that such transit would impede or delay the surrender or transfer of the person being transported.

(5) Where a person being transported to the ICC arrives in Botswana but the conditions under subsections (1) and (2) are met, the Commissioner of Police may require the ICC to submit a request under subsection (1), for transit of the person being transported as soon as is reasonably practicable.

PART V — *Requests for other types of assistance*

Assistance in locating or identifying persons or objects

40. (1) Where the ICC requests assistance in locating or identifying a person or an object believed to be in Botswana, the Commissioner of Police may give authority for the request to proceed if he or she has reasonable grounds to believe the person to whom or the thing to which the request relates is, or may be, in Botswana.

(2) Where the Commissioner of Police authorises the request under subsection (1), he or she shall, without delay, use his or her best endeavours to ensure that the person to whom or the object to which the request relates is located, or, as the case may be, identified and located.

(3) An authorisation under this section shall be deemed to authorise the Commissioner of Police to enter any property in order to locate a person or an object.

Assistance in taking evidence

41. (1) Where the ICC requests assistance in the taking of evidence, the Director of Public Prosecutions shall give authority for the request to proceed and transmit the request to a magistrate, if the Director of Public Prosecutions has reasonable grounds to believe that the evidence can be taken in Botswana.

(2) Where the Director of Public Prosecutions authorises and transmits a request under subsection (1), the magistrate shall issue an order compelling the witness to appear at a specified time and place for his or her evidence to be taken.

(3) The magistrate shall, if the ICC so requests, permit a representative of the ICC or a representative of the person to whom the request relates to be present at the taking of the evidence and to put questions to the witness.

(4) In taking evidence under this section, the magistrate shall do so in the manner specified in the request for assistance made by the ICC, including complying with any procedure outlined in the request, unless the manner of execution or the procedure is prohibited under the laws of Botswana.

(5) The magistrate shall, when taking evidence under this section —

(*a*) certify that the evidence was taken before him or her and that the persons named in the certificate were present when the evidence was taken; and

(*b*) cause the evidence together with the certificate to be transmitted to the Director of Public Prosecutions.

Assistance in production of documents and articles

42. (1) Where the ICC requests assistance in the production of documents or articles, the Director of Public Prosecutions shall, where he or she has reasonable grounds to believe that the documents or articles can be produced in Botswana, give authority for the request to proceed and transmit the request to a magistrate.

(2) Where the Director of Public Prosecutions authorises and transmits the request under subsection (1), the magistrate shall issue an order for the production of the documents or articles.

(3) The magistrate's order may provide for any form of certification or authentication of the document or article as may be required by the ICC and may specify any other terms and conditions that may be appropriate in the circumstances.

(4) Where documents and articles are produced duly authenticated or certified as required by an order made under subsection (3), the magistrate shall cause the documents or articles to be sent to the Director of Public Prosecutions, with a written statement signed by the magistrate that they were produced to him or her.

Applicable law

43. (1) The applicable law for the taking of evidence under section 41 or the production of documents or articles under section 42 shall be the Statute and Rules, unless the magistrate orders that the evidence shall be taken in accordance with the laws of Botswana.

(2) Notwithstanding subsection (1), a person compelled to give evidence or produce documents shall have the same privileges as if the investigation or proceedings were conducted under the laws of Botswana and the laws of Botswana relating to the non-disclosure of information, including national security information, shall apply.

(3) Nothing in subsection (1) shall be construed as requiring a person to give evidence or answer any question or produce any document or article that the person could not be compelled to give or answer or produce in an investigation being conducted by the Prosecutor or in any proceedings before the ICC.

Assistance in questioning persons

44. (1) Where the ICC requests assistance in questioning a person who is being investigated or prosecuted by the ICC, the Commissioner of Police shall give authority for the request to proceed if he or she has reasonable grounds to believe that the person is, or may be, in Botswana.

(2) The Commissioner of Police shall, without delay —

(*a*) use his or her best endeavours to ensure that the questioning requested by the ICC is undertaken; and

(*b*) ensure that the answers to the questions put are recorded in writing and make any other report on the questioning as he or she considers to be appropriate in the circumstances.

Assistance in arranging service of documents

45. (1) Where the ICC requests assistance in arranging for the service of a document in Botswana, the Commissioner of Police shall give authority for the request to proceed if he or she has reasonable grounds to believe that the person or body to be served is or may be in Botswana.

(2) Where the Commissioner of Police authorises the request under subsection (1), he or she shall, without delay —

(*a*) use his or her best endeavours to have the document served —

(i) in accordance with any procedure specified in the request, or

(ii) if that procedure would be unlawful or inappropriate in Botswana, or if no procedure is specified, in accordance with the law of Botswana; and

(*b*) transmit to the Director of Public Prosecutions —

(i) a certificate as to service, if the document is served, or

(ii) a statement of the reasons that prevented service, if the document is not served.

(3) In this section, "document" includes —

(*a*) a summons requiring a person to appear as a witness; and

(*b*) a summons to an accused that has been issued under article 58 (7) of the Statute, providing for the issuance by the pre-trial chamber for a warrant of arrest or summons to appear before the ICC.

Assistance in facilitating the voluntary appearance of witnesses

46. (1) Where the ICC requests assistance in facilitating the voluntary appearance of a witness before the ICC, the Commissioner of Police shall give authority for the request to proceed if he or she is satisfied that there are reasonable grounds to believe that the witness is, or may be, in Botswana.

(2) In this section and in sections 47 and 48, "witness" includes a person who may give expert evidence; but does not include —

(*a*) a person who has been accused of a crime in the proceedings to which the request relates; or

(*b*) a prisoner who is detained in relation to an offence against the laws of Botswana.

Witnesses' consent required

47. The Commissioner of Police shall, before he or she gives authority for a request to proceed under section 46, make such inquiries as may be necessary to ascertain whether the prospective witness consents to giving evidence or assisting the ICC.

Director of Public Prosecutions to assist in facilitating appearance of witnesses

48. (1) The Director of Public Prosecutions may assist in the making of arrangements to facilitate a witness's attendance before the ICC if the Director of Public Prosecutions is satisfied that —

(*a*) the prospective witness has consented to giving the evidence or assistance requested; and

(*b*) the ICC has given any assurance requested by the Director of Public Prosecutions in respect of the witness including, but not limited to, an assurance that the witness will not be prosecuted or detained by the ICC in respect of any specified act or omission that occurred before the witness's departure from Botswana.

(2) The Director of Public Prosecutions may —

(*a*) approve and make arrangements for the travel of the witness to the ICC at the cost of the ICC; including, but not limited to, the obtaining of such approvals, authorities, and permissions as are required for that purpose, including, in the case of a person who although not liable to be detained in a prison is subject to a sentence —

(i) the variation, discharge, or suspension of the conditions of the person's release from prison, or

(ii) the variation, cancellation, or suspension of the person's sentence, or of the conditions of the person's sentence; and

(*b*) take such other action for the purposes of subsection (1) as the Director of Public Prosecutions thinks appropriate.

Request for assistance by ICC in facilitating temporary transfer of prisoner

49. Where the ICC requests assistance in facilitating the temporary transfer to the ICC of a prisoner serving a sentence in Botswana for an offence against the law of Botswana, the Minister shall give authority for the request to proceed if he or she has reasonable grounds to believe that the prisoner's assistance is sought for the purpose of identification or obtaining evidence or other assistance.

Consent of prisoner on transfer

50. The Minister shall, before he or she authorises a transfer under section 49, make such inquiries as may be necessary to ascertain whether the prisoner will consent to the transfer.

Arrangement of transfer of prisoner

51. (1) The Minister may authorise the temporary transfer of a prisoner serving a sentence in Botswana to the ICC if he or she is satisfied that —

(*a*) the prisoner has consented to giving evidence or other assistance requested; and

(*b*) the ICC has given any assurances requested by the Minister, including but not limited to an assurance that the prisoner will not be released by the ICC without the prior notification of the Minister.

(2) Where the Minister authorises the temporary transfer of a prisoner serving a sentence in Botswana to the ICC, he or she may —

(*a*) direct that the prisoner be released from the prison in which that prisoner is detained, for the purpose of the transfer to the ICC; and

(*b*) make arrangements for the prisoner to travel to the ICC in the custody of a person authorised for the purpose by the ICC.

(3) A direction given by the Minister under subsection (2) in respect of a prisoner shall be sufficient authority for the release of the prisoner from the prison in which the prisoner is detained, for the purposes of the transfer.

(4) A prisoner released under a direction given under subsection (2) shall be treated, for the purposes of the law relating to escape from lawful custody and for that purpose only, as continuing to be in the legal custody of the officer in charge of a prison from which he or she is so released, while in Botswana during the period of that release.

(5) Where there is any inconsistency between subsection (4) and any other law, subsection (4) shall prevail.

Effect of transfer on prisoner's sentence

52. Where a prisoner who is serving a sentence for an offence committed in Botswana is transferred to the ICC —

(*a*) the prisoner shall be treated, while in custody outside Botswana in connection with the request, as being in custody for the purposes of the sentence imposed for the offence committed in Botswana which shall continue to run; and

(*b*) the Minister —

(i) may at any time notify the ICC that the prisoner is no longer required to be kept in custody, and

(ii) shall notify the ICC if the prisoner is no longer liable to be detained in a prison in Botswana.

Assistance in examining places or sites

53. (1) Where the ICC requests assistance in examining places or sites in Botswana, the Commissioner of Police shall give authority for the request to proceed if he or she has reasonable grounds to believe that the place or site is located in Botswana.

(2) Where the Commissioner of Police authorises the request under subsection (1), he or she —

(*a*) shall without delay use his or her best endeavours to undertake the examination of the place or site in the manner that the ICC has requested;

(*b*) shall make such report on the examination as he or she considers to be appropriate in the circumstances;

(*c*) shall deliver the report of the examination to the Director of Public Prosecutions; and

(*d*) may, where appropriate, apply to a magistrate for an exhumation order for the exhumation and examination of the remains at a grave site.

(3) An authorisation under this section shall be deemed to authorise the Commissioner of Police to enter a place or site for the purpose of examining it.

Assistance involving search and seizure

54. (1) Where the ICC makes a request for search and seizure, the Commissioner of Police shall give authority for the request to proceed and authorise a police officer, in writing, to apply to a magistrate for a search warrant if the Commissioner of Police has reasonable grounds to believe that any object relevant to an investigation being conducted by the Prosecutor or proceeding before the ICC is or may be located in Botswana.

(2) Upon an application made to a magistrate under subsection (1) by a police officer authorised under that subsection, the magistrate may, if satisfied that the thing specified in the request made by the ICC is located in Botswana, issue a warrant authorising that police officer or any other police officer specified in the warrant to search for and seize the object.

(3) The magistrate may issue a warrant under subsection (2) subject to such conditions as he or she may think fit to impose.

(4) Subject to any condition specified in the warrant, a warrant issued under subsection (2) shall authorise a police officer executing the warrant —

(*a*) to enter and search any place or to stop and search any vehicle in which the object specified in the warrant is located or held, at any time;

(*b*) to request the assistance of other police officers as may be reasonable in the circumstances for the purpose of such entry and search;

(*c*) to use such force as is reasonable in the circumstances to effect entry to such place or to stop or board such vehicle, and to break any receptacle in which the thing specified in the warrant is placed; and

(*d*) to search for and seize the object.

(5) A person called on to assist a police officer executing a warrant issued under subsection (2) may exercise the powers referred to in paragraphs (c) and (d) of subsection (4).

(6) A police officer executing a warrant issued under subsection (2) shall —

(*a*) produce such warrant on initial entry, and if required to do so, at any time thereafter; and

(*b*) give to the owner of the object seized or any other person whom he or she has reason to believe has an interest in such object, a notice specifying —

(i) the date and time of execution of the warrant,

(ii) the name and position of the person executing the warrant, and

(iii) the object seized under the warrant.

(7) A police officer seizing an object under the authority of a warrant issued under subsection (2) shall deliver it into the custody and control of the Commissioner of Police.

(8) Except as otherwise provided in this section, the law relating to search and seizure generally, shall apply to a search and seizure under this section.

Assistance involving the use of other domestic investigative procedures

55. (1) Where the ICC requests assistance in the gathering of evidence for an investigation, the Director of Public Prosecutions shall give authority for the request to proceed and transmit the request to the appropriate authority in Botswana, if the Director of Public Prosecutions has reasonable grounds to believe that the assistance requested is not prohibited by the laws of Botswana.

(2) Where the Director of Public Prosecutions authorises and transmits the request under subsection (1), the authority may —

(*a*) make use of domestic powers in the gathering of evidence as if the investigation was conducted under the laws of Botswana and the laws of Botswana relating to the gathering of evidence shall apply with the necessary modifications; and

(*b*) make such report as the authority considers to be appropriate in the circumstances.

Assistance in protecting victims and witnesses and preserving evidence

56. (1) Where the ICC requests —

(*a*) assistance under article 93 (1) (*j*) of the Statute in protecting victims and witnesses or preserving evidence; and

(*b*) assistance under article 19 (8), or article 56 (2) or (3), in preserving evidence, in relation to an investigation by or proceedings before the ICC,

the Commissioner of Police shall give authority for the request to proceed if he or she has reasonable grounds to believe that the assistance requested is not prohibited by the laws of Botswana.

(2) Where the Commissioner of Police authorises the request under subsection (1), he or she shall, without delay —

(*a*) use his or her best endeavours to give effect to the request; and

(*b*) make such report on the outcome of his or her endeavours as he or she considers to be appropriate in the circumstances.

Request for assistance in the restraining and confiscation of property

57. (1) Where the ICC requests assistance in identifying, tracing and restraining or confiscating property for the purpose of eventual forfeiture and the Director of Public Prosecutions has reasonable grounds to believe that the property is or may be located in Botswana, the Director of Public Prosecutions may apply to a court for a restraining or confiscation order with respect to the property.

(2) An application under subsection (1) may be made *ex parte* and may be granted without a hearing.

(3) The court, in considering an application under subsection (1), may make a restraining or confiscation order, as appropriate, if satisfied that the property to which the application for the restraining or confiscation order relates consists of or includes property that is or may be affected by a forfeiture order and that —

(*a*) the forfeiture order has been made in proceedings before the ICC; or

(*b*) there are reasonable grounds to believe that the forfeiture order may be made in such proceedings.

(4) A restraining or confiscation order shall provide for notice to be given to any persons with an interest in the property or otherwise affected by the order.

(5) A person affected by an order under this section may apply to the court for an order to vary or discharge the restraining or confiscation order in relation to his or her interest.

(6) The court may vary or discharge the restraining or confiscation order in relation to the interest of a person making an application under subsection (5) only if the court is satisfied that the applicant —

(*a*) has an interest in the property;

(*b*) was not in any way involved in the commission of the crime to which the property relates; and

(c) had no basis to believe that the property was the proceeds or instruments of, or associated with, the crime.

(7) Subject to subsection (6), the property shall remain subject to the restraining or confiscation order for a reasonable period of time as determined by the court or until the ICC issues a forfeiture order in respect of the property, and that order has been registered for enforcement under section 73, or the ICC advises that no such order will be issued, in which case the property shall be discharged from the restraining or confiscation order.

Refusal of request

58. (1) The Director of Public Prosecutions or the Commissioner of Police, as the case may be, may refuse a request for assistance under this Part if —

(*a*) the ICC has determined that the case to which the request relates is inadmissible on any ground;

(*b*) the ICC advises that it does not intend to proceed with the request for any reason, including but not limited to a determination of the ICC that article 98 (1) of the Statute applies to the execution of the request;

(*c*) the assistance sought is outside the listed types of assistance set out in article 93 (1) and the provision of the assistance is prohibited by the law of Botswana and the ICC does not accept the conditions, as contemplated by article 93 (5) of the Statute, subject to which the Director of Public Prosecutions or the Commissioner of Police, as the case may be, was willing to provide the assistance;

(*d*) the execution of a particular measure of assistance is prohibited in Botswana on the basis of an existing fundamental legal principle of general application and the ICC does not accept the conditions, as contemplated by article 93 (5) of the Statute, subject to which the Director of Public Prosecutions or the Commissioner of Police, as the case may be, was willing to provide the assistance;

(*e*) there are competing requests for assistance from the ICC and a State and the Director of Public Prosecutions or the Commissioner of Police, as the case may be, has decided, in consultation with the ICC and the State, that it is not possible to execute both requests and has decided further to proceed with the execution of the request of the State, in accordance with the principles established by article 90 of the Statute and section 25; or

(*f*) the refusal is authorised under Part VII of the Act.

(2) If the Director of Public Prosecutions or the Commissioner of Police, as the case may be, decides to refuse a request for assistance in accordance with subsection (1) after the Director of Public Prosecutions or the Commissioner of Police, as the case may be, has transmitted the request to the appropriate authority in Botswana, he or she shall inform that authority not to take any further steps to execute the request.

Postponement of execution of request for assistance

59. (1) The Director of Public Prosecutions or the Commissioner of Police, as the case may be, may postpone the execution of a request for assistance under this Part if —

(*a*) a determination on admissibility is pending before the ICC;

(*b*) the execution of the request would interfere with an investigation or prosecution in Botswana involving a different offence from that to which the request relates;

(*c*) the Director of Public Prosecutions or the Commissioner of Police, as the case may be, is consulting with the ICC under section 20 (2) as to whether or not article 98 (1) of the Statue applies to execution of the request; or

(*d*) there are competing requests for assistance from ICC and a State, and the Director of Public Prosecutions or the Commissioner of Police, as the case may be, in consultation with ICC and the State decides to postpone the execution of the ICC's request.

(2) If execution of the request for assistance is postponed under subsection (1) (*a*) and the ICC decides that the case is admissible, the Director of Public Prosecutions or the Commissioner of Police, as the case may be, shall proceed with the execution of the request as soon as possible after the decision of the ICC.

(3) If the execution of the request for assistance is postponed under subsection (1) (*b*), the Director of Public Prosecutions or the Commissioner of Police, as the case may be, shall consult with the ICC and agree on a period of time for postponement of the execution of the request under article 94 of the Statute; and the Director of Public Prosecutions or the Commissioner of Police, as the case may be, shall proceed with execution of the request after the lapse of the period, unless otherwise agreed with the ICC.

(4) If execution of the request for assistance is postponed under subsection (1) (*c*) and the ICC decides to proceed with the request, the Director of Public Prosecutions or the Commissioner of Police, as the case may be, shall proceed with the execution of the request as soon as possible after the decision of the ICC.

(5) If the execution of the request for assistance is postponed under subsection (1) (*d*), the Director of Public Prosecutions or the Commissioner of Police, as the case may be, shall proceed with the execution of the ICC's request as soon as practicable.

(6) If the Director of Public Prosecutions or the Commissioner of Police, as the case may be, decides to postpone execution of a request for assistance in accordance with this section after he or she has transmitted the request for execution to the relevant authority in Botswana, he or she shall direct that authority to postpone the execution of the request for such period as is specified in the direction.

(7) A decision by the Director of Public Prosecutions or the Commissioner of Police, as the case may be, to postpone the execution of a request shall not affect the validity of any act that has been done or any warrant or order made under this Part prior to the decision, and any such warrant or order shall remain in force unless cancelled.

Verification or authentication of material

60. Where, in order to comply with a request of the ICC for assistance, it is necessary for any evidence or other material obtained under this Part to be verified or authenticated in any manner, the Director of Public Prosecutions may give directions as to the manner in which such evidence or material shall be verified.

Transmission of material to ICC

61. (1) Any evidence or other material obtained under this Part by a person other than the Director of Public Prosecutions together with any requisite verification shall be sent to the Director of Public Prosecutions for transmission to the ICC unless the Director of Public Prosecutions otherwise directs.

(2) Where any evidence or other material is to be transmitted to the ICC, there shall be transmitted —

(*a*) where the material consists of a document, the original or a copy; and

(*b*) where the material consists of any other article, the article itself or a photograph or other description of it as may be necessary to comply with the request of the ICC.

Issuance of certificate

62. (1) If the Director of Public Prosecutions or the Commissioner of Police, as the case may be, receives a request for assistance from the ICC to which this Part applies, the Director of Public Prosecutions or the Commissioner of Police, as the case may be, may issue a certificate certifying all or any of the following facts —

(*a*) that a request for assistance has been made by the ICC;

(*b*) that the request meets with the requirements of this Act; and

(*c*) that the request has been duly accepted under and in accordance with the provisions of this Act.

(2) In any proceeding under this Act, a certificate purporting to have been issued under subsection (1) shall, in the absence of proof to the contrary, be sufficient evidence of the facts certified therein.

Request for assistance from ICC

63. The Director of Public Prosecutions or the Commissioner of Police, as the case may be, may make a request to the ICC for assistance in accordance with this Part in an investigation into, or trial in respect of, or conduct that may constitute a crime within the jurisdiction of the ICC or that constitutes a crime for which the maximum penalty under the law of Botswana is a term of imprisonment of not less than 5 years.

PART VI — *Enforcement of sentences or orders of the ICC in Botswana*

Application of Part

64. The application of sections 65 to 77 of this Part are subject to an agreement between the ICC and Botswana.

Botswana may act as State of enforcement

65. (1) The Minister may notify the ICC that Botswana is willing to allow persons who are ICC prisoners as a result of being sentenced to imprisonment by the ICC to serve those sentences in Botswana, subject to any conditions specified in the notification.

(2) The Minister shall, before issuing a notification under subsection (1), consult with any other relevant authority in Botswana.

Request for sentence to be served in Botswana

66. (1) Where —

(*a*) the Minister has issued a notification under section 65 and has not withdrawn that notification and the ICC imposes a sentence of imprisonment under the Statute on a person convicted of a crime within the jurisdiction of the ICC; and

(*b*) the ICC designates Botswana under article 103 of the Statute, as the State in which the sentence is to be served,

the Minister shall consider whether or not to accept the designation.

(2) The Minister may accept the designation of Botswana as the State in which the sentence is to be served if the Minister is satisfied that the ICC has agreed to the conditions specified in the notification made under section 65, and in the case of a prisoner who is not a citizen of Botswana, the Minister has consented to the sentence being served in Botswana.

Prisoner to be held in custody

67. (1) Where the Minister accepts the designation of Botswana as the State in which a sentence of imprisonment imposed by the ICC is to be served under section 66, an ICC prisoner may be transported to Botswana in the custody of a person authorised for the purpose by the ICC.

(2) On arrival in Botswana or, if the person is already in Botswana when the sentence is imposed, the Minister shall issue a warrant of detention in respect of the ICC prisoner and shall cause a copy of the warrant to be sent to the Commissioner of Prisons.

(3) The warrant of detention issued under subsection (2) shall be sufficient authority for the detention of the ICC prisoner until he or she completes, or is released from, the sentence or is transferred to another country.

(4) Subject to subsection (7), an ICC prisoner shall be detained in accordance with the laws of Botswana as if he or she had been sentenced to imprisonment under the laws of Botswana.

(5) Notwithstanding anything contained in subsection (4), or in any other law —

(*a*) an ICC prisoner shall have the right to communicate on a confidential basis with the ICC, without impediment from any person or body; and

(*b*) a Judge of the ICC or a member of staff of the ICC may visit the ICC prisoner for the purpose of hearing any representations by the prisoner without the presence of any other person, except a representative of the prisoner, if any.

(6) The enforcement of a sentence of imprisonment, including any decision to release or transfer an ICC prisoner, shall be in accordance with Part 10 of the Statute and the Rules.

(7) The laws of Botswana relating to parole, remission, reduction or variation of sentence and pardon shall not apply to a sentence imposed by the ICC.

Transfer of prisoner to ICC for review of sentence

68. (1) Where the ICC, under article 110 of the Statute, decides to review the sentence of an ICC prisoner who is serving sentence in Botswana, the Minister shall direct that the prisoner be transferred to the ICC, at the expense of the ICC, for the purposes of enabling the ICC to review the prisoner's sentence.

(2) An ICC prisoner referred to under subsection (1) shall be transferred to and from the ICC in the custody of a person authorised for the purpose by the ICC, at the expense of the ICC.

Transfer of prisoner to another State to complete sentence

69. (1) An ICC prisoner serving a sentence in Botswana may, at any time, apply, in writing, to the ICC to be transferred from Botswana to complete service of sentence in another State, which the prisoner is a citizen of.

(2) Where an ICC prisoner is to be transferred from Botswana to another State to complete that sentence, the prisoner may be transported from Botswana to that State in the custody of a person authorised for the purpose by the ICC at the expense of the ICC.

Special rules in certain cases

70. (1) An ICC prisoner serving a sentence in Botswana shall not —

(*a*) be extradited to another country on completion of his or her sentence; or

(*b*) be required to undergo trial for an offence under the laws of Botswana that relates to an act or omission alleged to have been committed prior to his or her arrival in Botswana to serve sentence, without agreement of the ICC.

(2) Nothing contained in subsection (1) shall apply to an ICC prisoner who remains voluntarily in Botswana for more than 30 days after the date of completion of, or release from, the sentence imposed on him or her by the ICC or who voluntarily returns to Botswana after having left Botswana.

Immigration permit not required

71. A person to whom this Part applies shall not be required to hold a permit or other authorisation under the laws of Botswana relating to citizenship and immigration control if, and for so long as, he or she is in Botswana in accordance with this Part, whether or not he or she is in custody.

Enforcement of fines

72. (1) Where the ICC requests enforcement in accordance with article 109 of the Statute of an order for the payment of a fine made under article 77 (2) (*a*) of the Statute, the Minister shall give authority for the request to proceed, if he or she has reasonable grounds to believe that —

(*a*) neither the conviction in respect of which the order was imposed, nor the order for the payment of the fine is subject to further appeal; and

(*b*) the order can be enforced in the manner provided for in this section.

(2) The Minister shall refer the request under subsection (1) to the appropriate authority, which authority shall, without delay, cause an order to be filed in any court in Botswana.

(3) An order filed in court under subsection (2), shall have the same force and effect as if it were an order for the payment of a fine imposed by that court and shall be enforced accordingly.

(4) The authority shall make a report to the Minister on the outcome of any action taken by it to enforce the order referred to in subsection (2) as it considers appropriate in the circumstances.

(5) Nothing contained in this section shall be construed as limiting or affecting the provisions relating to other types of assistance to the ICC in relation to a penalty imposed under article 77 of the Statute or as empowering the court to modify or vary an order of the ICC.

Enforcement of forfeiture orders

73. (1) Where the ICC requests enforcement in accordance with article 109 of the Statute, of an order for forfeiture of property made under article 77 (2) (*b*) of the Statute, the Director of Public Prosecutions shall give authority for the request to proceed if he or she has reasonable grounds to believe that —

(*a*) neither the conviction in respect of which the order was imposed, nor the forfeiture order, is subject to further appeal; and

(*b*) the property identified by the ICC is located in Botswana or that the person concerned, directly or indirectly, holds property in Botswana that may be the subject of the forfeiture order.

(2) The Director of Public Prosecutions shall, without delay, file the original or certified copy of the forfeiture order of the ICC with the High Court.

(3) Upon the filing of the order in the High Court under subsection (2), the High Court may direct that the Director of Public Prosecutions to do either or both of the following actions —

(*a*) give notice of the filing, in the manner and within the time the High Court considers appropriate to such persons, other than a person convicted of a crime in respect of which the order was made, as the High Court has reason to believe may have an interest in the property; or

(*b*) publish notice in the *Gazette* and two newspapers circulating in Botswana of the filing in the manner and within the time the High Court considers appropriate.

(4) A forfeiture order filed in the High Court under subsection (2) shall have, from the date it is filed, the same force and effect as if it were an order for the forfeiture of property issued by that High Court and shall be enforced accordingly.

(5) A forfeiture order filed under subsection (2) shall not be enforced until after the expiry of any period specified by the High Court in any notice given or published under subsection (3), or within two months from the filing of the order, whichever is the longer period.

(6) Where a forfeiture order is filed in the High Court in accordance with subsection (2), a person, other than a person convicted of a crime in respect of which the order was made, who claims an interest in the property, may apply to the court, with notice to the Director of Public Prosecutions.

(7) A person on whom notice of the hearing of the ICC held in connection with the making of the forfeiture order was served or who appeared at the hearing shall not make an application under subsection (6) without leave of the High Court.

(8) The High Court shall grant leave under subsection (7) only where it determines that it would be contrary to the interests of justice not to do so.

(9) An application made under subsection (6) shall be made before the expiry of any period specified in a notice made or published under subsection (3) or within two months of the filing of the order, whichever is the longer period, unless the court grants leave.

(10) On an application made under subsection (6), the High Court may make an order for the enforcement of the forfeiture order subject to the interests of the applicant if the High Court is satisfied that —

(*a*) the applicant has an interest in the property;

(*b*) the applicant did not receive notice of the hearing before the ICC or through no fault of his or her own, did not appear at the hearing;

(*c*) the applicant was not in any way involved in the commission of the crime in respect of which the order was made; and

(*d*) the applicant had no knowledge that the property constituted the proceeds of, or was associated with, the crime.

(11) Where the High Court makes an order under subsection (10), the ICC may —

(*a*) declare the nature, extent and value of the applicant's interest in the property; and

(*b*) either direct that the interest be transferred to the applicant or that payment be made to the applicant of an amount equivalent to the value of the interest.

Transfer of funds realised to ICC

74. The Minister responsible for finance shall arrange for the transfer of funds realised through the enforcement of fines under section 72 or the enforcement of forfeiture orders under section 73 to the ICC, subject to the deduction of reasonable costs related to the enforcement procedure.

Orders for forfeiture of property on conviction by ICC

75. (1) Where any person is convicted by the ICC of a crime within the jurisdiction of the ICC, the court may, on an application made by the Director of Public Prosecutions, order that any property situated in Botswana used for, or in connection with, or derived directly or indirectly from, the commission of that crime, be forfeited to the State, if satisfied, after appropriate consultation with the ICC, that no order of forfeiture has been or will be made by the ICC under article 77 (2) (*b*) of the Statute in respect of that property.

(2) Before making an order under subsection (1), the court shall give every person appearing to have an interest in the property in respect of which the order is proposed to be made, an opportunity to be heard, and section 73 (3), (4), (5), (6), (7), (8), (9), (10) and (11) shall apply equally to an order made under this section.

(3) Property forfeited to the State under subsection (1) shall vest in the State if —

(*a*) no appeal has been made against the order, at the end of the period within which an appeal may be made against the order; and

(*b*) an appeal has been made against the order, on the final determination of the appeal.

Enforcement of orders for victim reparation

76. (1) Where the ICC requests enforcement of an order requiring reparation, the Minister shall give authority for the request to proceed, if the Minister has reasonable grounds to believe that —

(*a*) neither the conviction in respect of which the order was imposed nor the order requiring reparation is subject to further appeal; and

(*b*) the order can be enforced in the manner provided for in this section.

(2) The Minister shall refer the request made under subsection (1) to the Attorney General, who shall, without delay, file an order with any court in Botswana.

(3) Every order filed in the court under subsection (2) shall, if the order requires —

(*a*) a monetary payment, have force and effect as if it were an order for the payment of compensation imposed by that court;

(*b*) the restitution of assets, property or other tangible items, have force and effect as if it were an order for the restitution of property made by that court; or

(*c*) the granting of any other relief, have force and effect as if it were an order for the granting of such relief made by that court.

(4) The Attorney General shall, without delay, make a report to the Minister on the outcome of any action taken by the Attorney General to enforce the order as the Attorney General considers to be appropriate in the circumstances.

(5) Nothing contained in this section shall be construed as limiting or affecting the provisions relating to other types of assistance to the ICC in relation to an order made under article 75 of the Statute or as empowering the court to modify the order of the ICC.

(6) The Minister shall consult with the ICC as to whether the funds realised through the enforcement of an order under this section should be transferred directly to specified victims or through the Victims Fund of the ICC.

(7) The Minister shall make arrangements for the transfer of the funds realised through the enforcement of an order under this section as determined through consultations with the ICC under subsection (6).

Assistance in enforcement of restraining order

77. (1) Where the ICC requests assistance in the enforcement of a restraining order issued by the ICC in respect of property in Botswana, the Director of Public Prosecutions shall give authority for the request to proceed if the Director of Public Prosecutions has reasonable grounds to believe that —

(*a*) the restraining order is not subject to further appeal; and

(*b*) the property is located in Botswana.

(2) The Director of Public Prosecutions shall, without delay, refer the request made under subsection (1) to the relevant authority, which authority shall file the restraining order in the High Court.

(3) Every order filed in the High Court under subsection (2) shall have force and effect as if it were a restraining order made by that High Court and shall be enforced accordingly.

(4) Nothing contained in this section shall be construed as limiting or affecting the provisions relating to other types of assistance to the ICC in relation to the enforcement of a restraining order made by the ICC or as empowering the High Court to modify the order of the ICC.

PART VII — *National security*

National security

78. (1) Where —

(*a*) the ICC requests assistance under Part V of the Act for the production of documents or the taking of evidence and the Minister is of the opinion that the production of such documents or the disclosure of such evidence would be prejudicial to the national security of Botswana;

(*b*) a person is required to disclose information to, or give evidence before the ICC, and the person refuses to do so on the grounds that the disclosure of such information or the giving of such evidence would be prejudicial to the national security of Botswana and the Minister confirms that in his or her opinion the disclosure of such information or the giving of such evidence would be prejudicial to the national security of Botswana; or

(*c*) the Minister is of the opinion that the disclosure of information to, or the giving of evidence before the ICC in circumstances other than the circumstances referred to in paragraphs (a) and (b), would be prejudicial to the national security of Botswana,

the Minister shall consult with the ICC and take reasonable steps to resolve the matter in accordance with article 72 (5) of the Statute.

(2) If, after consultation with the ICC, the Minister considers that there are no means or conditions under which the information, documents or evidence requested could be provided, disclosed or given without prejudice to the national security of Botswana, the Minister may refuse the request for the production of such document or the disclosure of such evidence or refuse the authorisation of the production of such documents or the disclosure of such information and shall specify to the ICC his or her reasons for doing so, unless the specification of those reasons would itself be, in the Minister's opinion, prejudicial to the national security of Botswana.

(3) For the purposes of this section, "Minister" means the Minister responsible for national security.

PART VIII — *Investigations and sittings of the ICC in Botswana*

Investigations of ICC in Botswana

79. The Prosecutor may conduct investigations in Botswana —

(*a*) in accordance with the provisions of article 99 (4) of the Statute;

(*b*) as authorised by the Pre-Trial Chamber under article 57 (3) (*d*) of the Statute; or

(*c*) as authorised by the Minister.

ICC sittings in Botswana

80. The ICC, in consultation with the Minister, may sit in Botswana for the purpose of discharging its functions under the Statute and under the Rules, including but not limited to —

(*a*) the taking of evidence;

(*b*) the conduct or continuation of proceedings;

(*c*) the giving of a judgment in proceedings; or

(*d*) the review of a sentence imposed by the ICC.

ICC powers while sitting in Botswana

81. (1) The ICC may discharge and exercise any or all of its functions and powers as provided for under the Statute and under the Rules, when sitting in Botswana.

(2) Without prejudice to the generality of subsection (1), the ICC shall have the power to —

(*a*) commit persons for contempt of its orders; or

(*b*) issue summons or other orders requiring the attendance of any person before the ICC or the production of any document or record for examination by the ICC.

(3) The relevant authorities in Botswana shall enforce orders or summons issued by the ICC under this section, including committal orders for contempt, as if the orders and summons had been issued by a court in Botswana.

(4) Nothing contained in this section shall be construed as limiting or affecting the provisions relating to the procedure of seeking assistance by foreign authorities under the laws of Botswana.

Power of ICC to administer oaths in Botswana

82. The ICC may, at any sitting of the ICC in Botswana, administer an oath or affirmation requiring a witness to give an undertaking as to the truthfulness of the evidence given by the witness, in accordance with the Rules.

Orders made by ICC not subject to review

83. (1) The conduct of a trial or other proceeding by the ICC sitting in Botswana shall not be subject to judicial or any other challenge in a court in Botswana.

(2) The following actions may not be brought or made in a court in Botswana in respect of a judgment, order, determination, or steps of the ICC given, made or taken at a sitting of the ICC in Botswana —

(*a*) judicial review;

(*b*) an application for, or for relief in the nature of a declaration, declaratory judgment or injunction;

(*c*) an application for relief in the nature of an order of mandamus or prohibition or certiorari;

(*d*) an application for relief in the nature of a writ of habeas corpus; or

(*e*) an appeal against a judgment of the ICC.

Power to hold ICC prisoners in custody in Botswana

84. (1) Where the ICC holds a sitting in Botswana and requests that a person whose presence is required at the sitting be held in custody as an ICC prisoner while such sitting continues in Botswana, the Minister shall direct, in writing, that the person be held in custody at such location as is specified in the direction.

(2) A direction given under subsection (1) in respect of an ICC prisoner is sufficient authority for the detention of that prisoner in accordance with the terms of the direction.

Cap. 21:03

(3) The provisions of the Prisons Act shall, so far as is applicable with any necessary modifications, apply to an ICC prisoner required to be detained in prison in accordance with a direction under subsection (1), as if the prisoner had been remanded in custody or sentenced to imprisonment for an offence under the laws of Botswana, as the case may require, and is liable to be detained in a prison under such an order or sentence.

(4) For the purposes of the application of the provisions of the laws relating to escape from lawful custody and aiding prisoners to escape, an ICC prisoner who is in custody in a prison or other detention facility in Botswana shall be deemed to be in lawful custody while in Botswana.

Removal of ICC prisoner

85. Where the Minister is satisfied that the presence in Botswana of an ICC prisoner who was the subject of a direction under section 84 is no longer necessary, sections 68 to 71 shall apply to and in relation to that person with any necessary modifications.

PART IX — *Miscellaneous provisions*

Legal personality of ICC and privileges and immunities of ICC officials

86. (1) The ICC shall have legal personality in Botswana with such legal capacity as may be necessary for the performance of its functions and the fulfillment of its purposes.

(2) Without prejudice to the generality of subsection (1), the ICC shall have the capacity to contract, to acquire and dispose of immovable and movable property and to institute, under its own name, legal proceedings, in Botswana.

(3) The Judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar, staff of the Office of the Prosecutor and of the Registry, counsel, experts, witnesses, and other persons required to be in Botswana for the performance of official functions or for participation in proceedings before the ICC shall have the privileges and immunities set out in article 48 of the Statute and the Agreement on the Privileges and Immunities of the ICC.

(4) Article 48 of the Statute and articles 2 to 11, 13 to 22, 25 to 27, 29 and 30 of the Agreement on the Privileges and Immunities of the ICC shall have the force of law in Botswana, and references in those articles to the State Party shall, for this purpose, be construed as references to Botswana.

(5) Notwithstanding anything contained in subsections (3) and (4), a national of a State which has made an election under article 23 of the Agreement on Privileges and Immunities of the ICC shall be entitled only to the privileges and immunities referred to in article 23 of the Agreement on Privileges and Immunities.

Administration of justice offences

87. (1) Any person who —

(*a*) in Botswana; or

(*b*) outside Botswana and who —

(i) is a citizen of Botswana,

(ii) is not a citizen of Botswana but who is ordinarily resident in Botswana, or

(iii) after the commission of the offence, is present in the territory of Botswana; and

(*c*) during his or her interaction, in any matter whatsoever, with the ICC, in respect of any matter over which the ICC has jurisdiction and whether or not the ICC is functioning in Botswana or not, intentionally —

(i) gives false evidence when under an obligation to tell the truth pursuant to paragraph 1 of article 69 of the Statute,

(ii) presents evidence that he or she knows is false or forged,

(iii) corruptly influences a witness, obstructs or interferes with the attendance or evidence of a witness, retaliates against a witness for giving evidence or destroys, tampers with or interferes with the collection of evidence,

(iv) impedes, intimidates or corruptly influences an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform his or her duties improperly,

(v) retaliates against an official of the ICC on account of duties performed by that or another official, or

(vi) solicits or accepts a bribe as an official of the ICC in connection with his or her official duties,

commits an offence and is liable to a fine of P5 000 or imprisonment for a period not exceeding five years, or to both.

(2) A prosecution may only be instituted against a person referred to in this section —

(*a*) at the request of the ICC through the Director of Public Prosecutions; and

(*b*) with the consent of the Director of Public Prosecutions.

(3) The Chief Justice of Botswana shall, in writing, designate an appropriate court as contemplated in which to conduct a prosecution against any person against whom a prosecution is instituted in terms of this section.

SCHEDULE 1

Rome Statute of the International Criminal Court
(*section 2*)

PREAMBLE

The States Parties to this Statute,

Conscious 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 propriomotu 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 prescribed 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 organised 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 organise 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 inter-governmental 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, inter-governmental 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 (c) 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.

SCHEDULE II

Agreement on the Privileges and Immunities of the International Criminal Court
(section 2)

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

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.

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.

PASSED by the National Assembly this 13th day of July, 2017.

BARBARA N. DITIIAPO,
Clerk of the National Assembly.