



NV 43/2019

The Embassy of the Republic of South Africa presents its compliments to the Secretariat of the Assembly of States Parties of the International Criminal Court and has the honour to inform that the Government of the Republic of South Africa enacted the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, ("Implementation Act") which serves as a stand-alone legislation, and includes the Rome Statute as an Annexure thereof. We have attached a copy of the Implementation Act for ease of reference.

The Implementation Act incorporates the substantive crimes into domestic law and incorporates aspects related to cooperation with the Court in Chapter 4, Parts 1 and 2.

The Implementation Act designates the Director-General: Justice and Constitutional Development as its Central Authority, which also serves as a channel of communication with the Court, through the South African Embassy in The Hague.

The Implementation Act provides for the privileges and immunities of the Court in section 6 and 7 thereof.

The Embassy of the Republic of South Africa to the Kingdom of the Netherlands avails itself of the opportunity to renew to the Secretariat of the Assembly of States Parties the assurance of its highest consideration.

Secretariat of the Assembly of States Parties
International Criminal Court
The Hague



The Hague
1 July 2019

**IMPLEMENTATION OF THE ROME STATUTE OF THE INTERNATIONAL
CRIMINAL COURT ACT 27 OF 2002**

[ASSENTED TO 12 JULY 2002] [DATE OF COMMENCEMENT: 16 AUGUST
2002]

(English text signed by the President)

Regulations under this Act

**IMPLEMENTATION OF THE ROME STATUTE OF THE INTERNATIONAL
CRIMINAL COURT REGULATIONS, 2002**

ACT

To provide for a framework to ensure the effective implementation of the Rome Statute of the International Criminal Court in South Africa; to ensure that South Africa conforms with its obligations set out in the Statute; to provide for the crime of genocide, crimes against humanity and war crimes; to provide for the prosecution in South African courts of persons accused of having committed the said crimes in South Africa and beyond the borders of South Africa in certain circumstances; to provide for the arrest of persons accused of having committed the said crimes and their surrender to the said Court in certain circumstances; to provide for cooperation by South Africa with the said Court; and to provide for matters connected therewith.

Preamble

MINDFUL that-

* throughout the history of human-kind, millions of children, women and men have suffered as a result of atrocities which constitute the crimes of genocide, crimes against humanity, war crimes and the crime of aggression in terms of international law;

* the Republic of South Africa, with its own history of atrocities, has, since 1994, become an integral and accepted member of the community of nations;

* the Republic of South Africa is committed to-

* bringing persons who commit such atrocities to justice, either in a court of law of the Republic in terms of its domestic laws where possible, pursuant to its international obligations to do so when the Republic became party to the Rome Statute of the International Criminal Court, or in the event of the national prosecuting authority of the Republic declining or being unable to do so, in line with the principle of complementarity as contemplated in the Statute, in the International Criminal Court, created by and functioning in terms of the said Statute; and

* carrying out its other obligations in terms of the said Statute;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

CONTENTS

Section

CHAPTER 1

DEFINITIONS, OBJECTS AND INTERPRETATION OF ACT

- 1 Definitions
- 2 Applicable law
- 3 Objects of Act

CHAPTER 2

JURISDICTION OF SOUTH AFRICAN COURTS AND INSTITUTION OF PROSECUTIONS IN SOUTH AFRICAN COURTS IN RESPECT OF CRIMES

- 4 Jurisdiction of South African courts in respect of crimes
- 5 Institution of prosecutions in South African courts

CHAPTER 3

FUNCTIONING, PRIVILEGES AND IMMUNITIES OF COURT IN SOUTH AFRICA

- 6 Seat of Court in Republic
- 7 Privileges and immunities of Court

CHAPTER 4

COOPERATION WITH AND ASSISTANCE TO COURT IN OR OUTSIDE SOUTH AFRICA

PART 1

COOPERATION WITH COURT: ARREST OF PERSONS AND THEIR SURRENDER TO COURT

- 8 Endorsement of warrants of arrest
- 9 Provisional warrants of arrest
- 10 Proceedings before competent court after arrest for purposes of surrender
- 11 Removal of persons surrendered
- 12 Entry and passage of persons in custody through the Republic
- 13 Discharge of persons not surrendered

PART 2

JUDICIAL ASSISTANCE TO COURT

- 14 Areas of cooperation and judicial assistance
- 15 Request for assistance in obtaining evidence
- 16 Examination of witnesses
- 17 Rights and privileges of witnesses before magistrate
- 18 Offences by witnesses
- 19 Attendance of witnesses in proceedings before Court
- 20 Transfer of prisoner to give evidence or to assist in investigations
- 21 Service of process and documents
- 22 Registration of restraint order
- 23 Effect of registration of restraint order
- 24 Setting aside of registration of restraint order
- 25 Registration of sentence of fine or compensatory order
- 26 Effect of registration of sentence of fine or compensatory order
- 27 Registration of confiscation order
- 28 Effect of registration of confiscation order
- 29 Setting aside of registration of confiscation order
- 30 Entry, search and seizure
- 31 Designation of Republic as State in which sentences of imprisonment can
be served
- 32 Enforcement of sentence of imprisonment

CHAPTER 5
MISCELLANEOUS

- 33 President may enter into agreements
- 34 Admissibility of documents
- 35 Act not to limit provision of other assistance
- 36 Conversion of currencies
- 37 Offences against administration of justice in terms of Statute
- 38 Regulations
- 39 Amendment of laws
- 40 Short title and commencement
 - Schedule 1
 - Schedule 2
 - Annexure

CHAPTER 1
DEFINITIONS, OBJECTS AND INTERPRETATION OF AN ACT (ss 1-3)

[a27y2002s1]1Definitions

In this Act, unless the context indicates otherwise-

'a crime against humanity' means any conduct referred to in Part 2 of Schedule 1;

'a war crime' means any conduct referred to in Part 3 of Schedule 1;

'Central Authority' means the Director-General: Justice and Constitutional Development;

'confiscation order' means any order issued by the Court aimed at recovering the proceeds of any crime or an offence within the jurisdiction of the Court or the value of such proceeds;

'conventional international law' means any convention or treaty or other international agreement that is in force in and binding on the Republic;

'Court' means the International Criminal Court established by Article 1 of the Statute;

'crime' means the crime of genocide, crimes against humanity and war crimes;

'genocide' means any conduct referred to in Part 1 of Schedule 1;

'High Court' means any one of the High Courts contemplated in section 166 (c) of the Constitution;

'magistrate' means a magistrate defined in section 1 of the Magistrates Act, 1993 (Act 90 of 1993);

'National Director' means the National Director of Public Prosecutions appointed in terms of section 179 (1) (a) of the Constitution;

'prescribed' means prescribed by regulation in terms of this Act;

'prisoner' means any person who is being detained in custody within or outside any prison-

(a) to serve a sentence in terms of any law; or

(b) pending his or her trial or sentence for an offence committed under South African domestic law;

'property' means money or any other movable, immovable, corporeal or incorporeal thing and includes any interest thereon and all proceeds thereof;

'regulation' means a regulation made under this Act;

'restraint order' means any order issued by the Court in respect of a crime or an offence within the jurisdiction of the Court, aimed at restraining any person from dealing with any property;

'Rules' means the Rules of Procedure and Evidence referred to in Article 51 of the Statute;

'the Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

'the Statute' means the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998 and ratified by the Republic on 10 November 2000, a copy of the English text of which is attached in the Annexure for information;

'this Act' includes the regulations.

[a27y2002s2]2Applicable law

In addition to the Constitution and the law, any competent court in the Republic hearing any matter arising from the application of this Act must also consider and, where appropriate, may apply-

- (a) conventional international law, and in particular the Statute;
- (b) customary international law; and
- (c) comparable foreign law.

[a27y2002s3]3Objects of Act

The objects of this Act are-

- (a) to create a framework to ensure that the Statute is effectively implemented in the Republic;
- (b) to ensure that anything done in terms of this Act conforms with the obligations of the Republic in terms of the Statute;
- (c) to provide for the crime of genocide, crimes against humanity and war crimes;
- (d) to enable, as far as possible and in accordance with the principle of complementarity as referred to in Article 1 of the Statute, the national prosecuting authority of the Republic to prosecute and the High Courts of the Republic to adjudicate in cases brought against any person accused of having committed a crime in the Republic and beyond the borders of the Republic in certain circumstances; and

(e) in the event of the national prosecuting authority declining or being unable to prosecute a person as contemplated in paragraph (d), to enable the Republic to cooperate with the Court in the investigation and prosecution of persons accused of having committed crimes or offences referred to in the Statute, and in particular to-

- (i) enable the Court to make requests for assistance;
- (ii) provide mechanisms for the surrender to the Court of persons accused of having committed a crime referred to in the Statute;
- (iii) enable the Court to sit in the Republic; and
- (iv) enforce any sentence imposed or order made by the Court.

CHAPTER 2

JURISDICTION OF SOUTH AFRICAN COURTS AND INSTITUTION OF PROSECUTIONS IN SOUTH AFRICAN COURTS IN RESPECT OF CRIMES (ss 4-5)

[a27y2002s4]4Jurisdiction of South African courts in respect of crimes

(1) Despite anything to the contrary in any other law of the Republic, any person who commits a crime, is guilty of an offence and is liable on conviction to a fine or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine, or both a fine and such imprisonment.

(2) Despite any other law to the contrary, including customary and conventional international law, the fact that a person-

- (a) is or was a head of State or government, a member of a government or parliament, an elected representative or a government official; or
- (b) being a member of a security service or armed force, was under a legal obligation to obey a manifestly unlawful order of a government or superior,

is neither-

- (i) a defence to a crime; nor
- (ii) a ground for any possible reduction of sentence once a person has been convicted of a crime.

(3) In order to secure the jurisdiction of a South African court for purposes of this Chapter, any person who commits a crime contemplated in subsection (1) outside the territory of the Republic, is deemed to have committed that crime in the territory of the Republic if-

- (a) that person is a South African citizen; or
- (b) that person is not a South African citizen but is ordinarily resident in the Republic; or
- (c) that person, after the commission of the crime, is present in the territory of the Republic; or
- (d) that person has committed the said crime against a South African citizen or against a person who is ordinarily resident in the Republic.

[a27y2002s5]5 Institution of prosecutions in South African courts

(1) No prosecution may be instituted against a person accused of having committed a crime without the consent of the National Director.

(2) No prosecution may be instituted against a person accused of having committed a crime if the crime in question is alleged to have been committed before the commencement of the Statute.

(3) The National Director must, when reaching a decision on whether to institute a prosecution contemplated in this section, give recognition to the obligation that the Republic, in the first instance and in line with the principle of complementarity as contemplated in Article 1 of the Statute, has jurisdiction and the responsibility to prosecute persons accused of having committed a crime.

(4) The Cabinet member responsible for the administration of justice must, in consultation with the Chief Justice of South Africa and after consultation with the National Director and, in writing, designate an appropriate High Court in which to conduct a prosecution against any person accused of having committed a crime.

(5) If the National Director, for any reason, declines to prosecute a person under this section, he or she must provide the Central Authority with the full reasons for his or her decision and the Central Authority must forward that decision, together with the reasons, to the Registrar of the Court.

(6) A decision by the National Director not to prosecute a person under this section does not preclude the prosecution of that person in the Court.

CHAPTER 3
FUNCTIONING, PRIVILEGES AND IMMUNITIES OF COURT IN SOUTH AFRICA
(ss 6-7)

[a27y2002s6]6 Seat of Court in Republic

The President may, at the request of the Court and by proclamation in the Gazette, declare any place in the Republic to be a seat of the Court.

[a27y2002s7]7Privileges and immunities of Court

(1) The Court has such rights and privileges of a South African court of law in the Republic as may be necessary to enable it to perform its functions.

(2) The judges, the Prosecutor, the Deputy Prosecutors and the Registrar of the Court, when performing their functions in the Republic, shall enjoy such immunities and privileges as are accorded a representative of another state or government in terms of section 4 (2) of the Diplomatic Immunities and Privileges Act, 2001 (Act 37 of 2001).

(3) The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry of the Court enjoy the privileges and facilities necessary for the performance of their functions in the Republic as may be published by proclamation in the Gazette in accordance with section 7 (2) of the Diplomatic Immunities and Privileges Act, 2001.

(4) The Cabinet member responsible for foreign affairs may, after consultation with the Cabinet member responsible for the administration of justice and by notice in the Gazette, on such conditions as he or she considers necessary, confer immunities and privileges on any other member of the staff of the Court or any other person performing functions for purposes of this Act.

(5) The name of any person who enjoys immunities or privileges in terms of this section must be entered into the register contemplated in section 9 (1) of the Diplomatic Immunities and Privileges Act, 2001, and sections 9 (2) and (3) of that Act apply with the necessary changes.

CHAPTER 4

COOPERATION WITH AND ASSISTANCE TO COURT IN OR OUTSIDE SOUTH AFRICA (ss 8-32)

Part 1

Cooperation with court: arrest of persons and their surrender to court (ss 8-13)

[a27y2002s8]8Endorsement of warrants of arrest

(1) Any request received from the Court for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Court must be referred to the Central Authority and accompanied by such documents as may be necessary to satisfy a competent court in the Republic that there are sufficient grounds for the surrender of that person to the Court.

(2) The Central Authority must immediately on receipt of that request, forward the request and accompanying documents to a magistrate, who must endorse the warrant of arrest for execution in any part of the Republic.

[a27y2002s9]9 Provisional warrants of arrest

(1) Where the Central Authority receives a request from the Court for the provisional arrest of a person who is suspected or accused of having committed a crime contemplated in the Statute or who has been convicted by the Court, the Central Authority must immediately forward the request to the National Director to apply for a warrant of arrest for that person.

(2) On an application by the National Director, or a person designated by him or her, stating under oath or affirmation that he or she has reason to believe that-

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

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

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

(d) the person concerned is in or on his or her way to the Republic;

and

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

a magistrate may issue a warrant for the arrest of that person and notify the Central Authority that a warrant has been issued.

(3) Any warrant endorsed in terms of section 8 or issued in terms of subsection (2) must be in the form and executed in a manner as near as possible to what may be prescribed in respect of warrants of arrest in general by or under the laws of the Republic relating to criminal procedure.

[a27y2002s10]10 Proceedings before competent court after arrest for purposes of surrender

(1) Any person who detains a person under a warrant of arrest or a warrant for his or her further detention must, within 48 hours after that person's arrest or on the date specified in the warrant for his or her further detention, as the case may be, bring that

person before a magistrate in whose area of jurisdiction he or she has been arrested or detained, whereupon that magistrate must, with a view to the surrender of that person to the Court, hold an inquiry in order to establish whether-

- (a) the warrant applies to the person in question;
- (b) the person has been arrested in accordance with the procedures laid down by domestic law; and
- (c) the rights of the person, as contemplated in Chapter 2 of the Constitution, have been respected, if, and the extent to which, they are or may be applicable.

(2) The magistrate may at any time during the inquiry postpone that inquiry for purposes of consultation between the relevant authorities of the Republic and the Court where any problem is experienced with the execution of any request of the Court for cooperation or judicial assistance.

(3) The magistrate holding the enquiry must proceed in the manner in which a preparatory examination is held under Chapter 20 of the Criminal Procedure Act, 1977 (Act 51 of 1977), and has, for the purposes of holding the inquiry, the same powers as he or she would have had in respect of a preparatory examination so held, including the power to commit any person for further detention or to release such person on bail.

(4) Any deposition, statement made under oath or an affirmation, whether or not it was made in the presence of the person referred to in subsection (1), or any document, record or judgment of conviction or any warrant issued by the Court, or any copy or sworn translation thereof, may be received in evidence at any such inquiry, but a copy or sworn translation thereof may only be received in evidence if such document is certified as a true copy or translation thereof by a judge of the Court or by a member of the staff of the Court authorised thereto by such judge.

(5) If, after considering the evidence adduced at the inquiry referred to in subsection (1), the magistrate is satisfied that the requirements of subsection (1) (a) to (c) have been complied with and that the person concerned may be surrendered to the Court-

- (a) for prosecution in the Court for the alleged crime;
- (b) for the imposition of a sentence by the Court for the crime in respect of which the person has been convicted;
- (c) to serve a sentence already imposed by the Court,

the magistrate must issue an order committing that person to prison pending his or her surrender to the Court.

(6) The magistrate issuing the order of committal contemplated in subsection (5) or postponing the inquiry as contemplated in subsection (2), must immediately forward to the Central Authority a copy of the order or reasons for the postponement, together with any other necessary report.

(7) The inquiry contemplated in this section may be dispensed with if the person concerned agrees in writing to his or her surrender to the Court.

(8) (a) No order for the surrender of any person may be executed-

(i) before the period allowed for an appeal as contemplated in this section has expired, unless that person has waived his or her right of appeal in writing; or

(ii) before such an appeal has been disposed of.

(b) Any person against whom an order has been issued under subsection (5) may, within seven days after the date of the order, appeal to a High Court having jurisdiction against a decision of the magistrate whether one or more of the requirements referred to in subsection (1) (a) to (c) have been complied with.

(c) The National Director may, within seven days after the date of a decision of a magistrate not to issue an order committing a person to prison pending his or her surrender to the Court, as contemplated in subsection (5), appeal against such a decision to a High Court having jurisdiction.

(d) On appeal such High Court must make a decision whether the requirements referred to in subsection (1) (a) to (c), as appealed against, have been complied with and make an order which, in the opinion of the High Court in question, the magistrate should have made in the first place.

(e) If an appeal in terms of-

(i) paragraph (b) is upheld, the Registrar of the High Court concerned must notify the magistrate in question accordingly, who must, in turn, immediately cancel the order referred to in section 10 (5), notify the Court thereof through the Central Authority and cause the person who lodged the appeal to be released from custody if he or she is in detention;

(ii) paragraph (c) is upheld, the Registrar of the High Court concerned must notify the magistrate in question accordingly, who must, in turn, after causing sufficient notice to be given to the person in question and to the National Director, inform the person in question of the order of the High Court.

(f) Notice to the person in question as contemplated in paragraph (e) (ii) must be a written notice to that person calling upon him or her to appear at a stated place and time

on a stated date in order that the magistrate can inform the person of the order of the High Court, as contemplated in paragraph (e) (ii), whereupon the provisions of sections 54 (2) and 55 (1) and (2) of the Criminal Procedure Act, 1977 (Act 51 of 1977), apply with the necessary changes.

(g) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must, within six months after the date of commencement of this Act, make and implement rules of procedure which provide for the expeditious and urgent finalisation of an appeal contemplated in this section.

(h) Any rule made under paragraph (g) must, before publication thereof in the Gazette, as contemplated in section 6 (4) of the Rules Board for Courts of Law Act, 1985, be approved by Parliament.

(9) The fact that the person to be surrendered is a person contemplated in section 4 (2) (a) or (b) does not constitute a ground for refusing to issue an order contemplated in subsection (5).

[a27y2002s11]11 Removal of persons surrendered

(1) Any person in respect of whom an order to be surrendered has been given under section 10 (5) or who agrees to his or her surrender, may be removed from the Republic in the custody of a person authorized by the Court to receive him or her and if the person escapes while being so removed, he or she may be arrested without a warrant by any person.

(2) Any person who-

(a) while being so removed, escapes or attempts to escape from custody; or

(b) rescues or attempts to rescue from custody any person being so removed,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

[a27y2002s12]12 Entry and passage of persons in custody through Republic

Any person entering and passing through the Republic in custody by virtue of any warrant or order lawfully issued by the Court is, during his or her passage through the Republic, and despite any other law, deemed to be in lawful custody and may be held in any police cell, lock-up, prison or any other detention facility which may be designated by the Cabinet member responsible for the administration of justice, in consultation with

the Cabinet member responsible for correctional services or for safety and security, as the case may be, for that purpose.

[a27y2002s13]13 Discharge of persons not surrendered

(1) Where the Court informs the Central Authority that a person arrested in terms of this Act is no longer required to be surrendered to it or into the custody of a state for purposes of serving a sentence imposed by the Court, as the case may be, the Central Authority must inform the magistrate who ordered the surrender accordingly.

(2) The magistrate concerned must, on receipt of such notification, immediately cancel the order referred to in section 10 (5) and cause the person in question to be released from custody if he or she is in detention.

Part 2

Judicial assistance to court (ss 14-32)

[a27y2002s14]14 Areas of cooperation and judicial assistance

The relevant competent authorities in the Republic must, subject to the domestic law of the Republic and the Statute, cooperate with, and render assistance to, the Court in relation to investigations and prosecutions in the following areas:

- (a) The identification and whereabouts of persons or the location of items;
- (b) the taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;
- (c) the questioning of any person being investigated or prosecuted;
- (d) the service of documents, including judicial documents;
- (e) facilitating the voluntary appearance of persons as witnesses or experts before the Court;
- (f) the temporary transfer of persons in custody for purposes of identification or for obtaining testimony or other assistance;
- (g) the examination of places or sites, including the exhumation and examination of grave sites;
- (h) the execution of searches and seizures;
- (i) the provision of records and documents, including official records and documents;

(j) the protection of victims and witnesses and the preservation of evidence;

(k) the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and

(l) any other type of assistance which is not prohibited by law, with the view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.

[a27y2002s15]15 Request for assistance in obtaining evidence

(1) A request by the Court for assistance in obtaining evidence in the Republic for use in the Court must be submitted in writing to the Central Authority.

(2) Upon receipt of such request the Central Authority must satisfy itself that-

(a) proceedings have been instituted in the Court; or

(b) there are reasonable grounds for believing that a crime has been committed within the jurisdiction of the Court; or

(c) an investigation in respect thereof is being conducted by the Prosecutor of the Court.

(3) For purposes of subsection (2), the Central Authority may rely on a certificate purporting to have been issued by a judge of the Court or the Prosecutor of the Court, confirming one or more of the requirements referred to in subsection (2).

(4) If the Central Authority is satisfied that one or more of the requirements as contemplated in subsection (2) have been complied with, it must submit the request contemplated in subsection (1) to the magistrate within whose area of jurisdiction the witness resides or is believed to be present, as well as to the National Director.

[a27y2002s16]16 Examination of witnesses

(1) The magistrate to whom a request has been forwarded in terms of section 15 (4) must cause the person whose evidence is required, to be summoned to appear before him or her to give evidence or to produce any book, document, or object.

(2) A person referred to in subsection (1) must be summoned in the prescribed manner.

(3) Upon the appearance of that person, the magistrate must administer an oath to or accept an affirmation from him or her and take the evidence of that person upon interrogatories or otherwise, as if the said person were a witness in a competent South African court of law in proceedings similar to those in connection with which his or her evidence is required.

(4) Upon completion of the examination of the witness, the magistrate taking the evidence must as soon as possible transmit to the Central Authority the record of the evidence certified by him or her to be correct, together with a certificate setting out the costs incurred in connection with the execution of the Court's request, including any extraordinary costs which have emanated from the execution of that request.

(5) If the services of an interpreter were used at the examination of the witness, the interpreter must, in the prescribed manner, certify that he or she has translated truthfully and to the best of his or her ability and that certificate must accompany the documents referred to in subsection (4).

(6) The Central Authority must, on receipt of the documents referred to in subsections (4) and (5), submit them to the Registrar of the Court, indicating which costs emanating from the execution of the request, in its opinion, should be borne by the Court in terms of Article 100 of the Statute.

[a27y2002s17]17 Rights and privileges of witnesses before magistrate

(1) In respect of the giving of evidence or the production of any book, document or object at an examination in terms of section 16, the laws of the Republic relating to privilege applicable to such a witness in a magistrate's court in similar proceedings apply.

(2) A person summoned to appear before a magistrate in terms of section 16 may be assisted by a legal practitioner in the proceedings contemplated in that section.

[a27y2002s18]18 Offences by witnesses

(1) Any person summoned to appear before a magistrate to give evidence or produce any book, document or object, who-

(a) without sufficient cause, fails to attend at the time and place specified or to remain in attendance until the conclusion of the examination or until he or she is excused from further attendance by the magistrate conducting the examination;

(b) refuses to be sworn or to make an affirmation as a witness;

(c) having been sworn or having made an affirmation, fails to answer any question put to him or her satisfactorily;

(d) fails to produce any book, document or object in his or her possession or under his or her control, which he or she was summoned to produce,

is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years.

(2) Any person who, after having been sworn or having made an affirmation as contemplated in section 16 (3), gives false evidence before a magistrate knowing such evidence to be false or not knowing or believing it to be true, is guilty of an offence and liable on conviction to the penalty which a competent South African court of law may impose for perjury.

[a27y2002s19]19 Attendance of witnesses in proceedings before Court

(1) A summons issued by a judge of the Court or the Prosecutor of the Court for the attendance of any person in any proceedings before the Court, whether in the Republic or elsewhere, must be transmitted to the Central Authority by the person receiving it in the Republic.

(2) Upon receipt of such summons, the Central Authority must immediately transmit it to the magistrate within whose area of jurisdiction such person resides or is present.

(3) Upon receipt of the summons, the magistrate must, if satisfied that the summons was issued by the Court, endorse it for service upon such person, whereupon it may be served as if it were a summons issued out of the court of such magistrate in proceedings similar to those in connection with which it was issued.

(4) Any person summoned under this section who, without sufficient cause, fails to attend at the time and place specified in the summons, is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 12 months.

(5) Any magistrate's court within whose area of jurisdiction the summons has been served or the person summoned resides, has jurisdiction to try such person for a contravention of subsection (4).

(6) For the purposes of subsection (4), a return of service indicating that the summons was served properly on the person concerned, together with a certificate by a judge of the Court, to the effect that such person failed to appear at the time and place specified in the summons, is prima facie proof that the said person failed to appear as contemplated in that subsection.

[a27y2002s20]20 Transfer of prisoner to give evidence or to assist in investigations

Despite any other law-

(a) where the Central Authority receives a request from the Court or the Prosecutor of the Court for the transfer of a prisoner in the Republic into the custody of the Court, for the purpose of giving evidence or assisting in an investigation, the Central Authority must transmit the request to the Cabinet member responsible for correctional services;

(b) if the prisoner consents to the transfer, the Commissioner of Correctional Services or any person authorised thereto by him or her in writing may issue the prescribed warrant for the transfer of the prisoner, into the custody of the Court in accordance with the arrangements made by the Cabinet member responsible for correctional services with the Registrar or the Prosecutor of the Court;

(c) any period of imprisonment served in the custody of the Court, by a prisoner transferred under this section, must be regarded as a period of imprisonment served in the Republic for purposes of calculating the remaining term of imprisonment of that person; and

(d) the Commissioner of Correctional Services must, where it appears that the term of imprisonment of the transferred prisoner will expire while that prisoner is still in the custody of the Court, in writing inform the Registrar of the date on which that term of imprisonment will expire.

[a27y2002s21]21 Service of process and documents

(1) Upon receipt of a request by the Court for assistance in effecting the service of process or documents, except a summons contemplated in section 19 (1), the Central Authority must send the request, together with the process or documents, to the National Commissioner of the South African Police Service for service on the person concerned.

(2) The National Commissioner of the South African Police Service must cause the process or documents to be served on the person concerned in the manner specified in the request.

(3) The National Commissioner of the South African Police Service must send the return of service to the Central Authority for transmission to the Court.

[a27y2002s22]22 Registration of restraint order

(1) When the Central Authority receives a request from the Court for assistance in enforcing a restraint order in the Republic, it may lodge with the registrar of the High Court in whose area of jurisdiction the property is situated or present a certified copy of such order if the Central Authority is satisfied that the order is not subject to any review or appeal and that the request is supported by the following:

(a) A concise statement of the purpose of the request, including the legal basis and the grounds for the request;

(b) as much information as possible about the location or identification of the property in question;

(c) a concise statement of the essential facts underlying the request;

(d) the reasons for and details of any procedure or requirement to be followed;

(e) any other information that is available and may be relevant in the circumstances.

(2) The registrar with whom a certified copy of a restraint order is lodged in terms of subsection (1), must, in the prescribed manner, register such order in respect of the property which is specified therein.

(3) The registrar registering a restraint order must immediately give notice in writing to the person against whom the order has been made that the-

(a) order has been registered at the High Court concerned; and

(b) said person may, within the prescribed period and in the prescribed manner, apply to that court for the setting aside of the registration of the order.

(4) (a) Where the person against whom the restraint order has been made is present in the Republic, the notice contemplated in subsection (3) must be served on such person in the prescribed manner.

(b) Where the said person is not present in the Republic, he or she must be informed of the registration of the restraint order in the prescribed manner.

[a27y2002s23]23 Effect of registration of restraint order

When any restraint order has been registered in terms of section 22, that order has the effect of a restraint order made by that High Court under the Prevention of Organised Crime Act, 1998 (Act 121 of 1998).

[a27y2002s24]24 Setting aside of registration of restraint order

(1) The registration of a restraint order in terms of section 22 must, on the application of the person against whom the order has been made, be set aside if the court at which the order was registered is satisfied that the-

(a) order was registered contrary to a provision of this Act;

(b) order is subject to review or appeal;

(c) sentence or order in support of which the restraint order was made, has been satisfied in full.

(2) The court hearing an application referred to in subsection (1) may at any time postpone the hearing of the application to such date as it may determine.

[a27y2002s25]25 Registration of sentence of fine or compensatory order

(1) When the Central Authority receives a request from the Court for assistance in the Republic to recover a fine to which a person has been sentenced in criminal proceedings in the Court, as contemplated in Article 77, read with Article 109 of the Statute, or for the execution of an order for the payment of compensation for damages to any person made in such proceedings, as contemplated in Article 75 of the Statute, the Central Authority must submit the request to the Cabinet member responsible for the administration of justice for approval if the Central Authority is satisfied that the-

(a) sentence of a fine or order of compensation is final and not subject to review or appeal;

(b) person on whom the sentence was imposed or against whom the order was made, had the opportunity of defending himself or herself;

(c) sentence or order cannot be satisfied in full except by confiscating and realising property; and

(d) person concerned holds property in the Republic.

(2) Upon receiving the approval of the Cabinet member responsible for the administration of justice for execution of the sentence or compensatory order in the Republic, the Central Authority must lodge with the clerk or registrar, as the case may be, of a court in the Republic having jurisdiction, a certified copy of the document confirming the sentence or order and such clerk of the court or registrar must thereupon, in the prescribed manner, register the sentence or order and the amount payable thereunder as reflected in the said document.

(3) The clerk of the court or registrar, as the case may be, must immediately, in the prescribed manner, give written notice of the registration of the sentence or order to the person on whom it was imposed or against whom it was made or who has effective control over the relevant property in the Republic.

[a27y2002s26]26 Effect of registration of sentence of fine or compensatory order

(1) When a sentence of a fine or compensatory order has been registered in terms of section 25, that sentence or order has the effect of a civil judgment of the court at which it has been registered, for the amount reflected therein in favour of the Republic, as represented by the Cabinet member responsible for the administration of justice.

(2) The Central Authority, subject to any agreement or arrangement between the Court and the Republic, must pay over to the Court any amount realised in the execution of a registered sentence or order, less all expenses incurred in connection with the execution of such sentence or order.

[a27y2002s27]27 Registration of confiscation order

(1) When the Central Authority receives a request for assistance in executing a confiscation order in the Republic made by the Court, it must submit that request to the Cabinet member responsible for the administration of justice for approval, if the Central Authority is satisfied that the-

- (a) order is final and not subject to review or appeal;
- (b) person against whom the order was made had the opportunity of defending himself or herself;
- (c) order cannot be satisfied in full except by confiscating and realising property;
- (d) order is enforceable by the Court;
- (e) person concerned holds property in the Republic; and
- (f) request is supported by the following:
 - (i) A concise statement of the purpose of the request, including the legal basis and the grounds for the request;
 - (ii) as much information as possible about the location or identification of the property in question;
 - (iii) a concise statement of the essential facts underlying the request;
 - (iv) the reasons for and details of any procedure or requirement to be followed;
 - (v) any other information that is available and may be relevant in the circumstances.

(2) Upon receiving the approval of the Cabinet member responsible for the administration of justice of the request contemplated in subsection (1), the Central Authority must lodge with the clerk or registrar, as the case may be, of a court in the Republic having jurisdiction, a certified copy of such confiscation order.

(3) When a certified copy of a confiscation order is lodged with a clerk or registrar of a court, that clerk or registrar must, in the prescribed manner, register the confiscation order where the order was for the-

(a) payment of money in respect of the balance of the amount payable thereunder; or

(b) recovery of particular property in respect of the property which is specified therein.

(4) The clerk or registrar of the court registering a confiscation order must immediately issue a notice in writing, addressed to the person against whom the order has been made, to the effect that the-

(a) order has been registered at the court concerned; and

(b) said person may, within the prescribed period and in the prescribed manner, apply to that court for the setting aside of the registration of the order.

(5) (a) Where the person against whom the confiscation order has been made is present in the Republic, the notice contemplated in subsection (4) must be served on such person in the prescribed manner.

(b) Where the said person is not present in the Republic, he or she must be informed of the registration of the confiscation order in the prescribed manner.

[a27y2002s28]28 Effect of registration of confiscation order

(1) When any confiscation order has been registered in terms of section 27, such order has the effect of a civil judgment of the court at which it has been registered in favour of the Republic, as represented by the Cabinet member responsible for the administration of justice.

(2) A confiscation order registered in terms of section 27 may not be executed before the expiry of the period within which an application in terms of section 27 (4) (b) for the setting aside of the registration may be made, or, if such application has been made, before the application has been finally decided.

(3) The Central Authority must, subject to any agreement or arrangement between the Court and the Republic, pay over to the Court any amount recovered in terms of a

confiscation order registered in terms of section 27, less all expenses incurred in connection with the execution of such order.

[a27y2002s29]29 Setting aside of registration of confiscation order

(1) On the application of any person against whom the registration of a confiscation order in terms of section 27 has been made, such registration may be set aside if the court at which it was registered is satisfied that the-

- (a) order was registered contrary to a provision of this Act;
- (b) order is subject to review or appeal;
- (c) person against whom the order was made, through no fault on his or her part, did not appear at the proceedings concerned or did not receive notice of the said proceedings as prescribed by the Statute or Rules or, if no such notice has been prescribed, that he or she did not receive reasonable notice of such proceedings so as to enable him or her to defend himself or herself at the proceedings; or
- (d) order has already been satisfied.

(2) The court hearing an application referred to in subsection (1) may at any time postpone the hearing of the application to such date as it may determine.

[a27y2002s30]30 Entry, search and seizure

(1) The Court or the Prosecutor of the Court must submit any request for assistance in the entering and searching of premises, the search of a person and the seizure of a book, document or object that has a bearing on a crime or an offence committed within the jurisdiction of the Court, to the Central Authority in writing.

(2) The request must contain sufficient information under oath or by way of affirmation that there are reasonable grounds for believing that the entry, search or seizure of the book, document or object has a bearing on a crime or an offence committed within the jurisdiction of the Court and that an investigation or prosecution in respect thereof is being conducted by the Prosecutor of the Court.

(3) On receipt of such request, the Central Authority must forward the request to the National Commissioner of the South African Police Service or a person designated by him or her for that purpose, with a view to obtaining the necessary warrant required in the circumstances.

(4) A magistrate or judge of a High Court may, if it appears to such magistrate or judge from the information submitted that there are reasonable grounds for believing that any book, document or object which has a bearing on the investigation or prosecution concerned, is in the possession or under the control of any person or on or in any

premises within such magistrate's or judge's area of jurisdiction, issue the necessary warrant required in the circumstances.

(5) The warrant must clearly specify the acts which may be performed thereunder by the police officer to whom it was issued.

(6) The warrant remains valid until-

- (a) it is executed;
- (b) it is cancelled by the person who issued it or by any person with similar authority;
- (c) the expiry of three months from the date of its issue; or
- (d) the purpose for which the warrant was issued no longer exists,

whichever may occur first.

(7) A police officer must, immediately before executing the warrant-

- (a) identify himself or herself to the person referred to in the warrant or the owner or person in control of the premises, if such person is present;
- (b) hand to such person a copy of the warrant or, if the person is not present, affix that copy to a prominent place on the premises; and
- (c) supply such person at his or her request with particulars regarding his or her authority to execute the warrant.

(8) An entry, search and seizure under this section must be-

- (a) conducted with strict regard to decency and order, including the protection of a person's right to dignity, freedom, security and privacy; and
- (b) executed by day unless the execution thereof by night is justifiable and necessary.

(9) The seizure of a book, document or object under this section must be effected by removing it from the premises concerned or, if that removal is not reasonably practicable, by sealing or otherwise safeguarding it on or in the premises.

(10) A police officer who may under this section enter and search any premises-

- (a) must, immediately before the entry, audibly demand admission to the premises and make known the purpose of the entry and search, unless there are

reasonable grounds for believing that a book, document or object in respect of which the search is being conducted, may be destroyed, disposed of or tampered with if that admission is first demanded and that purpose is made known;

(b) may use the force that is reasonably necessary to overcome resistance to the entry or search or the seizure of a book, document or object under this section;

(c) may utilize or request the assistance of any person to identify any book, document or object which has a bearing on the alleged crime or offence or to conduct the entry or search or the seizure of any book, document or object under this section.

(11) A person from whose possession or control a book, document or object has been removed under this section may, at his or her own expense and under the supervision of a police officer, make copies thereof or excerpts therefrom.

(12) A police officer who removes a book, document or object from any premises under this section must issue a receipt to the person who is the owner or in possession or in control thereof or, if that person is not present, affix it to a prominent place on the premises.

(13) If, during the conduct of a search or the carrying out of a seizure under this section, a person claims that a book, document or object found on or in the premises contains privileged information and refuses the examination or removal of the book, document or object, the police officer conducting the search or carrying out the seizure must, if he or she is of the opinion that the book, document or object contains information which has a bearing on the alleged crime or offence, seize the book, document or object and submit it to the registrar of the High Court having jurisdiction for safe custody until a court of law has made a ruling on the question whether the information is privileged or not.

(14) If the information is found not to be privileged, the book, document or object seized under this section must be handed over to the Court or Prosecutor of the Court, as the case may be.

(15) If criminal proceedings, in respect of which a book, document or object has been seized under this section, are not instituted within a reasonable time after the seizure or, if it appears that the book, document or object is not required in criminal proceedings for the purposes of evidence or an order of the Court, the Central Authority must request the Court or Prosecutor of the Court to return such book, document or object to the person from whom it was seized.

(16) Any person who-

(a) obstructs or hinders a police officer or any other person in the performance of his or her functions in terms of this section;

(b) when he or she is asked for information or an explanation relating to a matter within his or her knowledge, refuses or fails to give that information or explanation or gives information or an explanation which is false or misleading, knowing it to be false or misleading,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

[a27y2002s31]31 Designation of Republic as State in which sentences of imprisonment can be served

(1) In order to give effect to paragraphs 1 (a) and (b) of Article 103 of the Statute, the Cabinet member responsible for correctional services, must, as soon as practicable after the commencement of this Act-

- (a) in consultation with the Cabinet; and
- (b) with the approval of Parliament,

inform the Court, through the Central Authority, whether the Republic can be placed on the list of States willing to accept sentenced persons, and if so, of the conditions pertaining to such acceptance.

(2) The processes in respect of an acceptance and the conditions pertaining to such acceptance, as contemplated in subsection (1), apply with the necessary changes in respect of a revocation of such acceptance or a variation in the conditions pertaining to such acceptance.

[a27y2002s32]32 Enforcement of sentence of imprisonment

(1) If the Republic has been placed on the list of States contemplated in section 31 (1) and if the Court, in a particular case, as contemplated in paragraph 1 (c) of Article 103 of the Statute designates the Republic as a State in which a person in the case in question must serve a sentence of imprisonment, it must inform the Central Authority as soon as possible of such designation.

(2) The Central Authority must forward such designation to the Cabinet member responsible for correctional services who-

- (a) may accept or refuse the Court's designation; and
- (b) through the Central Authority, must inform the Court as soon as possible whether the designation is accepted or not.

(3) (a) Any person referred to in subsection (1) must, subject to paragraph (b), be committed to a prison in the Republic after the designation referred to in subsection (2) has been accepted and a warrant for his or her detention lawfully issued by the Court is deemed to be a valid warrant for the purposes of section 6 of the Correctional Services Act, 1998 (Act 111 of 1998).

(b) If the Court, at any time, decides to transfer a sentenced person referred to in paragraph (a) to a prison of another State, the Central Authority must, in consultation with the Commissioner of Correctional Services and the Registrar of the Court, arrange for the removal of that person from the Republic in the custody of a person authorised by the Court and the provisions of section 12 apply with the necessary changes.

(4) (a) Subject to paragraphs (b) and (c), the provisions of the Correctional Services Act, 1998, and the domestic law of the Republic apply to a person contemplated in subsection (3).

(b) The sentence of imprisonment referred to in subsection (1) may only be modified by the relevant authorities in the Republic at the request of the Court, as a result of an appeal by the person serving the sentence to, or review by, the Court in terms of the Rules.

(c) The relevant authorities in the Republic must, as far as possible, ensure that communication between persons serving a sentence as contemplated in subsection (3) (a) and the Court can take place freely and confidentially.

CHAPTER 5 MISCELLANEOUS (ss 33-40)

[a27y2002s33]33 President may enter into agreements

(1) The President, as head of the national executive, may, on such conditions as he or she deems fit, enter into any agreement with the Court, including any agreement relating to the provision of assistance to the Court, and he or she may agree to any amendment or revocation of such agreement.

(2) The provisions of section 231 of the Constitution apply to an agreement referred in subsection (1).

(3) Any agreement contemplated in subsection (1) and any amendment or revocation thereof must be published by the Cabinet member responsible for the administration of justice by notice in the Gazette.

[a27y2002s34]34 Admissibility of documents

Any deposition, affidavit, record of any conviction or any document confirming any order of the Court or any copy or sworn translation thereof, may be received in evidence at any proceedings in terms of a provision of this Act if it is-

- (a) authenticated in the manner in which foreign documents are authenticated to enable them to be produced in any court in the Republic;
- (b) signed by a judge of the Court or any person authorised thereto; or
- (c) authenticated in the manner provided for in any agreement with the Court.

[a27y2002s35]35 Act not to limit provision of other assistance

Nothing in this Act may be construed so as to prevent or abrogate or derogate from any arrangement or practice for the provision of assistance to the Court otherwise than in the manner provided for by this Act.

[a27y2002s36]36 Conversion of currencies

If any amount payable in terms of an order registered under section 25 or 27 is expressed in a currency other than that of the Republic, such amount must be converted into the currency of the Republic on the basis of the exchange rate which prevailed on the date on which the order in question was registered in the Republic.

[a27y2002s37]37 Offences against administration of justice in terms of Statute

(1) Any person who-

- (a) in the Republic; or
- (b) outside the territory of the Republic and who-
 - (i) is a South African citizen;
 - (ii) is not a South African citizen but who is ordinarily resident in the Republic;
 - (iii) after the commission of the offence, is present in the territory of the Republic; and
- (c) during his or her interaction, in any matter whatsoever, with the Court, in respect of any matter over which the Court has jurisdiction and whether or not the Court is functioning in the Republic or not, intentionally-

- (i) gives false evidence when under an obligation to tell the truth pursuant to paragraph 1 of Article 69 of the Statute;
- (ii) presents evidence that he or she knows is false or forged;
- (iii) corruptly influences a witness, obstructs or interferes with the attendance or evidence of a witness, retaliates against a witness for giving evidence or destroys, tampers with or interferes with the collection of evidence;
- (iv) impedes, intimidates or corruptly influences an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform his or her duties improperly;
- (v) retaliates against an official of the Court on account of duties performed by that or another official;
- (vi) solicits or accepts a bribe as an official of the Court in connection with his or her official duties,

is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

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

- (a) with the consent of the National Director; and
- (b) at the request of the Court through the Central Authority.

(3) The Cabinet member responsible for the administration of justice must, in consultation with the Chief Justice of South Africa and after consultation with the National Director and, in writing, designate an appropriate High Court or Magistrates Court as contemplated in section 166 (d) of the Constitution in which to conduct a prosecution against any person against whom a prosecution is instituted in terms of this section.

(4) If the National Director declines to prosecute a person under this section, he or she must provide the Central Authority with full reasons for his or her decision and the Central Authority must forward that decision, together with the reasons, to the Registrar of the Court.

[a27y2002s38]38 Regulations

(1) The Cabinet member responsible for the administration of justice may make regulations regarding-

(a) any matter which is required or permitted by this Act to be prescribed; or

(b) any administrative or procedural matter necessary to give effect to the provisions of this Act.

(2) A regulation made under subsection (1) may prescribe a penalty of a fine or of a period of imprisonment for a period not exceeding 12 months for any contravention thereof or failure to comply therewith.

[a27y2002s39]39 Amendment of laws

The laws referred to in Schedule 2 are hereby amended to the extent indicated in the third column thereof.

[a27y2002s40]40 Short title and commencement

This Act is called the Implementation of the Rome Statute of the International Criminal Court Act, 2002, and comes into operation on a date fixed by the President by proclamation in the Gazette.

Schedule 1
CRIMES

(Sections 1 (vii) and 4 (1))

PART 1
GENOCIDE

'Genocide' means any of the following conduct committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- (a) Killing members of the group;
- (b) causing serious bodily harm 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; or
- (e) forcibly transferring children of the group to another group.

PART 2
CRIMES AGAINST HUMANITY

1. 'A crime against humanity' means any of the following conduct 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 sterilisation or any other form of sexual violence of comparable gravity;
- (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in item 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this item or any crime within the jurisdiction of the Court;
- (i) enforced disappearance of persons;
- (j) the crime of apartheid; or
- (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 item 1 of this Part:

(a) 'attack directed against any civilian population' means a course of conduct involving the multiple commission of acts of conduct referred to in item 1 of this Part against any civilian population, pursuant to or in furtherance of a State or organisational 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 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 conduct of a character similar to those referred to in item 1 of this Part, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime; and

(i) 'enforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. 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.

PART 3 WAR CRIMES

'War crimes' mean any of the following:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following conduct against persons or property protected under the provisions of the relevant Geneva Conventions:

- (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 persons to serve in the forces of a hostile power;
 - (vi) wilfully depriving a prisoner of war or other protected persons of the rights of fair and regular trial;
 - (vii) unlawful deportation or transfer or unlawful confinement;
- or
- (viii) taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following conduct:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in the 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 or her arms or having no longer means of defence, has surrendered at discretion;

(vii) making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) declaring that no quarter will be given;

(xiii) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

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

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

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

(xvii) employing poison or poisoned weapons;

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

(xix) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to the Statute by an amendment in accordance with the relevant provisions set out in Articles 121 and 123 of the Statute;

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

(xxii) committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined in paragraph (f) of item 2 of Part 2, enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) utilising 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; or

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

(c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following conduct 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; or
- (iv) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.

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

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following conduct:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) pillaging a town or place, even when taken by assault;
- (vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined in paragraph (f) of item 2 of Part 2, enforced sterilisation 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 15 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, which cause death to or seriously endanger the health of such person or persons; or

(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 (e) of this Part 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 a protracted armed conflict between governmental authorities and organised armed groups or between such groups.

Schedule 2

LAWS AMENDED

(Section 39)

No. and year of law	Short title	Extent of amendment
Act 51 of 1977	<u>Criminal Procedure Act, 1977</u>	The amendment of section 18 by the addition after paragraph (f) of the following paragraph:

'(g) the crime of genocide, crimes against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002.'

Act 16 of 1999	<u>Military Discipline Supplementary Measures Act, 1999</u>	The amendment of section 3 by the addition after subsection (3) of the following subsection:
----------------	-------------------------------------------------------------	----------------------------------------------------------------------------------------------

'(4) When a person who is subject to the Code is suspected of having committed a crime contemplated in section 4 or an offence contemplated in section 37 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002, the matter must be dealt with in accordance with that Act.'