



**RULES OF PROCEDURE  
APPLICABLE TO THE INTERNATIONAL CRIMINAL COURT**



## **Preamble**

### **The States Parties to this Statute,**

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

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

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

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

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

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

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

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

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

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

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

**Have agree as follows:**

## **Part I Establishment of the Court**

### **Article 1**

#### **Legal status and powers of the Court**

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

## **Part II Jurisdiction, admissibility and applicable law**

### **Article 2**

#### **Crimes within the jurisdiction of the Court**

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

### **Article 3**

#### **Genocide**

For the purpose of this Statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

### **Article 4**

#### **Crimes against humanity**

1. For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) 'Extermination' includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) 'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

- (d) 'Deportation or forcible transfer of population' means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) 'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) 'Forced pregnancy' means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) 'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) 'The crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) 'Enforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term 'gender' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above.

## **Article 5**

### **War crimes**

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, 'war crimes' means:
  - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
    - (i) Wilful killing;
    - (ii) Torture or inhuman treatment, including biological experiments;
    - (iii) Wilfully causing great suffering, or serious injury to body or health;
    - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
    - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
    - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
    - (vii) Unlawful deportation or transfer or unlawful confinement;
    - (viii) Taking of hostages.

- (a) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
  - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
  - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
  - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive

emblems of the Geneva Conventions, resulting in death or serious personal injury;

- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objective
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xii) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xiii) Declaring that no quarter will be given;
- (xiv) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

- (xvi) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvii) Pillaging a town or place, even when taken by assault;
- (xviii) Employing poison or poisoned weapons;
- (xix) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xx) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xxi) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute.
- (xxii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxiii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiv) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the

distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(b) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

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

(iii) Taking of hostages;

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

(c) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(d) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within

the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the

security of the civilians involved or imperative military reasons so demand;

- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

## **Article 6**

### **Elements of Crimes**

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 3, 4 and 5. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

(a) Any State Party;

(b) The judges acting by an absolute majority;

(c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

## **Article 7**

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

## **Article 8**

### **Jurisdiction *ratione temporis***

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 9, paragraph 3.

## **Article 9**

### **Preconditions to the exercise of jurisdiction**

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 2.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

## **Article 10**

### **Exercise of jurisdiction**

The Court may exercise its jurisdiction with respect to a crime referred to in article 2 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 11;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

## **Article 11**

### **Referral of a situation by a State Party**

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the

Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

## **Article 12**

### **Prosecutor**

1. The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.
2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.
3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.
4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice

to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.
6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

### **Article 13**

#### **Deferral of investigation or prosecution**

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

### **Article 14**

#### **Issues of admissibility**

1. Having regard to paragraph 10 of the Preamble, the Court shall determine that a case is inadmissible where:
  - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
  - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted

from the unwillingness or inability of the State genuinely to prosecute;

- (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 15, paragraph 3;
  - (d) The case is not of sufficient gravity to justify further action by the Court.
2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:
- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
  - (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
  - (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.
3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

## **Article 15**

### ***Ne bis in idem***

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.
2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.
3. No person who has been tried by another court for conduct also proscribed under article 3, 4 or 5 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:
  - (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
  - (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

## **Article 16**

### **Applicable law**

1. The Court shall apply:
  - (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
  - (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
  - (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of

States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 4, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

### **Part III General principles of Criminal Law**

#### **Article 17**

##### ***Nullum crimen sine lege***

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.
3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

#### **Article 18**

##### ***Nulla poena sine lege***

A person convicted by the Court may be punished only in accordance with this Statute.

## **Article 19**

### **Non-retroactivity *ratione personae***

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

## **Article 20**

### **Individual criminal responsibility**

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
  - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
  - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
  - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
  - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of

persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

## **Article 21**

### **Exclusion of jurisdiction over persons under eighteen**

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

## **Article 22**

### **Irrelevance of official capacity**

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

## **Article 23**

### **Responsibility of commanders and other superiors**

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
  - (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
  - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the

competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

## **Article 24**

### **Non-applicability of statute of limitations**

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

## **Article 25**

### **Mental element**

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:
  - (a) In relation to conduct, that person means to engage in the conduct;
  - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly.

## **Article 26**

### **Grounds for excluding criminal responsibility**

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:
  - (a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;
  - (b) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;
  - (c) The person acts reasonably to defend himself or herself or another person or, in the case of war

crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;

(d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

(i) Made by other persons; or

(ii) Constituted by other circumstances beyond that person's control.

2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.
3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 16. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

## **Article 27**

## **Mistake of fact or mistake of law**

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.
2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 28.

## **Article 28-ex33**

### **Superior orders and prescription of law**

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
  - (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
  - (b) The person did not know that the order was unlawful; and
  - (c) The order was not manifestly unlawful.
2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

## **Part IV Composition and administration of the Court**

## **Article 29**

### **Service of judges**

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.
2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.
3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis.

## **Article 30**

### **The Office of the Prosecutor**

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.
2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.

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3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
4. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.
5. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.
6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.
7. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, *inter alia*, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.

8. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.
  - (a) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article;
  - (b) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter.
9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

## **Article 31**

### **Rules of Procedure and Evidence**

1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Rules of Procedure and Evidence may be proposed by:
  - (a) Any State Party;
  - (b) The judges acting by an absolute majority; or
  - (c) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next

ordinary or special session of the Assembly of States Parties.

4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.
5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

## **Article 32**

### **Regulations of the Court**

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.
2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.
3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.

## **Part V Investigation and prosecution**

### **Article 33**

#### **Duties and powers of the Prosecutor with respect to investigations**

1. The Prosecutor shall:
  - (a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant

to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;

(b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and

(c) Fully respect the rights of persons arising under this Statute.

2. The Prosecutor may conduct investigations on the territory of a State:

(a) In accordance with the provisions of Part 9; or

(b) As authorized by the Pre-Trial Chamber.

3. The Prosecutor may:

(a) Collect and examine evidence;

(b) Request the presence of and question persons being investigated, victims and witnesses;

(c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;

(d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;

- (e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and
- (f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

## **Article 34**

### **Rights of persons during an investigation**

1. In respect of an investigation under this Statute, a person:
  - (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
  - (b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
  - (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and
  - (d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.
2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the

Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

- (a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
- (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and
- (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

## **Article 35**

### **Initial proceedings before the Court**

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.
2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is

satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.
4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.
5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

## **Part VI The trial**

### **Article 36**

#### **Trial in the presence of the accused**

1. The accused shall be present during the trial.
2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

## **Article 37**

### **Functions and powers of the Trial Chamber**

1. The functions and powers of the Trial Chamber set out in this article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.
2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:
  - (a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;
  - (b) Determine the language or languages to be used at trial; and
  - (c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.
4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.
5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.
6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

(a) Exercise any functions of the Pre-Trial Chamber referred to in article 61, paragraph 11;-il ai

(b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;

(c) Provide for the protection of confidential information;

(d) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;

(e) Provide for the protection of the accused, witnesses and victims; and

(f) Rule on any other relevant matters.

7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.

8. (a) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65!!!! Il ai"or to plead not guilty.

(b) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.

9. The Trial Chamber shall have, *inter alia*, the power on application of a party or on its own motion to:

(a) Rule on the admissibility or relevance of evidence;  
and

(b) Take all necessary steps to maintain order in the  
course of a hearing.

10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

### **Article 38**

#### **Proceedings on an admission of guilt**

1. Where the accused makes an admission of guilt pursuant to article 37, paragraph 8 (a), the Trial Chamber shall determine whether:

(a) The accused understands the nature and consequences of the admission of guilt;

(b) The admission is voluntarily made by the accused after sufficient consultation with defence counsel;  
and

(c) The admission of guilt is supported by the facts of the case that are contained in:

(i) The charges brought by the Prosecutor and admitted by the accused;

(ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts;  
and

(iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.

2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional

evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.

4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may:

(a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or

(b) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.

6. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

## **Article 39**

### **Presumption of innocence**

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.
2. The onus is on the Prosecutor to prove the guilt of the accused.

3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

## **Article 40**

### **Rights of the accused**

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
  - (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
  - (c) To be tried without undue delay;
  - (d) Subject to article 36, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;
  - (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;

(f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks;

(g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;

(h) To make an unsworn oral or written statement in his or her defence; and

(i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

## **Article 41**

### **Requirements for the decision**

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.
2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The

decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.

3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.
4. The deliberations of the Trial Chamber shall remain secret.
5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

## **Article 42**

### **Reparations to victims**

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.
2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.
3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

### **Article 43**

#### **Sentencing**

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.
2. Except where article 38 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.
3. Where paragraph 2 applies, any representations under article 30 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.
4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.