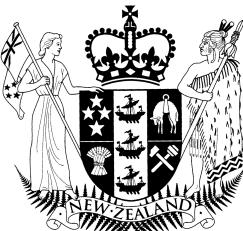


**Reprint**  
**as at 7 August 2020**



## **International Crimes and International Criminal Court Act 2000**

Public Act 2000 No 26

Date of assent 6 September 2000

Commencement see section 2

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#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint. Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Foreign Affairs and Trade and the Ministry of Justice.**

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**1 Title**

This Act is the International Crimes and International Criminal Court Act 2000.

**2 Commencement**

- (1) Sections 6 and 7, sections 14 to 23, Parts 3 to 10, sections 178 to 180, sections 182 to 184, sections 186 and 187, and the Schedule come into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions.
- (2) The rest of this Act comes into force on 1 October 2000.

Section 2(1): sections 6, 7, 14 to 23, Parts 3 to 10, sections 178 to 180, 183, 184, 186, 187, and the Schedule brought into force, on 1 July 2002, by section 2 of the International Crimes and International Criminal Court Act Commencement Order 2002 (SR 2002/131).

### **3 Purpose**

The purpose of this Act is—

- (a) to make further provision in New Zealand law for the punishment of certain international crimes, namely, genocide, crimes against humanity, and war crimes; and
- (b) to enable New Zealand to co-operate with the International Criminal Court established by the Rome Statute in the performance of its functions.

## **Part 1**

### **Preliminary provisions**

### **4 Interpretation**

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

**Appeals Chamber** means the Appeals Chamber of the ICC

**forfeiture order**—

- (a) means an order made by the ICC under Article 77(2)(b) of the Statute or under the Rules for the forfeiture of tainted property; and
- (b) includes a forfeiture order that is treated for the purposes of enforcement as a profit forfeiture order under section 131

**ICC** means the International Criminal Court established under the Statute; and includes any of the organs of the International Criminal Court referred to in the Statute

**ICC prisoner** means a person who is—

- (a) sentenced to imprisonment by the ICC; or
- (b) the subject of a request by the ICC under section 171(1)(b) to be held in custody during a sitting of the ICC in New Zealand

**international crime** means, in relation to the ICC, a crime in respect of which the ICC has jurisdiction under Article 5 of the Statute

**Minister** means the Minister of Justice

**New Zealand prison or prison** means a prison within the meaning of section 3(1) of the Corrections Act 2004

**New Zealand prisoner or prisoner** means a person who is for the time being in legal custody at any New Zealand prison, whether or not that person has been convicted of an offence

**Pre-Trial Chamber** means the Pre-Trial Chamber of the ICC

**prison officer** means a person who is an officer as defined in section 3(1) of the Corrections Act 2004

**property** means real or personal property of every description, whether situated in New Zealand or elsewhere and whether tangible or intangible; and includes an interest in any such real or personal property

**Prosecutor** means the Prosecutor of the ICC

**Rules** means the Rules of Procedure and Evidence made under Article 51 of the Statute

**Statute** means the Rome Statute of the ICC dated 17 July 1998, a copy of the English text of which is set out in the Schedule

**tainted property**, in relation to an international crime, means any—

- (a) instrument of crime as defined in section 5(1) of the Criminal Proceeds (Recovery) Act 2009; or
- (b) tainted property as defined in section 5(1) of the Criminal Proceeds (Recovery) Act 2009

**Trial Chamber** means the Trial Chamber of the ICC.

- (2) For the purposes of this Act, a person is not liable to be detained in a New Zealand prison if the person is—
  - (a) *[Repealed]*
  - (b) on parole, home detention, or compassionate release, or is subject to release conditions, under Part 1 of the Parole Act 2002; or
  - (ba) subject to a sentence of home detention imposed under section 80A of the Sentencing Act 2002; or
  - (c) *[Repealed]*
  - (d) subject to a community-based sentence (within the meaning of section 4(1) of the Sentencing Act 2002).
- (3) For the purposes of Parts 1 to 11,—
  - (a) a reference in those Parts to a request by the ICC for assistance includes a reference to a request by the ICC for co-operation; and
  - (b) a reference in those Parts 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 co-operation under that provision or in relation to that matter; and
  - (c) a reference in those Parts 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 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); and

(e) a reference to a sentence of imprisonment imposed by the ICC for an international crime or an offence against the administration of justice includes a reference to a sentence of imprisonment imposed by the ICC for non-payment of a fine that was a penalty for that crime or offence, as the case may be.

Section 4(1) **forfeiture order** paragraph (b): amended, on 1 December 2009, by section 197(1) of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 4(1) **New Zealand prison or prison**: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **New Zealand prisoner or prisoner**: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **prison officer**: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **tainted property**: substituted, on 1 December 2009, by section 197(2) of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 4(2)(a): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 4(2)(b): substituted, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 4(2)(ba): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(2)(c): repealed (without coming into force), on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 4(2)(d): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

## **5 Act to bind the Crown**

This Act binds the Crown.

## **6 Statute to have force of law**

(1) The provisions of the Statute specified in subsection (2) have the force of law in New Zealand in relation to the following matters:

- (a) the making of requests by the ICC to New Zealand for assistance and the method of dealing with those requests;
- (b) the conduct of an investigation by the Prosecutor or the ICC;
- (c) the bringing and determination of proceedings before the ICC;
- (d) the enforcement in New Zealand of sentences of imprisonment or other measures imposed by the ICC, and any related matters;
- (e) the making of requests by New Zealand to the ICC for assistance and the method of dealing with those requests.

(2) Subsection (1) applies in relation to the following provisions of the Statute:

- (a) Part 2 (which relates to jurisdiction, admissibility, and applicable law);
- (b) Part 3 (which relates to general principles of criminal law);
- (c) Articles 51 and 52 of the Statute (which relate respectively to the Rules of Procedure and Evidence, and Regulations of the Court);

- (d) Part 5 (which relates to the investigation and prosecution of crimes within the jurisdiction of the ICC);
- (e) Part 6 (which relates to the conduct of trials);
- (f) Part 7 (which relates to penalties);
- (g) Part 8 (which relates to appeals and revision of acquittals, convictions, or sentences);
- (h) Part 9 (which relates to international co-operation and judicial assistance);
- (i) Part 10 (which relates to the enforcement of sentences and other measures imposed by the ICC).

## 7 Obligations imposed by Statute or Rules

For the purposes of any provision of the Statute or the Rules that confers a power, or imposes a duty or function on a State, that power, duty, or function may be exercised or carried out on behalf of the Government of New Zealand by the Attorney-General, if this Act makes no other provision.

## Part 2

### International crimes and offences against administration of justice

#### *Jurisdiction to try international crimes*

## 8 Jurisdiction in respect of international crimes

- (1) Proceedings may be brought for an offence—
  - (a) against section 9 or section 10, if the act constituting the offence charged is alleged to have occurred—
    - (i) on or after the commencement of this section; or
    - (ii) on or after the applicable date but before the commencement of this section; and would have been an offence under the law of New Zealand in force at the time the act occurred, had it occurred in New Zealand; and
  - (b) against section 11, if the act constituting the offence charged is alleged to have occurred on or after the commencement of this section; and
  - (c) against section 9 or section 10 or section 11 regardless of—
    - (i) the nationality or citizenship of the person accused; or
    - (ii) whether or not any act forming part of the offence occurred in New Zealand; or
    - (iii) whether or not the person accused was in New Zealand at the time that the act constituting the offence occurred or at the time a decision was made to charge the person with an offence.

- (2) Subsection (3) applies if a person to whom subsection (1)(a)(ii) applies is convicted of an offence against section 9 or section 10.
- (3) If this subsection applies, the maximum term of imprisonment or the maximum fine that may be imposed on the offender is either—
  - (a) the maximum term or the maximum fine that could have been imposed under the laws of New Zealand at the time of the offence, if that maximum has subsequently been increased; or
  - (b) the maximum term or the maximum fine that can be imposed on the day on which sentence is to be passed, if that maximum is less than that prescribed at the time of the offence.
- (4) In subsection (1)(a)(ii), **applicable date** means,—
  - (a) in relation to an offence against section 9, 28 March 1979;
  - (b) in relation to an offence against section 10, 1 January 1991.

*International crimes*

**9 Genocide**

- (1) Every person commits an offence and is liable on conviction to the penalty specified in subsection (3) who, in New Zealand or elsewhere,—
  - (a) commits genocide; or
  - (b) conspires or agrees with any person to commit genocide, whether that genocide is to take place in New Zealand or elsewhere.
- (2) For the purposes of this section, **genocide** is an act referred to in Article 6 of the Statute.
- (3) The penalty for genocide, or conspiring with, or agreeing with any person to commit genocide is,—
  - (a) if the offence involves the wilful killing of a person, the same as the penalty for murder;
  - (b) in any other case, imprisonment for life or a lesser term.

Compare: Statute art 6

Section 9(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**10 Crimes against humanity**

- (1) Every person commits an offence and is liable on conviction to the penalty specified in subsection (3) who, in New Zealand or elsewhere, commits a crime against humanity.
- (2) For the purposes of this section, a **crime against humanity** is an act specified in Article 7 of the Statute.
- (3) The penalty for a crime against humanity is,—

- (a) if the offence involves the wilful killing of a person, the same as the penalty for murder;
- (b) in any other case, imprisonment for life or a lesser term.

Compare: Statute art 7

Section 10(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## 11 War crimes

- (1) Every person commits an offence and is liable on conviction to the penalty specified in subsection (3) who, in New Zealand or elsewhere, commits a war crime.
- (2) For the purposes of this section, a **war crime** is an act specified in—
  - (a) Article 8(2)(a) of the Statute (which relates to grave breaches of the First, Second, Third, and Fourth Geneva Conventions); or
  - (b) Article 8(2)(b) of the Statute (which relates to other serious violations of the laws and customs applicable in international armed conflict); or
  - (c) Article 8(2)(c) of the Statute (which relates to armed conflict not of an international character involving serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949); or
  - (d) Article 8(2)(e) of the Statute (which relates to other serious violations of the laws and customs applicable in armed conflict not of an international character).
- (3) The penalty for a war crime is,—
  - (a) if the offence involves the wilful killing of a person, the same as the penalty for murder;
  - (b) in any other case, imprisonment for life or a lesser term.

- (4) Nothing in this section affects or limits the operation of section 3 of the Geneva Conventions Act 1958 (which makes a grave breach of the Geneva Conventions an offence under New Zealand law).

Compare: Statute art 8

Section 11(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *General principles of criminal law*

## 12 General principles of criminal law

- (1) For the purposes of proceedings for an offence against section 9 or section 10 or section 11,—
  - (a) the following provisions of the Statute apply, with any necessary modifications:

- (i) Article 20 (which relates to crimes for which a person has previously been acquitted or convicted);
- (ii) Article 22(2) (which relates to principles of interpretation to be applied to the definition of crimes);
- (iii) Article 24(2) (which relates to the effect of changes in the law);
- (iv) Article 25 (which relates to principles of individual criminal responsibility);
- (v) Article 26 (which relates to the exclusion of jurisdiction over persons under 18 years);
- (vi) Article 28 (which relates to the responsibility of commanders and other superiors);
- (vii) Article 29 (which excludes any statute of limitations);
- (viii) Article 30 (which relates to the mental element of crimes);
- (ix) Article 31 (which specifies grounds for excluding criminal responsibility);
- (x) Article 32 (which relates to mistakes of fact or law);
- (xi) Article 33 (which relates to superior orders and prescription of law); and

- (b) the provisions of New Zealand law and the principles of criminal law applicable to the offence under New Zealand law apply; and
- (c) a person charged with the offence may rely on any justification, excuse, or defence available under the laws of New Zealand or under international law; and
- (d) despite paragraphs (b) and (c), the fact that an act done outside New Zealand is not an offence under the law of the place where it was done is not a justification, excuse, or defence.

(2) For the purposes of subsection (1)(a), the Articles of the Statute specified in that subsection (other than Article 20) apply as if—

- (a) a reference to the ICC were a reference to the New Zealand court exercising jurisdiction in respect of the proceedings; and
- (b) a reference to the Statute includes a reference to this Act.

(3) If there is any inconsistency between the provisions specified in subsection (1)(a) and the provisions and principles specified in subsections (1)(b) and (1)(c), the provisions specified in subsection (1)(a) prevail.

(4) For the purposes of interpreting and applying Articles 6 to 8 of the Statute in proceedings for an offence against section 9 or section 10 or section 11,—

- (a) the New Zealand court exercising jurisdiction in the proceedings may have regard to any elements of crimes adopted or amended in accordance with Article 9 of the Statute;

(b) the provisions of Parts 5 to 10 of the Crimes Act 1961 do not apply.

*Consent to prosecutions for international crimes*

**13 Attorney-General's consent to prosecutions required**

(1) Proceedings for an offence against section 9 or section 10 or section 11 may not be instituted in any New Zealand court without the consent of the Attorney-General.

(2) Despite subsection (1), a person charged with an offence against section 9 or section 10 or section 11 may be arrested, or a warrant for his or her arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further proceedings can be taken until that consent has been obtained.

Compare: 1989 No 106 s 12

*Jurisdiction to try offences against administration of justice*

**14 Jurisdiction in respect of offences against administration of justice**

Proceedings may be brought for an offence against any of sections 15 to 21 if—

(a) the act or omission constituting the offence charged is alleged to have occurred in New Zealand or on board a ship or aircraft that is registered in New Zealand; or

(b) the person charged is a New Zealand citizen.

Compare: 1989 No 106 s 4; Statute art 70(4)(a)

*Offences against administration of justice*

**15 Corruption of Judge**

(1) Every Judge commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years who, in New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for himself or herself or any other person in respect of an act—

(a) done or omitted by that Judge in his or her judicial capacity; or

(b) to be done or to be omitted by that Judge in his or her judicial capacity.

(2) Every Judge, the Registrar, and the Deputy Registrar commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years if, in New Zealand or elsewhere, that Judge, Registrar, or Deputy Registrar corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for himself or herself or any other person in respect of an act—

- (a) done or omitted by that Judge, Registrar, or Deputy Registrar, in his or her official capacity (other than an act or omission to which subsection (1) applies); or
- (b) to be done or omitted by that Judge, Registrar, or Deputy Registrar, in his or her official capacity (other than an act or omission to which subsection (1) applies).

(3) In this section and in sections 16 and 21,—

**Deputy Registrar** means the Deputy Registrar of the ICC

**Judge** means a Judge of the ICC

**Registrar** means the Registrar of the ICC.

(4) In this section and in sections 16 and 17, **bribe** has the same meaning as it has in section 99 of the Crimes Act 1961.

Compare: 1961 No 43 s 100

Section 15(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 15(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **16 Bribery of Judge, etc**

- (1) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere, corruptly gives or offers, or agrees to give, a bribe to any person with intent to influence a Judge in respect of any act or omission by that Judge in his or her judicial capacity.
- (2) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years who, in New Zealand or elsewhere, corruptly gives or offers, or agrees to give, a bribe to any person with intent to influence a Judge or the Registrar or the Deputy Registrar in respect of an act or omission by that Judge, Registrar, or Deputy Registrar in his or her official capacity (other than an act or omission to which subsection (1) applies).

Compare: 1961 No 43 s 101

Section 16(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 16(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **17 Corruption and bribery of official of ICC**

- (1) Every official of the ICC commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for himself or herself or any other person in respect of an act—
  - (a) done or omitted by that officer in his or her official capacity; or

(b) to be done or omitted by that officer in his or her official capacity.

(2) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years who, in New Zealand or elsewhere, corruptly gives or offers, or agrees to give, a bribe to any person with intent to influence an official of the ICC in respect of an act or omission by that officer in his or her official capacity.

(3) In this section and in section 21, an **official of the ICC** means a person employed under Article 44 of the Statute.

Compare: 1961 No 43 s 105

Section 17(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 17(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## 18 False evidence

(1) Every person who gives evidence for the purposes of a proceeding before the ICC or in connection with a request made by the ICC that contains an assertion that, if made in a judicial proceeding in New Zealand as evidence on oath, would be perjury, gives false evidence.

(2) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere, gives false evidence.

(3) Despite subsection (2), if the false evidence is given in order to obtain the conviction of a person for an offence for which the maximum punishment is not less than 3 years' imprisonment, the punishment may be imprisonment for a term not exceeding 14 years.

Compare: 1961 No 43 s 109

Section 18(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## 19 Fabricating evidence before ICC

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere, with intent to mislead the ICC, fabricates evidence by any means other than the giving of false evidence.

Compare: 1961 No 43 s 113

Section 19: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## 20 Conspiracy to defeat justice in ICC

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere, in relation

to any proceedings, request, or other matter referred to in the Statute, conspires to obstruct, prevent, pervert, or defeat the course of justice.

Compare: 1961 No 43 s 116

Section 20: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **21 Interference with witnesses or officials**

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere,—

- (a) dissuades or attempts to dissuade any person, by threats, force, bribery or other means, from giving evidence for the purposes of a proceeding before the ICC or in connection with a request made by the ICC; or
- (b) makes threats or uses force against any Judge, the Registrar, the Deputy Registrar, or any official of the ICC with intent to influence or punish that person, in respect of an act—
  - (i) done or omitted by that person or any Judge, the Registrar, the Deputy Registrar, or any official of the ICC, in his or her official capacity; or
  - (ii) to be done or omitted by that person or any Judge, the Registrar, the Deputy Registrar, or any official of the ICC, in his or her official capacity; or
- (c) intentionally attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice, in relation to any proceedings, request, or other matter referred to in the Statute.

Compare: 1961 No 43 s 117

Section 21: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Consent to prosecutions for offences against administration of justice*

## **22 Attorney-General's consent to prosecutions required**

- (1) Proceedings for an offence against any of sections 15 to 21 may not be instituted in any New Zealand court without the consent of the Attorney-General.
- (2) Despite subsection (1), a person charged with an offence against any of sections 15 to 21 may be arrested, or a warrant for his or her arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further proceedings can be taken until that consent has been obtained.

Compare: 1989 No 106 s 12

*Co-operation relating to offences against administration of justice***23 Co-operation relating to offences against administration of justice**

(1) If the ICC makes a request for assistance in an investigation or proceeding involving an offence against the administration of justice, that request must be dealt with,—

- (a) in the case of a request for surrender, in the manner provided in Parts 3 and 4, and those Parts apply accordingly and with the necessary modifications, subject to any contrary provision in the Statute or the Rules; and
- (b) in the case of a request for enforcement of an order requiring reparation or the payment of a fine or a forfeiture order, in the manner provided in Parts 3 and 6, and those Parts apply accordingly and with the necessary modifications, subject to any contrary provision in the Statute or the Rules; and
- (c) in the case of a request for transit, in the manner provided in sections 136 to 138 and 150 to 156, and those sections apply accordingly and with the necessary modifications, subject to any contrary provision in the Statute or the Rules; and
- (d) in the case of a request for any other type of assistance, in the manner provided in Parts 3 and 5, and those Parts and, if applicable, Part 8, apply accordingly and with the necessary modifications, subject to any contrary provision in the Statute or the Rules.

(2) In addition to the grounds of refusal or postponement specified in Parts 4 and 5, a request for surrender or other assistance that relates to an offence involving the administration of justice may be refused if, in the opinion of the Minister of Justice or Attorney-General, as the case may be, there are exceptional circumstances that would make it unjust or oppressive to surrender the person or give the assistance requested.

Compare: Statute art 70(2)

**Part 3**  
**General provisions relating to requests for assistance****24 Requests for assistance**

(1) This Part applies to a request by the ICC for assistance that is made under—

- (a) Part 9 of the Statute, namely,—
  - (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; or
  - (ii) the identification and whereabouts of persons or the location of items; or

- (iii) the taking of evidence, including testimony under oath, and the production of evidence, expert opinions, and reports necessary to the ICC; or
- (iv) the questioning of any person being investigated or prosecuted; or
- (v) the service of documents, including judicial documents; or
- (vi) facilitating the voluntary appearance of persons as witnesses or experts before the ICC; or
- (vii) the temporary transfer of prisoners; or
- (viii) the examination of places or sites, including the exhumation and examination of grave sites; or
- (ix) the execution of searches and seizures; or
- (x) the provision of records and documents, including official records and documents; or
- (xi) the protection of victims and witnesses and the preservation of evidence; or
- (xii) 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; or
- (xiii) any other type of assistance that is not prohibited by the law of New Zealand, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the ICC; or

(b) any of the following articles of the Statute:

- (i) Article 19(8) (which relates to various steps that the Prosecutor may take with the authority of the ICC);
- (ii) Article 56 (which relates to various measures that can be taken by the Pre-Trial Chamber);
- (iii) Article 64 (which relates to various measures that can be taken by the Trial Chamber);
- (iv) Article 76 (which relates to the imposition of sentence by the Trial Chamber);
- (v) Article 109 of the Statute (which relates to the enforcement of fines and forfeiture measures).

(2) Nothing in this section—

(a) limits the type of assistance that the ICC may request under the Statute or the Rules (whether in relation to the provision of information or otherwise):

(b) prevents the provision of assistance to the ICC otherwise than under this Act, including assistance of an informal nature.

Compare: 1995 No 27 ss 4, 56; Statute arts 86, 87(1)(a), 93(1)

## 25 Requests to be made through authorised channel

(1) A request for assistance must be made through an authorised channel and,—

- (a) in the case of a request to which Part 4 applies, be transmitted to the Minister; or
- (b) in any other case, be transmitted to the Attorney-General or a person authorised by the Attorney-General to receive requests.

(2) For the purposes of subsection (1) and section 26(1), an **authorised channel** is—

- (a) the diplomatic channel to the Minister of Foreign Affairs and Trade; or
- (b) any other appropriate channel that New Zealand may designate at the time it ratifies the Statute or at any subsequent time in accordance with the Rules.

(3) This section is subject to section 26 (which relates to urgent requests).

Compare: 1999 No 55 s 18(2); Statute art 87(1)(a), (b)

## 26 Urgent requests

(1) In urgent cases a request for assistance (including a request for provisional arrest) may be—

- (a) made using any medium capable of delivering a written record;
- (b) transmitted through the International Criminal Police Organisation or any other appropriate regional organisation, instead of through an authorised channel.

(2) If a request is made or transmitted in the first instance in the manner specified in subsection (1), it must be followed as soon as practicable by a formal request transmitted in the manner specified in section 25.

Compare: Statute arts 87(1)(b), 91(1), 92(1), 96(1)

## 27 Execution of requests

(1) If the ICC makes a request for assistance, the request must be dealt with in accordance with the relevant procedure under the law of New Zealand (as provided in this Act).

(2) If the request for assistance specifies that it should be executed in a particular manner that is not prohibited by New Zealand law or by using a particular procedure that is not prohibited by New Zealand law, the Attorney-General or the Minister, as the case may be, must use his or her best endeavours to ensure that

the request is executed in that manner or using that procedure, as the case may be.

Compare: Statute arts 88, 99(1)

## **28 Consultation**

- (1) The Attorney-General or the Minister, as the case may be, must consult with the ICC, without delay, if—
  - (a) a request for assistance is received from the ICC that does not contain or is not accompanied by the appropriate information or the appropriate documents specified in Articles 87, 91, 92, 93, or 96 of the Statute; or
  - (b) the ICC has not provided sufficient information for a request for assistance to be executed; or
  - (c) in the case of a request for surrender,—
    - (i) the person sought cannot be located in New Zealand; or
    - (ii) it appears that the person in New Zealand is clearly not the person named in the warrant or judgment, as the case may be; or
  - (d) execution of a request for assistance in its current form would require the breach of an existing treaty obligation to another State; or
  - (e) for any other reason there are or may be difficulties with the execution of a request for assistance received from the ICC.
- (2) Before refusing any request for assistance, the Attorney-General or the Minister, as the case may be, must consult with the ICC to ascertain whether the assistance sought could be provided—
  - (a) subject to conditions; or
  - (b) at a later date or in an alternative manner.
- (3) Without limiting the types of conditions under which assistance may be provided, the Attorney-General may agree to the transmission of documents or information to the Prosecutor on a confidential basis, on the condition that the Prosecutor will use them solely for the purpose of generating new evidence.
- (4) If the Attorney-General transmits documents or information subject to the condition specified in subsection (3), the Attorney-General may subsequently consent to the disclosure of such documents or information for use as evidence under the provisions of Parts 5 and 6 of the Statute and in accordance with the Rules.

Compare: Statute arts 93(5), 93(8)(b), (c), 97

## **29 Confidentiality of request**

- (1) A request for assistance and any documents supporting the request must be kept confidential by the New Zealand authorities who deal with the request, except to the extent that the disclosure is necessary for execution of the request.

- (2) If the ICC requests that particular information that is made available with a request for assistance 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, the New Zealand authorities must use their best endeavours to give effect to that request.
- (3) In this section, the **New Zealand authorities** are—
  - (a) the Attorney-General;
  - (b) the Minister;
  - (c) every Police employee;
  - (d) every prison officer;
  - (e) every employee of or contractor engaged by a New Zealand agency that is authorised to deal with the request.
- (4) Subsection (2) does not limit subsection (1).

Compare: Statute art 87(3), (4)

Section 29(3)(c): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

### **30 Response to be sent to ICC**

- (1) The Attorney-General or the Minister, as the case may be, must notify the ICC, without delay, of his or her response to a request for assistance and of the outcome of any action that has been taken in relation to it.
- (2) If the Attorney-General or the Minister decides, in accordance with the Statute and this Act, to refuse or postpone the assistance requested, in whole or in part, the notice to the ICC must set out the reasons for the decision.
- (3) If the request for assistance cannot be executed for any other reason, the notice to the ICC must set out the reasons for the inability or failure to execute the request.
- (4) In the case of an urgent request for assistance, any documents or evidence produced in response must, at the request of the ICC, be sent urgently to it.
- (5) Documents or evidence provided or produced in response to a request for assistance from the ICC must be transmitted to the ICC in their original language and form.

Compare: 1992 No 86 ss 28, 29; 1995 No 27 s 59; Statute arts 86, 90(8), 93(6)

*Official capacity of suspect or accused no bar to request*

### **31 Official capacity of person no bar to request**

- (1) The existence of any immunity or special procedural rule attaching to the official capacity of any person is not a ground for—
  - (a) refusing or postponing the execution of a request for surrender or other assistance by the ICC; or

- (b) holding that a person is ineligible for surrender, transfer, or removal to the ICC or another State under this Act; or
- (c) holding that a person is not obliged to provide the assistance sought in a request by the ICC.

(2) Subsection (1) applies subject to section 66 and section 120, but despite any other enactment or rule of law.

Compare: Statute art 27(2)

## **Part 4**

### **Arrest and surrender of person to ICC**

#### *Request from ICC for arrest and surrender*

##### **32 Request for arrest and surrender**

- (1) This Part applies to a request made by the ICC under Article 89(1) of the Statute for the arrest and surrender from New Zealand of—
  - (a) a person in respect of whom the Pre-Trial Chamber has issued a warrant of arrest under Article 58 or Article 60 of the Statute for an international crime;
  - (b) a person who has been convicted by the ICC of an international crime.
- (2) This Part applies to a request made under Article 92 of the Statute for the provisional arrest of a person accused or convicted of an international crime.
- (3) The following provisions of this Part apply subject to sections 55 to 66 (which deal with restrictions on surrender and the execution of a request for surrender):
  - (a) sections 33 to 35 (which deal with arrest where a request for surrender is received);
  - (b) sections 36 to 38 (which deal with provisional arrest in urgent cases);
  - (c) sections 39 to 42 (which deal with remand and bail);
  - (d) sections 43 to 46 (which deal with eligibility for surrender);
  - (e) sections 47 to 54 (which deal with surrender and temporary surrender).

Compare: Statute arts 58, 60(5), 91(2)–(4), 92(1)

#### *Arrest where request for surrender received*

##### **33 Minister to request issue of arrest warrant**

- (1) If a request for surrender is received, other than a request for provisional arrest referred to in section 32(2), the Minister may notify a District Court Judge in writing that it has been made and request that the Judge issue a warrant for the arrest of the person whose surrender is sought.

- (2) If a notice is sent to a Judge under subsection (1), the Minister must also send to the Judge a copy of the request and supporting documents.
- (3) The Minister may, if the Minister thinks fit, refuse to notify a District Court Judge under this section.

Compare: 1995 No 27 s 6; 1999 No 55 s 19(1), (3); Statute art 59(1)

#### **34 Issue of arrest warrant**

After receiving a request under section 33, the District Court Judge must issue a warrant in the prescribed form for the arrest of the person if the Judge is satisfied on the basis of information presented to him or her that—

- (a) the person is or is suspected of being in New Zealand or may come to New Zealand; and
- (b) there are reasonable grounds to believe that that person is the person to whom the request for surrender from the ICC relates.

Compare: 1995 No 27 s 7; 1999 No 55 s 19(2)

#### **35 Cancellation of warrant**

- (1) The Minister may, at any time, by notice in writing, order the cancellation of the warrant.
- (2) If the Minister orders the cancellation of a warrant under subsection (1), the warrant ceases to have effect and any person arrested under the warrant must be released, unless the person is otherwise liable to be detained in custody.

Compare: 1995 No 27 s 8

#### *Provisional arrest in urgent cases*

#### **36 Provisional arrest warrant may be issued**

- (1) A District Court Judge may issue a provisional warrant in the prescribed form for the arrest of a person if the Judge is satisfied on the basis of the information presented to him or her that—
  - (a) a warrant for the arrest of a person has been issued by the ICC or, in the case of a convicted person, a judgment of conviction has been given in relation to an international crime; and
  - (b) the person named in the warrant or judgment is or is suspected of being in New Zealand or may come to New Zealand; and
  - (c) it is necessary or desirable for an arrest warrant to be issued urgently.
- (2) A warrant may be issued under this section even though no request for surrender has yet been made or received from the ICC.

Compare: 1999 No 55 s 20; Statute art 92

### **37 Notice to be given to Minister**

- (1) If a District Court Judge issues a provisional arrest warrant under section 36, the applicant for the warrant must report the issue of the warrant to the Minister without delay.
- (2) The applicant must include in the report to the Minister a copy of the warrant issued by the ICC, or the judgment of conviction, as applicable, and the other documentary evidence that the applicant produced to the Judge.
- (3) On receipt of the report under subsection (1), the Minister may, if the Minister thinks fit, order that the proceedings be discontinued.
- (4) If the Minister orders that the proceedings be discontinued, the Minister may cancel any warrant of arrest and order the discharge of any person arrested under the warrant.
- (5) The Minister must notify the District Court of any action taken under subsection (3) or subsection (4).

Compare: 1999 No 55 s 21

### **38 Procedure where provisional arrest warrant issued**

- (1) If a person has been arrested on a provisional arrest warrant issued under section 36, the following provisions apply:
  - (a) the hearing of the proceedings must not proceed until the District Court receives from the Minister a notice in writing stating that a request for the surrender of the person has been transmitted to the Minister in the manner specified in section 25:
  - (b) pending the receipt of the notice from the Minister, the proceedings may from time to time be adjourned:
  - (c) the District Court must set a date by which the notice is to be transmitted to it, which must be a reasonable time having regard to:
    - (i) any provision in the Rules that prescribes the maximum period for transmission by the ICC of the request and supporting documents to the requested State:
    - (ii) if there is no such provision, the time it is likely to take for the ICC to prepare and transmit the request and supporting documents to New Zealand:
    - (iii) the time it is likely to take for the Minister to consider the request after receipt and for the notice to be transmitted to the District Court:
  - (d) if the District Court does not receive the notice within the time fixed by the District Court under paragraph (c), and does not extend that time under subsection (2), the District Court must discharge the person.

(2) The District Court may, from time to time, in its discretion, extend any time fixed by it under subsection (1)(c).

Compare: 1999 No 55 s 23(4); Statute art 92(1)

*Remand and bail*

**39 Procedure following arrest**

(1) A person arrested on a warrant issued under section 34 or section 36 must, unless sooner discharged, be brought before the District Court as soon as possible.

(2) The person—

- (a) is not entitled to bail as of right; and
- (b) may not go at large without bail.

(3) If the District Court remands the person on bail, the District Court may impose any conditions of bail that the District Court thinks fit in addition to any conditions that the District Court may impose under section 30(1), (2), and (4) of the Bail Act 2000.

(4) Without limiting the other factors that may be taken into account in making a decision to grant bail, the District Court must have regard to the following:

- (a) the gravity of the alleged crimes;
- (b) whether there are urgent and exceptional circumstances that favour the grant of bail; and
- (c) whether necessary safeguards exist to ensure that New Zealand can fulfil its duty under the Statute to surrender the person to the ICC.

(5) Without limiting the other factors that may be taken into account in making a decision to grant bail, the District Court may not consider whether any warrant of arrest or judgment issued by the ICC was properly issued in accordance with the Statute.

Compare: 1999 No 55 s 23(1)–(3); Statute art 59(2)–(4)

Section 39(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 39(3): substituted, on 19 December 2002, by section 3 of the International Crimes and International Criminal Court Amendment Act 2002 (2002 No 67).

Section 39(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**40 Procedure for bail**

(1) If an application for bail is made, the Minister must notify the ICC which may make recommendations to the Minister that must be conveyed to the District Court that is considering the application.

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- (2) Before rendering its decision, the District Court must consider any recommendations that the ICC has made, including any recommendations on measures to prevent the escape of the person.
- (3) If the person is granted bail, the Minister must, if the ICC requests, provide periodic reports to the ICC on the person's bail status.
- (4) This section applies with any necessary modifications to any bail application made during the period until the person is surrendered to the ICC or discharged according to law.

Compare: 1999 No 55 s 44(1)–(3); Statute art 59(2)–(6)

#### **41 Powers of District Court**

- (1) In proceedings under this Part, except as expressly provided in this Act or in regulations made under section 179 or section 180,—
  - (a) the District Court has the same jurisdiction and powers, and must conduct the proceedings in the same manner, as if the person were charged with a category 1 or 2 offence alleged to have been committed within the jurisdiction of New Zealand; and
  - (b) the following provisions apply to the proceedings, so far as applicable and with the necessary modifications:
    - (i) subparts 1 and 3 of Part 4, Part 5, and sections 365 and 379 of the Criminal Procedure Act 2011;
    - (ii) Parts 1 (except sections 9 to 12), 2, and 3 of the Bail Act 2000;
    - (iii) sections 38 to 44 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) In accordance with section 355 of the Criminal Procedure Act 2011, the District Court presided over by 1 or more Justices or 1 or more Community Magistrates does not have jurisdiction to conduct proceedings under this Part.
- (3) Despite section 168(1) and (2) of the Criminal Procedure Act 2011, a decision to remand a person in custody or on bail may be made only by a Judge.
- (4) *[Repealed]*
- (5) Section 169 of the Criminal Procedure Act 2011 and sections 27, 30 to 33, 35, 37 to 39, 41 to 43 and 52 of the Bail Act 2000 apply, so far as applicable and with the necessary modifications, to a person who is detained under section 46 or section 49.
- (6) To avoid doubt, if an application is made for the variation of conditions of bail of a person who is detained under section 46 or section 49, the procedure in section 40(1) and (2) applies.

Compare: 1999 No 55 s 43

Section 41(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 41(1)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 41(1)(b): substituted, on 19 December 2002, by section 4(1) of the International Crimes and International Criminal Court Amendment Act 2002 (2002 No 67).

Section 41(1)(b)(i): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 41(1)(b)(iii): substituted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 41(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 41(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 41(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 41(4): repealed, on 19 December 2002, by section 4(3) of the International Crimes and International Criminal Court Amendment Act 2002 (2002 No 67).

Section 41(5): substituted, on 19 December 2002, by section 4(4) of the International Crimes and International Criminal Court Amendment Act 2002 (2002 No 67).

Section 41(5): amended, on 14 November 2018, by section 101 of the Courts Matters Act 2018 (2018 No 50).

Section 41(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 41(6): added, on 19 December 2002, by section 4(4) of the International Crimes and International Criminal Court Amendment Act 2002 (2002 No 67).

## 42 Detention in place other than prison

- (1) This section applies if the District Court orders the detention of a person at any time under this Part.
- (2) If the District Court concludes that detaining the person in prison would risk the person's life or health or be undesirable for any reason, the District Court may order that the person be held in custody—
  - (a) at the place where the person is for the time being; or
  - (b) at any other place that the District Court considers appropriate, having regard to the risk or reason involved.
- (3) The person may be held as specified in subsection (2) until—
  - (a) the person can be detained in a prison without risk to that person's life or health; or
  - (b) the reason for not detaining the person in prison no longer applies; or
  - (c) the person is surrendered or discharged according to law.

(4) In making the order specified in subsection (2), the District Court must have regard to any recommendations that the ICC may make regarding the place of the person's detention.

Compare: 1999 No 55 s 52; Statute art 59(5)

*Eligibility for surrender*

**43 Determination of eligibility for surrender**

(1) If a person is brought before the District Court under this Part, the District Court must determine whether the person is eligible for surrender in relation to the international crime or crimes for which surrender is sought.

(2) Subsection (1) applies subject to sections 38 and 45.

(3) The person is eligible for surrender if—

- (a) a warrant for the arrest of the person issued by the ICC or a judgment of conviction for an international crime given by the ICC has been produced to the District Court; and
- (b) the District Court is satisfied that the person is the person to whom the warrant or judgment relates; and
- (c) the District Court is satisfied that the person was arrested in accordance with the proper process as provided in Article 59(2)(b) of the Statute; and
- (d) the District Court is satisfied that the person's rights were respected as provided in Article 59(2)(c) of the Statute.

(4) Neither subsection (3)(c) nor subsection (3)(d) applies unless the person puts the matter at issue.

(5) Despite subsection (3), the person is not eligible for surrender if the person satisfies the District Court that a mandatory restriction on the surrender of the person specified in section 55(1) applies.

(6) Despite subsection (3), in the proceedings under this section,—

- (a) the person to whom the proceedings relate is not entitled to adduce, and the District Court is not entitled to receive, evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which the surrender is sought; and
- (b) in the case of a person accused of an offence, nothing in this section requires evidence to be produced or given at the hearing to establish, according to the law of New Zealand, that the trial of the person would be justified if the conduct constituting the offence had occurred within the jurisdiction of New Zealand.

Compare: 1999 No 55 s 45; Statute art 59(2)

Section 43(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**44 Adjournment of hearing**

- (1) The District Court may adjourn the hearing for such period as it considers reasonable to allow a deficiency or deficiencies to be remedied if—
  - (a) a document or documents containing a deficiency or deficiencies of relevance to the proceedings are produced; and
  - (b) the District Court considers the deficiency or deficiencies to be of a minor nature.
- (2) Subsection (1) does not limit the circumstances in which the District Court may adjourn a hearing.

**45 Surrender by consent**

- (1) A person may at any time notify the District Court that he or she consents to being surrendered to the ICC for the international crime or crimes for which surrender is sought.
- (2) The District Court may accept the notification of consent under subsection (1) if—
  - (a) the person is before the District Court when notification of the consent to surrender is given; and
  - (b) the person has been legally represented in the proceedings; and
  - (c) the District Court is satisfied that the person has freely consented to the surrender in full knowledge of its consequences.
- (3) Nothing in this section prevents a person, in respect of whom a determination of eligibility for surrender is made by the District Court under section 43, from subsequently notifying the Minister that the person consents to surrender.
- (4) To avoid doubt,—
  - (a) a person arrested under a provisional warrant may consent to surrender before a request for surrender is received, in which case the Minister may make a surrender order as if a request for surrender had been received; and
  - (b) if paragraph (a) applies, section 38(1)(a) does not apply.

Compare: 1999 No 55 s 28; Statute art 92(3)

**46 Procedure following determination on eligibility or consent to surrender**

- (1) This section applies if—
  - (a) the District Court has determined in accordance with section 43 that a person is eligible for surrender; or
  - (b) a person has consented to surrender to the ICC in accordance with section 45.
- (2) If this section applies, the District Court must—

- (a) issue a warrant for the detention of the person in a prison or other place authorised in accordance with section 42 of this Act or section 169 of the Criminal Procedure Act 2011 pending the surrender of the person to the ICC or the person's discharge according to law; and
- (b) send to the Minister a copy of the warrant of detention and such report on the case as the court thinks fit; and
- (c) inform a person to whom subsection (1)(a) applies that,—
  - (i) subject to section 70, the person will not be surrendered until the expiration of 15 days after the date of the issue of the warrant; and
  - (ii) during that time the person has the right to make an application for a writ of habeas corpus; and
  - (iii) the person has the right to lodge an appeal under section 67; and
- (d) inform a person to whom subsection (1) applies that the Minister must determine whether to issue a surrender order before the person can be surrendered to the ICC; and
- (e) inform the person that if a surrender order is made and the person is not removed within 2 months, the person may apply to be discharged under section 74.

(3) If the District Court issues a warrant under subsection (2), the District Court may grant bail to the person in accordance with section 39.

(4) If the District Court is not satisfied that the person is eligible for surrender, it must discharge the person, unless under section 69 it orders that the person continue to be detained or issues a warrant for the arrest and detention of the person, pending the determination of an appeal under section 67.

Compare: 1999 No 55 s 46

Section 46(2)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### *Surrender and temporary surrender*

#### **47 Minister must determine whether person to be surrendered**

- (1) If the District Court issues a warrant for the detention of a person under section 46, the Minister must determine whether to order that the person be surrendered.
- (2) The Minister must make a surrender order in respect of the person unless—
  - (a) the Minister is satisfied that surrender of the person must be refused because a mandatory restriction on surrender specified in section 55(1) applies; or
  - (b) the Minister is satisfied that one of the discretionary restrictions on surrender specified in section 55(2) applies and that it is appropriate in the circumstances that surrender be refused; or

(c) the Minister postpones the execution of a request for surrender in accordance with section 56; or

(d) the Minister makes a temporary surrender order under section 49.

(3) The Minister must not make a surrender order in respect of a person until the later of the following times:

(a) until the expiration of 15 days after the date of the issue of the warrant of detention of that person under section 46(2)(a); or

(b) if an appeal, or an application for review or habeas corpus in respect of a determination under this Act, or any appeal from such an appeal or application, is pending, until after the date that the proceedings are finally determined and the result is that the person is eligible to be surrendered.

(4) Nothing in subsection (3) applies to—

(a) a person who has consented to surrender under section 45, whether before the District Court or subsequently by notice to the Minister; or

(b) a person to whom section 43 applies but who has, in accordance with section 70, notified the Minister that he or she has waived—

(i) the right to make an application for a writ of habeas corpus within 15 days after the date of the issue of the warrant; and

(ii) the right, in relation to every international crime for which the District Court has determined that the person is eligible to be surrendered, to lodge an appeal under section 67; or

(c) a person whom the District Court determines is eligible for surrender for 2 or more international crimes and who, under section 70, has waived—

(i) the right to make an application for habeas corpus within 15 days after the date of the issue of the warrant; and

(ii) the right, in relation to only 1 or some of those international crimes, to lodge an appeal under section 67,—

if the ICC withdraws its request for the surrender of the person for the international crime or crimes to which the waiver does not relate.

(5) If the Minister makes a surrender order in respect of a person described in section 4(2), the Minister may arrange for any approvals, authorities, and permissions that may be needed to be obtained before surrender, including the variation, cancellation, or suspension of the sentence, or of any conditions of the sentence.

(6) Subject to section 48, once the Minister has made a surrender order, the Minister must use his or her best endeavours to ensure that the person is delivered up to the ICC without delay in accordance with this Act and any applicable Rules.

Compare: 1999 No 55 s 50; Statute art 59(1), (7)

**48 Surrender order may take effect at later date**

- (1) This section applies if the Minister has determined under section 47 that in all other respects it is appropriate to make a surrender order, but the person is liable to be detained in a prison because of a sentence of imprisonment imposed for a different offence against the law of New Zealand.
- (2) If this section applies, the Minister may, after consultation with the ICC, instead of making a surrender order that has immediate effect, or a temporary surrender order under section 49, make an order for the surrender of the person that is to come into effect when the person ceases to be liable to be detained.

Compare: 1999 No 55 s 32; Statute art 89(4)

**49 Temporary surrender to ICC**

- (1) This section applies if—
  - (a) the request by the ICC for surrender relates to an international crime of which the person is accused; and
  - (b) the Minister has determined under section 47 that in all other respects it is appropriate to make a surrender order but the person sought is either—
    - (i) the subject of proceedings for a different offence against New Zealand law that has not been finally disposed of; or
    - (ii) liable to be detained in a prison because of a sentence of imprisonment imposed for a different offence against the law of New Zealand; and
  - (c) after consultation by the Minister with the ICC, the ICC requests that the person be surrendered temporarily.
- (2) If this section applies, the Minister may make a temporary surrender order in respect of the person.
- (3) Before making a temporary surrender order, the Minister may seek undertakings from the ICC relating to 1 or more of the following matters:
  - (a) the return of the person to New Zealand;
  - (b) the custody of the person while travelling to and from and while in the ICC's jurisdiction;
  - (c) such other matters, if any, that the Minister thinks appropriate.

Compare: 1999 No 55 s 33(1), (2); Statute art 89(4)

**50 Decision on return to New Zealand after trial**

- (1) The Minister must review whether it is appropriate for a person who has been surrendered to the ICC under a temporary surrender order to be returned to New Zealand in accordance with undertakings received from the ICC if the person is convicted by the ICC of an international crime and sentenced to imprisonment.

(2) The Minister may determine that he or she no longer requires the undertaking relating to return to be complied with and, if so, must inform the ICC without delay.

## **51 Request for return to ICC after temporary surrender**

(1) The Minister may make a surrender order in relation to a person who was surrendered to the ICC under a temporary surrender order if—

- (a) the person has been convicted by the ICC of an international crime and sentenced to imprisonment; and
- (b) the person is returned to New Zealand in order for the New Zealand proceedings or sentence to be completed; and
- (c) the ICC makes a request at any time before the person is no longer the subject of New Zealand proceedings or ceases to be liable to be detained in a New Zealand prison, that, when he or she is no longer the subject of proceedings or ceases to be so liable, the person be surrendered to serve the sentence imposed by the ICC.

(2) Before making an order under subsection (1), the Minister must determine in accordance with section 47(2) that the person is to be surrendered.

(3) If a surrender order is made under this section, the order takes effect on the same day that the person ceases to be subject to the New Zealand proceedings or ceases to be liable to be detained in a New Zealand prison.

Compare: 1999 No 55 s 34

## **52 New Zealand sentence continues to run**

(1) If a person who is subject to a sentence of imprisonment is released from a New Zealand prison under a surrender order made under section 47 or a temporary surrender order made under section 49, the person is to be treated, while in custody in connection with the request or the crime to which the request related, as the case may be (including custody outside New Zealand), as being in custody for the purposes of the New Zealand sentence, which continues to run.

(2) If, while a person is within the jurisdiction of the ICC under a temporary surrender order or surrender order, the person ceases to be liable to be detained in a New Zealand prison, the Minister must inform the ICC that any undertakings relating to custody referred to in section 49(3)(a) and section 49(3)(b) no longer need to be complied with.

(3) Nothing in this section affects the ICC's power to direct that any sentence of imprisonment that it imposes is to be cumulative on a sentence imposed under New Zealand law.

Compare: 1999 No 55 s 33(3), (4)

### **53 Form and execution of surrender order or temporary surrender order**

A surrender order made under section 47 or a temporary surrender order made under section 49 must be in the prescribed form, if any, and must—

- (a) specify all the international crimes in relation to which the person is being surrendered; and
- (b) either—
  - (i) require the person in whose custody the person to be surrendered is being held (if the person is being held in custody) to release the person to be surrendered into the custody of a Police employee, or a prison officer; or
  - (ii) if the person to be surrendered is on bail, authorise any Police employee to take the person into custody; and
- (c) authorise the Police employee, or prison officer, as the case may be, to transport the person in custody and, if necessary or convenient, to detain the person in custody, for the purpose of enabling the person to be placed in the custody of a person who is, in the opinion of the Minister, duly authorised to receive the person to be surrendered in the name of and on behalf of the ICC; and
- (d) authorise the duly authorised person referred to in paragraph (c) to take the person to be surrendered into custody and transport the person out of New Zealand as soon as practicable to the ICC to be dealt with there according to law.

Compare: 1999 No 55 s 67

Section 53(b)(i): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 53(b)(ii): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 53(c): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

### **54 Surrender to State of enforcement**

- (1) If a request for surrender relates to a convicted person who has escaped from custody and the ICC directs, under Article 111 of the Statute, that the person be delivered to the State in which the person was serving the sentence or to any other State designated by the ICC, the Minister must arrange for the person to be delivered to the State specified in the direction.
- (2) In any case in which subsection (1) applies, the surrender order may specify that the person be surrendered into the custody of duly authorised representatives of the State specified in the direction.

Compare: Statute art 111

*Restrictions on surrender***55 Refusal of surrender**

- (1) The Minister must refuse a request by the ICC for the surrender of a person if—
  - (a) there have been previous proceedings against the person and section 57(4) applies; or
  - (b) the ICC determines that the case is inadmissible and section 59(3) or section 60(2) applies; or
  - (c) section 66(3) applies.
- (2) The Minister may refuse a request by the ICC for the surrender of a person if—
  - (a) there are competing requests from the ICC and a State that is not a party to the Statute relating to the same conduct and section 63(4) applies; or
  - (b) there are competing requests from the ICC and a State that is not a party to the Statute relating to different conduct and section 64(3) applies.
- (3) To avoid doubt,—
  - (a) the only grounds on which surrender to the ICC may be refused are those specified in this section and, if applicable, section 23(2) (which relates to offences involving the administration of justice); and
  - (b) the restrictions on surrender specified in the Extradition Act 1999 do not apply in relation to a request for surrender from the ICC.

**56 Postponement of execution of request for surrender**

- (1) The Minister may postpone the execution of a request for surrender under this Part at any time before the person sought is surrendered if, and only if,—
  - (a) a ruling on admissibility of the kind specified in section 57(1) or section 59(1) or section 60 is pending before the ICC; or
  - (b) the request would interfere with an investigation or prosecution for a different offence against New Zealand law, as provided in section 58; or
  - (c) a request of the kind referred to in section 66(1)(c) is made to the ICC.
- (2) Even if a case is one to which subsection (1) applies, the Minister may decide not to postpone the execution of the request; and, in that event, the Minister may take such steps under this Part as may be appropriate in the circumstances, including making a surrender order with immediate effect under section 47 or with effect at a later date under section 48 or a temporary surrender order under section 49.
- (3) If the Minister postpones the execution of the request, the postponement may be for a reasonable time and may, if the Minister considers it desirable, be extended from time to time.
- (4) A decision by the Minister to postpone the execution of a request—

- (a) does not limit or affect—
  - (i) the District Court's ability to accept notification of consent to the surrender;
  - (ii) the ability to continue to detain a person under any warrant issued under this Part;
- (b) does not affect the validity of any act that has been done or any warrant or order made under this Part before the decision was made.

(5) If no decision on the execution of the request for surrender is made within 6 months after the date of the Minister's decision to postpone the execution of the request, the person may apply to a Judge of the High Court to be discharged.

(6) If an application to be discharged is made under subsection (5), the Judge may, on proof that reasonable notice of the intention to make the application has been given to the Minister, unless sufficient cause is shown against the discharge,—

- (a) discharge any order made under this Act;
- (b) order the discharge of the person from the place where the person is detained, if the person is not liable to be detained under any other order for detention.

## **57 Previous proceedings against person sought**

- (1) This section applies if the person whose surrender is sought alleges that—
  - (a) the case is one to which Article 20(1) of the Statute applies (because it relates to conduct that formed the basis of crimes for which the person has been convicted or acquitted by the ICC); or
  - (b) the person has been tried by another court for conduct also proscribed under Article 6, 7, or 8 of the Statute and the case is not one to which paragraphs (a) and (b) of Article 20(3) of the Statute applies.
- (2) If this section applies, the Minister must immediately consult with the ICC to determine if there has been a relevant ruling on admissibility under the Statute.
- (3) If the ICC has ruled that the case is admissible, surrender cannot be refused on the ground there have been previous proceedings.
- (4) If the ICC has ruled that the case is inadmissible under Article 20 of the Statute, surrender must be refused on the ground that there have been previous proceedings.
- (5) If an admissibility ruling is pending, the Minister may postpone the execution of a request until the ICC has made a determination on admissibility.

Compare: Statute arts 20(1), (3), 89(2)

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**58 Ongoing New Zealand investigation or proceedings involving different conduct**

(1) This section applies if the ICC makes a request for surrender that would interfere with an investigation or proceedings in New Zealand involving different conduct.

(2) If this section applies, the Minister may, after consultation with the ICC,—

- (a) proceed with the execution of the request in accordance with section 56(2), despite the New Zealand investigation or proceedings; or
- (b) postpone the execution of the request until the New Zealand investigation or proceedings have been finally disposed of.

(3) Nothing in this section limits or affects section 48 which allows the Minister to make a surrender order that comes into force at a later date if a person is serving a sentence for a different offence against New Zealand law.

Compare: Statute art 94

**59 Person being prosecuted in New Zealand for same conduct**

(1) This section applies if—

- (a) the ICC makes a request for surrender; and
- (b) the request relates to conduct that would constitute an offence under New Zealand law; and
- (c) either—
  - (i) the conduct is being investigated or prosecuted in New Zealand; or
  - (ii) the conduct had been investigated in New Zealand and a decision was made not to prosecute the person sought, that decision not being due to the unwillingness or genuine inability to prosecute; and
- (d) a challenge to the admissibility of the case is being or has been made to the ICC under Article 19(2)(b) of the Statute.

(2) If this section applies, the Minister may postpone the execution of the request for surrender until the ICC has made its determination on admissibility.

(3) If the ICC determines that the case is inadmissible, surrender must be refused.

(4) If the ICC determines that the case is admissible and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Compare: Statute arts 17(1), 19(2)(b), 95

**60 Other challenges to admissibility**

(1) If the ICC is considering an admissibility challenge under Article 18 or Article 19 of the Statute, other than a challenge of the kind referred to in section 57 or

section 59, the Minister may postpone the execution of a request under this Part pending a determination by the ICC.

- (2) If the ICC determines that the case is inadmissible, surrender must be refused.
- (3) If the ICC determines that the case is admissible, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Compare: Statute art 95

## **61 Request from ICC and other State relating to same conduct**

If a request for surrender of a person is received from the ICC and 1 or more States also request the extradition of the person for the same conduct that forms the basis of the crime for which the ICC seeks the person's surrender, the Minister—

- (a) must notify the ICC and the requesting State of that fact;
- (b) must determine, in accordance with section 62 or section 63, but despite section 99 of the Extradition Act 1999, whether the person is to be surrendered to the ICC or to the requesting State.

Compare: Statute art 90(1)

## **62 Procedure where competing request from State Party**

- (1) If section 61 applies and the requesting State is a party to the Statute, priority must be given to the request from the ICC if—
  - (a) the ICC has, under Article 18 or Article 19 of the Statute, 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 ICC makes such a determination after receiving notification of the competing request.
- (2) If the request is one to which subsection (1)(b) relates, then, pending the ICC's determination,—
  - (a) the steps required to be taken under the Extradition Act 1999 in relation to a request for extradition may continue to be taken; but
  - (b) no person may be surrendered under that Act unless and until the ICC makes its decision on admissibility and determines that the case is inadmissible.

Compare: Statute art 90(2)

## **63 Procedure where competing request from non-State Party**

- (1) If section 61 applies and the requesting State is not a party to the Statute, priority must be given to the request for surrender from the ICC if—

- (a) New Zealand is not under an international obligation to extradite the person to the requesting State; and
- (b) the ICC has determined under Article 18 or Article 19 of the Statute that the case is admissible.

(2) If section 61 applies and the requesting State is not a party to the Statute, the request for extradition may continue to be dealt with if—

- (a) New Zealand is not under an international obligation to extradite the person to the requesting State; and
- (b) the ICC has not yet determined under Article 18 and Article 19 of the Statute that the case is admissible.

(3) Despite subsection (2), no person may be surrendered under the Extradition Act 1999 unless and until the ICC makes its decision on admissibility and determines that the case is inadmissible.

(4) If section 61 applies, the requesting State is not a party to the Statute, and New Zealand is under an international obligation to extradite the person to the requesting State, the Minister must determine whether to surrender the person to the ICC or extradite the person to the requesting State.

(5) Section 99(1) of the Extradition Act 1999 does not apply to a determination made under subsection (4).

(6) In making the determination under subsection (4), the Minister must consider all the relevant factors including, without limitation,—

- (a) the respective dates of the requests; and
- (b) the interests of the requesting State, including, if 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 ICC and the requesting State.

Compare: Statute art 90(4)–(6)

#### **64 Request from ICC and other State relating to different conduct**

(1) If a request for surrender of a person is received from the ICC and a request for the extradition of that person is received from 1 or more States for conduct other than that which constitutes the crime for which the ICC seeks the person's surrender, the Minister must determine whether the person is to be surrendered to the ICC or to the requesting State.

(2) If New Zealand is not under an existing international obligation to extradite the person to the requesting State, priority must be given to the request from the ICC.

(3) If New Zealand is under an existing international obligation to extradite the person to the requesting State, the Minister must determine whether to surrender the person to the ICC or to extradite the person to the requesting State.

(4) In making the determination under subsection (3), the Minister must consider all the relevant factors, including, without limitation, those matters specified in section 63 of this Act and section 99 of the Extradition Act 1999, but must give special consideration to the relative seriousness of the offences for which surrender is sought.

Compare: Statute art 90(7)

**65 Notification of decision on extradition to requesting State**

(1) If, following notification under Article 90 of the Statute, the ICC has determined that a case is inadmissible and the Minister subsequently refuses extradition of the person to the requesting State under the Extradition Act 1999, the Minister must notify the ICC of this decision.

(2) The obligation in this section is in addition to the requirement in section 30 for the Minister to respond formally to the request from the ICC.

Compare: Statute art 90(8)

**66 Conflict with obligations to another State**

(1) This section applies if—

- (a) the ICC makes a request for surrender; and
- (b) the ICC has not previously made a final determination on whether or not Article 98 of the Statute applies to that request; and
- (c) a request is made to the ICC to determine whether or not Article 98 of the Statute applies to the request for surrender.

(2) If this section applies, the Minister may postpone the request for surrender until the ICC advises whether or not it intends to proceed with the request for surrender.

(3) If the ICC advises that it does not intend to proceed with the request, surrender must be refused.

(4) If the ICC advises that it intends to proceed with the request for surrender, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Compare: Statute art 98

*Appeals against determinations of eligibility for surrender*

**67 Appeal on question of law only**

(1) This section applies if the District Court determines under section 43 that a person is or is not eligible for surrender in relation to any crime for which surrender is sought, and either party considers the determination erroneous in point of law.

(2) If this section applies, the party may appeal against the determination to the High Court on a question of law only.

(3) To lodge an appeal the party must, within 15 days after the determination, file in the office of the court that made the determination a notice of appeal in the prescribed form.

Section 67: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 67(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **68 Application to appeal of Bail Act 2000 and Criminal Procedure Act 2011**

(1) Section 59 of the Bail Act 2000 (which relates to the surrender of an appellant released on bail) applies with any necessary modifications to an appeal under this Part as if it were an appeal under subpart 8 of Part 6 of the Criminal Procedure Act 2011 against the determination by the District Court of a charge for an offence.

(2) Subpart 8 of Part 6 of the Criminal Procedure Act 2011 applies as far as applicable with the necessary modifications to every appeal under this Part.

Section 68: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 68(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **69 Custody pending determination of appeal**

(1) The District Court may order that the person who is the subject of the determination continue to be detained or, as the case may be, issue a warrant for the arrest and detention of the person, pending the determination of the appeal if—

- the District Court makes a determination under section 43; and
- immediately after the District Court makes the determination, either party informs the District Court that the party intends to appeal against the determination.

(2) The District Court or the High Court may order that the person who is the subject of the determination continue to be detained or, as the case may be, issue a warrant for the arrest and detention of the person, pending the determination of the appeal if—

- the District Court makes a determination under section 43; and
- either party files a notice of appeal against the determination.

(3) If a person is detained under an order made under this section or is arrested and detained under a warrant issued under this section, sections 39 to 42 apply to the detention of the person with any necessary modifications as if the appeal proceedings were proceedings under section 43 to determine whether or not the person is eligible for surrender.

Compare: 1999 No 55 s 70

Section 69(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 69(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 69(2)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **70 Waiver of rights to apply for habeas corpus or to lodge appeal**

Without limiting section 45, a person whose surrender is sought may, by a waiver in the prescribed form, waive the following rights:

- (a) the right to make an application for a writ of habeas corpus within 15 days after the issue of a warrant of detention; and
- (b) the right, in relation to any international crime or crimes for which the District Court has determined that the person is eligible for surrender, to lodge an appeal under this Part.

Compare: 1999 No 55 s 71

## **71 Powers of court on appeal**

- (1) The High Court must hear and determine the question or questions of law arising on any case transmitted to it, and do 1 or more of the following things:
  - (a) reverse, confirm, or amend the determination in respect of which the case has been stated;
  - (b) remit the determination to the District Court for reconsideration together with the opinion of the High Court on the determination;
  - (c) remit the determination to the District Court with a direction that the proceedings to determine whether the person is eligible for surrender be reheard;
  - (d) make any other order in relation to the determination that it thinks fit.
- (2) In hearing and determining the question or questions of law arising on any case transmitted to it, the High Court—
  - (a) must not have regard to any evidence of a fact or opinion that was not before the District Court when it made the determination appealed against; and
  - (b) may in the same proceeding hear and determine any application for a writ of habeas corpus made in respect of the detention of the person whose surrender is sought.

Compare: 1999 No 55 s 72

## **72 Further provisions relating to powers of court on appeal**

- (1) If the appeal is against a determination that a person is eligible for surrender, and the High Court reverses the determination in respect of which the case has been stated, the High Court must also either—

- (a) discharge the person; or
- (b) remit the determination to the District Court with a direction that the proceedings to determine whether the person is eligible for surrender be reheard.

(2) If the appeal is against a determination that a person is eligible for surrender in respect of 2 or more international crimes, and the High Court determines that the determination includes an error of law that relates to only 1 or some of those international crimes, the High Court may amend the determination and—

- (a) discharge the person in respect of that international crime or those international crimes; or
- (b) remit the determination to the District Court with a direction that the proceedings to determine whether the person is eligible for surrender be reheard in respect of that international crime or those international crimes.

(3) Despite subsections (1) and (2), if an appeal is against a determination that a person is eligible for surrender, and the High Court determines that there has been an error of law, it may nevertheless decline to reverse or amend the determination in respect of which the case has been stated if it considers that no substantial wrong or miscarriage of justice has occurred and that the determination ought to be upheld.

(4) If the appeal is against a determination that a person is not eligible for surrender, and the High Court determines that the determination includes an error of law, the High Court may—

- (a) exercise the powers of the District Court under section 46 as if it were the District Court, although subsection (2)(c) of that section does not apply;
- (b) if it remits the determination to the District Court, issue a warrant for the arrest and detention of the person pending the District Court's reconsideration of the determination or rehearing of the proceedings to determine whether the person is eligible for surrender; and section 69(3) applies to any warrant issued under this paragraph as if the warrant were issued under that section.

(5) Subsections (1), (2), and (4) do not limit section 71.

Compare: 1999 No 55 s 73

Section 72(4)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

*Discharge of person*

**73 Discharge of person if Minister declines to order surrender**

If the Minister determines under section 47 that the person is not to be surrendered, the person must be discharged from custody immediately unless the person is subject to any other order for detention.

Compare: 1999 No 55 s 35

**74 Discharge of person if not surrendered within 2 months**

- (1) This section applies if a person is not surrendered and conveyed out of New Zealand under a surrender order or a temporary surrender order made under this Part within 2 months—
  - (a) after the date of the issue of the warrant for the detention of the person under section 46 pending surrender, if no appeal or application for review or habeas corpus, in respect of a determination under this Act, or any appeal from such an appeal or application, is pending; or
  - (b) if an appeal, or an application for review or habeas corpus, in respect of a determination under this Act, or any appeal from such an appeal or application, is pending, after the date that the proceedings are finally determined; or
  - (c) if a surrender order is made under section 48, after the date that the order takes effect.
- (2) If this section applies, the person may apply to a Judge of the High Court to be discharged.
- (3) If an application to be discharged is made under subsection (2), the Judge may, on proof that reasonable notice of the intention to make the application has been given to the Minister, unless sufficient cause is shown against the discharge,—
  - (a) discharge the surrender order or temporary surrender order, as the case may be; and
  - (b) order the discharge of the person from the place where the person is detained, if the person is not liable to be detained under any other order for detention.

Compare: 1999 No 55 s 36

**75 Discharge of person if not resurrendered**

- (1) If a person has been surrendered under a temporary surrender order made under section 49, nothing in section 74 prevents an order being made under section 51.
- (2) Subsection (3) applies if an order is made under section 51 and the person is not surrendered and conveyed out of New Zealand under this Part within 2

months after the date that the person ceases to be liable to be detained under the sentence of imprisonment imposed by a New Zealand court.

- (3) If this subsection applies, the person may apply to a Judge of the High Court to be discharged.
- (4) If an application to be discharged is made under subsection (3), the Judge may, on proof that reasonable notice of the intention to make the application has been given to the Minister, unless sufficient cause is shown against the discharge,—
  - (a) discharge the surrender order; and
  - (b) order the discharge of the person from the place where the person is detained, if the person is not liable to be detained under any other order for detention.

Compare: 1999 No 55 s 37

## 76 Discharge of person under this Part does not preclude further proceedings

To avoid doubt, the discharge of a person under any provision of this Part does not preclude further proceedings under this Act, whether or not they are based on the same conduct, to surrender the person to the ICC.

Compare: 1999 No 55 s 38; Statute art 92(4)

### *Miscellaneous provisions relating to arrest and surrender*

## 77 Search and seizure on arrest

- (1) If a person is arrested on a warrant issued under this Part, a constable may search, without further warrant, the person arrested and may seize any thing, including any sum of money, found on the person or in the person's possession if the constable believes on reasonable grounds that the thing on the person or in the person's possession may be evidence as to the commission of any offence in relation to which the warrant to arrest was issued or for which the surrender of the person is sought by the ICC.
- (2) If there is no suitable searcher available at the place where the search is to take place, the person to be searched may be taken to another place to be searched.
- (3) Nothing in this section limits or affects the right at common law of a constable to search a person on that person's arrest or any power under section 11 of the Search and Surveillance Act 2012.
- (4) If any thing is seized under subsection (1) from the person arrested,—
  - (a) the constable must make a report to the Minister specifying the items seized and any other relevant information;
  - (b) the Minister must, on receipt of the report referred to in paragraph (a), provide the ICC with a report on the seizure.

Compare: 1999 No 55 s 82

Section 77(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 77(3): amended, on 1 October 2012, by section 266(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 77(4)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## **78 Disposal of property seized**

- (1) If the Minister makes a surrender order or temporary surrender order under this Act, the Minister may also direct that any thing that was seized under section 77 that may be evidence of the offence the person is alleged to have committed or has committed be delivered with the person on the person's surrender to the ICC.
- (2) If the person cannot be surrendered or temporarily surrendered by reason of the person's death or escape from custody, the Minister may direct that any thing that was seized under section 77 that may be evidence of the offence the person is alleged to have committed or has committed be delivered up to the ICC.
- (3) If a person is discharged under this Act without being surrendered or temporarily surrendered, the Minister may direct that any thing seized under section 77 be returned to the person from whom it was seized.
- (4) The Minister may refuse to direct that any thing referred to in subsection (1) or subsection (2) be delivered to the ICC if the thing is required for the investigation of an offence within the jurisdiction of New Zealand.
- (5) The Minister may refuse to direct that any thing referred to in subsection (3) be returned to the person if—
  - (a) the thing is the subject of a dispute as to who is entitled to it; or
  - (b) the thing is required for the investigation of an offence within the jurisdiction of New Zealand; or
  - (c) possession of the thing by the person would be unlawful in New Zealand.

Compare: 1999 No 55 s 89

## **79 Information about time spent in custody in New Zealand**

- (1) If the ICC requests the surrender of a person, and that person is detained in a New Zealand prison or any other place at any time pending surrender, the prison manager of the prison or the head of the other place must keep a record of the time spent in custody as if the person were charged with an offence against the law of New Zealand and were on remand.
- (2) The prison manager or the head of the other place must, if requested, provide to the Minister a certificate recording—
  - (a) the date on which the person was admitted to a prison or any other place to be held in custody in relation to the request; and

(b) the total period during which the person was detained in custody during the process leading to the surrender of the person to New Zealand in relation to the offence or offences; and

(c) whether the person was, at any time during the period in custody in relation to the surrender, also serving a sentence for an offence against New Zealand law.

(3) The Minister must provide to the ICC at the time of the surrender of the person, or as soon as possible after that, a certificate recording the information specified in subsection (2) and such other information relating to any period spent in custody in relation to the surrender as the ICC may request.

Compare: 1999 No 55 s 62(1); Statute art 78(2)

Section 79(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 79(1): amended, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 79(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

## **80 Consent to trial of surrendered person for previous offences**

(1) This section applies if—

(a) a person is surrendered to the ICC under this Act; and

(b) the ICC requests a waiver of the requirements of Article 101(1) of the Statute (which relates to the rule of speciality).

(2) If this section applies, the Minister may consent to the person being proceeded against, punished, or detained for conduct committed before surrender (not being the conduct or course of conduct that forms the basis of the crimes for which that person has been surrendered).

(3) The consent given under subsection (2) may relate to the person's surrender to another State.

(4) Before giving consent under subsection (2), the Minister—

(a) may request that additional information be provided in accordance with Article 91 of the Statute;

(b) may seek any assurances from the ICC that the Minister thinks fit.

Compare: 1999 No 55 s 30(5); Statute arts 91, 101

## **Part 5**

### **Domestic procedures for other types of co-operation**

*Identifying or locating persons or things*

## **81 Assistance in locating or identifying persons or things**

(1) This section applies if the ICC requests assistance under any of Articles 19(8), 56, 64, or 93(1)(a) of the Statute in locating, or identifying and locating, a person or a thing believed to be in New Zealand.

- (2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—
  - (a) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
  - (b) the person to whom or thing to which the request relates is or may be in New Zealand.
- (3) If the Attorney-General gives authority for the request to proceed,—
  - (a) the Attorney-General must forward the request to the appropriate New Zealand agency; and
  - (b) that agency must, without delay,—
    - (i) use its best endeavours to locate or, as the case may be, identify and locate the person to whom or thing to which the request relates; and
    - (ii) advise the Attorney-General of the outcome of those endeavours.
- (4) This section does not give any person a power to enter property in order to locate a person or item.

Compare: Statute arts 19(8), 56, 64, 93(1)(a)

*Taking evidence and producing documents*

**82 Assistance in gathering evidence**

- (1) This section applies if the ICC requests, under any of Articles 19(8), 56, 64, or 93(1)(b) of the Statute, that—
  - (a) evidence be taken in New Zealand; or
  - (b) documents or other articles in New Zealand be produced.
- (2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—
  - (a) the request relates to an investigation being conducted by the Prosecutor or to a proceeding before the ICC; and
  - (b) there are reasonable grounds for believing that the evidence can be taken or, as the case may be, the documents or other articles can be produced in New Zealand.

Compare: 1995 No 27 s 21; Statute arts 19(8), 56, 64, 93(1)(b)

**83 Taking evidence**

- (1) If the Attorney-General gives authority for a request relating to the taking of evidence to proceed, the statement of each witness must be taken in writing on the oath or affirmation of that witness by a District Court Judge.
- (2) The Judge who takes evidence under subsection (1), must—
  - (a) certify that the evidence was taken by the Judge; and

(b) ensure that the evidence, as certified, is sent to the Attorney-General.

Compare: 1995 No 27 s 22

#### **84 Producing documents or other articles**

- (1) If the Attorney-General gives authority for a request relating to the production of documents or other articles to proceed, a District Court Judge may make an order requiring their production.
- (2) If the documents or other articles are produced, the Judge must send them to the Attorney-General together with a written statement certifying that they were produced to the Judge.
- (3) Despite subsection (2), in the case of documents that are produced, the Judge may send to the Attorney-General copies of the documents certified by the Judge to be true copies instead of the originals.
- (4) Subsections (2) and (3) apply subject to any contrary order by the Judge.

Compare: 1995 No 27 s 23

#### **85 Protection of witnesses**

- (1) The applicable law with respect to compelling a person to appear before Judge under section 83 or section 84 and to give evidence or answer questions, or to produce documents or other articles, is the law specified in subsection (2); and that law applies with any necessary modifications.
- (2) For the purposes of subsection (1), the applicable law is the law of New Zealand that applies to the giving of evidence or the answering of questions or the production of documents or other articles on the hearing of a charge against a person for an offence against the law of New Zealand.
- (3) Despite subsection (1), for the purposes of section 83 and section 84, the person to whom the investigation being conducted by the Prosecutor, or the proceeding before the ICC, relates is competent but not compellable to give evidence.
- (4) Despite subsection (1), a person who is required under section 83 or section 84 to give evidence, or to produce documents or other articles, is not required to give any evidence, or to produce any document or article, that the person could not be compelled to give or produce in the investigation being conducted by the Prosecutor or the proceeding before the ICC.
- (5) A person who is required under section 83 or section 84 to give evidence or to produce documents or other articles—
  - (a) has the same privileges in relation to the answering of questions and the production of documents or articles as if the investigation were being conducted in New Zealand or the proceeding were pending in a New Zealand court, as the case may be; and
  - (b) must be given a copy of any statement required to be given to a witness under the Rules in the manner and form required by the Rules.

(6) Subsections (4) and (5) apply subject to section 31 and any contrary provision in the Statute or the Rules.

Compare: 1995 No 27 s 26

**86 ICC may give evidence certificate**

(1) In this section, **evidence certificate** means a certificate or declaration that—

- (a) is given or made by or on behalf of the ICC; and
- (b) specifies or declares whether, under the Statute or the Rules, a specified person or class of persons could or could not be required to answer a specified question or to produce a specified document—

- (i) generally; or
- (ii) in specified proceedings; or
- (iii) in specified circumstances.

(2) An evidence certificate authenticated under subsection (3) is admissible in proceedings for the purposes of the application of section 85(4) as *prima facie* evidence of the matters stated in the certificate.

(3) A certificate is authenticated for the purposes of subsection (2) if it purports to be—

- (a) signed or certified by a Judge, the Registrar, the Deputy Registrar, or a member of the staff of the ICC; or
- (b) authenticated in any other manner authorised by the Statute or the Rules.

Compare: 1995 No 27 s 27

**87 Certain persons may appear**

(1) The following persons may appear and be legally represented at a hearing held under section 83 or section 84:

- (a) the person to whom the proceeding before the ICC or the investigation conducted by the Prosecutor relates;
- (b) any other person giving evidence or producing documents or other articles at the hearing;
- (c) a representative of the Prosecutor or ICC.

(2) Subsection (1) applies subject to any contrary provision of the Statute or the Rules.

(3) A certificate by a Judge under section 83(2) or section 84(2) must state whether any of the persons specified in subsection (1) were present when the evidence was taken or the documents or other articles were produced.

Compare: 1992 No 86 s 34

**88 Powers of Judge may be exercised by Registrar**

- (1) Any Judge may authorise a Registrar of the District Court to exercise the powers of a Judge under section 83 or section 84 in respect of any particular case.
- (2) An authorisation given under subsection (1) may be revoked at any time by any Judge.
- (3) If a matter in respect of which a Registrar has jurisdiction under an authorisation given under subsection (1) appears to the Registrar to be one of special difficulty, the Registrar may refer the matter to a Judge, who may—
  - (a) dispose of the matter; or
  - (b) refer it back to the Registrar with such directions as the Judge thinks fit.
- (4) Nothing in this section prevents the exercise by any Judge of any jurisdiction or powers conferred on any Registrar under this section.

Compare: 1995 No 27 s 28

*Questioning persons***89 Assistance in questioning persons**

- (1) This section applies if the ICC requests assistance under any of Articles 19(8), 56, 64, or 93(1)(c) of the Statute in questioning a person who is being investigated or prosecuted.
- (2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—
  - (a) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
  - (b) the person is or may be in New Zealand.
- (3) If the Attorney-General gives authority to proceed,—
  - (a) the Attorney-General must forward the request to the appropriate New Zealand agency; and
  - (b) that agency must, without delay,—
    - (i) use its best endeavours to undertake the questioning that the ICC has requested; and
    - (ii) ensure that the answers to the questions put are recorded in writing and make any other report on the questioning as it considers to be appropriate in the circumstances; and
    - (iii) advise the Attorney-General of the outcome of those endeavours and, if relevant, deliver the record and any report of the questioning to the Attorney-General.

Compare: Statute arts 19(8), 56, 64, 93(1)(c)

**90 Procedure where questioning by New Zealand agency**

- (1) This section applies if there are grounds to believe that a person who is to be questioned by a New Zealand agency following a request under Article 91(1)(c) of the Statute has committed a crime within the jurisdiction of the ICC.
- (2) If this section applies, the person to be questioned must be informed, before being questioned, that there are grounds to believe that the person has committed a crime within the jurisdiction of the ICC and that the person has the right—
  - (a) to remain silent, without such silence being a consideration in the determination of guilt or innocence; and
  - (b) to have legal assistance of the person’s choosing, or, if the person does not have legal assistance, to have legal assistance assigned to the person, 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
  - (c) to be questioned in the presence of a lawyer unless the person voluntarily waives the right to counsel.
- (3) If there is any inconsistency between subsection (2) and any other enactment, subsection (2) prevails.
- (4) If the person seeks to have legal assistance assigned under subsection (2)(b), that assistance may be provided under the Legal Services Act 2000.
- (5) This section does not give any person a power to require another person to answer questions.

Compare: Statute art 55(2)

Section 90(4): amended, on 1 February 2001, pursuant to section 126(1) of the Legal Services Act 2000 (2000 No 42).

*Assistance in arranging service*

**91 Assistance in arranging service of documents**

- (1) This section applies if the ICC requests assistance under any of Articles 19(8), 56, 58(7), 64, or 93(1)(d) of the Statute in arranging for the service of a document in New Zealand.
- (2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—
  - (a) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
  - (b) the person or body to be served is or may be in New Zealand.

(3) If the Attorney-General gives authority for the request to proceed, the Attorney-General must forward the request for service to the appropriate New Zealand agency, and that agency must, without delay,—

- use its best endeavours to have the process served—
  - in accordance with any procedure specified in the request; or
  - if that procedure would be unlawful or inappropriate in New Zealand, or if no procedure is specified, in accordance with the law of New Zealand; and
- transmit to the Attorney-General—
  - a certificate as to service, if the document is served; or
  - a statement of the reasons that prevented service, if the document is not served.

(4) In this section, **document** includes—

- a summons requiring a person to appear as a witness; and
- a summons to an accused that has been issued under Article 58(7) of the Statute.

Compare: 1995 No 27 s 35; Statute arts 19(8), 56, 58(7), 59(7), 64, 93(1)(d)

#### *Facilitating appearance of witnesses*

### **92 Request for voluntary appearance of witness**

(1) This section applies if the ICC requests assistance under any of Articles 19(8), 56, 64, or 93(1)(e) of the Statute in facilitating the voluntary appearance of a witness before the ICC.

(2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

- the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
- the witness's attendance is sought so that the witness can give evidence or information relating to the investigation or proceeding; and
- the witness is or may be in New Zealand.

(3) In this section and sections 93 and 94, **witness** includes a person who may give expert evidence; but does not include either—

- a person who has been accused of an international crime in the proceedings to which the request relates; or
- a prisoner who is detained in relation to an offence against New Zealand law.

Compare: 1995 No 27 s 30(1); Statute arts 19(8), 56, 64, 93(1)(e)

**93 Consent required and assurances may be sought**

- (1) If the Attorney-General gives authority for the request to facilitate the voluntary appearance of a witness to proceed, the Attorney-General must forward the request to the appropriate New Zealand agency.
- (2) The New Zealand agency to which a request is forwarded under subsection (1) must make such inquiries as may be necessary to ascertain if the prospective witness consents to giving evidence or assisting the ICC.
- (3) The Attorney-General may, at any time, ask the ICC to give 1 or more of the following assurances:
  - (a) that the witness will not be prosecuted, detained, or subjected to any restriction of personal freedom by the ICC in respect of all or any specified acts or omissions that occurred before the person's departure from New Zealand;
  - (b) that the witness will be returned to New Zealand as soon as practicable in accordance with arrangements agreed to by the Attorney-General;
  - (c) an assurance relating to such other matters as the Attorney-General thinks appropriate.

Compare: Statute art 93(2)

**94 Attorney-General may facilitate appearance**

- (1) The Attorney-General may assist in the making of arrangements to facilitate a witness's attendance before the ICC if the Attorney-General is satisfied that—
  - (a) the prospective witness has consented to giving the evidence or assistance requested; and
  - (b) the ICC has given adequate assurances where appropriate.
- (2) The Attorney-General may—
  - (a) approve and arrange the travel of the witness to the ICC; and
  - (b) obtain 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
  - (c) take such other action for the purposes of subsection (1) as the Attorney-General thinks appropriate.

Compare: 1995 No 27 ss 30(2), 31(3)

*Temporary transfer of prisoners***95 Request for temporary transfer of prisoner**

- (1) This section applies if the ICC requests assistance under Article 93(1)(f) of the Statute in facilitating the temporary transfer to the ICC of a New Zealand prisoner.
- (2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—
  - (a) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
  - (b) the prisoner's attendance is sought for the purposes of identification or for obtaining evidence or other assistance.

Compare: Statute art 93(1)(f), (7)

**96 Consent required and assurances may be sought**

- (1) If the Attorney-General gives authority for the request to facilitate the temporary transfer of a New Zealand prisoner to proceed, the Attorney-General must forward the request to the appropriate New Zealand agency.
- (2) The New Zealand agency to which a request is forwarded under subsection (1) must make such inquiries as may be necessary to ascertain if the prisoner will consent to the transfer.
- (3) The Attorney-General may ask the ICC to give 1 or more of the following assurances:
  - (a) that the prisoner will not be released from custody without the prior approval of the Attorney-General;
  - (b) that the prisoner will be returned to New Zealand without delay in accordance with arrangements agreed to by the Attorney-General;
  - (c) an assurance relating to such other matters as the Attorney-General thinks appropriate.

**97 Attorney-General may arrange for transfer**

- (1) The Attorney-General may authorise the temporary transfer of a New Zealand prisoner to the ICC if the Attorney-General is satisfied that—
  - (a) the prisoner has consented to giving the evidence or assistance requested; and
  - (b) the ICC has given adequate assurances where appropriate.
- (2) If the Attorney-General authorises the temporary transfer of the prisoner to the ICC, the Attorney-General may—
  - (a) direct that the prisoner be released from the prison in which that person 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—
  - (i) a Police employee; or
  - (ii) a prison officer; or
  - (iii) a person authorised for the purpose by the ICC.
- (3) A direction given by the Attorney-General under subsection (2) in respect of a prisoner is sufficient authority for the release of the prisoner from the prison in which the prisoner is detained, for the purposes of the direction.
- (4) Every person released under a direction given under subsection (2) is to be treated, for the purposes of section 120 of the Crimes Act 1961 (which relates to escaping from lawful custody) and for that purpose only, as continuing to be in legal custody for the time being under the Corrections Act 2004, while in New Zealand during the period of that release.
- (5) If there is any inconsistency between subsection (4) and the Corrections Act 2004, subsection (4) prevails.

Compare: 1995 No 27 s 31

Section 97(2)(b)(i): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 97(4): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 97(5): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

## **98 Effect of transfer on prisoner's sentence**

- (1) If a prisoner who is charged with or convicted of an offence against the law of New Zealand is transferred to the ICC under section 97, the provisions of section 99 of this Act and section 90 of the Parole Act 2002 apply to any period that the person spends in custody outside New Zealand in connection with the request before sentence is imposed for the New Zealand offence.
- (2) If a prisoner who is serving a sentence for a New Zealand offence is transferred to the ICC under section 97,—
  - (a) the prisoner is to be treated, while in custody outside New Zealand in connection with the request, as being in custody for the purposes of the New Zealand sentence, which continues to run; and
  - (b) the Attorney-General—
    - (i) may at any time notify the ICC that the prisoner is no longer required to be kept in custody; and
    - (ii) must notify the ICC if the prisoner is no longer liable to be detained in a New Zealand prison.

Compare: 1995 No 27 s 32

Section 98(1): amended, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

**99 Request for information about time spent in custody overseas**

(1) If a prisoner who is charged with or convicted of an offence against the law of New Zealand (the **New Zealand offence**) is transferred to the ICC under section 97 before sentence is imposed for the New Zealand offence, the Attorney-General may—

- (a) advise the ICC of the date on which the prisoner was sentenced for the New Zealand offence; and
- (b) request the ICC to provide a certificate recording the total period during which the prisoner was detained outside New Zealand in connection with the request until sentence was imposed for the New Zealand offence.

(2) A certificate obtained under subsection (1) is presumed to be accurate in the absence of any evidence to the contrary.

(3) The Attorney-General may issue a certificate setting out the date and period specified in subsection (1) if—

- (a) the ICC does not provide a certificate within a reasonable time after the Attorney-General makes a request under subsection (1); and
- (b) the Attorney-General is satisfied from the information that the Attorney-General has that an accurate calculation can be made of the period referred to in paragraph (b) of subsection (1).

(4) For the purposes of section 91(4) of the Parole Act 2002, a certificate given by the Attorney-General under subsection (3) has the same effect as a certificate under subsection (1).

(5) Subsection (6) applies if, after the Attorney-General has given a certificate under subsection (3),—

- (a) a certificate requested under subsection (1) is obtained from the ICC; and
- (b) the time period specified in that certificate is different from that specified in the Attorney-General's certificate.

(6) If this subsection applies, the new certificate is a substitute certificate for the purposes of section 91(4) of the Parole Act 2002.

Section 99(4): amended, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 99(6): substituted, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

*Examination of places or sites***100 Assistance in examining places or sites**

(1) This section applies if the ICC requests assistance under any of Articles 19(8), 56, 64, or 93(1)(g) of the Statute in examining places or sites in New Zealand.

- (2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC.
- (3) If the Attorney-General gives authority for the request to proceed,—
  - (a) the Attorney-General must forward the request to the appropriate New Zealand agency; and
  - (b) that agency must, without delay,—
    - (i) use its best endeavours to undertake the examination of the place or site in the manner that the ICC has requested; and
    - (ii) make such report on the examination as it considers to be appropriate in the circumstances; and
    - (iii) deliver the report of the examination to the Attorney-General.
- (4) This section does not give any person a power to enter a place or site.

Compare: Statute arts 19(8), 56, 64, 93(1)(g)

#### *Search and seizure*

##### **101 Request for search and seizure**

- (1) This section applies if the ICC makes a request under any of Articles 19(8), 56, 64, or 93(1)(h) of the Statute for search and seizure.
- (2) The Attorney-General may give authority for the request to proceed if he or she is satisfied that—
  - (a) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
  - (b) any thing relevant to the investigation or proceedings is or may be located in New Zealand.
- (3) If the Attorney-General gives authority for the request to proceed, he or she may authorise a constable, in writing, to apply to a District Court Judge for a search warrant under section 102.

Compare: 1992 No 86 s 43; Statute arts 19(8), 56, 64, 93(1)(h)

Section 101(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

##### **102 Issue of search warrant**

- (1) This section applies if an issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012), on an application made in the manner provided in subpart 3 of Part 4 of that Act by a constable, is satisfied that there are reasonable grounds for believing that there is in or on any place or thing—
  - (a) any thing on or in respect of which an international crime has been, or is suspected of having been, committed; or
  - (b) any thing that may be evidence as to the commission of any such crime.

(2) The provisions of subparts 1 to 5 and 7, 9, and 10 of Part 4, and sections 161 and 162 of the Search and Surveillance Act 2012 apply.

(3) *[Repealed]*

(4) *[Repealed]*

Compare: 1995 No 27 s 48

Section 102(1): amended, on 1 October 2012, by section 266(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 102(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 102(2): replaced, on 1 October 2012, by section 266(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 102(3): repealed, on 1 October 2012, by section 266(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 102(4): repealed, on 1 October 2012, by section 266(4) of the Search and Surveillance Act 2012 (2012 No 24).

### **103 Form and content of search warrant**

*[Repealed]*

Section 103: repealed, on 1 October 2012, by section 266(5) of the Search and Surveillance Act 2012 (2012 No 24).

### **104 Powers conferred by warrant**

*[Repealed]*

Section 104: repealed, on 1 October 2012, by section 266(5) of the Search and Surveillance Act 2012 (2012 No 24).

### **105 Power to stop vehicles**

*[Repealed]*

Section 105: repealed, on 1 October 2012, by section 266(5) of the Search and Surveillance Act 2012 (2012 No 24).

### **106 Person executing warrant to produce evidence of authority**

*[Repealed]*

Section 106: repealed, on 1 October 2012, by section 266(5) of the Search and Surveillance Act 2012 (2012 No 24).

### **107 Report to Attorney-General on execution of warrant**

(1) *[Repealed]*

(2) If a warrant issued under section 102 is executed, a report on the execution of the warrant, together with a copy of any notice given under section 133 of the Search and Surveillance Act 2012 must be sent to the Attorney-General, without delay.

(3) If a warrant issued under section 102 is not able to be executed, a report explaining the reasons for this must be sent to the Attorney-General, without delay.

Compare: 1999 No 55 s 88

Section 107 heading: amended, on 1 October 2012, by section 266(6) of the Search and Surveillance Act 2012 (2012 No 24).

Section 107(1): repealed, on 1 October 2012, by section 266(7) of the Search and Surveillance Act 2012 (2012 No 24).

Section 107(2): amended, on 1 October 2012, by section 266(8)(a) of the Search and Surveillance Act 2012 (2012 No 24).

Section 107(2): amended, on 1 October 2012, by section 266(8)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Section 107(3): amended, on 1 October 2012, by section 266(9) of the Search and Surveillance Act 2012 (2012 No 24).

## **108 Disposal of things seized**

(1) If a constable seizes a thing under a warrant issued under section 102, it must be delivered into the custody and control of—

- the Commissioner of Police; or
- a constable who is of or above the level of position of inspector designated by the Commissioner to receive things seized under this Act.

(2) The Commissioner of Police or designated constable must—

- inform the Attorney-General, without delay, that the thing has been so delivered; and
- retain the thing for a period not exceeding 3 months from the day on which the thing was seized, pending the Attorney-General's direction under subsection (3) about how to deal with the thing; and
- comply with any direction that the Attorney-General gives.

(3) The Attorney-General may, by written notice, give the Commissioner of Police or designated constable a direction—

- requiring the Commissioner of Police or designated constable to send the thing to the ICC; or
- requiring the Commissioner of Police or designated constable to deal with the thing in some other way.

(4) Subject to section 155 of the Search and Surveillance Act 2012 (which applies with any necessary modifications), the Attorney-General must direct the Commissioner of Police or designated constable to return the thing seized to the person from whose possession it was seized as soon as practicable, if—

- the ICC advises that the thing is not required for the Prosecutor's investigation or its proceeding; or
- no other direction is given by the Attorney-General before the expiry of 3 months from the day on which the thing was seized.

(5) Despite subsection (4), but subject to section 154 of the Search and Surveillance Act 2012 (which applies with any necessary modifications), the Attorney-General may refuse to return the thing to the person from whom it was seized if—

- the thing is the subject of a dispute as to who is entitled to it; or
- the thing is required for the investigation of an offence within the jurisdiction of New Zealand; or
- possession of the thing by the person would be unlawful in New Zealand.

Compare: 1995 No 27 s 55; 1999 No 55 s 89(3)

Section 108(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 108(1)(b): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 108(2): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 108(3): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 108(3)(a): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 108(3)(b): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 108(4): amended, on 1 October 2012, by section 266(10) of the Search and Surveillance Act 2012 (2012 No 24).

Section 108(4): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 108(5): amended, on 1 October 2012, by section 266(11) of the Search and Surveillance Act 2012 (2012 No 24).

### *Provision of records and documents*

#### **109 Facilitating provision of records and documents**

- This section applies if the ICC makes a request under Article 93(1)(i) of the Statute for the provision of records and documents, including official records and documents.
- The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—
  - the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
  - the document or record sought is or may be in New Zealand.
- If the Attorney-General gives authority for the request to proceed,—
  - the Attorney-General must forward the request to the appropriate New Zealand agency; and

(b) that agency must, without delay,—

- (i) use its best endeavours to locate and make available the document or record sought; and
- (ii) make such report on its endeavours as it considers to be appropriate in the circumstances; and
- (iii) deliver the document or record, if located, to the Attorney-General.

(4) This section does not give any person power to require the production of a document or record.

Compare: 1992 No 86 s 32(2); Statute art 93(1)(i)

*Protecting victims and witnesses and preserving evidence*

**110 Protecting victims and witnesses and preserving evidence**

(1) This section applies if the ICC requests—

- (a) assistance under Article 93(1)(j) of the Statute in protecting victims and witnesses or preserving evidence;
- (b) assistance under Article 19(8), or paragraphs (2) or (3) of Article 56, in preserving evidence.

(2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

- (a) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
- (b) the assistance sought is not prohibited by New Zealand law.

(3) If the Attorney-General gives authority for the request to proceed,—

- (a) the Attorney-General must—
  - (i) take such steps as the Attorney-General thinks appropriate in the particular case; and
  - (ii) forward the request to the appropriate New Zealand agency; and
- (b) that agency must, without delay,—
  - (i) use its best endeavours to give effect to the request; and
  - (ii) make such report on its endeavours as it considers to be appropriate in the circumstances; and
  - (iii) deliver the report to the Attorney-General.

Compare: Statute arts 19(8), 56(2), (3), 68, 93(1)(j)

*Identifying, freezing, or seizing property associated with international crimes***111 Request relating to property associated with crime**

- (1) This section applies if the ICC requests assistance under Article 93(1)(k) of the Statute in identifying, tracing and freezing, or seizing tainted property for the purpose of eventual forfeiture.
- (2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—
  - (a) the request relates to an international crime that is being investigated by the Prosecutor, or which is the subject of proceedings before the ICC; and
  - (b) tainted property is or may be located in New Zealand.

Compare: Statute arts 57(3)(e), 93(1)(k)

**112 Attorney-General may authorise measures**

- (1) If the Attorney-General gives authority for the request for assistance in identifying, tracing and freezing, or seizing tainted property to proceed, the Attorney-General may authorise the appropriate New Zealand authority to apply for 1 or more of the following orders or warrants:
  - (a) a search warrant under section 101 or 102 of the Criminal Proceeds (Recovery) Act 2009;
  - (b) any restraining order made under the Criminal Proceeds (Recovery) Act 2009;
  - (c) a production order under section 104 of the Criminal Proceeds (Recovery) Act 2009.
- (2) If the ICC's request relates to the freezing of tainted property, and the ICC has made an order in the nature of a restraining order, the Attorney-General may authorise the appropriate authority to register that order, and section 130 applies accordingly, with the necessary modifications.

Compare: 1992 No 86 ss 59–62

Section 112(1): substituted, on 1 December 2009, by section 198 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

*Other types of assistance***113 Request for other types of assistance**

- (1) This section applies if the ICC requests any other type of assistance under Article 93(1)(l) of the Statute for the purposes of facilitating the investigation and prosecution of crimes within the jurisdiction of the ICC.
- (2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

- (a) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
- (b) the assistance sought is not prohibited by New Zealand law.

(3) If the Attorney-General gives authority for the request to proceed,—

- (a) the Attorney-General must—
  - (i) take such steps as the Attorney-General thinks appropriate in the particular case; and
  - (ii) forward the request to the appropriate New Zealand agency; and
- (b) that agency must, without delay,—
  - (i) use its best endeavours to give effect to the request; and
  - (ii) make such report on its endeavours as it considers to be appropriate in the circumstances; and
  - (iii) deliver the report to the Attorney-General.

(4) If the Attorney-General considers that the assistance sought cannot lawfully be provided, the Attorney-General must, before refusing the request, and in accordance with Article 93(5) of the Statute,—

- (a) consult with the ICC;
- (b) consider whether the assistance can be provided subject to conditions or whether it can be provided at a later date or in an alternative manner.

Compare: 1995 No 27 s 56; Statute art 93(1)(l), (2), (5)

*Restrictions on provision of assistance*

**114 Refusal of assistance**

(1) The Attorney-General must refuse a request by the ICC for assistance to which this Part applies if—

- (a) the ICC does not accept the conditions or other modifications suggested in order to implement the request as contemplated by Article 93(5) of the Statute and section 113(4); or
- (b) the ICC determines under Article 18 or Article 19 of the Statute that the case to which the request relates is inadmissible and section 118(4) applies; or
- (c) section 120(4) applies.

(2) The Attorney-General may refuse a request by the ICC to which this Part applies if—

- (a) Part 8 (which relates to the protection of national security or third party information) applies; or

- (b) there are competing requests from the ICC and a State that is not a party to the Statute relating to the same conduct and section 63(4) (as applied by section 119) applies; or
- (c) there are competing requests from the ICC and a State that is not a party to the Statute relating to different conduct and section 64(3) (as applied by section 119) applies.

(3) To avoid doubt,—

- (a) the only grounds on which assistance to the ICC may be refused are those specified in this section and, if applicable, section 23(2) (which relates to offences involving the administration of justice); and
- (b) the restrictions on assistance specified in the Mutual Assistance in Criminal Matters Act 1992 do not apply in relation to a request by the ICC for assistance to which this Part applies.

### **115 Postponement of execution of assistance**

- (1) The Attorney-General may postpone the execution of a request for assistance under this Part if, and only if,—
  - (a) the execution of the request would interfere with an ongoing investigation or prosecution for a different offence and section 117 applies; or
  - (b) a ruling on admissibility is pending before the ICC and section 118 applies; or
  - (c) there are competing requests from the ICC and from another State to which New Zealand is under an international obligation and section 119(2)(a) applies; or
  - (d) the request is for assistance under Article 93(1)(l) of the Statute and is one to which section 113(4) applies; or
  - (e) a request of the kind referred to in section 120(2)(c) is made to the ICC.
- (2) Even if a case is one to which subsection (1) applies, the Attorney-General may decide not to postpone the execution of the request, and in that event the request must be dealt with in accordance with this Part.
- (3) If the Attorney-General postpones the execution of a request for assistance under this Part, the postponement may be for a reasonable time and may, if the Attorney-General considers it desirable, be extended from time to time.

Compare: Statute arts 93(9), 94, 95

### **116 Procedure if execution of assistance precluded under New Zealand law**

If the execution of a particular measure of assistance specified in a request to which this Part applies is prohibited in New Zealand, despite any other provision in this Part, the Attorney-General must—

- (a) consider whether the assistance can be provided in another manner or subject to conditions; and

(b) promptly consult with the ICC in order to resolve the matter.

Compare: Statute art 93(3)

**117 Postponement where ongoing investigation or prosecution**

- (1) If the immediate execution of a request by the ICC for assistance to which this Part applies would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the Attorney-General may postpone the execution of the request for a period of time agreed between the Attorney-General and the ICC.
- (2) Despite section 115(3), the period of postponement may be no longer than is reasonably necessary to complete the investigation or prosecution.
- (3) Before making a decision to postpone the execution of a request, the Attorney-General must consider whether the assistance could be provided immediately subject to certain conditions.
- (4) If the Attorney-General decides to postpone the execution of a request and the ICC seeks assistance in the preservation of evidence under Article 93(1)(j) of the Statute, the Attorney-General must deal with that request in accordance with this Part.

Compare: Statute art 94

**118 Postponement where admissibility challenge**

- (1) This section applies if the ICC is considering an admissibility challenge under Article 18 or Article 19 of the Statute in respect of a case that a request to which this Part applies relates.
- (2) If the ICC has not made an order under Article 18 or Article 19 of the Statute allowing the Prosecutor to collect evidence to which the request relates, the Attorney-General may postpone the execution of the request until the ICC's determination on admissibility is issued.
- (3) If the ICC has made an order under Article 18 or Article 19 of the Statute allowing the Prosecutor to collect evidence to which the request relates, the Attorney-General may not postpone the execution of a request under this section but must deal with it under this Part.
- (4) If the ICC determines that the case to which the request relates is inadmissible, the request must be refused.
- (5) If the ICC determines that the case to which the request relates is admissible, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Compare: Statute art 95

**119 Competing requests**

- (1) If the Attorney-General receives competing requests for assistance from the ICC and from another State to which New Zealand is under an obligation to

respond, the Attorney-General must endeavour, after consultation with the ICC and the other State, to satisfy both requests.

- (2) For the purposes of subsection (1), the Attorney-General may do either or both of the following:
  - (a) postpone the execution of either of the competing requests;
  - (b) attach conditions to the provision of assistance under either or both of the requests.
- (3) If it is not possible to resolve the issue by consultation, the method of dealing with the competing requests must be resolved in accordance with Article 90 of the Statute, and sections 61 to 65 apply with any necessary modifications.

Compare: Statute arts 90, 93(9)(a)

## **120 Requests involving conflict with other international obligations**

- (1) If a request by the ICC for assistance to which this Part applies concerns persons who, or information or property that, are subject to the control of another State or an international organisation under an international agreement, the Attorney-General must inform the ICC to enable it to direct its request to the other State or international organisation.
- (2) Subsections (3) to (5) apply if—
  - (a) the ICC makes a request for assistance; and
  - (b) the ICC has not previously made a final determination on whether or not Article 98(1) of the Statute applies to that request; and
  - (c) a request is made to the ICC to determine whether or not Article 98(1) applies to the request for assistance.
- (3) If this subsection applies, the Attorney-General may postpone the request for assistance until the ICC advises whether or not it wishes to proceed with the request for assistance.
- (4) If the ICC advises that it does not intend to proceed with the request, the request for assistance must be refused.
- (5) If the ICC advises that it intends to proceed with the request for assistance, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Compare: Statute art 98(1)

Section 120(2)(c): amended, on 7 August 2020, by section 6(1) of the International Crimes and International Criminal Court Amendment Act 2020 (2020 No 39).

Section 120(3): amended, on 7 August 2020, by section 6(2) of the International Crimes and International Criminal Court Amendment Act 2020 (2020 No 39).

### *Miscellaneous*

**121 Effect of authority to proceed**

At any time before a formal response is sent to the ICC, the Attorney-General may decide that a request by the ICC for assistance to which this Part applies will be refused or the execution of the request postponed, on a ground specified in section 114 or section 115, even if the Attorney-General has previously given authority for the request to proceed.

**122 Request may relate to assistance sought by defence**

To avoid doubt, if the ICC makes a request under Part 9 of the Statute to assist a defendant in the preparation of his or her defence, that request must be dealt with in the same manner as a request for assistance of a similar type, to assist the Prosecutor.

Compare: Statute art 57(3)(b)

**123 Execution of request by Prosecutor**

- (1) The Prosecutor may execute a request that does not involve any compulsory measures on New Zealand territory in the circumstances specified in Article 99(4) of the Statute.
- (2) If the Attorney-General identifies difficulties with the execution of a request to which Article 99(4)(b) of the Statute relates, the Attorney-General must, without delay, consult with the ICC in order to resolve the matter.
- (3) The provisions of this Act and the Statute, allowing a person heard or examined by the ICC under Article 72 of the Statute to invoke restrictions designed to prevent disclosure of confidential information connected with national security, apply to the execution of requests for assistance under Article 99 of the Statute.

Compare: Statute art 99(4), (5)

## **Part 6** **Enforcement of penalties**

### *Orders relating to victim reparation*

**124 Assistance with enforcement of orders for victim reparation**

- (1) This section applies if—
  - (a) the ICC—
    - (i) makes an order under Article 75 of the Statute requiring reparation; and
    - (ii) requests that the order be enforced in accordance with Article 109 of the Statute; and

- (b) neither the conviction in respect of which the order was imposed nor the order requiring reparation is subject to further appeal.
- (2) The Attorney-General may give authority for the request to proceed if he or she is satisfied that the order—
  - (a) requires reparation; and
  - (b) is of a kind that can be enforced in the manner provided in this section.
- (3) If the Attorney-General gives authority for the request to proceed,—
  - (a) the Attorney-General must refer the request to the appropriate New Zealand agency; and
  - (b) that agency must, without delay,—
    - (i) in a case where the order requires a monetary payment, take such steps as are necessary to enforce the order as if it were a sentence of reparation imposed under section 32 of the Sentencing Act 2002; or
    - (ii) in a case where the order requires the restitution of assets, property or other tangible items, take such steps as are necessary to enforce the order as if it were an order for the restitution of property made under section 404(1) of the Crimes Act 1961; or
    - (iii) in a case where the order requires another remedy, take such steps as are necessary to enforce the order as if it were enforceable under Part 6 of the High Court Rules 2016; and
  - (c) that agency must, without delay, make such report to the Attorney-General on the results of any action taken as it considers to be appropriate in the circumstances.
- (4) For the purposes of this section,—
  - (a) section 145 of the Sentencing Act 2002 and Part 3 of the Summary Proceedings Act 1957 (which relate, respectively, to the enforcement of a sentence of reparation and the enforcement of fines) apply with any necessary modifications to an order of the ICC for monetary payment as if it were an order of the District Court made in summary proceedings; and
  - (b) Part 6 of the High Court Rules 2016 apply, with any necessary modifications, to an order referred to in subsection (3)(b)(iii).
- (5) Despite subsection (4), an order may not be made under Part 3 of the Summary Proceedings Act 1957—
  - (a) imposing a sentence for non-payment of an order of the ICC requiring monetary payment; or
  - (b) modifying an order of the ICC made under Article 75 of the Statute, without the prior agreement of the ICC; or

(c) remitting or directing that no further steps be taken to enforce all or any part of a sum of money due under an order made by the ICC, without the prior agreement of the ICC.

(6) Nothing in this section limits or affects the provision of other types of assistance to the ICC in relation to an order made under Article 75 of the Statute.

Compare: Statute arts 75(5), (6), 109(1)

Section 124(3)(b)(i): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 124(3)(b)(iii): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Section 124(4)(a): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 124(4)(b): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

## **125 Enforcement of fines**

(1) This section applies if—

(a) the ICC—

(i) orders payment of a fine under Article 77(2)(a) of the Statute; and

(ii) requests that the order be enforced in accordance with Article 109 of the Statute; and

(b) neither the conviction in respect of which the order was imposed nor the order for payment of a fine is subject to further appeal.

(2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that the order—

(a) involves a monetary penalty; and

(b) is of a kind that can be enforced in the manner provided in this section.

(3) If the Attorney-General gives authority for the request to proceed,—

(a) the Attorney-General must refer the request to the appropriate New Zealand agency; and

(b) that agency must, without delay,—

(i) take such steps as are necessary to enforce the order as if it were a fine imposed on conviction; and

(ii) make such report to the Attorney-General on the results of any action taken as it considers to be appropriate in the circumstances.

(4) For the purposes of this section, Part 3 of the Summary Proceedings Act 1957 (which relates to the enforcement of fines) applies, with any necessary modifications, to a fine imposed by the ICC.

(5) Despite subsection (4), an order may not be made under Part 3 of the Summary Proceedings Act 1957—

- (a) imposing a sentence for non-payment of a fine imposed by the ICC; or
- (b) modifying an order of the ICC for payment of a fine, without the prior agreement of the ICC; or
- (c) remitting or directing that no further steps be taken to enforce all or any part of a fine payable under an order made by the ICC, without the prior agreement of the ICC.

(6) Nothing in this section limits or affects the provision of other types of assistance to the ICC in relation to a penalty imposed under Article 77 of the Statute.

Compare: Statute arts 77(2)(a), 109(1)

Section 125(3)(b)(i): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

*Assistance with enforcement of forfeiture orders*

**126 Request for forfeiture of tainted property**

- (1) This section applies if—
  - (a) the ICC—
    - (i) makes an order under Article 77(2)(b) of the Statute for the forfeiture of tainted property; and
    - (ii) requests assistance under Article 109(1) of the Statute to enforce the forfeiture order; and
  - (b) neither the conviction in respect of which the order was imposed nor the forfeiture order is subject to further appeal.
- (2) The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that the order is of a kind that can be enforced in the manner provided in sections 127 to 131.
- (3) If the Attorney-General gives authority for the request to proceed, the Attorney-General must refer the request to the Solicitor-General for registration of the forfeiture order in the manner provided in sections 127 to 129.

Compare: 1992 No 86 s 54; Statute arts 77(2)(b), 109(1)

**127 Solicitor-General may apply for registration**

- (1) The Solicitor-General may apply to the High Court for the registration of a forfeiture order or an amendment to such an order.
- (2) On an application under subsection (1), the court must register the order or the amendment to the order under section 128 if it is satisfied that the order or amendment to the order is in force.

**128 Method of registration of order**

- (1) A forfeiture order, or an amendment to such an order, must be registered in the High Court by the registration in accordance with the prescribed procedure, if any, of—

- (a) a copy of the order or amendment sealed by the ICC; or
- (b) a copy of the order or amendment authenticated in accordance with subsection (2).

(2) A document is authenticated for the purposes of subsection (1)(b) if it purports to be—

- (a) signed or certified by a Judge, the Registrar, the Deputy Registrar, or a member of the staff of the ICC; or
- (b) authenticated in any other manner authorised by the Statute or the Rules.

(3) An amendment to a forfeiture order does not, for the purposes of this Act and of the Criminal Proceeds (Recovery) Act 2009, have any effect until it is registered.

(4) A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order has the same effect, for the purposes of this Act and of the Criminal Proceeds (Recovery) Act 2009, as the sealed or authenticated copy that is not a facsimile.

(5) Despite subsection (4), registration effected by means of a facsimile copy ceases to have effect on the expiry of the period of 21 days commencing on the date of registration unless, before the expiry of that period, the sealed or authenticated copy is registered.

Section 128(3): amended, on 1 December 2009, by section 199 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 128(4): amended, on 1 December 2009, by section 199 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

## **129 Notice of registration of order**

If the High Court registers an order under section 128, the court may direct the Solicitor-General to do either or both of the following:

- (a) give notice of the registration, in the manner and within the time the court considers appropriate, to such persons (other than a person convicted of an offence in respect of which the order was made) as the court has reason to believe may have an interest in the property;
- (b) publish notice of the registration in the manner and within the time the court considers appropriate.

Compare: 1995 No 27 s 42(4)

## **130 Effect of registration of order**

(1) A forfeiture order registered under section 128 has effect and may be enforced as if it were a profit forfeiture order—

- (a) made by the High Court under the Criminal Proceeds (Recovery) Act 2009; and
- (b) entered on the date of registration.

- (2) Subsection (1) applies subject to sections 132 and 133.
- (3) If a forfeiture order is registered under section 128,—
  - (a) subpart 3 of Part 2 of the Criminal Proceeds (Recovery) Act 2009 so far as is applicable and with any necessary modifications, and except to the extent that this Act provides otherwise, applies in relation to the order; and
  - (b) the property must be disposed of, or otherwise dealt with, in accordance with the order of, or directions given by, the ICC and the Attorney-General may give such directions as may be necessary to give effect to that order or those directions; and
  - (c) if, for any reason, the Attorney-General is not able to dispose of the property in accordance with the ICC's order or directions, the Attorney-General may, after consulting with the ICC, arrange for the property to be transferred to the person in whom it was vested immediately before the forfeiture order was made.
- (4) A restraining order registered in accordance with section 112(2) has effect, and may be enforced, as if it were a restraining order—
  - (a) made under the Criminal Proceeds (Recovery) Act 2009; and
  - (b) entered on the date of registration.

Section 130: substituted, on 1 December 2009, by section 200 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

### **131 Forfeiture order may be treated as profit forfeiture order**

- (1) If the Attorney-General is unable to give effect to a forfeiture order, the Attorney-General must take measures to recover—
  - (a) the value specified by the ICC as the value of the tainted property ordered by the ICC to be forfeited; or
  - (b) if the ICC has not specified the value of the tainted property, the value that, in the opinion of the Attorney-General, is the value of the tainted property ordered by the ICC to be forfeited.
- (2) In a case to which subsection (1) applies, the forfeiture order is to be treated as a profit forfeiture order for the equivalent amount and may be enforced accordingly as if it were a profit forfeiture order—
  - (a) made by the High Court under the Criminal Proceeds (Recovery) Act 2009; and
  - (b) entered on the date of registration.

Section 131: substituted, on 1 December 2009, by section 200 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

**132 Third parties may apply for relief**

- (1) If a forfeiture order is registered under section 128, a person (other than a person convicted of an offence in respect of which the order was made) who claims an interest in any of the property to which the order relates may apply to the High Court for an order under section 133.
- (2) 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, may not make an application under subsection (1) without the leave of the High Court.
- (3) The High Court must not grant leave under subsection (2) unless it is satisfied that—
  - (a) the applicant had good reason for failing to attend the hearing held by the ICC in connection with the making of the forfeiture order; or
  - (b) evidence proposed to be adduced by the applicant in connection with the application under subsection (1) was not reasonably available to the applicant at the time of the hearing of the ICC; or
  - (c) there are special reasons justifying the grant of leave.
- (4) An application under subsection (1) must be made before the expiry of the period of 2 months beginning on the date on which the forfeiture order is registered in the High Court.
- (5) Despite subsection (4), the High Court may grant a person leave to make an application under subsection (1) after the expiry of the period referred to in subsection (4) if it is satisfied that the person's failure to apply within that period was not owing to any neglect on the person's part.
- (6) A person who makes an application under subsection (1) must serve notice of the application on the Solicitor-General, who must be a party to any proceedings on the application.
- (7) This section and section 133 apply subject to any contrary provision in the Statute or the Rules.

Compare: 1991 No 120 s 23C; 1992 No 86 s 57(1), (3); Statute arts 77(2)(b), 109(1)

**133 Court may grant relief to third party**

- (1) This section applies if—
  - (a) a person applies to the High Court for an order under this section in respect of an interest in property; and
  - (b) the court is satisfied that the applicant's claim is valid.
- (2) If this section applies, the High Court must make an order—
  - (a) declaring the nature, extent, and value of the applicant's interest in the property; and
  - (b) either—

- (i) directing that the interest be transferred to the applicant; or
- (ii) declaring that payment be made to the applicant of an amount equal to the value of the interest declared by the court.

(3) Despite subsection (2), the court may, if it thinks fit, refuse to make an order under that subsection if it is satisfied that—

- (a) the applicant was, in any respect, involved in the commission of the offence in respect of which the order was made; or
- (b) although the applicant acquired the interest at the time of or after the commission of the offence, it was not acquired in good faith and for value.

Compare: 1995 No 27 s 46

#### **134 Cancellation of registration of order**

- (1) If a forfeiture order has been registered under section 128, the Attorney-General may direct the Solicitor-General to apply to the High Court for cancellation of the registration.
- (2) Without limiting the generality of subsection (1), the Attorney-General may give a direction under that subsection in relation to a forfeiture order if—
  - (a) the order has, since its registration in New Zealand, ceased to have effect; or
  - (b) the order was registered in contravention of section 126; or
  - (c) the Attorney-General considers that cancellation is appropriate having regard to the arrangements in force with the ICC in relation to the enforcement of orders of that kind; or
  - (d) the ICC so requests.
- (3) If, in accordance with a direction given under subsection (1), the Solicitor-General applies to the High Court for cancellation of the registration of a forfeiture order, the court must cancel the registration accordingly.
- (4) If, under the Criminal Proceeds (Recovery) Act 2009, a forfeiture order registered under section 128 of this Act is discharged (in whole or in part) or is revoked, that discharge or revocation constitutes a ground for an application for cancellation of the order under this section.

Compare: 1995 No 27 s 47

Section 134(4): amended, on 1 December 2009, by section 201 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

*Transfer of money or property recovered under this Part*

**135 Money or property recovered to be transferred to ICC**

- (1) Any money or property, including the proceeds of sale of property, recovered as a result of the enforcement under this Part of an order of the ICC must be transferred to the ICC.
- (2) Subsection (1) applies—
  - (a) subject to section 130(3)(b) and (3)(c); but
  - (b) despite any other provision in this Part or in any other Act.

Compare: Statute arts 75(5), 109(3)

**Part 7**

**Persons in transit to ICC or serving sentences imposed by ICC**

*Person in transit*

**136 Transit by person being surrendered or transferred to ICC**

- (1) This section and sections 137, 138, and 150 to 156 apply to a person (the **transferee**) who—
  - (a) is being surrendered to the ICC by another State under Article 89 of the Statute; or
  - (b) is a person to whom Article 93(7) of the Statute applies, and is being temporarily transferred to the ICC by another State; or
  - (c) is a person sentenced to imprisonment by the ICC and who is being transferred to or from the ICC, or between States, in connection with that sentence.
- (2) The transferee may be transported through New Zealand for the purpose of being surrendered or transferred to the ICC or to another State, as the case may be.
- (3) Before the transferee is transported through New Zealand under subsection (2), the ICC must first transmit a request for transit in accordance with Article 87 of the Statute that contains the following information and documents:
  - (a) a description of the transferee;
  - (b) in the case of a person described in subsection (1)(a),—
    - (i) a brief statement of the facts of the case and their legal characterisation; and
    - (ii) a copy of the warrant for arrest and surrender;
  - (c) in the case of a person described in subsection (1)(b), such information as the Minister may request about the reasons for the temporary transfer.

- (4) Despite subsection (3), the Minister must not refuse a request for transit unless the Minister considers that transit through New Zealand would impede or delay the surrender or transfer of the transferee.
- (5) Despite subsection (3), no authorisation for transit is required if the transferee is transported by air and no landing is scheduled on New Zealand territory.
- (6) If an unscheduled landing occurs on New Zealand territory, the Minister may require the ICC to submit a request for transit of the transferee under subsection (3) as soon as is reasonably practicable.

Compare: 1992 No 86 s 42; 1999 No 55 s 90(1), (2); Statute arts 89(3), 93(1)(f), (7)

**137 Transferee to be held in custody**

- (1) The transferee must, during the period of transit, be detained in custody in accordance with subsection (2).
- (2) If the aircraft or ship that transports a transferee lands or calls at any place in New Zealand,—
  - (a) the person holding the transferee in custody before the landing or call is made may hold the transferee in his or her custody or in Police custody for a period not exceeding 96 hours; and
  - (b) the District Court may, on the application of a constable, order that the transferee be held in custody for such further period or periods as the court considers reasonably necessary to facilitate the transportation of the transferee to the ICC or to another State, as the case may be.
- (3) If an unscheduled landing occurs and the ICC is required under section 136(6) to submit a request for transit, the transferee must be held in custody under subsection (2).
- (4) If subsection (3) applies, the period of detention of the transferee may not be extended beyond 96 hours from the time of the unscheduled landing, unless the request for transit from the ICC is received within that time.
- (5) If the District Court orders, under subsection (2)(b), that a transferee be held in custody, the transferee may be detained in a prison or any other place in which a person could be detained under section 42.

Compare: 1999 No 55 s 90(4); Statute art 89(3)

Section 137(2)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 137(2)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 137(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**138 Minister must make removal order or issue certificate**

- (1) If a transferee is not removed before or at the expiry of all periods of custody under section 137(2), the Minister must either—

- (a) make a removal order under section 153; or
- (b) issue a certificate under section 150 giving the transferee temporary authority to remain in New Zealand.

(2) Despite subsection (1), no removal order may be made under section 153 unless—

- (a) the Minister first consults with the ICC; and
- (b) it is not possible for the Minister and the ICC to reach agreement relating to the prompt removal of the transferee.

(3) The Minister may not issue the certificate referred to in subsection (1)(b) unless the Minister is satisfied that, because of the special circumstances of the transferee, it would be inappropriate to make a removal order.

Compare: 1999 No 55 s 93(1)

*Enforcement of sentences in New Zealand*

**139 New Zealand may act as State of enforcement**

(1) The Minister may advise the ICC that New Zealand 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 New Zealand, subject to any specified conditions.

(2) If advice is given under subsection (1), the Minister may, at any time, advise the ICC—

- (a) of further conditions that New Zealand wishes to impose in relation to the serving of sentences in New Zealand by ICC prisoners; or
- (b) that it wishes to withdraw a condition referred to in subsection (1) or paragraph (a).

(3) Before providing advice under subsection (1) or subsection (2), the Minister must consult with—

- (a) the Commissioner of Police; and
- (b) the chief executive of the Department of Corrections; and
- (c) the chief executive of the Department of Labour.

(4) If advice is given under subsection (1), the Minister may, at any time, advise the ICC that New Zealand is no longer willing to allow ICC prisoners to serve their sentences in New Zealand.

(5) Any advice given under subsection (4) does not affect the enforcement of sentences for which the Minister has accepted the designation of the ICC under section 140(1)(c).

Compare: Statute art 103(1), (2)

**140 Request for sentence to be served in New Zealand**

- (1) This section and sections 141 to 156 apply if—
  - (a) the Minister has given advice under section 139(1) and has not withdrawn that advice under section 139(4); and
  - (b) the ICC imposes a sentence of imprisonment on a person—
    - (i) convicted of an international crime; or
    - (ii) convicted of an offence against the administration of justice; and
  - (c) the ICC designates New Zealand, under Article 103 of the Statute, as the State in which the sentence is to be served.
- (2) If the Minister accepts the designation, the Minister must issue an order for detention in the prescribed form, and forward that order and any information about the person supplied by the ICC to each of the following persons:
  - (a) the Commissioner of Police;
  - (b) the chief executive of the Department of Corrections;
  - (c) the chief executive of the Department of Labour.
- (3) The Minister may, at any time, ask the ICC to give 1 or more of the following assurances:
  - (a) that all or part of the transportation costs incurred by New Zealand in the enforcement of the sentence will be met by the ICC;
  - (b) that the ICC will arrange for the transportation of the ICC prisoner who is the subject of the designation,—
    - (i) to New Zealand, for the purpose of enabling his or her sentence to be enforced in New Zealand; or
    - (ii) from New Zealand, on the completion of the sentence, or if the ICC prisoner is to be transferred to another country;
  - (c) an assurance relating to such other matters as the Minister thinks appropriate.

**141 Prisoner to be held in custody**

- (1) If the Minister accepts the designation of New Zealand as the State in which a sentence of imprisonment imposed by the ICC is to be served, the ICC prisoner may be transported to New Zealand in the custody of—
  - (a) a Police employee; or
  - (b) a prison officer; or
  - (c) a person authorised for the purpose by the ICC.
- (2) On arrival in New Zealand or, if the person is already in New Zealand when the sentence is imposed, on the imposition of the sentence, the ICC prisoner must be detained in accordance with the Corrections Act 2004 as if the prisoner had been sentenced to imprisonment under New Zealand law.

(3) Despite subsection (2) and any other enactment,—

- (a) the ICC prisoner has the right to communicate on a confidential basis with the ICC, without impediment from any person;
- (b) a Judge of the ICC or a member of the 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 any representative of the prisoner;
- (c) the ICC prisoner must not, without the prior agreement of the ICC, be—
  - (i) temporarily released from custody under section 62 of the Corrections Act 2004; or
  - (ii) temporarily removed from prison under section 62 of the Corrections Act 2004 unless that removal is to a hospital;
- (d) the Minister must advise the ICC if the ICC prisoner is transferred to a hospital under section 62 of the Corrections Act 2004.

Compare: Statute arts 106, 110(1)

Section 141(1)(a): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 141(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 141(3)(c): substituted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 141(3)(d): substituted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

## **142 Order for detention to act as authority for detention**

The order for detention issued by the Minister under section 140(2) is sufficient authority for the detention of the prisoner to which the notice relates for the purposes of this Part and the Corrections Act 2004—

- (a) until the ICC prisoner completes, or is released from, the sentence or is transferred to another country; and
- (b) during any further period that the ICC prisoner is required to serve the sentence if the ICC makes an order for recall of the prisoner.

Section 142: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

## **143 Parole Act 2002 does not apply in certain cases**

- (1) The administration of a sentence of imprisonment imposed by the ICC that is served in New Zealand, including any decision to release or transfer the ICC prisoner, must be undertaken in accordance with Part 10 of the Statute and the Rules.
- (2) The Parole Act 2002 does not apply to a sentence of imprisonment imposed by the ICC that is served in New Zealand unless the sentence has been imposed for an offence against the administration of justice.

(3) If, in relation to the administration of a sentence of imprisonment imposed for an offence against the administration of justice that is served in New Zealand by an ICC prisoner, there is any inconsistency between the provisions of the Parole Act 2002 and the provisions of the Statute and the Rules, the provisions of the Statute and the Rules prevail.

Compare: Statute arts 106(1), 110(1), (2)

Section 143 heading: amended, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 143(2): amended, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 143(3): amended, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

#### **144 Transfer of prisoner to ICC for review of sentence**

(1) This section applies if the ICC, under Article 110 of the Statute, decides to review the sentence of an ICC prisoner who is serving that sentence in New Zealand.

(2) The Minister must direct that the prisoner be transferred to the ICC for the purposes of enabling the ICC to review the prisoner's sentence if the Minister is satisfied that—

- (a) the prisoner is entitled to appear before the ICC at the review of the prisoner's sentence; or
- (b) the ICC has requested the prisoner to appear before it at the review; or
- (c) the interests of justice require the prisoner's attendance at the ICC.

(3) If the Minister gives a direction under subsection (2), the Minister must forward a notice of the direction to each of the following persons:

- (a) the Commissioner of Police;
- (b) the chief executive of the Department of Corrections;
- (c) the chief executive of the Department of Labour.

(4) On the giving of a direction under subsection (2), the prisoner may be transported to the ICC and, if necessary, from the ICC in the custody of—

- (a) a Police employee; or
- (b) a prison officer; or
- (c) a person authorised for the purpose by the ICC.

Compare: Statute arts 105(2), 110(3), (5)

Section 144(4)(a): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

#### **145 Transfer of prisoner to ICC for other purposes**

(1) This section applies if the ICC—

- (a) directs that an ICC prisoner appear before it to give evidence in another case; or

(b) requests that an ICC prisoner appear before it for any other reason.

(2) The Minister,—

- (a) if subsection (1)(a) applies, must direct that the ICC prisoner be transferred to the ICC;
- (b) if subsection (1)(b) applies, may direct that the ICC prisoner be transferred to the ICC if the Minister is satisfied that the interests of justice require the prisoner's attendance at the ICC.

(3) If the Minister gives a direction under subsection (2), section 144(3) and (4) apply, with any necessary modifications.

(4) This section does not apply if the request by the ICC is a request to which section 95(1) applies.

**146 Transfer of prisoner to another State to complete sentence**

If an ICC prisoner of any nationality is to be transferred from New Zealand to another State to complete that sentence, the prisoner may be transported from New Zealand to that State in the custody of—

- (a) a Police employee; or
- (b) a prison officer; or
- (c) a person authorised for the purpose by the ICC.

Compare: Statute art 104(1)

Section 146(a): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

**147 Minister must make removal order or issue certificate**

(1) If an ICC prisoner is to complete his or her sentence in New Zealand or to be released at the direction of the ICC while in New Zealand and the prisoner is not a New Zealand citizen, the Minister must, before the date of completion or release, either—

- (a) make a removal order under section 153; or
- (b) issue a certificate under section 150 giving the prisoner temporary authority to remain in New Zealand.

(2) The Minister must not issue the certificate referred to in subsection (1)(b) unless the Minister is satisfied that,—

- (a) because of the special circumstances of the ICC prisoner, it would be inappropriate to make a removal order; or
- (b) it is desirable to issue a certificate under section 150 in order to facilitate the processing of a request for extradition of the ICC prisoner, or the investigation of an offence, or to enable the prisoner to serve another sentence in New Zealand, or for any other reason in the interests of justice.

(3) This section applies subject to section 148.

Compare: Statute art 107(1)

#### **148 Special rules in certain cases**

(1) An ICC prisoner serving a sentence in New Zealand may—

- (a) be extradited to another country in accordance with the Extradition Act 1999 either—
  - (i) at the completion of the sentence; or
  - (ii) during the sentence, but only for a temporary period; or
- (b) be required to remain in New Zealand in order to serve any sentence that the prisoner is liable to serve under New Zealand law; or
- (c) be required to remain in New Zealand to undergo trial for an offence under New Zealand law.

(2) Despite subsection (1),—

- (a) a person to whom subsection (1)(a) applies may not be extradited to another country without the prior agreement of the ICC;
- (b) a person to whom subsection (1)(b) or subsection (1)(c) applies may not be required to serve a sentence in New Zealand or to undergo trial for an offence under New Zealand law, as the case may be, that relates to an act or omission that occurred before the designation referred to in section 140(1)(c), without the prior agreement of the ICC.

(3) Subsection (2) does not apply to a person who—

- (a) remains voluntarily in New Zealand for more than 30 days after the date of completion of, or release from, the sentence imposed by the ICC; or
- (b) voluntarily returns to New Zealand after having left it.

Compare: Statute arts 107(3), 108

#### **149 Extradition of escaped ICC prisoner**

(1) Subsection (2) applies if—

- (a) an ICC prisoner serving a sentence in another State escapes from custody and is located in New Zealand; and
- (b) the State designated by the ICC as the State of enforcement of the sentence makes a request to New Zealand for extradition in accordance with Article 111 of the Statute.

(2) If this subsection applies, the Extradition Act 1999 applies to a request for extradition—

- (a) with any necessary modifications; and
- (b) as if the request related to a person who had been convicted of an extradition offence, within the meaning of section 2 of that Act.

(3) Subsection (4) applies if—

- (a) an ICC prisoner serving a sentence in New Zealand escapes from custody and is located in another State; and
- (b) the Minister wishes to make a request to that State for the person's extradition in accordance with Article 111.

(4) If this subsection applies, the Minister may make a request for the prisoner's extradition under Part 6 of the Extradition Act 1999 and that Part applies—

- (a) with any necessary modifications; and
- (b) as if the request related to a person who had been convicted of an extradition offence, within the meaning of section 2 of that Act.

Compare: Statute art 111

*Certificates and removal orders*

**150 Certificate giving temporary authority to remain in New Zealand**

- (1) A certificate issued by the Minister under this section—
  - (a) may be issued for a period, not exceeding 3 months, specified in the certificate; and
  - (b) may, from time to time, be renewed for 1 further period not exceeding 3 months; and
  - (c) may, if the Minister thinks fit, order that the person named in the certificate be taken into custody.
- (2) The certificate is, while it remains in force, sufficient authority for the person named in the certificate to remain in New Zealand.
- (3) If the Minister issues a certificate, the Minister may refer the person's case to the Minister of Immigration for consideration under section 61 of the Immigration Act 2009, and, in that case, that section applies for the purposes of this section as if the person were a person required to hold a visa under that Act to be in New Zealand.
- (4) Except as provided in subsection (3), nothing in the Immigration Act 2009 applies to the person named in the certificate while the certificate is in force.

Compare: 1999 No 55 s 94(1)–(4)

Section 150(3): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 150(4): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

**151 Cancellation of certificate**

The Minister must cancel the certificate issued under section 150 and make a removal order under section 153 in respect of a person if,—

- (a) where the Minister referred the person's case to the Minister of Immigration under section 150(3),—
  - (i) the Minister of Immigration declines to grant a visa under the Immigration Act 2009; and
  - (ii) there do not appear to the Minister to be any other grounds on which the person should be permitted to remain in New Zealand;
- (b) in any other case, there do not appear to the Minister to be any other grounds on which the person should be permitted to remain in New Zealand.

Compare: 1999 No 55 s 94(5)

Section 151(a)(i): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

## 152 Further provisions relating to certificate

- (1) If a certificate issued under section 150 orders that a person be taken into custody, the certificate is sufficient authority for a constable to arrest the person and take him or her into custody.
- (2) A person who is taken into custody under this section must, unless sooner released, be brought before a District Court Judge as soon as possible and, after that, every 21 days while the certificate is in force to determine, in accordance with subsection (3), if the person should be detained in custody or released pending the decisions referred to in section 151.
- (3) If a person is brought before a District Court Judge under subsection (2), the Judge may, if the Judge is satisfied that the person is the person named in the certificate,—
  - (a) issue a warrant for the detention of the person in custody if the Judge is satisfied that, if not detained, the person is likely to abscond; or
  - (b) order the release of the person subject to such conditions, if any, that the Judge thinks fit.
- (4) A warrant for the detention of the person issued under subsection (3)(a) may authorise the detention of the person in a prison or any other place in which a person could be detained under section 42.

Compare: 1999 No 55 s 95

Section 152(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## 153 Removal order

- (1) A removal order made by the Minister under this section—
  - (a) may either—
    - (i) require the person who is the subject of the order to be released into or taken into the custody of a Police employee; or

- (ii) if the person is not in custody, authorise any Police employee to take the person into custody; and
- (b) must specify that the person is to be taken by a Police employee and placed on board any craft for the purpose of effecting the person's removal from New Zealand; and
- (c) may authorise the detention in custody of the person while awaiting removal from New Zealand.

(2) The removal order must be served on the person named in the order by personal service.

(3) If the removal order authorises the detention of the person in custody, the person may be detained—

- (a) in a prison, or any other place in which a person could be detained under section 42; or
- (b) at a seaport or airport.

(4) A removal order made under this section continues in force until it is executed or cancelled.

(5) In this section, **personal service**, in relation to a removal order, means personal delivery of the order to the person to whom it relates or, if the person refuses to accept the order, bringing the order to the person's attention.

Compare: 1999 No 55 s 96

Section 153(1)(a)(i): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 153(1)(a)(ii): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 153(1)(b): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

#### **154 Delay in removal**

- (1) If a person is not able to be conveyed out of New Zealand within 48 hours after service of a removal order issued under section 153, the person must be brought before a District Court Judge to determine, in accordance with subsection (2), whether the person should be detained in custody or released pending removal from New Zealand.
- (2) If a person is brought before a District Court Judge under subsection (1), the Judge may, if the Judge is satisfied that the person is the person named in the order,—
  - (a) issue a warrant for the detention of the person in custody if the Judge is satisfied that, if not detained, the person is likely to abscond; or
  - (b) order the release of the person subject to such conditions, if any, that the Judge thinks fit.

(3) A warrant for the detention of the person issued under subsection (2)(a) may authorise the detention of the person in any place specified in section 153(3).

### **155 Immigration visa not required**

A person to whom this Part applies is not required to hold a visa under the Immigration Act 2009 if, and for so long as, he or she is in New Zealand in accordance with this Part (whether or not he or she is in custody).

Section 155 heading: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 155: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

### **156 New Zealand citizens**

Nothing in this Part authorises the making of a removal order under section 153 in respect of a New Zealand citizen.

Compare: 1999 No 55 s 97

## **Part 8**

### **Protection of national security or third party information**

#### *National security*

### **157 National security issues to be dealt with under Article 72**

If an issue relating to New Zealand's national security interests arises at any stage of any proceedings before the ICC, the issue must be dealt with in the manner provided in Article 72 of the Statute and this Part.

Compare: Statute art 72(1), (4)

### **158 Part 9 request involving national security**

(1) If a request for assistance made under Part 9 of the Statute appears to concern the production of any documents or disclosure of evidence that would, in the opinion of the Attorney-General, prejudice New Zealand's national security interests, that request must be dealt with in accordance with the process specified in sections 161 and 162.

(2) If, having followed the specified process the matter is not able to be resolved, the Attorney-General may refuse the request or decline to authorise the production of the documents or giving of the evidence, as the case may be.

Compare: Statute arts 72(1), 93(4), 99(5)

### **159 Information or evidence involving national security**

(1) This section applies if a person who has been requested to give information or evidence—

- (a) refuses to do so on the ground that disclosure would prejudice the national security interests of New Zealand; or
- (b) refers the matter to the Attorney-General on the ground that disclosure would prejudice the national security interests of New Zealand.

(2) If this section applies, the Attorney-General must determine whether or not he or she is of the opinion that the giving of information or evidence would prejudice New Zealand's national security interests.

(3) If the Attorney-General confirms that he or she is of the opinion that disclosure would prejudice New Zealand's national security interests, the matter must be dealt with in accordance with the process specified in sections 161 and 162.

(4) If, having following the specified process, the matter has not been resolved, the Attorney-General may refuse the request or decline to authorise the provision of the information or giving of the evidence, as the case may be.

Compare: Statute arts 72(2), 93(4)

## **160 Other situations involving national security**

- (1) If, in any circumstances other than those specified in sections 158 and 159, the Attorney-General is of the opinion that the disclosure of information or documents to the ICC would prejudice New Zealand's national security interests, the matter must be dealt with in accordance with the process specified in sections 161 and 162.
- (2) Without limiting subsection (1), this section applies if the Attorney-General learns that information or documents are being, or are likely to be, disclosed at any stage of the proceedings, and intervenes in accordance with Article 72(4) of the Statute.
- (3) If, having followed the specified process, the matter has not been resolved and the ICC has not made an order for disclosure under Article 72(7)(b)(i) of the Statute, the Attorney-General may refuse the request or decline to authorise the provision of the information or giving of the evidence, as the case may be.

Compare: Statute arts 72(4), (7)(b)(i), 93(4)

## **161 Consultation with ICC required**

The Attorney-General must consult with the ICC and, if appropriate, the defence, in accordance with Article 72(5) of the Statute.

Compare: Statute art 72(5)

## **162 Procedure where no resolution**

- (1) If, after consultation, the Attorney-General considers that there are no means or conditions under which the information or documents or evidence could be provided or disclosed or given without prejudice to New Zealand's national security interests, the Attorney-General must notify the ICC, in accordance with Article 72(6) of the Statute, of the specific reasons for his or her decision,

unless a specific description of the reasons would result itself in prejudice to New Zealand's national security interests.

- (2) The Attorney-General must use his or her best endeavours with a view to reaching a mutually satisfactory outcome if—
  - (a) the ICC determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused; and
  - (b) the issue of disclosure arises in the circumstances specified in section 158 or section 159 and the Attorney-General is of the opinion that New Zealand's national security interests would be prejudiced by disclosure; and
  - (c) the ICC requests further consultations for the purpose of considering the representations, which may include hearings in camera and *ex parte*.
- (3) The Attorney-General must comply with an ICC disclosure order if—
  - (a) the ICC determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the defendant; and
  - (b) the issue of disclosure arises in the circumstances specified in section 160(1); and
  - (c) the ICC orders disclosure in accordance with Article 72(7)(b)(i) of the Statute.

Compare: Statute arts 72(6), (7), 93(4)

**163 Attorney-General must take into account ICC's ability to refer matter to Security Council**

In determining what action to take in relation to a matter to which this Part applies, the Attorney-General must take into account the power of the ICC to refer a matter to the Assembly of States Parties or to the Security Council in accordance with Article 87(7) of the Statute if the ICC considers that a requested State is not acting in accordance with its obligations under the Statute.

Compare: Statute arts 72(7)(a)(ii), 87(7)

*Information provided by third party*

**164 Disclosure of information provided by third party**

- (1) If the ICC requests the provision of a document or information that was provided or disclosed to New Zealand in confidence by another State, intergovernmental organisation, or international organisation, the Attorney-General must seek the consent of the originator before providing that document or information to the ICC.
- (2) If the originator is a State Party that consents to disclosure of the information or document, the Attorney-General must, subject to Article 72 of the Statute, provide that information or document to the ICC.

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- (3) If the originator is a State Party that undertakes to resolve the issue of disclosure with the ICC under Article 73, the Attorney-General must inform the ICC of that undertaking.
- (4) If the originator is not a State Party and refuses to consent to disclosure, the Attorney-General must inform the ICC that he or she is unable to provide the document or information because of an existing obligation of confidentiality to the originator.

Compare: Statute arts 72, 73

**165 Request for New Zealand's consent to disclosure**

- (1) If a request is received from another State for New Zealand's consent to the disclosure to the ICC of a document or information that had been disclosed to the State in confidence, the Attorney-General must either—
  - (a) consent to the disclosure; or
  - (b) undertake to resolve the matter with the ICC.
- (2) The provision of an undertaking under subsection (1)(b) does not prevent the Attorney-General from refusing the assistance sought in accordance with section 164(4).

Compare: Statute art 73

**Part 9**  
**Investigations or sittings of ICC in New Zealand**

**166 Prosecutor may conduct investigations in New Zealand**

The Prosecutor may conduct investigations in New Zealand territory—

- (a) in accordance with the provisions of Part 9 of the Statute and as specified in section 27; or
- (b) as authorised by the Pre-Trial Chamber under Article 57(3)(d) of the Statute.

Compare: Statute arts 54(3), 57(3)(d), 99(1), (4)

**167 ICC sittings in New Zealand**

The ICC may sit in New Zealand for the purpose of performing its functions under the Statute and under the Rules, including, without limitation,—

- (a) taking evidence; or
- (b) conducting or continuing a proceeding; or
- (c) giving judgment in a proceeding; or
- (d) reviewing a sentence.

Compare: 1995 No 27 s 36; Statute arts 3(3), 62

**168 ICC's powers while sitting in New Zealand**

While the ICC is sitting in New Zealand, it may exercise its functions and powers as provided under the Statute and under the Rules.

Compare: 1995 No 27 s 37; Statute arts 4(2), 64

**169 ICC may administer oaths in New Zealand**

The ICC may, at any sitting of the ICC in New Zealand, administer an oath or affirmation giving an undertaking as to truthfulness in accordance with the practice and procedure of the ICC.

Compare: 1995 No 27 s 38(1); Statute art 69(1)

**170 Orders made by ICC not subject to review**

No application for review under the Judicial Review Procedure Act 2016 and no application for an order of mandamus or prohibition or certiorari or for a declaration or injunction may be brought in respect of any judgment or order or determination of the ICC that is made or given at a sitting of the ICC in New Zealand.

Compare: 1995 No 27 s 39

Section 170: amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

**171 Power to detain ICC prisoners in New Zealand prisons if ICC holds sitting in New Zealand**

- (1) A person in New Zealand must be kept in custody as the Minister directs in writing if—
  - (a) the ICC holds any sitting in New Zealand; and
  - (b) the ICC requests that the person whose presence is required at the proceedings be held in custody as an ICC prisoner while the sitting continues in New Zealand.
- (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.
- (3) If an ICC prisoner is directed to be detained in a prison under subsection (1), the Corrections Act 2004, so far as applicable and with all necessary modifications, applies with respect to that prisoner as if the prisoner had been remanded in custody or sentenced to imprisonment for an offence against the law of New Zealand, 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 section 120 of the Crimes Act 1961 (which relates to escape from lawful custody) and section 121 (which relates to assisting escape), an ICC prisoner who is in custody in a New Zealand prison or other detention facility is deemed to be in lawful custody while in New Zealand.

Compare: 1957 No 87 s 20(4); 1992 No 86 s 15(1)–(3); Statute art 63

Section 171(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

**172 Removal of ICC prisoner**

If the Minister is satisfied that the presence of an ICC prisoner who was the subject of a direction under section 171(1) is no longer necessary, sections 150 to 156 apply with any necessary modifications to that person.

**Part 10**  
**Requests to ICC for assistance**

**173 Attorney-General or Minister may request assistance from ICC**

The Attorney-General or the Minister, 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, conduct that may constitute a crime within the jurisdiction of the ICC or that constitutes a crime for which the maximum penalty under New Zealand law is a term of imprisonment of not less than 5 years.

Compare: 1992 No 86 ss 7, 8; Statute art 93(10)

**174 Making of request**

An urgent request for assistance may be made or transmitted to the ICC in the manner specified in section 26(1).

Compare: Statute art 96(4)

**175 Types of requests to ICC**

A request may be made under this Part for any assistance that the ICC may lawfully give including, without limitation,—

- (a) the transmission of statements, documents, or other types of evidence obtained in the course of an investigation or a trial conducted by the ICC; and
- (b) the questioning of any person detained by order of the ICC.

Compare: Statute art 93(10)(b)(i)

**176 Mutual Assistance in Criminal Matters Act 1992 applies to requests**

Part 2 of the Mutual Assistance in Criminal Matters Act 1992 applies, with any necessary modifications, in relation to the request for assistance of the kind specified in that Act, and any assistance provided as a result, as if the ICC were a foreign country within the meaning of that Act, subject to any contrary provision in the Statute or the Rules.

**177 Extradition Act 1999 applies to requests for surrender**

Part 6 of the Extradition Act 1999 applies, with any necessary modifications, in relation to the surrender or temporary surrender of a person by the ICC to New

Zealand, as if the ICC were an extradition country within the meaning of that Act, subject to any contrary provision in the Statute or the Rules.

## Part 11

### Miscellaneous provisions and consequential amendments

#### *Miscellaneous provisions*

##### **178 Certificates given by Attorney-General**

- (1) If the Attorney-General receives a request for assistance from the ICC to which Part 5 relates, the Attorney-General may give 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 the requirements of this Act;
  - (c) that the acceptance of the request has been duly made under and in accordance with this Act.
- (2) In any proceeding under this Act, a certificate purporting to have been given under subsection (1) is, in the absence of proof to the contrary, sufficient evidence of the matters certified by the certificate.

Compare: 1995 No 27 s 58

##### **179 Regulations**

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the procedure to be followed in dealing with requests made by the ICC, and providing for notification of the results of action taken in accordance with any such request;
- (b) prescribing the procedures for obtaining evidence or producing documents or other articles in accordance with a request made by the ICC;
- (c) providing for the payment of fees, travelling allowances, and expenses to any person in New Zealand who gives or provides evidence or assistance pursuant to a request made by the ICC;
- (d) prescribing conditions for the protection of any property sent to the ICC pursuant to a request made under this Act, and making provision for the return of property in New Zealand in accordance with a request;
- (e) prescribing the forms of applications, notices, certificates, warrants, and other documents for the purposes of this Act, and requiring the use of such forms;
- (f) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: 1995 No 27 s 60

**180 Regulations to implement Rules of Evidence and Procedure**

Without limiting section 179, the Governor-General may, by Order in Council, make regulations to implement any obligation that is placed on State Parties by the Rules of Evidence and Procedure if that obligation is not inconsistent with the provisions of this Act.

*Consequential amendments to Crimes Act 1961*

**181 Amendments to Crimes Act 1961**

*Amendment(s) incorporated in the Act(s).*

*Consequential amendment to Criminal Justice Act 1985*

*[Repealed]*

Heading: repealed (without coming into force), on 30 June 2002, pursuant to section 125 of the Parole Act 2002 (2002 No 10).

**182 Amendment to Criminal Justice Act 1985**

*[Repealed]*

Section 182: repealed (without coming into force), on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

*Consequential amendment to Diplomatic Privileges and Immunities Act 1968*

**183 Amendment to Diplomatic Privileges and Immunities Act 1968**

*Amendment(s) incorporated in the Act(s).*

*Consequential amendment to Extradition Act 1999*

**184 Amendment to Extradition Act 1999**

*Amendment(s) incorporated in the Act(s).*

*Consequential amendment to Geneva Conventions Act 1958*

**185 Amendment to Geneva Conventions Act 1958**

*Amendment(s) incorporated in the Act(s).*

*Consequential amendment to Penal Institutions Act 1954*

*[Repealed]*

Heading: repealed, on 1 June 2005, by section 208(1) of the Corrections Act 2004 (2004 No 50).

**186 Amendment to Penal Institutions Act 1954**

*[Repealed]*

Section 186: repealed, on 1 June 2005, by section 208(1) of the Corrections Act 2004 (2004 No 50).

*Consequential amendments to Proceeds of Crime Act 1991*

**187 Amendments to Proceeds of Crime Act 1991**

*Amendment(s) incorporated in the Act(s).*

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## Schedule

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### **Rome Statute of the International Criminal Court\***

[\*as corrected by the procés-verbaux of 10 November 1998 and 12 July 1999]

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*[This table is not part of the Statute and is included for convenience]*

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**Part 4**

## **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 *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.
2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.
3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.
4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.
5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.
6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

### **Article 16—Deferral of investigation or prosecution**

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

### **Article 17—Issues of admissibility**

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
  - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

- (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
- (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
- (d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
- (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
- (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

### Article 18—Preliminary rulings regarding admissibility

1. When a situation has been referred to the Court pursuant to article 13 (a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.
2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's

investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.
4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.
5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.
6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.
7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of additional significant facts or significant change of circumstances.

#### **Article 19—Challenges to the jurisdiction of the Court or the admissibility of a case**

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.
2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:
  - (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
  - (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
  - (c) A State from which acceptance of jurisdiction is required under article 12.
3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).
5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.
6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.
7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.
8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:
  - (a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;
  - (b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and
  - (c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.
9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.
10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.
11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

## **Article 20—Ne bis in idem**

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.
2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.
3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:
  - (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
  - (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

## **Article 21—Applicable law**

1. The Court shall apply:
  - (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
  - (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
  - (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

## **Part 3**

### **General principles of criminal law**

#### **Article 22—Nullum crimen sine lege**

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.
3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

#### **Article 23—Nulla poena sine lege**

A person convicted by the Court may be punished only in accordance with this Statute.

#### **Article 24—Non-retroactivity ratione personae**

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

#### **Article 25—Individual criminal responsibility**

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
  - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
  - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
  - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

- (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
- (ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

### **Article 26—Exclusion of jurisdiction over persons under eighteen**

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

### **Article 27—Irrelevance of official capacity**

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

### **Article 28—Responsibility of commanders and other superiors**

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effect-

ive 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—Services of judges**

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.
2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.
3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining

judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.

4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49.

**Article 36—Qualifications, nomination and election of judges**

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.
2. (a) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.

(b) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.

(c) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (b), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and article 37, paragraph 2;

(ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (b) and (c) (i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (a) and (b). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.

3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

(b) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:

(i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or

(ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.

(b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.

(c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.

5. For the purposes of the election, there shall be two lists of candidates:

List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and

List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii).

A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.

6. (a) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting.

(b) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (a) until the remaining places have been filled.

7. No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

8. (a) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:

(i) The representation of the principal legal systems of the world;

(ii) Equitable geographical representation; and

(iii) A fair representation of female and male judges.

(b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

9. (a) Subject to subparagraph (b), judges shall hold office for a term of nine years and, subject to subparagraph (c) and to article 37, paragraph 2, shall not be eligible for re-election.

(b) At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall

be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years.

(c) A judge who is selected to serve for a term of three years under subparagraph (b) shall be eligible for re-election for a full term.

10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

### Article 37—Judicial vacancies

1. In the event of a vacancy, an election shall be held in accordance with article 36 to fill the vacancy.
2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36.

### Article 38—*The Presidency*

1. The President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.
2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.
3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for:
  - (a) The proper administration of the Court, with the exception of the Office of the Prosecutor; and
  - (b) The other functions conferred upon it in accordance with this Statute.
4. In discharging its responsibility under paragraph 3 (a), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

### Article 39—Chambers

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (b). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and pro-

cedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.

2.
  - (a) The judicial functions of the Court shall be carried out in each division by Chambers.
  - (b)
    - (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;
    - (ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;
    - (iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence;
  - (c) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.
  3.
    - (a) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.
    - (b) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.
  4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

#### **Article 40—Independence of the judges**

1. The judges shall be independent in the performance of their functions.
2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.
3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.
4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

### Article 41—Excusing and disqualification of judges

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.
2.
  - (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.
  - (b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.
  - (c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

### Article 42—The Office of the Prosecutor

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.
2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.
3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
4. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of

their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.

5. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.
6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.
7. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, *inter alia*, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.
8. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.
  - (a) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article;
  - (b) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter;
9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

#### **Article 43—The Registry**

1. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42.
2. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.
3. The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
4. The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.
5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall

hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.

6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

#### Article 44—Staff

1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.
2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, mutatis mutandis, to the criteria set forth in article 36, paragraph 8.
3. The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.
4. The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties.

#### Article 45—Solemn undertaking

Before taking up their respective duties under this Statute, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

#### Article 46—Removal from office

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person:
  - (a) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or

(b) Is unable to exercise the functions required by this Statute.

2. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot:
  - (a) In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges;
  - (b) In the case of the Prosecutor, by an absolute majority of the States Parties;
  - (c) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.
3. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.
4. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

#### **Article 47—Disciplinary measures**

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

#### **Article 48—Privileges and immunities**

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.
2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.
3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.
4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper

functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.

5. The privileges and immunities of:

- (a) A judge or the Prosecutor may be waived by an absolute majority of the judges;
- (b) The Registrar may be waived by the Presidency;
- (c) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;
- (d) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

#### **Article 49—Salaries, allowances and expenses**

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

#### **Article 50—Official and working languages**

- 1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.
- 2. The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.
- 3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

#### **Article 51—Rules of Procedure and Evidence**

- 1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.
- 2. Amendments to the Rules of Procedure and Evidence may be proposed by:
  - (a) Any State Party;
  - (b) The judges acting by an absolute majority; or
  - (c) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.
4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.
5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

#### **Article 52—Regulations of the Court**

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.
2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.
3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.

### **Part 5**

#### **Investigation and prosecution**

#### **Article 53—Initiation of an investigation**

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:
  - (a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;
  - (b) The case is or would be admissible under article 17; and
  - (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.

2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:

- (a) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;
- (b) The case is inadmissible under article 17; or
- (c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime;

the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.

3. (a) At the request of the State making a referral under article 14 or the Security Council under article 13, paragraph (b), the Pre-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.
- (b) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on paragraph 1 (c) or 2 (c). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber.

4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

#### Article 54—Duties and powers of the Prosecutor with respect to investigations

1. The Prosecutor shall:
  - (a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;
  - (b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and
  - (c) Fully respect the rights of persons arising under this Statute.

2. The Prosecutor may conduct investigations on the territory of a State:
  - (a) In accordance with the provisions of Part 9; or
  - (b) As authorized by the Pre-Trial Chamber under article 57, paragraph 3 (d).
3. The Prosecutor may:
  - (a) Collect and examine evidence;
  - (b) Request the presence of and question persons being investigated, victims and witnesses;
  - (c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;
  - (d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;
  - (e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and
  - (f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

#### **Article 55—Rights of persons during an investigation**

1. In respect of an investigation under this Statute, a person:
  - (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
  - (b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
  - (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and
  - (d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.
2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part

9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

- (a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
- (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and
- (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

#### Article 56—Role of the Pre-Trial Chamber in relation to a unique investigative opportunity

1. (a) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.  
(b) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.  
(c) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in response to a summons in connection with the investigation referred to in subparagraph (a), in order that he or she may be heard on the matter.
2. The measures referred to in paragraph 1 (b) may include:
  - (a) Making recommendations or orders regarding procedures to be followed;
  - (b) Directing that a record be made of the proceedings;
  - (c) Appointing an expert to assist;
  - (d) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been designated, appointing another counsel to attend and represent the interests of the defence;

- (e) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;
- (f) Taking such other action as may be necessary to collect or preserve evidence.

3. (a) Where the Prosecutor has not sought measures pursuant to this article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor's failure to request the measures. If upon consultation, the Pre-Trial Chamber concludes that the Prosecutor's failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.

(b) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.

4. The admissibility of evidence preserved or collected for trial pursuant to this article, or the record thereof, shall be governed at trial by article 69, and given such weight as determined by the Trial Chamber.

#### **Article 57—Functions and powers of the Pre-Trial Chamber**

1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.
2. (a) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.  
(b) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.
3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:
  - (a) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;
  - (b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;
  - (c) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who

have been arrested or appeared in response to a summons, and the protection of national security information;

- (d) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9.
- (e) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

#### Article 58—Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:
  - (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
  - (b) The arrest of the person appears necessary:
    - (i) To ensure the person's appearance at trial,
    - (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or
    - (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.
2. The application of the Prosecutor shall contain:
  - (a) The name of the person and any other relevant identifying information;
  - (b) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed;
  - (c) A concise statement of the facts which are alleged to constitute those crimes;
  - (d) A summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes; and

(e) The reason why the Prosecutor believes that the arrest of the person is necessary.

3. The warrant of arrest shall contain:

- (a) The name of the person and any other relevant identifying information;
- (b) A specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and
- (c) A concise statement of the facts which are alleged to constitute those crimes.

4. The warrant of arrest shall remain in effect until otherwise ordered by the Court.

5. On the basis of the warrant of arrest, the Court may request the provisional arrest or the arrest and surrender of the person under Part 9.

6. The Prosecutor may request the Pre-Trial Chamber to amend the warrant of arrest by modifying or adding to the crimes specified therein. The Pre-Trial Chamber shall so amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed the modified or additional crimes.

7. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear. The summons shall contain:

- (a) The name of the person and any other relevant identifying information;
- (b) The specified date on which the person is to appear;
- (c) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and
- (d) A concise statement of the facts which are alleged to constitute the crime.

The summons shall be served on the person.

#### **Article 59—Arrest proceedings in the custodial State**

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.
2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:
  - (a) The warrant applies to that person;

(b) The person has been arrested in accordance with the proper process; and

(c) The person's rights have been respected.

3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.
4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b).
5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.
6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.
7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

#### Article 60—Initial proceedings before the Court

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.
2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.
3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.
4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

#### **Article 61—Confirmation of the charges before trial**

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.
2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:
  - (a) Waived his or her right to be present; or
  - (b) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:
  - (a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and
  - (b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.
5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.
6. At the hearing, the person may:
  - (a) Object to the charges;
  - (b) Challenge the evidence presented by the Prosecutor; and
  - (c) Present evidence.
7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the

person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:

- (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
- (b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;
- (c) Adjourn the hearing and request the Prosecutor to consider:
  - (i) Providing further evidence or conducting further investigation with respect to a particular charge; or
  - (ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.

9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.

11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

## **Part 6**

### **The trial**

#### **Article 62—Place of trial**

Unless otherwise decided, the place of the trial shall be the seat of the Court.

#### **Article 63—Trial in the presence of the accused**

1. The accused shall be present during the trial.
2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom,

through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

#### **Article 64—Functions and powers of the Trial Chamber**

1. The functions and powers of the Trial Chamber set out in this article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.
2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:
  - (a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;
  - (b) Determine the language or languages to be used at trial; and
  - (c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.
4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.
5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.
6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:
  - (a) Exercise any functions of the Pre-Trial Chamber referred to in article 61, paragraph 11;
  - (b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;
  - (c) Provide for the protection of confidential information;
  - (d) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;
  - (e) Provide for the protection of the accused, witnesses and victims; and
  - (f) Rule on any other relevant matters.
7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session

for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.

8. (a) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65 or to plead not guilty.  
(b) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.
9. The Trial Chamber shall have, *inter alia*, the power on application of a party or on its own motion to:
  - (a) Rule on the admissibility or relevance of evidence; and
  - (b) Take all necessary steps to maintain order in the course of a hearing.
10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

### Article 65—Proceedings on an admission of guilt

1. Where the accused makes an admission of guilt pursuant to article 64, paragraph 8 (a), the Trial Chamber shall determine whether:
  - (a) The accused understands the nature and consequences of the admission of guilt;
  - (b) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and
  - (c) The admission of guilt is supported by the facts of the case that are contained in:
    - (i) The charges brought by the Prosecutor and admitted by the accused;
    - (ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts; and
    - (iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.
2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.
4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may:
  - (a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or
  - (b) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.
5. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

#### **Article 66—Presumption of innocence**

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.
2. The onus is on the Prosecutor to prove the guilt of the accused.
3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

#### **Article 67—Rights of the accused**

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
  - (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
  - (c) To be tried without undue delay;
  - (d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case

where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;

- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;
- (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks;
- (g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (h) To make an unsworn oral or written statement in his or her defence; and
- (i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

#### Article 68—Protection of the victims and witnesses and their participation in the proceedings

- 1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
- 2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.
4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

### **Article 69—Evidence**

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.
2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of *viva voce* (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.
3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.
4. The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.
5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.

6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.
7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:
  - (a) The violation casts substantial doubt on the reliability of the evidence; or
  - (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.
8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

#### **Article 70—Offences against the administration of justice**

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:
  - (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;
  - (b) Presenting evidence that the party knows is false or forged;
  - (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
  - (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
  - (e) Retaliating against an official of the Court on account of duties performed by that or another official;
  - (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.
2. The principles and procedures governing the Court's exercise of jurisdiction over offences under this article shall be those provided for in the Rules of Procedure and Evidence. The conditions for providing international cooperation to the Court with respect to its proceedings under this article shall be governed by the domestic laws of the requested State.
3. In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.
4. (a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;

(b) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

### **Article 71—Sanctions for misconduct before the Court**

1. The Court may sanction persons present before it who commit misconduct, including disruption of its proceedings or deliberate refusal to comply with its directions, by administrative measures other than imprisonment, such as temporary or permanent removal from the courtroom, a fine or other similar measures provided for in the Rules of Procedure and Evidence.
2. The procedures governing the imposition of the measures set forth in paragraph 1 shall be those provided for in the Rules of Procedure and Evidence.

### **Article 72—Protection of national security information**

1. This article applies in any case where the disclosure of the information or documents of a State would, in the opinion of that State, prejudice its national security interests. Such cases include those falling within the scope of article 56, paragraphs 2 and 3, article 61, paragraph 3, article 64, paragraph 3, article 67, paragraph 2, article 68, paragraph 6, article 87, paragraph 6 and article 93, as well as cases arising at any other stage of the proceedings where such disclosure may be at issue.
2. This article shall also apply when a person who has been requested to give information or evidence has refused to do so or has referred the matter to the State on the ground that disclosure would prejudice the national security interests of a State and the State concerned confirms that it is of the opinion that disclosure would prejudice its national security interests.
3. Nothing in this article shall prejudice the requirements of confidentiality applicable under article 54, paragraph 3 (e) and (f), or the application of article 73.
4. If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this article.
5. If, in the opinion of a State, disclosure of information would prejudice its national security interests, all reasonable steps will be taken by the State, acting in conjunction with the Prosecutor, the defence or the Pre-Trial Chamber or Trial Chamber, as the case may be, to seek to resolve the matter by cooperative means. Such steps may include:
  - (a) Modification or clarification of the request;

- (b) A determination by the Court regarding the relevance of the information or evidence sought, or a determination as to whether the evidence, though relevant, could be or has been obtained from a source other than the requested State;
- (c) Obtaining the information or evidence from a different source or in a different form; or
- (d) Agreement on conditions under which the assistance could be provided including, among other things, providing summaries or redactions, limitations on disclosure, use of in camera or ex parte proceedings, or other protective measures permissible under the Statute and the Rules of Procedure and Evidence.

6. Once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests, it shall so notify the Prosecutor or the Court of the specific reasons for its decision, unless a specific description of the reasons would itself necessarily result in such prejudice to the State's national security interests.

7. Thereafter, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused, the Court may undertake the following actions:

- (a) Where disclosure of the information or document is sought pursuant to a request for cooperation under Part 9 or the circumstances described in paragraph 2, and the State has invoked the ground for refusal referred to in article 93, paragraph 4:
  - (i) The Court may, before making any conclusion referred to in subparagraph 7 (a) (ii), request further consultations for the purpose of considering the State's representations, which may include, as appropriate, hearings in camera and ex parte;
  - (ii) If the Court concludes that, by invoking the ground for refusal under article 93, paragraph 4, in the circumstances of the case, the requested State is not acting in accordance with its obligations under this Statute, the Court may refer the matter in accordance with article 87, paragraph 7, specifying the reasons for its conclusion; and
  - (iii) The Court may make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances; or
- (b) In all other circumstances:
  - (i) Order disclosure; or

(ii) To the extent it does not order disclosure, make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances.

### **Article 73—Third-party information or documents**

If a State Party is requested by the Court to provide a document or information in its custody, possession or control, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, it shall seek the consent of the originator to disclose that document or information. If the originator is a State Party, it shall either consent to disclosure of the information or document or undertake to resolve the issue of disclosure with the Court, subject to the provisions of article 72. If the originator is not a State Party and refuses to consent to disclosure, the requested State shall inform the Court that it is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator.

### **Article 74—Requirements for the decision**

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.
2. The Trial Chamber’s decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.
3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.
4. The deliberations of the Trial Chamber shall remain secret.
5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber’s findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber’s decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

### **Article 75—Reparations to victims**

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.  
Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.
3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.
5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.
6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

### **Article 76—Sentencing**

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.
2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.
3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.
4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

## **Part 7** **Penalties**

### **Article 77—Applicable penalties**

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:
  - (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

- (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
- 2. In addition to imprisonment, the Court may order:
  - (a) A fine under the criteria provided for in the Rules of Procedure and Evidence;
  - (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

#### **Article 78—Determination of the sentence**

- 1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.
- 2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.
- 3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (b).

#### **Article 79—Trust Fund**

- 1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.
- 2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.
- 3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

#### **Article 80—Non-prejudice to national application of penalties and national laws**

Nothing in this Part affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this Part.

## **Part 8**

### **Appeal and revision**

#### **Article 81—Appeal against decision of acquittal or conviction or against sentence**

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:
  - (a) The Prosecutor may make an appeal on any of the following grounds:
    - (i) Procedural error,
    - (ii) Error of fact, or
    - (iii) Error of law;
  - (b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:
    - (i) Procedural error,
    - (ii) Error of fact,
    - (iii) Error of law, or
    - (iv) Any other ground that affects the fairness or reliability of the proceedings or decision.
2. (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;

- (b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 81, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 83;
- (c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (a).

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

(b) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below;

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

- (i) Under exceptional circumstances, and having regard, *inter alia*, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;
- (ii) A decision by the Trial Chamber under subparagraph (c) (i) may be appealed in accordance with the Rules of Procedure and Evidence.

4. Subject to the provisions of paragraph 3 (a) and (b), execution of the decision or sentence shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

### Article 82—Appeal against other decisions

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

- (a) A decision with respect to jurisdiction or admissibility;
- (b) A decision granting or denying release of the person being investigated or prosecuted;
- (c) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;
- (d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

2. A decision of the Pre-Trial Chamber under article 57, paragraph 3 (d), may be appealed against by the State concerned or by the Prosecutor, with the leave of the Pre-Trial Chamber. The appeal shall be heard on an expedited basis.
3. An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.
4. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

#### **Article 83—Proceedings on appeal**

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.
2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:
  - (a) Reverse or amend the decision or sentence; or
  - (b) Order a new trial before a different Trial Chamber.For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.
3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.
4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.
5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

#### **Article 84—Revision of conviction or sentence**

1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the grounds that:

- (a) New evidence has been discovered that:
  - (i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and
  - (ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;
- (b) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;
- (c) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under article 46.

2. The Appeals Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

- (a) Reconvene the original Trial Chamber;
- (b) Constitute a new Trial Chamber; or
- (c) Retain jurisdiction over the matter,

with a view to, after hearing the parties in the manner set forth in the Rules of Procedure and Evidence, arriving at a determination on whether the judgement should be revised.

#### **Article 85—Compensation to an arrested or convicted person**

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.
3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

## Part 9

### International cooperation and judicial assistance

#### Article 86—General obligation to cooperate

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

#### Article 87—Requests for cooperation: general provisions

1. (a) The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession. Subsequent changes to the designation shall be made by each State Party in accordance with the Rules of Procedure and Evidence.  
(b) When appropriate, without prejudice to the provisions of subparagraph (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.
2. Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession. Subsequent changes to this choice shall be made in accordance with the Rules of Procedure and Evidence.
3. The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.
4. In relation to any request for assistance presented under this Part, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under this Part shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families.

5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.  
(b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.
6. The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.
7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

#### **Article 88—Availability of procedures under national law**

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.

#### **Article 89—Surrender of persons to the Court**

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.
2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of ne bis in idem as provided in article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.
3. (a) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.

- (b) A request by the Court for transit shall be transmitted in accordance with article 87. The request for transit shall contain:
  - (i) A description of the person being transported;
  - (ii) A brief statement of the facts of the case and their legal characterization; and
  - (iii) The warrant for arrest and surrender;
- (c) A person being transported shall be detained in custody during the period of transit;
- (d) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State;
- (e) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (b). The transit State shall detain the person being transported until the request for transit is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.

4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

#### Article 90—Competing requests

- 1. A State Party which receives a request from the Court for the surrender of a person under article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.
- 2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:
  - (a) The Court has, pursuant to article 18 or 19, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or
  - (b) The Court makes the determination described in subparagraph (a) pursuant to the requested State's notification under paragraph 1.
- 3. Where a determination under paragraph 2 (a) has not been made, the requested State may, at its discretion, pending the determination of the Court under paragraph 2 (b), proceed to deal with the request for extradition from the requesting State but shall not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.

4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court, if the Court has determined that the case is admissible.
5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.
6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:
  - (a) The respective dates of the requests;
  - (b) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and
  - (c) The possibility of subsequent surrender between the Court and the requesting State.
7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:
  - (a) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;
  - (b) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or to extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.
8. Where pursuant to a notification under this article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the Court of this decision.

#### **Article 91—Contents of request for arrest and surrender**

1. A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).

2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under article 58, the request shall contain or be supported by:
  - (a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;
  - (b) A copy of the warrant of arrest; and
  - (c) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.
3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain or be supported by:
  - (a) A copy of any warrant of arrest for that person;
  - (b) A copy of the judgement of conviction;
  - (c) Information to demonstrate that the person sought is the one referred to in the judgement of conviction; and
  - (d) If the person sought has been sentenced, a copy of the sentence imposed and, in the case of a sentence for imprisonment, a statement of any time already served and the time remaining to be served.
4. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (c). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

#### Article 92—Provisional arrest

1. In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in article 91.
2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:
  - (a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;
  - (b) A concise statement of the crimes for which the person's arrest is sought and of the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;
  - (c) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and

(d) A statement that a request for surrender of the person sought will follow.

3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.

4. The fact that the person sought has been released from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and surrender of that person if the request for surrender and the documents supporting the request are delivered at a later date.

### **Article 93—Other forms of cooperation**

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:

- (a) The identification and whereabouts of persons or the location of items;
- (b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;
- (c) The questioning of any person being investigated or prosecuted;
- (d) The service of documents, including judicial documents;
- (e) Facilitating the voluntary appearance of persons as witnesses or experts before the Court;
- (f) The temporary transfer of persons as provided in paragraph 7;
- (g) The examination of places or sites, including the exhumation and examination of grave sites;
- (h) The execution of searches and seizures;
- (i) The provision of records and documents, including official records and documents;
- (j) The protection of victims and witnesses and the preservation of evidence;
- (k) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and
- (l) Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.

2. The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State.
3. Where execution of a particular measure of assistance detailed in a request presented under paragraph 1, is prohibited in the requested State on the basis of an existing fundamental legal principle of general application, the requested State shall promptly consult with the Court to try to resolve the matter. In the consultations, consideration should be given to whether the assistance can be rendered in another manner or subject to conditions. If after consultations the matter cannot be resolved, the Court shall modify the request as necessary.
4. In accordance with article 72, a State Party may deny a request for assistance, in whole or in part, only if the request concerns the production of any documents or disclosure of evidence which relates to its national security.
5. Before denying a request for assistance under paragraph 1 (l), the requested State shall consider whether the assistance can be provided subject to specified conditions, or whether the assistance can be provided at a later date or in an alternative manner, provided that if the Court or the Prosecutor accepts the assistance subject to conditions, the Court or the Prosecutor shall abide by them.
6. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.
7. (a) The Court may request the temporary transfer of a person in custody for purposes of identification or for obtaining testimony or other assistance. The person may be transferred if the following conditions are fulfilled:

- (i) The person freely gives his or her informed consent to the transfer; and
- (ii) The requested State agrees to the transfer, subject to such conditions as that State and the Court may agree.

(b) The person being transferred shall remain in custody. When the purposes of the transfer have been fulfilled, the Court shall return the person without delay to the requested State.

8. (a) The Court shall ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request.

(b) The requested State may, when necessary, transmit documents or information to the Prosecutor on a confidential basis. The Prosecutor may then use them solely for the purpose of generating new evidence.

(c) The requested State may, on its own motion or at the request of the Prosecutor, subsequently consent to the disclosure of such documents or information. They may then be used as evidence pursuant to the provisions of Parts 5 and 6 and in accordance with the Rules of Procedure and Evidence.

9. (a) (i) In the event that a State Party receives competing requests, other than for surrender or extradition, from the Court and from another State pursuant to an international obligation, the State Party shall endeavour, in consultation with the Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.

(ii) Failing that, competing requests shall be resolved in accordance with the principles established in article 90.

(b) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.

10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.

(b) (i) The assistance provided under subparagraph (a) shall include, inter alia:

- a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and
- b. The questioning of any person detained by order of the Court;

(ii) In the case of assistance under subparagraph (b) (i) a:

- a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;
- b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of article 68.

(c) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this Statute.

#### Article 94—Postponement of execution of a request in respect of ongoing investigation or prosecution

1. If the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the requested State may postpone the execution of the request for a period of time agreed upon with the Court. However, the postponement shall be no longer than is necessary to complete the relevant investigation or prosecution in the requested State. Before making a decision to postpone, the requested State should consider whether the assistance may be immediately provided subject to certain conditions.
2. If a decision to postpone is taken pursuant to paragraph 1, the Prosecutor may, however, seek measures to preserve evidence, pursuant to article 93, paragraph 1 (j).

#### Article 95—Postponement of execution of a request in respect of an admissibility challenge

Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19.

#### Article 96—Contents of request for other forms of assistance under article 93

1. A request for other forms of assistance referred to in article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).
2. The request shall, as applicable, contain or be supported by the following:
  - (a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;

- (b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;
- (c) A concise statement of the essential facts underlying the request;
- (d) The reasons for and details of any procedure or requirement to be followed;
- (e) Such information as may be required under the law of the requested State in order to execute the request; and
- (f) Any other information relevant in order for the assistance sought to be provided.

3. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (e). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.
4. The provisions of this article shall, where applicable, also apply in respect of a request for assistance made to the Court.

### **Article 97—Consultations**

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter. Such problems may include, inter alia:

- (a) Insufficient information to execute the request;
- (b) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the requested State is clearly not the person named in the warrant; or
- (c) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

### **Article 98—Cooperation with respect to waiver of immunity and consent to surrender**

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.
2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international

agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

### Article 99—Execution of requests under articles 93 and 96

1. Requests for assistance shall be executed in accordance with the relevant procedure under the law of the requested State and, unless prohibited by such law, in the manner specified in the request, including following any procedure outlined therein or permitting persons specified in the request to be present at and assist in the execution process.
2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.
3. Replies from the requested State shall be transmitted in their original language and form.
4. Without prejudice to other articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:
  - (a) When the State Party requested is a State on the territory of which the crime is alleged to have been committed, and there has been a determination of admissibility pursuant to article 18 or 19, the Prosecutor may directly execute such request following all possible consultations with the requested State Party;
  - (b) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.
5. Provisions allowing a person heard or examined by the Court under article 72 to invoke restrictions designed to prevent disclosure of confidential information connected with national security shall also apply to the execution of requests for assistance under this article.

### Article 100—Costs

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:

- (a) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody;
- (b) Costs of translation, interpretation and transcription;
- (c) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court;
- (d) Costs of any expert opinion or report requested by the Court;
- (e) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and
- (f) Following consultations, any extraordinary costs that may result from the execution of a request.

2. The provisions of paragraph 1 shall, as appropriate, apply to requests from States Parties to the Court. In that case, the Court shall bear the ordinary costs of execution.

#### **Article 101—Rule of speciality**

- 1. A person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.
- 2. The Court may request a waiver of the requirements of paragraph 1 from the State which surrendered the person to the Court and, if necessary, the Court shall provide additional information in accordance with article 91. States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so.

#### **Article 102—Use of terms**

For the purposes of this Statute:

- (a) “surrender” means the delivering up of a person by a State to the Court, pursuant to this Statute.
- (b) “extradition” means the delivering up of a person by one State to another as provided by treaty, convention or national legislation.

## Part 10

### Enforcement

#### Article 103—Role of States in enforcement of sentences of imprisonment

1. (a) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.  
(b) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.  
(c) A State designated in a particular case shall promptly inform the Court whether it accepts the Court's designation.
2. (a) The State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, the State of enforcement shall take no action that might prejudice its obligations under article 110.  
(b) Where the Court cannot agree to the circumstances referred to in subparagraph (a), it shall notify the State of enforcement and proceed in accordance with article 104, paragraph 1.
3. In exercising its discretion to make a designation under paragraph (1), the Court shall take into account the following:
  - (a) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, as provided in the Rules of Procedure and Evidence;
  - (b) The application of widely accepted international treaty standards governing the treatment of prisoners;
  - (c) The views of the sentenced person;
  - (d) The nationality of the sentenced person;
  - (e) Such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate in designating the State of enforcement.
4. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State, in accordance with the conditions set out in the headquarters agreement referred to in article 3, paragraph 2. In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the Court.

**Article 104—Change in designation of State of enforcement**

1. The Court may, at any time, decide to transfer a sentenced person to a prison of another State.
2. A sentenced person may, at any time, apply to the Court to be transferred from the State of enforcement.

**Article 105—Enforcement of the sentence**

1. Subject to conditions which a State may have specified in accordance with article 103, paragraph 1 (b), the sentence of imprisonment shall be binding on the States Parties, which shall in no case modify it.
2. The Court alone shall have the right to decide any application for appeal and revision. The State of enforcement shall not impede the making of any such application by a sentenced person.

**Article 106—Supervision of enforcement of sentences and conditions of imprisonment**

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.
2. The conditions of imprisonment shall be governed by the law of the State of enforcement and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.
3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

**Article 107—Transfer of the person upon completion of sentence**

1. Following completion of the sentence, a person who is not a national of the State of enforcement may, in accordance with the law of the State of enforcement, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the State of enforcement authorizes the person to remain in its territory.
2. If no State bears the costs arising out of transferring the person to another State pursuant to paragraph 1, such costs shall be borne by the Court.
3. Subject to the provisions of article 108 the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

## Article 108—Limitation on the prosecution or punishment of other offences

1. A sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.
2. The Court shall decide the matter after having heard the views of the sentenced person.
3. Paragraph 1 shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

## Article 109—Enforcement of fines and forfeiture measures

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.
2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.
3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgement of the Court shall be transferred to the Court.

## Article 110—Review by the Court concerning reduction of sentence

1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.
2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.
3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.
4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:
  - (a) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;
  - (b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or

- (c) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.
- 5. If the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.

### **Article 111—Escape**

If a convicted person escapes from custody and flees the State of enforcement, that State may, after consultation with the Court, request the person's surrender from the State in which the person is located pursuant to existing bilateral or multilateral arrangements, or may request that the Court seek the person's surrender, in accordance with Part 9. It may direct that the person be delivered to the State in which he or she was serving the sentence or to another State designated by the Court.

## **Part 11**

### **Assembly of States Parties**

#### **Article 112—Assembly of States Parties**

- 1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.
- 2. The Assembly shall:
  - (a) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;
  - (b) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;
  - (c) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;
  - (d) Consider and decide the budget for the Court;
  - (e) Decide whether to alter, in accordance with article 36, the number of judges;
  - (f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;
  - (g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.
- 3. (a) The Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms.

(b) The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.

(c) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.

4. The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.

5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.

6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.

7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:

(a) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting;

(b) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.

8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

9. The Assembly shall adopt its own rules of procedure.

10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations.

## **Part 12**

### **Financing**

#### **Article 113—Financial Regulations**

Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsid-

iary 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, includ-

ing 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, art-

icle 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.

## **Reprints notes**

### **1 General**

This is a reprint of the International Crimes and International Criminal Court Act 2000 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2 Legal status**

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3 Editorial and format changes**

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4 Amendments incorporated in this reprint**

International Crimes and International Criminal Court Amendment Act 2020 (2020 No 39)

Courts Matters Act 2018 (2018 No 50): section 101

Judicial Review Procedure Act 2016 (2016 No 50): section 24

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(c)

Search and Surveillance Act 2012 (2012 No 24): section 266

Criminal Procedure Act 2011 (2011 No 81): section 413

Immigration Act 2009 (2009 No 51): section 406(1)

Criminal Proceeds (Recovery) Act 2009 (2009 No 8): sections 197–201

Policing Act 2008 (2008 No 72): sections 116(a)(ii), (b), 130(1)

Sentencing Amendment Act 2007 (2007 No 27): section 58

Corrections Act 2004 (2004 No 50): sections 206, 208(1)

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115): section 51

International Crimes and International Criminal Court Amendment Act 2002 (2002 No 67)

International Crimes and International Criminal Court Act Commencement Order 2002 (SR 2002/131)

Parole Act 2002 (2002 No 10): section 125

Sentencing Act 2002 (2002 No 9): section 186

Legal Services Act 2000 (2000 No 42): section 126(1)

