

other officers of the Court shall make a public and solemn undertaking to do so impartially and conscientiously.

Article 15

Loss of office

1. A judge, the Prosecutor or other officer of the Court who is found to have committed misconduct or a serious breach of this Statute, or to be unable to exercise the functions required by this Statute because of long-term illness or disability, shall cease to hold office.

2. A decision as to the loss of office under paragraph 1 shall be made by secret ballot: (a) in the case of the Prosecutor or a Deputy Prosecutor, by an absolute majority of the States parties; (b) in any other case, by a two-thirds majority of the judges.

3. The judge, the Prosecutor or any other officer whose conduct or fitness for office is impugned shall have full opportunity to present evidence and to make submissions but shall not otherwise participate in the discussion of the question.

Article 16

Privileges and immunities

1. The judges, the Prosecutor, the Deputy Prosecutors and the staff of the Procuracy, the Registrar and the Deputy Registrar shall enjoy the privileges, immunities and facilities of a diplomatic agent within the meaning of the Vienna Convention on Diplomatic Relations of 16 April 1961.

2. The staff of the Registry shall enjoy the privileges, immunities and facilities necessary to the performance of their functions.

3. Counsel, experts and witnesses before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

4. The judges may by an absolute majority decide to revoke a privilege or waive an immunity conferred by this article, other than an immunity of a judge, the Prosecutor or Registrar as such. In the case of other officers and staff of the Procuracy or Registry, they may do so only on the recommendation of the Prosecutor or Registrar, as the case may be.

Article 17

Allowances and expenses

1. The President shall receive an annual allowance.

2. The Vice-Presidents shall receive a special allowance for each day they exercise the functions of the President.

3. Subject to paragraph 4, the judges shall receive a daily allowance during the period in which they exercise their functions. They may continue to receive a salary payable in respect of another position occupied by them consistently with article 10.

4. If it is decided under article 10(4) that judges shall thereafter serve on a full-time basis, existing judges who elect to serve on a full-time basis, and all judges subsequently elected, shall be paid a salary.

Article 18

Working languages

The working languages of the Court shall be English and French.

Article 19

Rules of the Court

1. Subject to paragraphs 2 and 3, the judges may by an absolute majority make rules for the functioning of the Court in accordance with this Statute, including rules regulating:

- (a) the conduct of investigations;
- (b) the procedure to be followed and the rules of evidence to be applied;
- (c) any other matter which is necessary for the implementation of this Statute.

2. The initial Rules of the Court shall be drafted by the judges within six months of the first elections for the Court, and submitted to a conference of States parties for approval. The judges may decide that a rule subsequently made under paragraph 1 should also be submitted to a conference of States parties for approval.

3. In any case to which paragraph 2 does not apply, rules made under paragraph 1 shall be transmitted to States parties and may be confirmed by the Presidency unless, within six months after transmission, a majority of States parties have communicated in writing their objections.

4. A rule may provide for its provisional application in the period prior to its approval or confirmation. A rule not approved or confirmed shall lapse.

PART 3. JURISDICTION OF THE COURT

Article 20

Crimes within the jurisdiction of the Court

The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) the crime of genocide;
- (b) the crime of aggression;
- (c) serious violations of the laws and customs applicable in armed conflict;
- (d) crimes against humanity;
- (e) crimes, established under or pursuant to the treaty provisions listed in the Annex, which, having regard to the conduct alleged, constitute exceptionally serious crimes of international concern.

Article 21

Preconditions to the exercise of jurisdiction

1. The Court may exercise its jurisdiction over a person with respect to a crime referred to in article 20 if:

- (a) in a case of genocide, a complaint is brought under article 25(1);
- (b) in any other case, a complaint is brought under article 25(2) and the jurisdiction of the Court with respect to the crime is accepted under article 22:
 - (i) by the State which has custody of the suspect with respect to the crime ("the custodial State"); and
 - (ii) by the State on the territory of which the act or omission in question occurred.

2. If, with respect to a crime to which paragraph 1(b) applies, the custodial State has received, under an international agreement, a request from another State to surrender a suspect for the purposes of prosecution, then, unless the request is rejected, the acceptance by the requesting State of the Court's jurisdiction with respect to the crime is also required.

Article 22

Acceptance of the jurisdiction of the Court for the purposes of article 21

1. A State party to this Statute may:
- (a) at the time it expresses its consent to be bound by the Statute, by declaration lodged with the depositary; or
 - (b) at a later time, by declaration lodged with the Registrar;

accept the jurisdiction of the Court with respect to such of the crimes referred to in article 20 as it specifies in the declaration.

2. A declaration may be of general application, or may be limited to particular conduct or to conduct committed during a particular period of time.

3. A declaration may be made for a specified period, in which case it may not be withdrawn before the end of that period, or for an unspecified period, in which case it may be withdrawn only upon giving six months' notice of withdrawal to the Registrar. Withdrawal does not affect proceedings already commenced under this Statute.

4. If under article 21 the acceptance of a State which is not a party to this Statute is required, that State may, by declaration lodged with the Registrar, consent to the Court exercising jurisdiction with respect to the crime.

Article 23

Action by the Security Council

1. Notwithstanding article 21, the Court has jurisdiction in accordance with this Statute with respect to crimes referred to in article 20 as a consequence of the referral of a matter to the Court by the Security Council acting under Chapter VII of the Charter of the United Nations.

2. A complaint of or directly related to an act of aggression may not be brought under this Statute unless the Security Council has first determined that a State has committed the act of aggression which is the subject of the complaint.

3. No prosecution may be commenced under this Statute arising from a situation which is being dealt with by the Security Council as a threat to or breach of the peace or an act of aggression under Chapter VII of the Charter, unless the Security Council otherwise decides.

Article 24

Duty of the Court as to jurisdiction

The Court shall satisfy itself that it has jurisdiction in any case brought before it.

PART 4. INVESTIGATION AND PROSECUTION

Article 25

Complaint

1. A State party which is also a Contracting Party to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 may lodge a complaint with the Prosecutor alleging that a crime of genocide appears to have been committed.

2. A State party which accepts the jurisdiction of the Court under article 22 with respect to a crime may lodge a complaint with the Prosecutor alleging that such a crime appears to have been committed.

3. As far as possible a complaint shall specify the circumstances of the alleged crime and the identity and whereabouts of any suspect, and be accompanied by such supporting documentation as is available to the complainant State.

4. In a case to which article 23(1) applies, a complaint is not required for the initiation of an investigation.

Article 26

Investigation of alleged crimes

1. On receiving a complaint or upon notification of a decision of the Security Council referred to in article 23(1), the Prosecutor shall initiate an investigation unless the Prosecutor concludes that there is no possible basis for a prosecution under this Statute and decides not to initiate an investigation, in which case the Prosecutor shall so inform the Presidency.

2. The Prosecutor may:

- (a) request the presence of and question suspects, victims and witnesses;
- (b) collect documentary and other evidence;
- (c) conduct on-site investigations;
- (d) take necessary measures to ensure the confidentiality of information or the protection of any person;
- (e) as appropriate, seek the cooperation of any State or of the United Nations.

3. The Presidency may, at the request of the Prosecutor, issue such subpoenas and warrants as may be required for the purposes of an investigation, including a warrant under article 28(1) for the provisional arrest of a suspect.

4. If, upon investigation and having regard, *inter alia*, to the matters referred to in article 35, the Prosecutor concludes that there is no sufficient basis for a prosecution under this Statute and decides not to file an indictment, the Prosecutor shall so inform the Presidency giving details of the nature and basis of the complaint and of the reasons for not filing an indictment.

5. At the request of a complainant State or, in a case to which article 23(1) applies, at the request of the Security Council, the Presidency shall review a decision of the Prosecutor not to initiate an investigation or not

to file an indictment, and may request the Prosecutor to reconsider the decision.

6. A person suspected of a crime under this Statute shall:

- (a) prior to being questioned, be informed that the person is a suspect and of the rights:
 - (i) to remain silent, without such silence being a consideration in the determination of guilt or innocence; and
 - (ii) to have the assistance of counsel of the suspect's choice or if the suspect lacks the means to retain counsel, to have legal assistance assigned by the Court;
- (b) not be compelled to testify or to confess guilt; and
- (c) if questioned in a language other than a language the suspect understands and speaks, be provided with competent interpretation services and with a translation of any document on which the suspect is to be questioned.

Article 27

Commencement of prosecution

1. If upon investigation the Prosecutor concludes that there is a *prima facie* case, the Prosecutor shall file with the Registrar an indictment containing a concise statement of the allegations of fact and of the crime or crimes with which the suspect is charged.

2. The Presidency shall examine the indictment and any supporting material and determine:

- (a) whether a *prima facie* case exists with respect to a crime within the jurisdiction of the Court; and
- (b) whether, having regard, *inter alia*, to the matters referred to in article 35, the case should on the information available be heard by the Court.

If so, it shall confirm the indictment and establish a trial chamber in accordance with article 9.

3. If, after any adjournment that may be necessary to allow additional material to be produced, the Presidency decides not to confirm the indictment, it shall so inform the complainant State or, in a case to which article 23(1) applies, the Security Council.

4. The Presidency may at the request of the Prosecutor amend the indictment, in which case it shall make any necessary orders to ensure

that the accused is notified of the amendment and has adequate time to prepare a defence.

5. The Presidency may make any further orders required for the conduct of the trial, including an order:

- (a) determining the language or languages to be used during the trial;
- (b) requiring the disclosure to the defence, within a sufficient time before the trial to enable the preparation of the defence, of documentary or other evidence available to the Prosecutor, whether or not the Prosecutor intends to rely on that evidence;
- (c) providing for the exchange of information between the Prosecutor and the defence, so that both parties are sufficiently aware of the issues to be decided at the trial;
- (d) providing for the protection of the accused, victims and witnesses and of confidential information.

Article 28

Arrest

1. At any time after an investigation has been initiated, the Presidency may at the request of the Prosecutor issue a warrant for the provisional arrest of a suspect if:

- (a) there is probable cause to believe that the suspect may have committed a crime within the jurisdiction of the Court; and
- (b) the suspect may not be available to stand trial unless provisionally arrested.

2. A suspect who has been provisionally arrested is entitled to release from arrest if the indictment has not been confirmed within 90 days of the arrest, or such longer time as the Presidency may allow.

3. As soon as practicable after the confirmation of the indictment, the Prosecutor shall seek from the Presidency a warrant for the arrest and transfer of the accused. The Presidency shall issue such a warrant unless it is satisfied that:

- (a) the accused will voluntarily appear for trial; or
- (b) there are special circumstances making it unnecessary for the time being to issue the warrant.

4. A person arrested shall be informed at the time of arrest of the reasons for the arrest and shall be promptly informed of any charges.

Article 29

Pre-trial detention or release

1. A person arrested shall be brought promptly before a judicial officer of the State where the arrest occurred. The judicial officer shall determine, in accordance with the procedures applicable in that State, that the warrant has been duly served and that the rights of the accused have been respected.

2. A person arrested may apply to the Presidency for release pending trial. The Presidency may release the person unconditionally or on bail if it is satisfied that the accused will appear at the trial.

3. A person arrested may apply to the Presidency for a determination of the lawfulness under this Statute of the arrest or detention. If the Presidency decides that the arrest or detention was unlawful, it shall order the release of the accused, and may award compensation.

4. A person arrested shall be held, pending trial or release on bail, in an appropriate place of detention in the arresting State, in the State in which the trial is to be held or if necessary, in the host State.

Article 30

Notification of the indictment

1. The prosecutor shall ensure that a person who has been arrested is personally served, as soon as possible after being taken into custody, with certified copies of the following documents, in a language understood by that person:

- (a) in the case of a suspect provisionally arrested, a statement of the grounds for the arrest;
- (b) in any other case, the confirmed indictment;
- (c) a statement of the accused's rights under this Statute.

2. In any case to which paragraph (1) (a) applies, the indictment shall be served on the accused as soon as possible after it has been confirmed.

3. If, 60 days after the indictment has been confirmed, the accused is not in custody pursuant to a warrant issued under article 28 (3), or for some reason the requirements of paragraph 1 cannot be complied with, the Presidency may on the application of the Prosecutor prescribe some other manner of bringing the indictment to the attention of the accused.

Article 31

Persons made available to assist in a prosecution

1. The Prosecutor may request a State party to make persons available to assist in a prosecution in accordance with paragraph 2.

Such persons should be available for the duration of the prosecution, unless otherwise agreed. They shall serve at the direction of the Prosecutor, and shall not seek or receive instructions from any Government or source other than the Prosecutor in relation to their exercise of functions under this article.

3. The terms and conditions on which persons may be made available under this article shall be approved by the Presidency on the recommendation of the Prosecutor.

PART 5. THE TRIAL

Article 32

Place of trial

Unless otherwise decided by the Presidency, the place of the trial will be the seat of the Court.

Article 33

Applicable law

The Court shall apply:

- (a) this Statute;
- (b) applicable treaties and the principles and rules of general international law; and
- (c) to the extent applicable, any rule of national law.

Article 34

Challenges to jurisdiction

Challenges to the jurisdiction of the Court may be made, in accordance with the Rules:

- (a) prior to or at the commencement of the hearing, by an accused or any interested State; and
- (b) at any later stage of the trial, by an accused.

Article 35

Issues of admissibility

The Court may, on application by the accused or at the request of an interested State at any time prior to the commencement of the trial, or of its own motion, decide, having regard to the purposes of this Statute set out in the preamble, that a case before it is inadmissible on the ground – that the crime in question:

- (a) has been duly investigated by a State with jurisdiction over it, and the decision of that State not to proceed to a prosecution is apparently well-founded;
- (b) is under investigation by a State which has or may have jurisdiction over it, and there is no reason for the Court to take any further action for the time being with respect to the crime; or
- (c) is not of such gravity to justify further action by the Court.

Article 36

Procedure under articles 34 and 35

1. In proceedings under articles 34 and 35, the accused and the complainant State have the right to be heard.
2. Proceedings under articles 34 and 35 shall be decided by the Trial Chamber, unless it considers, having regard to the importance of the issues involved, that the matter should be referred to the Appeals Chamber.

Article 37

Trial in the presence of the accused

1. As a general rule, the accused should be present during the trial.
2. The trial Chamber may order that the trial proceed in the absence of the accused if:
 - (a) the accused is in custody, or has been released pending trial, and for reasons of security or the ill-health of the accused it is undesirable for the accused to be present;
 - (b) the accused is continuing to disrupt the trial; or
 - (c) the accused has escaped from lawful custody under this Statute or has broken bail.
3. The Chamber shall, if it makes an order under paragraph 2, ensure that the rights of the accused under this Statute are respected, and in particular:
 - (a) that all reasonable steps have been taken to inform the accused of the charge; and
 - (b) that the accused is legally represented, if necessary by a lawyer appointed by the Court.
4. In cases where a trial cannot be held because of the deliberate absence of an accused, the Court may establish, in accordance with the Rules, an Indictment Chamber for the purpose of:

- (a) recording the evidence;
- (b) considering whether the evidence establishes a *prima facie* case of a crime within the jurisdiction of the Court; and
- (c) issuing and publishing a warrant of arrest in respect of an accused against whom a *prima facie* case is established;

5. If the accused is subsequently tried under this Statute:

- (a) the record of evidence before the Indictment Chamber shall be admissible;
- (b) any judge who was a member of the Indictment Chamber may not be a member of the Trial Chamber.

Article 38

Functions and powers of the Trial Chamber

1. At the commencement of the trial, the Trial Chamber shall:

- (a) have the indictment read;
- (b) ensure that article 27 (5)(b) and 30 have been complied with sufficiently in advance of the trial to enable adequate preparation of the defence;
- (c) satisfy itself that the other rights of the accused under this Statute have been respected; and
- (d) allow the accused to enter a plea of guilty or not guilty.

2. The Chamber shall ensure that a trial is fair and expeditious and is conducted in accordance with this Statute and the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

3. The Chamber may, subject to the Rules, hear charges against more than one accused arising out of the same factual situation.

4. The trial shall be held in public, unless the Chamber determines that certain proceedings be in closed session in accordance with article 43, or for the purpose of protecting confidential or sensitive information which is to be given in evidence.

5. The Chamber shall, subject to this Statute and the Rules have, *inter alia*, the power on the application of a party or of its own motion, to:

- (a) issue a warrant for the arrest and transfer of an accused who is not already in the custody of the Court;

- (b) require the attendance and testimony of witnesses;
- (c) require the production of documentary and other evidentiary materials;
- (d) rule on the admissibility or relevance of evidence;
- (e) protect confidential information; and
- (f) maintain order in the course of a hearing.

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

Article 39

Principle of legality (*nullum crimen sine lege*)

An accused shall not be held guilty:

- (a) in the case of a prosecution with respect to a crime referred to in article 20 (a) to (d), unless the act or omission in question constituted a crime under international law;
 - (b) in the case of a prosecution with respect to a crime referred to in article 20 (e), unless the treaty in question was applicable to the conduct of the accused;
- at the time the act of omission occurred.

Article 40

Presumption of innocence

An accused shall be presumed innocent until proved guilty in accordance with law. The onus is on the Prosecutor to establish the guilt of the accused beyond reasonable doubt.

Article 41

Rights of the accused

1. In the determination of any charge under this Statute, the accused is entitled to a fair and public hearing, subject to article 43, and to the following minimum guarantees:

- (a) to be informed promptly and in detail, in a language which the accused understands, of the nature and cause of the charge;
- (b) to have adequate time and facilities for the preparation of the defence, and to communicate with counsel of the accused's choosing.
- (c) to be tried without undue delay.
- (d) subject to article 37 (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, without payment if the accused lacks sufficient means to pay for such assistance;

- (e) to examine, or have examined, the prosecution witnesses and to obtain the attendance and examination of witnesses for the defence under the same conditions as witnesses for the prosecution;
- (f) if any of the proceedings or documents presented to the Court are not in a language the accused understands and speaks, to have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness;
- (g) not to be compelled to testify or to confess guilt.

2. Exculpatory evidence that becomes available to the Procuracy prior to the conclusion of the trial shall be made available to the defence. In case of doubt as to the application of this paragraph or as to the admissibility of the evidence, the Trial Chamber shall decide.

Article 42

Non bis in idem

1. No person shall be tried before any other court for acts constituting crime of the kind referred to in article 20 for which that person has already been tried by the Court.

2. A person who has been tried by another court for acts constituting a crime of the kind referred to in article 20 may be tried under this Statute only if:

- (a) the acts in question were characterized by that court as an ordinary crime and not as a crime which is within the jurisdiction of the Court; or
- (b) the proceedings in the other court were not impartial or independent or were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted under this Statute, the Court shall take into account the extent to which a penalty imposed by another court on the same person for the same act has already been served.

Article 43

Protection of the accused, victims and witnesses

The Court shall take necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed

proceedings or allow the presentation of evidence by electronic or other special means.

Article 44

Evidence

1. Before testifying, each witness shall, in accordance with the Rules, give an undertaking as to the truthfulness of the evidence to be given by that witness.

2. States parties shall extend their laws of perjury to cover evidence given under this Statute by their nationals, and shall cooperate with the Court in investigating and where appropriate prosecuting any case of suspected perjury.

3. The Court may require to be informed of the nature of any evidence before it is offered so that it may rule on its relevance or admissibility.

4. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

5. Evidence obtained by means of a serious violation of this Statute or of other rules international law shall not be admissible.

Article 45

Quorum and judgment

1. At least four members of the Trial Chamber be present at each stage of the trial.

2. The decisions of the Trial Chamber shall be taken by a majority of the judges. At least three judges must concur in a decision as to conviction or acquittal and as to the sentence to be imposed.

3. If after sufficient time for deliberation a Chamber which has been reduced to four judges is unable to agree on a decision, it may order a new trial.

4. The deliberations of the Court shall be and remain secret.

5. The judgment shall be in writing and shall contain a full and reasoned statement of the findings and conclusions. It shall be the sole judgment issued and shall be delivered in open court.

Article 46

Sentencing

1. In the event of a conviction, the Trial Chamber shall hold a further hearing to hear any evidence relevant to sentence, to allow the Prosecutor