

MODEL LAW

To Implement the Rome Statute of the International Criminal Court

AN ACT TO ENABLE (NAME OF COUNTRY) TO IMPLEMENT AND GIVE EFFECT TO ITS OBLIGATIONS UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT; AND FOR CONNECTED MATTERS.

Note: This model law should be read with reference to the Report of the Commonwealth Expert Group on Implementing Legislation for the Rome Statute of the International Criminal Court, Marlborough House, London 7-9 July 2004 (the Report which can be found in Part II of this document). The footnotes to the sections provide cross references to relevant sections of the report.

PREAMBLE

RECOGNIZING that genocide, crimes against humanity and war crimes, as the most serious crimes of concern to the international community must not go unpunished and effective prosecution must be ensured by taking measures at the national level and enhancing international co-operational;

EMPHASIZING that the International Criminal Court established under the Rome Statute is complementary to national criminal jurisdictions;

MINDFUL of the need for (name of country) as a State Party to implement the obligations under the Rome Statute in domestic law;

NOW BE IT ENACTED by (Parliament) of (name of country) as follows:

Part I—Preliminary

1 Short title

This Act may be cited as the International Criminal Court Act (year)

2 Act to bind the (Crown/Republic)¹

This Act shall bind the (Crown/Republic) and shall apply to persons in the public service of the (Crown/Republic) and to property held for the purposes of the public service of the (Crown/Republic), in all respects, as it applies to other persons and property.

3 Interpretation

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

“the Agreement on the Privileges and Immunities of the ICC” means the agreement set out in Schedule 2 to this Act;

“crime within the jurisdiction of the ICC” means

- (a) a crime over which the ICC has jurisdiction under article 5 of the Statute; or
- (b) an offence against the administration of justice over which the ICC has jurisdiction under article 70 of the Statute;

“ICC” means the International Criminal Court established under the Statute;

“ICC prisoner” means a person on whom a sentence of imprisonment has been imposed by the ICC and includes a person who is held in custody at the request of the ICC during a sitting of the ICC in (name of country);

“Minister” means the Minister of

“Prescribed” means prescribed by regulations made under this Act;

“Pre-Trial Chamber” means the Pre-Trial Chamber of the ICC;

“Property” means movable or immovable property of every description, whether situated in (name of country) or elsewhere and whether tangible or intangible; and includes an interest in any such movable or immovable property;

“Prosecutor” means the Prosecutor of the ICC;

“Restraining order” means an order prohibiting any person from dealing in the property specified in the order other than in accordance with the conditions and exceptions specified in the order;

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

¹ See discussion under Part XXVI of the Report on Sovereign Immunity and Clause 47 of the drafting instructions.

“Seizing order” means an order authorizing a police officer to search for any property and to seize the property if found or any other property that the police officer believes on reasonable grounds may relate to the request from the ICC;

“Statute” means the Rome Statute of the ICC set out in Schedule 1 to this Act;

“Trial Chamber” means the Trial Chamber of the ICC.

[Optional Alternative Definition (to be included if employing optional alternative offence provisions under section 5, 6 or 7)

“conventional international law” means a convention, treaty or other international agreement to which (name of country) is a party and for the time being in force;]

(2) For the purposes of this Act—

- (a) a reference in this Act to a request by the ICC for assistance includes a reference to a request by the ICC for co-operation;
- (b) a reference in this Act to a request by the ICC for assistance under a specified provision or in relation to a particular matter includes a reference to a request by the ICC for co-operation under that provision or in relation to that matter;
- (c) a reference in this Act to a figure in brackets immediately following the number of an article of the Statute is a reference to the paragraph of that article with the number corresponding to the figure in brackets;
- (d) a reference in this Act to a sentence of imprisonment imposed by the ICC includes a reference to a sentence of imprisonment extended by the ICC (whether for the non-payment of a fine or otherwise).

4 Obligations imposed by Statute or Rules

Where any provision of the Statute or the Rules confers or imposes a power or duty on, or assigns a function to, a State including but not limited to a power, duty or function relating to the execution of a request for assistance from the ICC, that power, duty, or function may, unless there is provision to the contrary in this Act, be exercised, performed and discharged by the Minister on behalf of the Government of (name of country).

Part II—International Crimes and Offences Against the Administration of Justice

*International Crimes*²

5 Genocide

- (1) Every person who, in (name of country) or elsewhere—
 - (a) commits genocide; or
 - (b) conspires or agrees with any person to commit genocide, whether that genocide is to be committed in (name of country) or elsewhere,
shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to the penalty specified in subsection (3).
- (2) For the purposes of this section, “genocide” is an act referred to in article 6 of the Statute.³

Option 1

- (3) The penalty for the offence referred to in subsection (1) shall—
 - (a) if the offence involves the willful killing of a person, be the same as the penalty for murder prescribed by the law of (name of country); and
 - (b) in any other case, be imprisonment for a term not exceeding 30 years or a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

OR

Option 2

- (3) The penalty for an offence referred to sub section (1) shall be (penalty consistent with domestic law).

[OPTIONAL ALTERNATIVE OFFENCE PROVISION ⁴

- (1) *Every person who, in (name of country) or elsewhere—*
 - (a) *commits genocide;*

² See discussion in the Report of offences and penalties for core crimes in Part II on Core Crimes – Substance and Part IV on Core Crimes – Penalties and Clauses 1 and 3 of the drafting instructions.

³ The intention of subparagraph 2 of this section and sections 6 and 7 is to incorporate the crime definitions by reference to the Statute. If there are concerns about the sufficiency of incorporation by reference, the text of the Statute definitions can be replicated in the legislation.

⁴ In respect of the optional alternative offence provisions in sections 5, 6 and 7 see discussion in paragraph 7 of the Report on adopting a “living” definition.

- (b) *conspires or agrees with any person to commit genocide, whether that genocide is to be committed in (name of country) or elsewhere, shall be guilty of an offence and shall be liable, after conviction after trial on indictment, to the penalty specified in subsection (3).*
- (2) *For the purposes of this section, “genocide” is an act specified in article 6 of the Statute and includes any other act which, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of it being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.)].*

6 Crimes against humanity

- (1) Every person who, in (name of country) or elsewhere, commits a crime against humanity shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to the penalty specified in subsection (3).
- (2) For the purposes of this section, a “crime against humanity” is an act specified in article 7 of the Statute.

Option 1

- (3) The penalty for the offence referred to in subsection (1) shall—
- (a) if the offence involves the willful killing of a person, be the same as the penalty for murder prescribed by the law of (name of country); and
- (b) in any other case, be imprisonment for a term not exceeding 30 years or a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

OR

Option 2

- (3) The penalty for an offence referred to in subsection (1) shall be (penalty consistent with domestic law).

[OPTIONAL ALTERNATIVE OFFENCE PROVISION

- (1) *Every person who, in (name of country) or elsewhere, commits a crime against humanity shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to the penalty specified in subsection (3).*
- (2) *For the purposes of this section, “crime against humanity” is an act specified in article 7 of the Statute and includes any other act which, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of it being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission]*

7 War crimes

- (1) Every person who, in (name of country) or elsewhere, commits a war crime shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to the penalty specified in subsection (3).
- (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 August 12, 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).

Option 1

- (3) The penalty for an offence referred to in subsection (1) shall—
 - (a) if the offence involves the willful killing of a person, be the same as the penalty for murder prescribed by the law of (name of country); and
 - (b) in any other case, be imprisonment for a term not exceeding 30 years or a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

OR

Option 2

- (3) The penalty for an offence referred to subsection (1) shall be (penalty consistent with domestic law)

[OPTIONAL ALTERNATIVE OFFENCE PROVISION

- (1) *Every person who, in (name of country) or elsewhere, commits a war crime shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to the penalty specified in subsection (3).*
- (2) *For the purposes of this section, a “war crime” means an act specified in article 8(2) of the Statute and any other act committed during an armed conflict which, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission).]*

[OPTIONAL ADDITIONAL PROVISION

7A Other violations of the Geneva Conventions⁵

- (1) Every person who, in the course of an international armed conflict or an armed conflict not of an international character, commits any act in violation of the Geneva Conventions of 1949 or the Additional Protocol of 1977 (not being an act specified in section 7 (2), shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to the penalty specified in subsection (2).
- (2) The penalty for an offence referred to in subsection (1) shall—
 - (a) if the offence involves the willful killing of a person, be the same as the penalty for murder prescribed by the law of (name of country); and
 - (b) in any other case, be imprisonment for life or a term not exceeding 30 years or a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.]

Interpretation and General Principles

8 Interpretation of articles 6, 7 and 8 of the Statute⁶

In interpreting and applying the provisions of articles 6, 7 and 8 of the Statute, the court shall take into account any elements of crime adopted and amended under article 9 of the Statute.

9 Defences to offences under section 5, 6 or 7⁷

Option 1

A person charged with an offence under section 5, 6 or 7 may rely on any defence, excuse or justification available to him or her under the law of (name of country).

OR

Option 2

- (1) A person charged with an offence under section 5, 6 or 7 may rely on any defence, excuse or justification available to him or her under the law of (name of country) or under international law.
- (2) In the case of an inconsistency between a provision of the law of (name of country) and a principle or provision of international law, the principle or provision of international law shall prevail.

OR

⁵ See discussion of implementing other international obligations in paragraph 7 of the Report.

⁶ See discussion of interpretive provisions under Part XIII of the Report on General Interpretative Provisions.

⁷ See discussion of applicable law for defences under paragraphs 63-67 of the Report and Clauses 17 and 18 of the drafting instructions.

Option 3

- (1) Subject to subsection 3, a person charged with an offence under section 5, 6 or 7 may rely on any defence, excuse or justification available to him or her under the law of (name of country) or under international law.
- (2) In the case of an inconsistency between the law of (name of country) and a principle or provision of international law, the principle or provision of international law shall prevail.
- (3) It shall not be a defence to an offence under section 5 or 6 or 7 for the person charged with the offence to plead that the act constituting the offence was committed in obedience to, or in conformity with, the law in force at the time, and in the place at which, such act was alleged to have been committed.

10 Obedience to superior orders not a defence to offences under sections 5, 6 or 7⁸

Option 1

- (1) Notwithstanding section 9, it shall not be a defence to an offence under section 5 or 6 or 7 for the person charged with the offence to plead that he or she committed the act constituting such offence pursuant to an order by a Government or a superior, whether military or civilian unless—
 - (a) the person was under a legal obligation to obey the order of the Government or the superior in question;
 - (b) the person did not know that the order was unlawful; and
 - (c) the order was not manifestly unlawful.
- (2) For the purposes of this section, orders to commit genocide or a crime against humanity shall be regarded as being manifestly unlawful.

OR

Option 2

Notwithstanding section 9, it shall not be a defence to an offence under section 5 or 6 or 7 for the person charged with the offence to plead that he or she committed the act constituting the offence pursuant to an order by a Government or a superior, whether military or civilian.

OR

Option 3

(Include no provision on superior orders in which case any existing defence available under domestic law relating to obedience to superior orders will apply and if there is none, no defence will be available. However if Option 2 under section 9 is included and international law defences are incorporated then the defence as set out in Article 33 of the Rome Statute will be incorporated unless specifically excluded.)

⁸ See discussion of superior orders under paragraphs 69-71 of the Report and Clause 19 of the drafting instructions.

11 Responsibility of Commanders & Other Superiors⁹

- (1) A military commander or a person effectively acting as a military commander shall be responsible for an offence under section 5 or 6 or 7 committed by forces under his or her effective command and control or as the case may be, under his or her effective authority and control, as a result of his or her failure to exercise control properly over such forces where—
 - (a) he or she either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offence; and
 - (b) he or she failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation or prosecution.
- (2) With respect to superior and subordinate relationships not described in subsection (1), a superior shall be responsible for an offence under section 5 or 6 or 7 committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control over such subordinates where—
 - (a) he or she either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offence;
 - (b) the offences concerned activities that were within his or her effective responsibility and control; and
 - (c) he or she failed to take 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.
- (3) A person responsible under this section for an offence under section 5 or 6 or 7 shall, for the purposes of this Part of this Act, be regarded as having aided, abetted, counseled or procured the commission of that offence.

OPTIONAL ADDITIONAL PROVISION

[11A *Pleas of Autrofois Acquit & Convict*¹⁰

- (1) *Where a person is alleged to have committed an act which constitutes an offence under section 5 or 6 or 7 and that person has been tried and dealt with by a court in another state outside (name of country) in respect of that offence in such a manner that, had he or she been tried and dealt with in (name of country) for that offence he or she would have been able to plead autrofois acquit, autrofois convict or pardon, he or she shall be deemed to have been so tried and dealt with.*

⁹ See discussion of command responsibility under paragraphs 56-58 of the Report and Clause 15 of the drafting instructions.

¹⁰ See discussion of *ne bis in idem* in paragraphs 47-49 of the Report and Clause 13 of the drafting instructions.

- (2) *Notwithstanding anything in subsection (1), a person shall not be deemed to have been dealt with as provided for in that subsection, if he or she had been tried and dealt with in a court outside (name of country) and the proceedings in such court—*
- (a) *were for the purpose of shielding that person from criminal liability; or*
 - (b) *were not otherwise conducted independently or impartially in accordance with the norms of due process recognized by international law, and conducted in a manner that, in the circumstances, was inconsistent with an intention to bring the person to justice).]*

OPTIONAL ADDITIONAL PROVISION

[11B **Knowledge and intent**¹¹

- (1) *Unless otherwise provided in the Statute or the elements of crime, a person shall be regarded as having committed an act which constitutes an offence under section 5, 6 or 7 only if he or she has committed such act with intent and knowledge.*
- (2) *For the purposes of this section—*
- (a) *a person has intent—*
 - (i) *in relation to conduct, if he or she means to engage in such conduct;*
 - (ii) *in relation to a consequence, if he or she means to cause the consequence or is aware that it will occur in the ordinary course of events; and*
 - (b) *“knowledge” means awareness that a circumstance exists or that a consequence will occur in the ordinary course of events).]*

Jurisdiction and Procedure for offences under sections 5, 6 and 7

12 Temporal Jurisdiction for Offences under sections 5, 6 or 7^{12 13}

Option 1

Include no provision on temporal jurisdiction in which case by operation of law proceedings will be prospective only i.e. the Act will apply only to offences alleged to have been committed on or after the date on which this Act comes into force.

¹¹ See discussion on mental element in paragraphs 60-62 of the Report and Clause 16 of the drafting instructions.

¹² See discussion under Part III of the Report on Core Crimes—Temporal Jurisdiction and Clause 2 of the drafting instructions.

¹³ In some states treaties are self-implementing and become part of domestic law upon ratification. For those states it may be that no provision on temporal jurisdiction may be needed for the offence provisions if it is considered that the offences under the Rome Statute become offences under domestic law with ratification taking effect at that time. However given that the Rome Statute does not mandate the adoption of the offences under domestic law consideration needs to be given to whether additional legislation may be needed to create offences in those states even though treaties are generally self implementing.

OR

Option 2

Proceedings for an offence under section 5 or 6 or 7 may be instituted if the act or omission constituting the offence is alleged to have been committed—

- (a) on or after the date on which this Act comes into force; or
- (b) on or after July 1, 2002 and before the date on which this Act comes into force.

13 Jurisdiction to try offences under sections 5, 6 or 7¹⁴

Option 1

- (1) Where an act constituting an offence under section 5 or 6 or 7 is committed by any person outside the territory of (name of country), proceedings may be instituted against that person for that offence in (name of country), if—
 - (a) the person is a citizen or permanent resident of (name of country);
 - (b) the person has committed the offence against a citizen or permanent resident of (name of country); or
 - (c) the person is, after the commission of the offence, present in (name of country).

OR

Option 2

Proceedings may be instituted against any person for an offence under section 5 or 6 or 7 in (name of country), whether or not such person is a citizen or permanent resident of (name of country) and whether or not the act constituting such offence was committed within or outside the territory of (name of country).

14 Attorney General's consent required for prosecutions under sections 5, 6 or 7¹⁵

- (1) No proceedings for an offence under section 5 or 6 or 7 of this Act shall be instituted in any court in (name of country) except with the consent of [the Attorney General/ DPP].
- (2) Notwithstanding anything in subsection (1), a person charged with an offence under section 5 or 6 or 7 may be arrested, or a warrant for his or her arrest may be issued and executed, and he or she may be remanded in custody or on bail, even though the consent of the Attorney-General for the institution of proceedings against that person for that offence has not been obtained, but no further steps shall be taken in the proceedings until that consent has been obtained.

¹⁴ See discussion under Part V of the Report on Core Crimes – Jurisdiction to Prosecute and Clause 4 of the drafting instructions.

¹⁵ See discussion under Part V of the Report on Consent to Prosecution and Clause 5 of the drafting instructions.

OPTIONAL ADDITIONAL PROVISION

[(3) *Proceedings for an offence under section 5 or 6 or 7 may be conducted only by the Attorney General or counsel acting on his or her behalf.*.]

*Offences against administration of Justice*¹⁶

Option 1

Extend existing administration of justice offences relating to domestic courts and proceedings to the ICC and extend jurisdiction to nationals.

OR

Option 2

Create new offences based on the optional administration of justice offence provisions set out in sections 14A–14G

OPTIONAL ADMINISTRATION OF JUSTICE PROVISIONS

[14A *Corruption of Judge etc.*

- (1) *A Judge who, in (name of country) 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 to be done by that Judge in his or her judicial capacity; or*
 - (b) *to be done or to be omitted to be done by that Judge in his or her judicial capacity,*
shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to imprisonment for a term not exceeding years.
- (2) *A Judge, Registrar, Deputy Registrar, Prosecutor or Deputy Prosecutor who, in (name of country) 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 to be done by that Judge, Registrar, Deputy Registrar, Prosecutor, or Deputy Prosecutor, in his or her official capacity (other than an act or omission to which subsection (1) applies); or*
 - (b) *to be done or to be omitted to be done by that Judge, Registrar, Deputy Registrar, Prosecutor or Deputy Prosecutor in his or her official capacity (other than an act or omission to which subsection (1) applies),*
shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to imprisonment for a term not exceeding years.

¹⁶ See discussion under Part VII of the Report on Article 70—Administration of Justice Offences and Clause 6 of the drafting instructions.

(3) In this section and in sections 14B and 14G—

“Deputy Registrar” means a Deputy Registrar of the ICC;

“Judge” means a Judge of the ICC;

“Registrar” means the Registrar of the ICC

“Prosecutor” means the Prosecutor of the ICC and

“Deputy Prosecutor” means a Deputy Prosecutor of the iCC.

14B Bribery of Judge & c.

(1) Every person who, in (name of country) 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 shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to imprisonment for a term not exceeding years.

(2) Every person who, in (name of country) 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 or the Prosecutor or the Deputy Prosecutor in respect of an act or omission by that Judge, Registrar, Deputy Registrar, Prosecutor or Deputy Prosecutor in his or her official capacity (other than an act or omission to which subsection (1) applies) shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to imprisonment to a term not exceeding years).

14C Corruption and bribery of official of ICC

(1) An official of the ICC who, in (name of country) 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 to be done by that officer in his or her official capacity; or

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

shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to imprisonment for a term not exceeding years.

(2) Every person who, in (name of country) 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 shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to imprisonment for a term not exceeding years.

(3) In this section and in section 14G “official of the ICC” means a person employed under article 44 of the Statute.

14D 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 (name of country) as evidence on oath, would constitute perjury, shall be deemed to have given false evidence.
- (2) Every person, who in (name of country) or elsewhere, gives false evidence shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to imprisonment for a term not exceeding years.

14E Fabricating evidence before ICC

Every person who, in (name of country) or elsewhere, with intent to mislead the ICC, fabricates evidence by any means other than by the giving of false evidence shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to imprisonment for a term not exceeding years.

14F Conspiracy to defeat justice in ICC

Every person who, in (name of country) 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, shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to imprisonment for a term not exceeding years.

14G Interference with witnesses or officials

Every person who, in (name of country) 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, or a Deputy Registrar, the Prosecutor or a Deputy Prosecutor 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, a Deputy Registrar, the Prosecutor or a Deputy Prosecutor 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, a Deputy Registrar, the Prosecutor or a Deputy Prosecutor 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, shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to imprisonment to a term not exceeding years.]

15 Jurisdiction to try offences under sections 14A to 14G¹⁷

Option 1

- (1) Where an act constituting an offence under section 14A to 14G is committed by any person outside the territory of (name of country), proceedings may be instituted against that person for that offence in (name of country), if—
 - (a) the person is a citizen or permanent resident of (name of country);
 - (b) the person has committed the offence against a citizen or permanent resident of (name of country); or
 - (c) the person is, after the commission of the offence, present in (name of country).

OR

Option 2

Where an act constituting an offence under sections 14A to 14G is committed by any person outside the territory of (name of country) proceedings may be instituted against that person for that offence in (name of country) if that person is a citizen of (name of country).

16 Attorney General's consent required for prosecutions under sections 14A to 14G¹⁸

- (1) No proceedings for an offence under sections 14A to 14G shall be instituted in any court in (name of country) except with the consent of the [Attorney General/DPP].
- (2) Notwithstanding anything in subsection (1), a person charged with an offence under sections 14A to 14G may be arrested, or a warrant for his or her arrest may be issued and executed, and he or she may be remanded in custody or on bail, even though the consent of the Attorney-General for the institution of proceedings against that person for that offence has not been obtained, but no further steps shall be taken in the proceedings until that consent has been obtained.

General

OPTIONAL ADDITIONAL PROVISION

[16A Conspiracy¹⁹

Every person who conspires in (name of country) to commit an offence under this Part of this Act in or outside the territory of (name of country) or who conspires outside (name of country) to commit an offence under this Part of this Act in (name of country)

¹⁷ See discussion under Part VIII of the Report on Jurisdiction for the Administration of Justice Offences and Clause 7 of the drafting instructions.

¹⁸ See discussion under Part X of the Report on Consent to Prosecution of Administration of Justice Offences and Clause 9 of the drafting instructions.

¹⁹ With reference to 16A and 16B see discussion under Part XI of the Report on Ancillary Offences for the Administration of Justice Offences and Clause 10 of the drafting instructions.

shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to the same penalty as the penalty prescribed for the first mentioned offence).]

OPTIONAL ADDITIONAL PROVISION

[16B Aiding and abetting &c.

Every person who—

- (a) attempts to commit,*
 - (b) counsels or procures the commission of,*
 - (c) orders, incites, solicits or induces the commission of,*
 - (d) aids or abets or otherwise assists in the commission or attempted commission of,*
 - (e) is an accessory after the fact in relation to,*
 - (f) intentionally contributes in any other way to the commission or attempted commission of,*
- an offence under this Part of this Act shall be guilty of an offence and shall be liable, on conviction after trial on indictment, to the same penalty as the penalty prescribed for the first mentioned offence.]*

17 Offences to be tried on indictment²⁰

Every person charged with an offence under this Part of this Act shall be tried on indictment.

18 Trial of offences committed outside (name of country)²¹

Where an act constituting an offence under this Part of this Act is alleged to have been committed by a person outside the territory of (name of country) proceedings may be instituted against such person for that offence in any court in (name of country) having jurisdiction to try offences on indictment, and such court shall have all the powers to try such offence as if the offence had been committed within the territorial limits of the courts jurisdiction.

19 Interpretation

For the avoidance of doubt it is hereby declared that “an offence under this Part of this Act” means an offence under section 5, 6, 7, (14A, 14B, 14C, 14D, 14E, or 14F, or 14G).

²⁰ See discussion in Part XII of the Report on Place of Trial and Relevant Court and Procedure and Clause 11 of the drafting instructions.

²¹ See discussion in Part XII of the Report on Place of Trial and Relevant Court and Procedure and Clause 11 of the drafting instructions.

Part III—General Provisions Relating to Requests for Assistance²²

20 Application²³

- (1) This Part of this Act shall apply to all requests for assistance received under Parts, IV, V and VI.
- (2) Parts IV, V, and VII shall apply to every request made by the ICC, whether the acts under investigation or subject to prosecution are alleged to have been committed before or after the date on which this Act comes into force.
- (3) Part VI shall apply to the enforcement of every sentence, penalty or order of the ICC, whether the offence to which the sentence, penalty or order relates was committed before or after the date on which this Act comes into force.
- (4) Part VIII shall apply to every investigation or sitting of the ICC whether the alleged offence or offence to which the investigation or sitting relates was committed before or after the date on which this Act comes into force.

21 Requests for assistance

A request for assistance is a request made by the ICC to the Minister, in respect of an investigation or prosecution that the Prosecutor is conducting or proposing to conduct, in relation to a crime within the jurisdiction of the ICC, for:

- (a) assistance in respect of any one or more of the following, 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;
 - (ii) the identification and whereabouts of persons or the location of things;
 - (iii) the taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the ICC;
 - (iv) the questioning of any person being investigated or prosecuted;
 - (v) the service of documents, including judicial documents;
 - (vi) facilitating the voluntary appearance of persons (other than prisoners) as witnesses or experts before the ICC;
 - (vii) the temporary transfer of prisoners;

²² See discussion in paragraphs 73, 74 and 75 of the Report on general provisions for requests for assistance and clause 21 of the drafting instructions.

²³ See comments on jurisdiction regarding the cooperation regime in paragraph 72 of the Report and Clause 20 of the drafting instructions.

- (viii) the examination of places or sites, including the exhumation and examination of gravesites;
 - (ix) the execution of searches and seizures;
 - (x) the provision of records and documents, including official records and documents;
 - (xi) the protection of victims and witnesses and the preservation of evidence;
 - (xii) the identification, tracing and restraining, or seizure of proceeds of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and
- (b) any other type of assistance that is not prohibited by the law of (name of country) with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the ICC and the enforcement of orders of the ICC made after convictions for such crimes.

22 Making of requests

- (1) Subject to subsection (2), a request for assistance shall be made in writing, directly to the Minister.
- (2) A request for provisional arrest under article 92 of the Statute or an urgent request for other forms of assistance under article 93 of the Statute may be made using any medium capable of delivering a written record including facsimile or electronic mail.
- (3) Where a request is made, or supporting documents transmitted, by the use of facsimile or electronic mail, this Act shall apply as if the documents so sent were the originals and a copy of the facsimile or electronic mail shall be receivable in evidence.
- (4) If a request is made by the use of facsimile or electronic mail in accordance with subsection (2), it shall be followed by a written request under subsection (1).

23 Confidentiality of requests

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

24 Execution of requests²⁴

A request for assistance shall be executed in the manner specified in the request, including following any procedure outlined therein and permitting the presence and participation of persons specified in the request in the execution process, unless execution in this manner is prohibited under the law of (*name of country*).

²⁴ See discussion on execution of requests in paragraph 106 of the Report and Clause 33 of the drafting instructions.

25 State or Diplomatic immunity²⁵

- (1) Any state or diplomatic immunity attaching to a person or premises by reason of a connection with a State Party to the ICC Statute does not prevent proceedings under Parts III-VIII of this Act, in relation to that person.
- (2) If the Minister is of the opinion that a request for provisional arrest, arrest and surrender or other assistance would require (name of country) to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of another state which is not a party to the Statute, he or she shall consult with the ICC and request a determination as to whether article 98(1) of the Statute applies.
- (3) If the Minister is of the opinion that a request for provisional arrest or arrest and surrender would require (name of country) to act inconsistently with its obligations under an international agreement with a state which is not a party to the Statute pursuant to which the consent of the sending state is required to surrender a person of that State to the ICC, he or she shall consult with the ICC and request a determination as to whether article 98(2) of the Statute applies.

26 Response to requests

- (1) The Minister shall notify the ICC without undue delay, of his or her response to a request for assistance and the outcome of any action that has been taken to execute the request.
- (2) Before deciding to postpone or refuse a request the Minister shall consult with the ICC to ascertain whether the assistance sought could be provided subject to conditions or at a later date or in an alternative manner.
- (3) If the Minister decides, in accordance with the Statute and this Act, to refuse or postpone the assistance requested, in whole or in part, the notification to the ICC shall set out the reasons for the decision.
- (4) If the request for assistance cannot be executed for any other reason, the Minister shall set out in the notification to the ICC, the reasons for the inability to execute the request.
- (5) In the case of an urgent request for assistance, any documents or evidence transmitted in response shall, if the ICC so requests, be sent expeditiously to it.

²⁵ See discussion under Part XXV of the Report on Conflicting Obligations under International Law (Article 98) and Clause 46 of the drafting instructions.

Part IV—Arrest and Surrender of Person to ICC²⁶

27 Application of this Part

This Part of this Act applies to requests for assistance from the ICC, for the arrest and surrender, or the provisional arrest, of a person.

28 Request for arrest and surrender

- (1) Subject to sections 29 and 30, when the Minister receives a request for arrest and surrender of a person alleged to have committed a crime within the jurisdiction of the ICC or on whom a judgment of conviction has been imposed by the ICC the Minister shall, if satisfied that the request is supported by the information and documents required by article 91 of the Statute—
 - (a) transmit the request and any supporting documents to (a magistrate); and
 - (b) notify (the Director of Public Prosecutions).
- (2) Upon receipt of a request under subsection (1) (a) (the magistrate) shall—
 - (a) if the request is accompanied by a warrant of arrest issued by the ICC, endorse the warrant for execution by a police officer in any part of (name of country); or
 - (b) if the request is accompanied by a judgment of conviction of the ICC, issue a warrant for the arrest of the person to whom the judgment relates, for execution by a police officer in any part of (name of country).

29 Refusal of request for arrest and surrender²⁷

- (1) The Minister shall refuse a request for arrest and surrender, at any time before the surrender of the person, only if—
 - (a) the ICC has determined that the case to which the request relates is inadmissible on any ground; or
 - (b) the ICC advises that it does not intend to proceed with the request for any reason, including but not limited to a determination by the ICC that article 98 of the Statute applies to the execution of the request.
- (2) The Minister may refuse a request for arrest and surrender of a person, at any time before the surrender of the person only if—
 - (a) there is a competing request from one or more States not party to the Statute for the extradition of the person for the same conduct as that which constitutes the crime

²⁶ See generally Part XVI of the Report on Arrest and Surrender.

²⁷ See discussion of grounds of refusal in paragraphs 96 and 97 of the Report and Clause 28 of the drafting instructions.

for which the ICC seeks the person's surrender and a decision to extradite to a State is made in accordance with article 90 of the Statute and section 31; or

- (b) there is a competing request from one or more States not party to the Statute for the extradition of the person for different conduct from that which constitutes the crime for which the ICC requests the person's surrender and a decision to extradite to a State is made in accordance with article 90 of the Statute and section 31.
- (3) If the Minister decides to refuse a request for arrest and surrender in accordance with subsection (1) or (2) after he or she has transmitted a request under section 28, he or she shall notify (the magistrate) who shall cancel any warrant or delivery order issued by him or her and ensure the person's release from custody or conditions prescribed in relation to bail arising from that warrant or order.

30 Postponement of execution of request for arrest and surrender²⁸

- (1) The Minister may postpone the execution of a request for arrest and surrender at any time before the surrender of the person only if—
- (a) a determination on admissibility is pending before the ICC;
 - (b) the request would interfere with an investigation or prosecution in (name of country) involving a different offence from that for which surrender to the ICC is requested;
 - (c) the Minister is consulting with the ICC under section 25 as to whether or not article 98 of the Statute applies to the execution of the request.
- (2) If execution of the request for arrest and surrender is postponed under subsection (1) (a) and the ICC decides that the case is admissible, the Minister shall proceed with the execution of the request as soon as possible after the decision of the ICC.
- (3) If the execution of the request for arrest and surrender is postponed under subsection (1)(b), the Minister shall consult with the ICC and agree on a period of time for postponement of the execution of the request in accordance with article 94 of the Statute; and the Minister shall proceed with execution of the request after the lapse of that period, unless otherwise agreed with the ICC.
- (4) If execution of the request for arrest and surrender is postponed under subsection (1)(c) and the ICC decides to proceed with the request, the Minister shall proceed with the execution of the request as soon as possible after the decision of the ICC.
- (5) If the Minister decides to postpone execution of a request for arrest and surrender in accordance with this section after he or she has transmitted a request under section 28, he or she shall—

²⁸ See discussion on postponement of execution of requests in paragraph 95 of the Report and Clause 27 of the drafting instructions.

- (a) notify (the magistrate) of the postponement and the magistrate shall adjourn any pending proceedings until further notice from the Minister; and
 - (b) notify (the magistrate) at the relevant time whether the execution of the request is to proceed or not, and (the magistrate) shall proceed accordingly with the execution of the request or the discharge of the person.
- (6) A decision by the Minister to postpone the execution of a request shall not affect the validity of any act that has been done or any warrant or order made under this Part of this Act prior to the decision, and any such warrant or order shall remain in force unless cancelled by (the magistrate) in accordance with subsection (5) (b).

31 Competing requests²⁹

- (1) Where a request for arrest and surrender of a person is received from the ICC and one or more states also request the extradition of the person for the same conduct as that which constitutes the crime for which ICC seeks the person's surrender, the Minister—
- (a) shall notify ICC and the requesting state of that fact; and
 - (b) shall determine whether the person is to be surrendered to the ICC or to the requesting state.
- (2) Where the request for extradition of a person for the same conduct as that which constitutes the crime for which the ICC seeks the persons surrender is made by a state which is a party to the Statute, priority shall be given to the request from the ICC if the ICC has determined under articles 18 or 19 of the Statute that the case is admissible; and where an admissibility decision is pending before the ICC, no person shall be extradited under the laws relating to extradition until the ICC makes a decision on admissibility and determines that the case is inadmissible.
- (3) Where the request for extradition of a person for the same conduct as that which constitutes the crime for which the ICC seeks the persons surrender is made by a state which is not a party to the Statute, priority shall be given to the request for arrest and surrender from the ICC, if (name of country) is not under an international obligation to extradite the person to the requesting state and the ICC has determined under article 18 or 19 of the Statute that the case is admissible.
- (4) Where the request for extradition of a person for the same conduct as that which constitutes the crime for which the ICC seeks the persons surrender is made by a state which is not a party to the Statute and (name of country) is under an international obligation to extradite the person to the requesting state and the ICC has determined under article 18 or 19 of the Statute that the case is admissible, the Minister shall determine whether the person is to be surrendered to the ICC or extradited taking into consideration all the relevant factors including but not limited to, the respective dates of the requests, the

²⁹ See discussion of competing requests in paragraphs 91 and 92 of the Report and Clause 24 of the drafting instructions.

interests of the requesting state including, where relevant, whether the crime was committed in its territory, the nationality of the victims and the person sought to be extradited, and the possibility of subsequent surrender between the ICC and the requesting state.

- (5) Where a request for arrest and surrender is received from the ICC and one or more states also request the extradition of the person for conduct other than that which constitutes the crime for which ICC seeks the person's surrender, priority shall be given to the request from the ICC if (name of country) is not under an international obligation to extradite the person to any requesting state.
- (6) Where a request for surrender is received from the ICC and one or more states also request the extradition of the person for conduct other than that which constitutes the crime for which ICC seeks the person's surrender, and (name of country) is under an international obligation to extradite to one or more of the requesting states, the Minister shall determine whether the person is to be surrendered to the ICC or extradited to a requesting state taking into consideration all the relevant factors referred to in subsection (4) as well as the relative nature and gravity of the conduct in question.

32 Official capacity not a bar to arrest and surrender³⁰

Subject to section 25, the existence of any immunity or special procedural rule attaching, under domestic or international law, to a person shall not be a ground for—

- (a) refusing or postponing a request by the ICC for the arrest and surrender of that person;
- (b) holding that that person is ineligible for arrest and surrender to the ICC.

Provisional Arrest in Urgent Cases

33 Provisional arrest³¹

- (1) Where the Minister receives a request from the ICC for provisional arrest of a person under article 92 of the Statute, he or she shall, if satisfied that the request is supported by the information required by paragraph (2) of article 92 of the Statute, transmit the request and any supporting documents to the (Inspector General of Police) with a direction for the arrest of the person.
- (2) The Minister shall transmit a copy of the direction to (the Director of Public Prosecutions).
- (3) Where (the Inspector General of Police) receives a direction from the Minister under subsection (1) he or she shall instruct the police to carry out the direction.

³⁰ See discussion under Part XXVI of the Report on Sovereign Immunity and Clause 47 of the drafting instructions.

³¹ See general discussion of provisional arrest in paragraphs 78 and 79 of the Report.

- (4) (The Inspector General of Police) shall, after carrying out the direction, notify the Minister and (the Director of Public Prosecutions) that he or she has done so.
- (5) Where a person has been provisionally arrested under this section, and the Minister receives the formal request for arrest and surrender as provided for in article 91 of the Statute, the Minister shall immediately send a notice to (the magistrate) and proceed with the transmission of the request in accordance with section 28.

34 Rights of arrested person³²

- (1) A person arrested under a warrant obtained in accordance with section 28 or pursuant to a direction under section 33 shall be brought before (a magistrate) within 48 hours.
- (2) (The magistrate) may, of his or her own motion or at the request of the person, determine—
 - (a) whether the person was lawfully arrested in accordance with the warrant or the direction; and
 - (b) whether the person's rights have been respected in the course of the arrest.
- (3) In making a determination under subsection (2) (the magistrate) shall apply the principles applicable to judicial review.
- (4) If (the magistrate) determines that—
 - (a) the person was not lawfully arrested; or
 - (b) the person's rights were not respected,
(the magistrate) shall make a declaration to that effect with any explanation required but may not grant any other form of relief.
- (5) (The magistrate) shall send any declaration made under subsection (4) to the Minister, and the Minister shall transmit it to the ICC.

35 Person arrested on a provisional warrant

- (1) Where a person has been provisionally arrested under section 33, (the magistrate) shall not proceed under section 37 until—
 - (a) (the magistrate) has received a notice from the Minister that the request for surrender and supporting documents required under article 91 of the Statute have been received by the Minister; and
 - (b) the relevant documents have been transmitted to (the magistrate) by the Minister under section 33(5).
- (2) Pending the receipt of the notice and documents under subsection (1), (the magistrate) may adjourn the proceedings from time to time.

³² See discussion of rights upon arrest in paragraphs 78 and 79 of the Report.

- (3) If (the magistrate) has not received the notice specified in subsection (1)(a) within 60 days of the date of the provisional arrest of the person, he or she shall release the person from custody or on bail unless satisfied that the period for submission of the notice should be extended in the interests of justice.
- (4) The release of a person under subsection (3) shall be without prejudice to any subsequent proceedings that may be brought for the arrest and surrender of the person to the ICC whether for the same facts and offence or not.

*Bail*³³

36 Application for bail

- (1) A person brought before (a magistrate) under section 34 may make an application for bail.
- (2) Where an application for bail is made under subsection (1), (the magistrate) shall adjourn the hearing of the application and notify the Minister.
- (3) The Minister shall, on receipt of a notification under subsection (2), consult immediately with the ICC to obtain any recommendations from the Pre-Trial Chamber under article 59(5) of the Statute, and shall convey those recommendations to (the magistrate).
- (4) (The magistrate) shall give full consideration to any recommendations conveyed to him or her under subsection (3) before making a decision on the application for bail.
- (5) Where no recommendations are received from the ICC within seven days of the Minister being notified of the application for bail, (the magistrate) may proceed to hear the application.
- (6) (A magistrate) shall not release a person brought before him or her under section 34 on bail, unless (the magistrate) is satisfied that, having regard to the crimes alleged to have been committed by that person, there are urgent and exceptional circumstances that justify the persons release on bail and that there are sufficient safeguards to ensure that (name of country) will be able to fulfill its obligations under the Statute to surrender such person to the ICC.

*Surrender*³⁴

37 Surrender hearing

- (1) (The magistrate) before whom a person arrested under section 28 or 33 is brought shall satisfy himself or herself that—
 - (a) there is a warrant of arrest issued by the ICC or a judgment of conviction by the ICC, in respect of that person; and

³³ See discussion on interim release in paragraphs 80 and 81 of the Report.

³⁴ See discussion of evidence and structure for surrender procedure in paragraphs 83 to 86 of the Report.

- (b) the warrant or judgment relates to the person before (the magistrate).
- (2) Upon the magistrate being satisfied of the matters referred to in paragraphs (a) and (b) of subsection (1) with respect to the arrested person, (the magistrate) shall, subject to section 35, issue a delivery order in respect of that person in accordance with article 59(7) of the Statute.
- (3) Where (the magistrate) issues a delivery order under subsection (2) he or she shall —
- (a) transmit the delivery order to (the Inspector General of Police) for execution;
 - (b) commit the person to custody pending the execution of the delivery order by (the Inspector General of Police);
 - (c) send a copy of the delivery order to the Minister; and
 - (d) inform the person in ordinary language of his or her right to make an application to the appropriate court for a mandate in the nature of a writ of habeas corpus.
- (4) If the person who is the subject of a delivery order—
- (a) is in custody, (the magistrate) shall order the continued detention of the person under the delivery order and notify (the Commissioner of Prisons) and (the Superintendent of the prison), of the delivery order; or
 - (b) is not in custody, the magistrate shall, subject to any order with regard to bail, commit him or her to custody and shall notify (the Commissioner of Prisons) and (the Superintendent of the prison).
- (5) Subject to subsection (6), (the Inspector General of Police) shall make arrangements with the ICC for the execution of the delivery order as soon as possible, and shall notify the Minister when the person has been surrendered to the ICC or the state of enforcement, in execution of the delivery order.
- (6) Subject to section 39, (the Inspector General of Police) shall not make arrangements with the ICC for the execution of the delivery order—
- (a) until after the expiration of the period prescribed by law for making an application for habeas corpus by the person to whom the order relates; or
 - (b) if an application for habeas corpus is made by such person within such period, until after the final determination of the application³⁵.
- (7) A delivery order issued under this section is sufficient authority for holding the person specified in the order in custody until his or her delivery to the ICC.
- (8) In deciding whether to make a delivery order under this section³⁶ —

³⁵ If the general law of the country does not provide for habeas corpus as an automatic right, a statutory provision giving the person a right to make such an application should be included. (See paragraph 88 of the Report)

³⁶ See discussion on guidance on the role of the judge in the surrender proceedings in paragraph 90 of the Report and Clause 23 of the drafting instructions.

- (a) (the magistrate) shall not require evidence to establish that the trial of the person for the crime that he or she is alleged to have committed is justified before the ICC or would be justified under the law of (name of country) if the act constituting such crime had been committed in (name of country); and
 - (b) (the magistrate) shall not receive evidence with respect to, nor adjudicate on, any claim by the person that he or she has been previously tried or convicted for the conduct for which the ICC seeks surrender of the person.
- (9) If the person makes a claim, under subsection (8) (b), (the magistrate) shall advise the Minister of this claim and the Minister shall transmit that information to the ICC.

38 Magistrate not to inquire into validity of warrant³⁷

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

39 Surrender by consent

- (1) A person may at any time notify (a magistrate) that he or she consents to being surrendered to the ICC for the crime or crimes for which the ICC seeks the surrender of the person.
- (2) (The magistrate) may accept the notification of consent under subsection (1) if—
 - (a) the person is before (the magistrate) when notification of the consent to surrender is given; and
 - (b) (the magistrate) is satisfied that the person has freely consented to the surrender in full knowledge of its consequences.
- (3) Nothing in this section shall be construed as preventing a person, in respect of whom (the magistrate) has made a delivery order, from subsequently notifying the Minister that he or she consents to surrender.
- (4) For the avoidance of doubt a person arrested under a provisional warrant may consent to surrender before a request for surrender is received, in which case (the magistrate) may make an order under subsection (5).
- (5) Where the consent to surrender has been given, (the magistrate) shall immediately make a delivery order in the same terms as section 37(2) and such of the provisions of sections 37 and 38 as are applicable shall thereupon apply.

³⁷ See discussion of Guidance on the Role of the Judge in Surrender Proceedings in paragraph 90 of the Report and Clause 23 of the drafting instructions.

40 Effect of delivery order

- (1) A delivery order is sufficient authority for any person to receive the person to whom the order relates, keep him or her in custody and convey him or her to the place where he or she is to be delivered up into the custody of the ICC or of the state of enforcement, in accordance with arrangements made by (the Inspector General of Police).
- (2) A person in respect of whom a delivery order is in force shall be deemed to be in legal custody pending delivery up under the order.
- (3) If a person in respect of whom a delivery order is in force escapes or is unlawfully at large, he or she may be arrested without warrant and taken to the place where he or she is required to be or to be taken.

41 Procedure where magistrate refuses order³⁸

- (1) Where (the magistrate) refuses to make a delivery order under section 37, he or she shall make an order remanding the person arrested in custody for fourteen days, and shall notify the Minister of his or her decision and of the grounds for it.
- (2) The Minister may appeal to the (High Court) (highest appeal court) against the decision by (the magistrate) refusing to make a delivery order.
- (3) Where (the magistrate) is informed that an appeal is to be taken against the decision, the order remanding the person arrested shall continue to have effect until the appeal is determined and the person is either discharged or the delivery order is executed.
- (4) Where (the High Court) allows the appeal, it may make a delivery order or remit the case to the magistrate to make a delivery order in accordance with the decision of (the High Court).
- (5) Where (the High Court) dismisses the appeal, the person shall be discharged in accordance with the decision of (the High Court).

42 Discharge of person not delivered up

- (1) If the person in respect of whom a delivery order has been made is not delivered up under the order within 60 days after the expiration of the period prescribed by law for making an application for habeas corpus or, if such an application is made within 60 days, after the final determination of the application, that person or someone duly authorized by him or her may make an application to (the magistrate) who made the delivery order, for the persons discharge.
- (2) On an application made under this section, (the magistrate) shall order the persons discharge unless reasonable cause is shown for the delay.

³⁸ See discussion on appeals in paragraphs 87 to 89 of the Report and Clause 22 of the drafting instructions.

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

43 Discharge of person no longer required to be surrendered

- (1) Where the ICC informs the Minister that the person arrested upon the request of the ICC is no longer required to be surrendered, the Minister shall notify (the magistrate) of that fact and (the magistrate) shall on receipt of the notification make an order for the discharge of the person.
- (2) The discharge of a person under subsection (1) shall be without prejudice to any subsequent proceedings that may be brought for the arrest and surrender of the person to the ICC whether for the same facts and offence or not.

44 Request for temporary surrender³⁹

- (1) Where a request for arrest and surrender by the ICC relates to a crime within the jurisdiction of the ICC but the person is subject to proceedings for a different offence in (name of country) which have not been finally disposed of or is liable to serve a sentence of imprisonment imposed by a court in (name of country) for a different offence, the Minister may authorize the temporary transfer of that person to the ICC.
- (2) The Minister may, before making an authorization under subsection (1), seek an undertaking from the ICC that the person shall be returned on completion of proceedings before the ICC or service of sentence imposed by the ICC, as the case may be.
- (3) Subsections (2), (3), (4) and (5) of section 59 shall apply to an authorization under subsection (1) with any necessary modifications.

45 Request for transit of a person to ICC⁴⁰

- (1) Subject to subsection (4), where the Minister receives a request from the ICC for transit through the territory (name of country) of a person—
 - (a) being surrendered or transferred by another state to the ICC;
 - (b) being transferred from the ICC to a State of enforcement;
 - (c) being transferred to or from the State of enforcement as a result of a review hearing or other appearance by the person before the ICC,

the Minister shall accede to the request for transit and the person shall be deemed, during transit, to be in lawful custody and may be held in any police station, prison or any other

³⁹ See discussion on temporary surrender in paragraph 93 of the Report and Clause 25 of the drafting instructions.

⁴⁰ See discussion on transit in paragraph 94 of the Report and Clause 26 of the drafting instructions.

place of detention which may be designated by the Minister in consultation with the other relevant Ministers.

- (2) If a person referred to in subsection (1) arrives in (name of country) without prior consent to transit, a police officer may at the request of the officer who has custody of the person being transported, hold the person in custody for a maximum period of 96 hours pending receipt by the Minister of a request under subsection (1).
- (3) No authorization for transit is required if the person being transported is transported by air and no landing is scheduled on the territory of (name of country).
- (4) Notwithstanding subsection (1), the Minister may refuse a request for transit if the Minister considers that transit through (name of country) would impede or delay the surrender or transfer of the person being transported.
- (5) If an unscheduled landing occurs on the territory of (name of country), the Minister may require the ICC to submit a request under subsection (1), for transit of the person being transported as soon as is reasonably practicable.

46 Waiver of requirements of article 101 of the Statute⁴¹

Where a person is surrendered to the ICC under this Part of this Act and the ICC requests the waiver of the requirements of paragraph (1) of article 101 of the Statute with respect to that person, the Minister, having regard to the information provided by the ICC with respect to that person, shall endeavor to consent to the person being proceeded against, punished or detained for conduct committed prior to surrender, not being conduct constituting crimes for which he or she has been surrendered to the ICC.

⁴¹ See discussion of the rule of specialty and Article 101 of the Statute in paragraph 98 of the Report and Clause 29 of the drafting instructions.

Part V—Requests for Other Types of Assistance⁴²

47 Application of this Part

This Part of this Act applies to requests for assistance by the ICC, other than requests for arrest and surrender, or the provisional arrest, of a person.

48 Assistance in locating or identifying persons or things

- (1) Where the ICC requests assistance in locating, or identifying and locating, a person or a thing believed to be in (name of country), the Minister shall give authority for the request to proceed and transmit the request to (the appropriate agency in) (name of country), if he or she has reasonable grounds to believe the person to whom or the thing to which the request relates is, or may be in (name of country).
- (2) Where the Minister authorizes and transmits the request under subsection (1), (the appropriate agency in) (name of country) shall, without delay—
 - (a) 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
 - (b) advise the Minister of the outcome of those endeavours.
- (3) This section shall not be construed as giving any person a power to enter property in order to locate a person or thing.

49 Assistance in taking evidence

- (1) Where the ICC requests assistance in the taking of evidence, the Minister shall give authority for the request to proceed and transmit the request to (a magistrate), if the Minister has reasonable grounds to believe that the evidence can be taken in (name of country).
- (2) Where the Minister authorizes and transmits the request under subsection (1), (the magistrate) shall issue an order compelling the witness to appear at a specified time and place for his or her evidence to be taken.
- (3) (The magistrate) shall, if the ICC so requests, permit a representative of the ICC or a representative of the person to whom the request relates to be present at the taking of the evidence and to put questions to the witness.
- (4) In taking evidence under this section, (the magistrate) shall do so in the manner specified in the request for assistance made by the ICC, including complying with the any procedure outlined therein unless the manner of execution or the procedure is prohibited under the law of (name of country).

⁴² See general discussion of other forms of cooperation in paragraphs 99-101 of the Report and Clause 30 of the drafting instructions.

- (5) (The magistrate) taking evidence under this section shall—
- (a) certify that the evidence was taken before him or her and that the persons named in the certificate were present when the evidence was taken; and
 - (b) cause the evidence together with the certificate to be transmitted to the Minister.

[OPTIONAL ADDITIONAL PROVISION

49A(1) The magistrate may order evidence to be given to the ICC by means of video or satellite link or through any other technology.

(2) To facilitate the taking of such evidence, the magistrate may order the person to appear at any facility where the relevant technology is available.]

50 Assistance in production of documents and articles

- (1) Where the ICC requests assistance in the production of documents or articles the Minister shall give authority for the request to proceed and transmit the request to (a magistrate), if the Minister has reasonable grounds to believe that the documents or articles can be produced in (name of country).
- (2) Where the Minister authorizes and transmits the request under subsection (1), (the magistrate) shall issue an order for the production of the documents or articles.
- (3) The order may provide for any form of certification or authentication of the document or article as may be required by the ICC and may specify any other terms and conditions that may be appropriate in the circumstances.
- (4) Where the documents and articles are produced duly authenticated or certified as required by the order made under subsection (3), (the magistrate) shall cause them to be sent to the Minister, with a written statement signed by (the magistrate) that they were produced to him or her.

51 Applicable law

- (1) The applicable law for the taking of evidence under section 49 or the production of documents or articles under section 50 shall be the Statute and Rules unless the magistrate orders that the evidence shall be taken in accordance with the laws of (name of country).
- (2) Notwithstanding subsection (1), a person compelled to give evidence or produce documents shall have the same privileges as if the investigation or proceeding was conducted under the laws of (name of country) and the laws of (name of country) relating to the non-disclosure of information, including national security information, shall apply.
- (3) Nothing in subsection (1) shall be construed as requiring a person to give evidence or answer any question or produce any document or article that the person could not be

compelled to give or answer or produce in an investigation being conducted by the Prosecutor or in any proceedings before the ICC.

52 Assistance in questioning persons

- (1) Where the ICC requests assistance in questioning a person who is being investigated or prosecuted by the ICC, the Minister shall give authority for the request to proceed and transmit the request to (the appropriate agency) in (name of country) if the Minister has reasonable grounds to believe that the person is or may be in (name of country).
- (2) Where the Minister authorizes and transmits the request under subsection (1), (the appropriate agency) in (name of country) shall, without delay—
 - (a) use its best endeavours to undertake the questioning that the ICC has requested;
 - (b) 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
 - (c) advise the Minister of the outcome of those endeavours and, if relevant, deliver the record and any report of the questioning to Minister.
- (3) A person questioned under this section shall notwithstanding anything to the contrary in any other law, be entitled to all the rights referred to in article 55 (2) of the Statute.

53 Assistance in arranging service of documents

- (1) Where the ICC requests assistance in arranging for the service of a document in (name of country), the Minister shall give authority for the request to proceed and transmit the request to (the appropriate agency) in (name of country), if the Minister has reasonable grounds to believe that the person or body to be served is or may be in (name of country).
- (2) Where the Minister authorizes and transmits the request under subsection (1), (the appropriate agency) in (name of country) shall, without delay—
 - (a) use its best endeavours to have the document served—
 - (i) in accordance with any procedure specified in the request; or
 - (ii) if that procedure would be unlawful or inappropriate in (name of country), or if no procedure is specified, in accordance with the law of (name of country); and
 - (b) transmit to the Minister—
 - (i) a certificate as to service, if the document is served; or
 - (ii) a statement of the reasons that prevented service, if the document is not served.

- (3) In this section, document includes—
- (a) a summons requiring a person to appear as a witness; and
 - (b) a summons to an accused that has been issued under article 58(7) of the Statute.

54 Assistance in facilitating the voluntary appearance of witness

- (1) Where the ICC requests assistance in facilitating the voluntary appearance of a witness before the ICC the Minister shall give authority for the request to proceed and transmit the request to (the appropriate agency) in (name of country) if the Minister is satisfied that there are reasonable grounds to believe that the witness is or may be in (name of country).
- (2) In this section and in section 55 and 56, “witness” includes a person who may give expert evidence; but does not include—
- (a) a person who has been accused of a crime in the proceedings to which the request relates; or
 - (b) a prisoner who is detained in relation to an offence against the law of (name of country).

55 Consent required

(The appropriate agency) to which a request is transmitted under section 54 shall make such inquiries as may be necessary to ascertain whether the prospective witness consents to giving evidence or assisting the ICC.

56 Minister may facilitate appearance

- (1) The Minister may assist in the making of arrangements to facilitate a witness’s attendance before the ICC if the Minister is satisfied that—
- (a) the prospective witness has consented to giving the evidence or assistance requested; and
 - (b) the ICC has given any assurance requested by the Minister in respect of the witness including but not limited to an assurance that the witness will not be prosecuted or detained by the ICC in respect of any specified act or omission that occurred before the witness’s departure from (name of country).
- (2) The Minister may—
- (a) approve and make arrangements for the travel of the witness to the ICC at the cost of the ICC; including but not limited to, the obtaining of such approvals, authorities, and permissions as are required for that purpose, including, in the case of a person who although not liable to be detained in a prison is subject to a sentence—

- (i) the variation, discharge, or suspension of the conditions of the person's release from prison; or
 - (ii) the variation, cancellation, or suspension of the person's sentence, or of the conditions of the person's sentence; and
- (b) take such other action for the purposes of subsection (1) as the Minister thinks appropriate.

57 Assistance in facilitating temporary transfer of prisoner⁴³

Where the ICC requests assistance in facilitating the temporary transfer to the ICC of a prisoner serving a sentence in (name of country) for an offence against the law of that country, the Minister shall give authority for the request to proceed and transmit the request to (the appropriate agency) in (name of country), if the Minister has reasonable grounds to believe that the prisoner's assistance is sought for the purpose of identification or obtaining evidence or other assistance.

58 Consent required and assurances may be sought

Where the Minister authorizes and transmits a request under section 57, (the appropriate agency) in (name of country) shall make such inquiries as may be necessary to ascertain whether the prisoner will consent to the transfer.

59 Minister may arrange for transfer

- (1) The Minister may authorize the temporary transfer of a prisoner serving a sentence in (name of country) to the ICC if the Minister is satisfied that—
- (a) the prisoner has consented to giving the evidence or other assistance requested; and
 - (b) the ICC has given any assurances requested by the Minister including but not limited to an assurance that the prisoner will not be released without prior approval of the Minister.
- (2) Where the Minister authorizes the temporary transfer of the prisoner serving a sentence in (name of country) to the ICC, the Minister may—
- (a) direct that the prisoner be released from the prison in which that prisoner is detained, for the purpose of the transfer to the ICC; and
 - (b) make arrangements for the prisoner to travel to the ICC in the custody of a person authorized for the purpose by the ICC.
- (3) A direction given by the Minister 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 transfer.

⁴³ For sections 57-60 see discussion on temporary transfer of witnesses in paragraph 105 of the Report and Clause 32 of the drafting instructions.

- (4) Every person released under a direction given under subsection (2) shall be treated, for the purposes of the law in force relating to escape from lawful custody and for that purpose only, as continuing to be in the legal custody of the officer in charge of a prison from which he or she is so released, while in (name of country) during the period of that release.
- (5) Where there is any inconsistency between subsection (4) and any other law, subsection (4) shall prevail.

60 Effect of transfer on prisoner's sentence

Where a prisoner who is serving a sentence for an offence committed in (name of country) is transferred to the ICC—

- (a) the prisoner shall be treated, while in custody outside (name of country) in connection with the request, as being in custody for the purposes of the sentence imposed for the offence committed in (name of country) which shall continue to run; and
- (b) the Minister—
 - (i) may at any time notify the ICC that the prisoner is no longer required to be kept in custody; and
 - (ii) shall notify the ICC if the prisoner is no longer liable to be detained in a prison in (name of country).

61 Assistance in examining places or sites

- (1) Where the ICC requests assistance in examining places or sites in (name of country) the Minister shall give authority for the request to proceed and transmit the request to (the appropriate agency) in (name of country) if the Minister has reasonable grounds to believe that the place or site is located in (name of country).
- (2) Where the Minister authorizes and transmits the request under subsection (1), (the appropriate agency) in (name of country)—
 - (a) shall without delay use its best endeavours to undertake the examination of the place or site in the manner that the ICC has requested;
 - (b) shall make such report on the examination as it considers to be appropriate in the circumstances; and
 - (c) shall deliver the report of the examination to the Minister; and
 - (d) may, where appropriate, apply to (a magistrate) for an exhumation order for the exhumation and examination of the remains at a grave site.
- (3) An authorization under this section shall be deemed to authorize (the appropriate agency) to enter a place or site for the purpose of examining it.

62 Assistance involving search and seizure

- (1) Where the ICC makes a request for search and seizure, the Minister shall give authority for the request to proceed and authorize in writing, a police officer to apply to (a magistrate) for a search warrant if the Minister has reasonable grounds to believe that any thing relevant to an investigation being conducted by the Prosecutor or proceeding before the ICC is or may be located in (name of country).
- (2) Upon an application made to a magistrate under subsection (1) by a police officer authorized under that subsection, (the magistrate) may, if satisfied that the thing specified in the request made by the ICC is located in (name of country) issue a warrant authorizing that police officer or any other police officer specified in the warrant to search for and seize that thing.
- (3) (The magistrate) may issue a warrant under subsection (2) subject to such conditions as he or she may think fit to impose.
- (4) Subject to any condition specified in the warrant, a warrant issued under subsection (2) shall authorize the police officer executing the warrant—
 - (a) to enter and search any place or to stop and search any vehicle in which the thing specified in the warrant is located or held, at any time by day or night;
 - (b) to use such assistants as may be reasonable in the circumstances for the purpose of such entry and search;
 - (c) to use such force as is reasonable in the circumstances to effect entry to such place or to stop or board such vehicle, and to break any receptacle in which the thing specified in the warrant is placed; and
 - (d) to search for and seize the thing.
- (5) A person called on to assist a police officer executing a warrant issued under subsection (2) may exercise the powers referred to in paragraph (c) and (d) of subsection (4).
- (6) A police officer executing a warrant issued under subsection (2) shall—
 - (a) produce such warrant on initial entry, and if required to do so, at any time thereafter;
 - (b) give to the owner of the thing seized or any other person whom he or she has reason to believe has an interest in such thing, a notice specifying—
 - (i) the date and time of execution of the warrant;
 - (ii) the name and position of the person executing the warrant;
 - (iii) the thing seized under the warrant.
- (7) A police officer seizing a thing under the authority of a warrant issued under subsection (2) shall deliver it into the custody and control of (the Inspector General of Police).

- (8) (The Inspector General of Police) shall inform the Minister that the thing has been delivered to him or her and await the Minister's directions as to how the thing is to be dealt with.
- (9) Except as otherwise provided in this section, the law relating to search and seizure generally, shall apply to a search and seizure under this section.

63 Assistance involving the use of other domestic investigative procedures⁴⁴

- (1) Where the ICC requests assistance in the gathering of evidence for an investigation, the Minister shall give authority for the request to proceed and transmit the request to (the appropriate agency) in (name of country) if the Minister has reasonable grounds to believe that the assistance requested is not prohibited by the law of (name of country).
- (2) Where the Minister authorizes and transmits the request under subsection (1), (the appropriate agency) may
 - (a) make use of any domestic powers as would be available in a domestic investigation of a similar matter to gather such evidence and any such powers under domestic law shall apply with the necessary modifications;
 - (b) make such report as it considers to be appropriate in the circumstances; and
 - (c) deliver the report to the Minister.

64 Assistance in protecting victims and witnesses and preserving evidence⁴⁵

- (1) Where 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 article 56(2) or (3), in preserving evidence,in relation to an investigation by, or a proceeding before, the ICC, the Minister shall give authority for the request to proceed and transmit the request to (the appropriate agency) in (name of country) if the Minister has reasonable grounds to believe that the assistance requested is not prohibited by the law of (name of country).
- (2) Where the Minister authorizes and transmits the request under subsection (1), (the appropriate agency) in (name of country) shall without delay—
 - (a) use its best endeavours to give effect to the request;
 - (b) make such report on the outcome of its endeavours as it considers to be appropriate in the circumstances; and
 - (c) deliver the report to the Minister.

⁴⁴ See discussion in paragraph 101 of the report on use of domestic powers and Clause 30 of the drafting instructions.

⁴⁵ See discussion on protection of victims and witnesses in paragraphs 102-104 of the Report and Clause 31 of the drafting instructions.

65 Request for assistance in the restraining and seizure of property associated to crime

- (1) Where the ICC requests assistance in identifying, tracing and restraining or seizing property for the purpose of eventual forfeiture, the Minister shall give authority for the request to proceed and transmit the request to (the appropriate agency) in (name of country) if the Minister has reasonable grounds to believe that the property is or may be located in (name of country).
- (2) Where the Minister authorizes and transmits the request under subsection (1), (the appropriate agency) in (name of country)—
 - (a) shall use its best endeavours to give effect to the request; or
 - (b) may, where appropriate, apply to (a magistrate) for a restraining or seizing order with respect to the property.
- (3) An application under sub section 2(b) may be made *ex parte* and may be granted without a hearing.
- (4) (The magistrate) considering an application under subsection 2(b) may make a restraining or seizing order, as appropriate, if satisfied—
 - (a) that a forfeiture order has been made in proceedings before the ICC; or
 - (b) that there are reasonable grounds to believe that a forfeiture order may be made in such proceedings,and that the property to which the application for the restraining or seizing order relates consists of or includes property that is or may be affected by such a forfeiture order.
- (5) A restraining or seizing order shall provide for notice to be given to any persons with an interest in the property or otherwise affected by the order.
- (6) A person affected by the order may apply to a magistrate for an order to vary or discharge the restraining or seizing order in relation to his or her interest.
- (7) (The magistrate) may vary or discharge the restraining or seizure order in relation to the interest of a person making an application under subsection (6) only if (the magistrate) is satisfied that the applicant has an interest in the property, was not in any way involved in the commission of the crime to which the property relates, and had no basis to believe that the property was the proceeds of, or associated with, the crime.
- (8) Subject to subsection (7), the property shall remain subject to the restraining or seizing order until the ICC issues a relevant forfeiture order in respect of the property and that order has been registered for enforcement under section 85 or the ICC advises that no such order will be issued, in which case the property shall be discharged from the restraining or seizing order.

(Note: It may be necessary to place a time limitation on restraint orders or alternatively provide for a periodic review by a magistrate)

66 Refusal of request⁴⁶

- (1) The Minister shall refuse a request for assistance under this Part only if—
 - (a) the ICC has determined that the case to which the request relates is inadmissible on any ground;
 - (b) the ICC advises that it does not intend to proceed with the request for any reason, including but not limited to a determination of the ICC that article 98(1) of the Statute applies to the execution of the request;
 - (c) the assistance sought is outside the listed types of assistance set out in Article 93 (1) and the provision of the assistance is prohibited by the law of (name of country) and the ICC does not accept the conditions, as contemplated by article 93 (5) of the Statute, subject to which the Minister was willing to provide the assistance; or
 - (d) the execution of a particular measure of assistance is prohibited in (name of country) on the basis of an existing fundamental legal principle of general application and the ICC does not accept the conditions, as contemplated by article 93 (5) of the Statute, subject to which the Minister was willing to provide the assistance.
- (2) The Minister may refuse a request for assistance under this Part of this Act only if —
 - (a) there are competing requests for assistance from the ICC and a state and the Minister has decided, in consultation with the ICC and the state, that it is not possible to execute both requests and has decided further to proceed with the execution of the request of the state, in accordance with the principles established by article 90 of the Statute and section 31; or
 - (b) the refusal is authorized under Part VII.
- (3) If the Minister decides to refuse a request for assistance in accordance with subsection (1) or (2) after he or she has transmitted the request to (the appropriate agency) in (name of country), he or she shall inform that agency not to take any further steps to execute the request.

67 Postponement of execution of request for assistance⁴⁷

- (1) The Minister may postpone the execution of a request for assistance under this Part only if—
 - (a) a determination on admissibility is pending before the ICC;
 - (b) the execution of the request would interfere with an investigation or prosecution in (name of country) involving a different offence from that to which the request relates;

⁴⁶ See discussion of grounds of refusal in paragraphs 110 and 111 of the Report and Clause 36 of the drafting instructions.

⁴⁷ See discussion of postponement of execution of requests in paragraph 109 of the Report and Clause 35 of the drafting instructions.

- (c) the Minister is consulting with the ICC under section 25(2) as to whether or not article 98(1) of the Statute applies to execution of the request; or
 - (d) there are competing requests for assistance from ICC and a state, and the Minister in consultation with ICC and the state decides to postpone the execution of the ICC's request.
- (2) If execution of the request for assistance is postponed under subsection (1) (a) and the ICC decides that the case is admissible, the Minister shall proceed with the execution of the request as soon as possible after the decision of the ICC.
 - (3) If the execution of the request for assistance is postponed under subsection (1) (b), the Minister shall consult with the ICC and agree on a period of time for postponement of the execution of the request in accordance with article 94 of the Statute; and the Minister shall proceed with execution of the request after the lapse of the period, unless otherwise agreed with the ICC.
 - (4) If execution of the request for assistance is postponed under subsection (1) (c) and the ICC decides to proceed with the request, the Minister shall proceed with the execution of the request as soon as possible after the decision of the ICC.
 - (5) If the execution of the request for assistance is postponed under subsection (1) (d), the Minister shall proceed with the execution of the ICC's request as soon as practicable.
 - (6) If the Minister decides to postpone execution of a request for assistance in accordance with this section after he or she has transmitted the request for execution to the appropriate agency in (name of country), he or she shall direct that agency to postpone the execution of the request for such period as is specified in the direction.
 - (7) A decision by the Minister to postpone the execution of a request shall not affect the validity of any act that has been done or any warrant or order made under this Part of this Act prior to the decision, and any such warrant or order shall remain in force unless cancelled.

Supplementary Provisions

68 Verification or Authentication of material⁴⁸

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

⁴⁸ See discussion of authentication of documents in paragraphs 162 and 163 of the Report and Clause 48 of the drafting instructions.

69 Transmission of material to ICC

- (1) Any evidence or other material obtained under this Part by a person other than the Minister together with any requisite verification shall be sent to the Minister for transmission to the ICC unless the Minister authorizes otherwise.
- (2) Where any evidence or other material is to be transmitted to the ICC there shall be transmitted-
 - (a) where the material consists of a document, the original or a copy; and
 - (b) where the material consists of any other article, the article itself or a photograph or other description of it as may be necessary to comply with the request of the ICC.

70 Certificates issued by Minister⁴⁹

- (1) If the Minister receives a request for assistance from the ICC to which this Part of this Act applies, the Minister may issue a certificate certifying all or any of the following facts—
 - (a) that a request for assistance has been made by the ICC;
 - (b) that the request meets with the requirements of this Act; and
 - (c) that the request has been duly accepted under and in accordance with the provisions of this Act.
- (2) In any proceeding under this Act, a certificate purporting to have been issued under subsection (1) shall, in the absence of proof to the contrary, be sufficient evidence of the facts certified therein.

71 Minister may request assistance from ICC⁵⁰

The Minister may make a request to the ICC for assistance in accordance with this Part of this Act 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 the law of (name of country) is a term of imprisonment of not less than 5 years.

⁴⁹ See discussion of certificates in paragraphs 162 and 163 of the Report and Clause 48 of the drafting instructions.

⁵⁰ See discussion under Part XIX of the Report on Assistance by the Court and Clause 37 of the drafting instructions.

Part VI—Enforcement of Sentences and Orders of the ICC in (name of country)⁵¹

72 Application of this Part

This Part of this Act applies to the enforcement of sentences imposed by the ICC and of orders for the payment of fines, restraining orders, forfeiture orders and orders for reparation, made by the ICC.

73 (name of country) may act as State of enforcement⁵²

- (1) The Minister may notify the ICC that (name of country) 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 (name of country), subject to any conditions specified in the notification.
- (2) The Minister shall, before issuing a notification under subsection (1), consult with any other relevant Minister.

74 Request for sentence to be served in (name of country)

- (1) Where—
 - (a) the Minister has issued a notification under section 73 and has not withdrawn that notification and the ICC imposes a sentence of imprisonment under the Statute on a person convicted of a crime within the jurisdiction of the ICC; and
 - (b) the ICC designates (name of country) under article 103 of the Statute, as the State in which the sentence is to be served, the Minister shall consider whether to accept the designation.
- (2) The Minister may accept the designation of (name of country) as the State in which the sentence is to be served if the Minister is satisfied that ICC has agreed to the conditions specified in the notification made under section 73, and in the case of a prisoner who is not a citizen of (name of country), the (relevant Minister) has consented to the sentence being served in (name of country).

75 Prisoner to be held in custody

- (1) Where the Minister accepts the designation of (name of country) as the State in which a sentence of imprisonment imposed by the ICC is to be served, the ICC prisoner may be transported to (name of country) in the custody of a person authorized for the purpose by the ICC.

⁵¹ See general discussion under Part XX of the Report on the Enforcement of Sentences and Clause 38 of the drafting instructions.

⁵² See discussion of general powers in enforcement in paragraph 120 of the Report.

- (2) On arrival in (name of country) or, if the person is already in (name of country) when the sentence is imposed, on the imposition of the sentence, the Minister shall issue an order of detention in respect of the ICC prisoner and shall cause a copy of the order to be sent to (the Commissioner of Prisons).
- (3) The order of detention issued under subsection (2) shall be sufficient authority for the detention of the ICC prisoner until he or she completes, or is released from, the sentence or is transferred to another country.
- (4) Subject to subsection (7), the ICC prisoner shall be detained in accordance with the laws of (name of country) as if he or she had been sentenced to imprisonment under the law of (name of country).
- (5) Notwithstanding anything in subsection (4) or in any other law—
 - (a) the ICC prisoner shall have 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.
- (6) The enforcement of a sentence of imprisonment, including any decision to release or transfer the ICC prisoner shall be in accordance with Part 10 of the Statute and the Rules.
- (7) The laws of (name of country) relating to parole, remission, reduction or variation of sentence and pardon shall not apply to a sentence imposed by the ICC.⁵³

76 Transfer of prisoner to ICC for review of sentence⁵⁴

- (1) Where the ICC, under article 110 of the Statute, decides to review the sentence of an ICC prisoner who is serving that sentence in (name of country), the Minister shall direct that the prisoner be transferred to the ICC, at the expense of the ICC, for the purposes of enabling the ICC to review the prisoner's sentence.
- (2) The ICC prisoner shall be transferred to and from the ICC in the custody of a person authorized for the purpose by the ICC, at the expense of the ICC.

77 Transfer of prisoner to another State to complete sentence⁵⁵

- (1) An ICC prisoner serving a sentence in (name of country) may, at any time apply to the ICC to be transferred from (name of country) to complete service of sentence in another state.

⁵³ See discussion on non-modification of sentence in paragraph 121 of the Report.

⁵⁴ See discussion of transfers in paragraph 124 of the Report.

⁵⁵ See discussion of transfers in paragraph 124 of the Report.

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

*Certificates and Removal Orders*⁵⁶

OPTION 1

[Apply general immigration law provisions to the ICC prisoner]

OPTION 2

78 Procedure on completion of sentence

Upon—

- (a) the completion of sentence in (name of county) by a ICC prisoner who is not a citizen of (name of country);
- (b) the release, on the direction of the ICC, of a ICC prisoner who is not a citizen of (name of country),

the Minister may issue a removal order for that ICC prisoner under section 79.

79 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 officer; or
 - (ii) if the person is not in custody, authorize any police officer to take the person into custody; and
- (b) shall specify that the person is to be taken by a police officer and placed on board any aircraft or vessel for the purpose of effecting the person's removal from (name of country) to; and
- (c) may authorize the detention in custody of the person while awaiting removal from (name of country).

(2) A removal order made under this section shall continue in force until it is executed or cancelled.

⁵⁶ See discussion on situation after service of sentence in paragraph 123 of the Report.

80 Delay in removal

- (1) If a person in respect of whom a removal order has been made is not conveyed out of (name of country) within (.....hours/days) after the order has issued, the person shall be brought before (a magistrate) to determine, in accordance with subsection (2), whether the person should be detained in custody or released pending removal from (name of country).
- (2) If a person is brought before (a magistrate) under subsection (1), (the magistrate) may, if she or he 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 magistrate) 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 magistrate) thinks fit to impose.

81 Special rules in certain cases⁵⁷

- (1) An ICC prisoner serving a sentence in (name of country) shall not—
 - (a) be extradited to another country on completion of his or her sentence; or
 - (b) be required to undergo trial for an offence under the law of (name of country) that relates to an act or omission alleged to have been committed prior to his or her arrival in (name of country) to serve such sentence, without agreement of the ICC.
- (2) Nothing in subsection (1) shall apply to an ICC prisoner who remains voluntarily in (name of country) for more than 30 days after the date of completion of, or release from, the sentence imposed on him or her by the ICC or who voluntarily returns to (name of country) after having left (name of country).

82 Immigration permit not required

A person to whom this Part of this Act applies shall not be required to hold a permit or other authorization under the law of (name of country) relating to citizenship and immigration control if, and for so long as, he or she is in (name of country) in accordance with this Part, whether or not he or she is in custody.

83 Application to citizens of (name of country)

Nothing in this Part of this Act shall be deemed to authorize the making of a removal order under section 79 in respect of a citizen of (name of country).

⁵⁷ See discussion on protections from other proceedings in paragraph 125 of the Report.

84 Enforcement of fines⁵⁸

- (1) Where the ICC requests enforcement in accordance with article 109 of the Statute of an order for the payment of a fine made under article 77 (2) (a) of the Statute, the Minister shall give authority for the request to proceed, if he or she has reasonable grounds to believe that—
 - (a) neither the conviction in respect of which the order was imposed, nor the order for the payment of the fine is subject to further appeal; and
 - (b) the order can be enforced in the manner provided in this section,and shall refer the request to (the appropriate agency) in (name of country).
- (2) (The appropriate agency) in (name of country) shall, without delay, cause such order to be filed in (the appropriate court).
- (3) An order filed in (the appropriate court) under subsection (2) shall have the same force and effect as if it were an order for the payment of a fine imposed by that court and shall be enforced accordingly.
- (4) (The appropriate agency) shall make such report to the Minister on the outcome of any action taken by it to enforce the order as it considers to be appropriate in the circumstances.
- (5) Nothing in this section shall be construed as limiting or affecting the provision of other types of assistance to the ICC in relation to a penalty imposed under article 77 of the Statute or as empowering the court to modify or vary the order of the ICC.

85 Enforcement of forfeiture orders⁵⁹

- (1) Where the ICC requests enforcement in accordance with article 109 of the Statute, of an order for forfeiture of property made under article 77 (2) (b) of the Statute, the Minister shall give authority for the request to proceed if he or she has reasonable grounds to believe that—
 - (a) neither the conviction in respect of which the order was imposed, nor the forfeiture order, is subject to further appeal; and
 - (b) the property identified by the ICC is located in (name of country) or that the person concerned, directly or indirectly, holds property in (name of country) that may be the subject of the forfeiture order,and shall refer the request to (the Director of Public Prosecutions) for enforcement in accordance with this section.
- (2) Upon receipt of a referral under subsection (1), (the Director of Public Prosecutions) shall file the original or a certified copy of the forfeiture order of the ICC with (the appropriate court).

⁵⁸ See discussion on enforcement of fines in paragraph 127 of the Report and Clause 39 of the drafting instructions.

⁵⁹ See discussion of forfeiture orders in paragraph 131 of the Report and Clause 41 of the drafting instructions.

- (3) Upon the filing of the order in (the appropriate court) under subsection (2), the court may direct (the Director of Public Prosecutions) to do either or both of the following—
 - (a) give notice of the filing, in the manner and within the time the court considers appropriate to such persons, other than a person convicted of a crime 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 filing in the manner and within the time the court considers appropriate.
- (4) A forfeiture order filed in (the appropriate court) under subsection (2) shall have, from the date it is filed, the same force and effect as if it were an order for the forfeiture of property issued by that court and shall be enforced accordingly.
- (5) A forfeiture order filed under subsection (2) shall not be enforced until after the expiry of any period specified by the court in any notice given or published under subsection (3), or two months from the filing of the order, whichever is the longer period.
- (6) Where a forfeiture order is filed in (the appropriate court) under subsection (2), a person, other than a person convicted of a crime in respect of which the order was made, who claims an interest in the property, may apply to the court, with notice to (the Director of Public Prosecutions).
- (7) A person on whom notice of the hearing of the ICC held in connection with the making of the forfeiture order was served or who appeared at the hearing shall not make an application under subsection (6) without leave of the court.
- (8) (The appropriate court) shall grant leave under subsection (7) only where it determines that it would be contrary to the interests of justice not to do so.
- (9) An application under subsection (6) shall be made before the expiry of any period specified in a notice made or published under subsection (3) or within two months of the filing of the order, whichever is the longer period, unless the court grants leave.
- (10) On an application under subsection (6), the court may make an order for the enforcement of the forfeiture order subject to the interest of the applicant if satisfied that—
 - (a) the applicant has an interest in the property;
 - (b) the applicant did not receive notice of the hearing before the ICC or through no fault of his or her own, did not appear at the hearing;
 - (c) the applicant was not in any way involved in the commission of the crime in respect of which the order was made; and
 - (d) the applicant had no knowledge that the property constituted the proceeds of, or was associated with, the crime.

- (11) Where the court makes an order under subsection (10), the Court may—
- (a) declare the nature, extent and value of the applicant’s interest in the property; and
 - (b) either direct that the interest be transferred to the applicant or that payment be made to the applicant of an amount equivalent to the value of the interest.

86 Transfer of funds realized to ICC

The Minister shall arrange for the transfer of funds realized through the enforcement of a fine under section 84 or a forfeiture order under section 85 to the ICC (subject to the deduction of reasonable costs related to the enforcement procedure)

87 Orders for forfeiture of Property on conviction by ICC

- (1) Where any person is convicted by the ICC of a crime within the jurisdiction of the ICC, (the High Court) may, on an application made by (the Attorney General), order that any property situated in (name of country)—
- (a) used for, or in connection with; or
 - (b) derived directly or indirectly from,
the commission of that crime, be forfeited to the State, if satisfied that no order of forfeiture has been or will be made by the ICC under article 77 (2)(b) of the Statute in respect of that property.
- (2) Before making an order under subsection (1), the court shall give every person appearing to have an interest in the property in respect of which the order is proposed to be made, an opportunity of being heard, and subsections (3), (4), (5), (6), (7), (8), (9), (10) and (11) of section 85 shall, mutates mutandis, apply to an order made under this section
- (3) Property forfeited to the State under subsection (1) shall vest in the State—
- (a) if no appeal has been made against the order, at the end of the period within which an appeal may be made against the order; and
 - (b) if an appeal has been made against the order, on the final determination of the appeal.

88 Enforcement of orders for victim reparation⁶⁰

- (1) Where the ICC requests enforcement in accordance with article 109 of the Statute of an order requiring reparation made under article 75 of the Statute, the Minister shall give authority for the request to proceed, if he or she has reasonable grounds to believe that—
- (a) neither the conviction in respect of which the order was imposed nor the order requiring reparation is subject to further appeal; and

⁶⁰ See discussion of reparations in paragraphs 132-134 of the Report and Clause 42 of the drafting instructions.

- (b) the order can be enforced in the manner provided in this section, and shall refer the request to (the appropriate agency) in (name of country).
- (2) (The appropriate agency) in (name of country) shall, without delay file such order in (the appropriate court).
- (3) Every order filed in (the appropriate court) under subsection (2) shall—
 - (a) if the order requires a monetary payment, have force and effect as if it were an order for the payment of compensation imposed by that court; or
 - (b) if the order requires the restitution of assets, property or other tangible items, have force and effect as if it were an order for the restitution of property made by that court; or
 - (c) if the order requires the granting of any other relief, have force and effect as if it were an order for the granting of such relief made by that court and every such order shall be enforced accordingly.
- (4) (The appropriate agency) in (name of country) shall, without delay, make such report to the Minister on the outcome of any action taken by it to enforce the order as it considers to be appropriate in the circumstances.
- (5) Nothing in this section shall be construed as limiting or affecting the provision of other types of assistance to the ICC in relation to an order made under article 75 of the Statute or as empowering the court to modify the order of the ICC.
- (6) The Minister shall consult with the ICC as to whether the funds realized through the enforcement of an order under this section should be transferred directly to specified victims or through the Victims Fund of the ICC.
- (7) The Minister shall make arrangements for the transfer of the funds realized through the enforcement of an order under this section as determined through the consultations under subsection (6).

89 Assistance in enforcement of restraining order⁶¹

- (1) Where the ICC requests assistance in the enforcement of a restraining order issued by the ICC in respect of property in (name of country), the Minister shall give authority for the request to proceed if he or she has reasonable grounds to believe that—
 - (a) the restraining order is not subject to further appeal; and
 - (b) the property is located in (name of country),
 and shall refer the request to (the appropriate agency) in (name of country).
- (2) (The appropriate agency) in (name of country) shall file such order in (the appropriate court).

⁶¹ See discussion on freezing/restraint of assets in paragraphs 128-130 of the Report and Clause 40 of the drafting instructions.

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

(4) Nothing in this section shall be construed as limiting or affecting the provision of other types of assistance to the ICC in relation to the enforcement of a restraining order made by it or as empowering the court to modify the order of the ICC.

Part VII—National Security⁶²

(Note: It will depend on domestic context as to whether any provisions on national security need to be included in the legislation.)

90 National Security

(1) Where—

- (a) the ICC requests assistance under Part V for the production of documents or the taking of evidence and the Minister is of the opinion that the production of such documents or the disclosure of such evidence would be prejudicial to the national security of (name of country); or
- (b) a person is required to disclose information to, or give evidence before, the ICC and the person refuses to do so on the ground that the disclosure of such information or the giving of such evidence would be prejudicial to the national security of (name of country) and the Minister confirms that in his or her opinion the disclosure of such information or the giving of such evidence would be prejudicial to the national security of (name of country); or
- (c) the Minister is of the opinion that the disclosure of information to, or giving of evidence before, the ICC in circumstances other than the circumstances referred to in paragraphs (a) and (b) would be prejudicial to the national security of (name of country),

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

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

⁶² See discussion under Part XXIV on National Security and Clause 45 of the drafting instructions.

Part VIII—Sittings of the ICC in (name of country)⁶³

91 Prosecutor may conduct investigations in (name of country)⁶⁴

The Prosecutor may conduct investigations in the territory of (name of country)—

- (a) in accordance with the provisions of Part 9 of the Statute;
- (b) as authorized by the Pre-Trial Chamber under article 57(3)(d) of the Statute; or
- (c) as authorized by national authorities.

92 ICC sittings in (name of country)

The ICC may sit in (name of country) for the purpose of discharging its functions under the Statute and under the Rules, including but not limited to—

- (a) the taking of evidence;
- (b) the conduct or continuation of a proceeding;
- (c) the giving of a judgment in a proceeding; or
- (d) the review of a sentence imposed by the ICC.

93 ICC powers while sitting in (name of country)

Option 1

- (1) When the ICC is sitting in (name of country) it may discharge and exercise any or all of its functions and powers as provided for under the Statute and under the Rules.
- (2) Without prejudice to the generality of subsection (1), the ICC shall have the power to—
 - (a) commit persons for contempt of its orders; or
 - (b) issue summons or other orders requiring the attendance of any person before the ICC or the production of any document or record for examination by the ICC;
- (3) Orders or summons issued by the ICC under this section, including committal orders for contempt, shall be enforced by the domestic authorities of (name of country) as if the order had been issued by a domestic court in (name of country).

Option 2

Include no specific provisions like section 96 and require the ICC to seek assistance under the cooperation sections to compel witnesses etc. as per the normal practice.

⁶³ See discussion under Part XXIII on ICC Sittings and Clause 43 of the drafting instructions.

⁶⁴ See discussion on direct execution by the Prosecutor in paragraphs 107 and 108 of the Report and Clause 34 of the drafting instructions.

94 ICC may administer oaths in (name of country)

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

95 Orders made by ICC not subject to review

- (1) The conduct of a trial or other proceeding by the ICC sitting in (name of country) is not subject to judicial or other challenge in a court in (name of country).
- (2) In particular, none of the following may be brought or made in a court in (name of country) in respect of a judgment, order, determination, or step of the ICC given, made or taken at a sitting of the ICC in (name of country):
 - (a) any judicial review;
 - (b) an application for, or for relief in the nature of, a declaration, declaratory judgment or injunction;
 - (c) an application for, or for relief in the nature of an order of mandamus or prohibition or certiorari;
 - (d) an application for, or for relief in the nature of, a writ of habeas corpus;
 - (e) an appeal.

96 Power to detain ICC prisoners in prison in (name of country)

- (1) Where the ICC holds a sitting in (name of country) and requests that a person whose presence is required at that sitting be held in custody as a ICC prisoner while the sitting continues in (name of country), the Minister shall direct in writing that such person be held in custody at such location as is specified in the direction.
- (2) A direction given under subsection (1) in respect of an ICC prisoner is sufficient authority for the detention of that prisoner in accordance with the terms of the direction.
- (3) The law relating to prisons so far as is applicable with any necessary modifications shall apply to a ICC prisoner required to be detained in a prison by a direction under subsection (1) as if the prisoner had been remanded in custody or sentenced to imprisonment for an offence under the law of (name of country), as the case may require, and is liable to be detained in a prison under such an order or sentence.
- (4) For the purposes of the application of the law relating to escape from lawful custody and aiding prisoners to escape, an ICC prisoner who is in custody in a prison or other detention facility in (name of country) shall be deemed to be in lawful custody while in (name of country).

97 Removal of ICC prisoner

If the Minister is satisfied that the presence in (name of country) of an ICC prisoner who was the subject of a direction under section 96 is no longer necessary, sections 78 to 83 shall apply to and in relation to that person with any necessary modifications.

Part IX—Legal Status of the ICC and Privileges and Immunities of Officials of the ICC⁶⁵

98 Legal personality and privileges and immunities

- (1) The ICC shall have legal personality in (name of country) with such legal capacity as may be necessary for the performance of its functions and the fulfillment of its purposes.
- (2) Without prejudice to the generality of subsection (1), the ICC shall have the capacity to contract, to acquire and dispose of immovable and movable property and to institute in legal proceedings, in (name of country).
- (3) The Judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar, staff of the Office of the Prosecutor and of the Registry, counsel, experts, witnesses, and other persons required to be in (name of country) for the performance of official functions or for participation in proceedings before the ICC shall have the privileges and immunities set out in article 48 of the Statute and the Agreement on the Privileges and Immunities of the ICC.
- (4) Article 48 of the Statute and articles 2 to 11, 13 to 22, 25 to 27, 29 and 30 of the Agreement on the Privileges and Immunities of the ICC shall have the force of law in (name of country), and references in those articles to the State Party shall, for this purpose, be construed as references to (name of country).

OPTIONAL ADDITIONAL PROVISION

[(5) Notwithstanding anything in subsections (3) and (4), a national of a State which has made an election under article 23 of the Agreement on Privileges and Immunities of the ICC shall be entitled only to the privileges and immunities referred to in Article 23 of the Agreement on Privileges and Immunities.]⁶⁶

⁶⁵ See discussion under Part XXIII on Privileges and Immunities for Court Officials and Other Relevant Persons and Clause 44 of the drafting instructions.

⁶⁶ See discussion on option of restricting application of certain immunities in paragraph 142 of the Report and Clause 44 of the drafting instructions.

Part X—Miscellaneous

99 Regulations⁶⁷

- (1) The Minister may make regulations for the purpose of giving effect to the principles and provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the Minister may make regulations in respect of all or any of the following matters:
 - (a) prescribing the procedure to be followed in dealing with requests made by the ICC, and providing for notification of the outcome of action taken to give effect to such requests;
 - (b) providing for temporary surrender of a person;
 - (c) prescribing the procedures for obtaining evidence or producing documents or other articles in accordance with a request made by the ICC;
 - (d) providing for the payment of fees, traveling allowances, and expenses to any person in (name of country) who gives or provides evidence or assistance pursuant to a request made by the ICC;
 - (e) 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 to (name of country);
 - (f) providing for the enforcement of any ICC sentence of imprisonment;
 - (g) providing for management and disposal of property under a restraining, seizing or forfeiture order;
 - (h) prescribing the forms of applications, notices, certificates, warrants and other documents for the purposes of this Act, and requiring the use of such forms; and
 - (i) implementation of any obligation that is placed on States Parties by the Rules in so far as such obligation is not inconsistent with the provisions of this Act.
- (3) Every regulation made by the Minister under subsection(1) shall be published in the Gazette and shall come into force on the date of its publication or on such later date as may be specified therein.
- (4) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be placed before (Parliament) for its approval. Every regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder.

⁶⁷ See discussion of regulatory power in paragraphs 162 and 163 of the Report and Clause 48 of the drafting instructions.

- (5) Notification of the date on which any regulation is deemed to be so rescinded shall be published in the Gazette.

SCHEDULE 1

The Rome Statute of the International Criminal Court

SCHEDULE 2

Agreement on the Privileges and Immunities of the International Criminal Court