

INTERNATIONAL CRIMINAL COURT

Checklist of Implementation Considerations and Examples

Relating to the Rome Statute and the Rules of Procedure & Evidence

A supplement to the
"Manual for the Ratification and Implementation of the Rome Statute"
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International Centre for Criminal Law Reform & Criminal Justice Policy,
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2. NOTES ON THE CONTRIBUTORS

The International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) was founded in 1991 and is based in Vancouver, Canada. ICCLR conducts research and policy analysis, undertakes the development and delivery of technical assistance programs and provides public information and consultation services relating to the fields of international criminal law, criminal justice policy, and crime prevention. In its role as an affiliated institute of the United Nations, ICCLR participates in the annual meetings of the United Nations Commission on Crime Prevention and Criminal Justice, and the meeting of the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network. ICCLR has also established numerous co-operative working relationships with other international bodies, institutes and associations.

Since 1992, ICCLR has been and continues to be actively committed to supporting global efforts in combating international crimes and prioritising the creation of a permanent, effective and just International Criminal Court (ICC). In March of 1993, ICCLR organised and sponsored *The International Meeting of Experts on the Establishment of an International Criminal Court*, with more than seventy leading criminal and international law experts from thirty countries converging on Vancouver for this five-day meeting. Consequently, the final report was transmitted to the United Nations Legal Office in New York and was used extensively in the design of the *ad hoc* International Criminal Tribunal for the Former Yugoslavia, as noted in the May 1993 Secretary General's Report.

In the ensuing years, ICCLR has continued to develop its expansive collection of substantive and comprehensive ICC-related papers while participating in many negotiating conferences, including several United Nations *ad hoc* Committee meetings for the Establishment of the ICC in 1995 and Preparatory Committee meetings from 1996 to 1998. In 1998, ICCLR delegated representatives to Rome for the five-week United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the ICC. Of course, this landmark conference ultimately led to an overwhelming vote in favour of the adoption of a convention on the establishment of an international criminal court. Building on the momentum created in Rome, the United Nations has since held regular meetings of the Preparatory Commission for the ICC, to focus on a number of proposals for the operation of the Court and the elements of crimes under its jurisdiction, with ICCLR partaking in all eight meetings thus far.

During the first half of 2000, ICCLR developed a *Manual for the Ratification and Implementation of the Rome Statute* – in partnership with “Rights & Democracy” (formerly the International Centre for Human Rights and Democratic Development), and with the financial assistance of the Department of Foreign Affairs & International Trade and the

Department of Justice, Canada. This widely used Manual provides details on the obligations of States Parties to the Rome Statute, and guidance as to how a State might implement each obligation into its national legal system. The English version of the Manual was successfully launched at the Preparatory Commission meeting for the ICC in June 2000, and is now also available in Arabic, Chinese, French, Portuguese, Russian and Spanish.

From August 2000 to January 2002, a major thrust was undertaken in organizing regional workshops to promote the expeditious establishment of a just and permanent ICC, and to assist countries in the development of legislation and administrative procedures to support the ICC when it comes into existence. The International Criminal Court Technical Assistance Program (ICCTAP) was undertaken as a joint partnership between ICCLR and three other Canadian organizations: Rights & Democracy, the Canadian Network for the International Criminal Court (hosted by the World Federalists of Canada), and the Institute for Media, Policy and Civil Society. This component has been supported by the Canadian International Development Agency (CIDA), the Department of Justice, and the Department of Foreign Affairs and International Trade, with in-kind contributions of expert personnel to each workshop by the Government of Canada.

By the end of January 2002, the ICCTAP had provided five regional workshops, each comprised of three or more sub-workshops to promote ICC sensitization, legal technical assistance, civil society collaboration, and media awareness and training. Most of these regional workshops were co-organised with the host country's government, and/or another international organization specializing in ICC ratification and implementation assistance in the region. The five regional workshops were as follows: one for Member States of the Pacific Islands Forum (in the Cook Islands and New Zealand, October 2000), a second for Francophonie States of Central Africa (in Cameroon in February 2001, co-organised with the Government of Cameroon), a third for the Caribbean region (in Jamaica in May 2001, co-organised with the Ministry of Justice of Jamaica and the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders), a fourth for Member States of the Southern African Development Community (Namibia in May 2001, co-organised with the Ministry of Justice of the Republic of Namibia, the Namibian Parliament, and Parliamentarians for Global Action), and a fifth for Member States of the Economic Community of West African States (in Cote d'Ivoire in January 2002, co-organised with the ECOWAS Secretariat and the International Committee of the Red Cross). Cumulatively through these five workshops, the three pillars (government, civil society and media) will have combined to directly sensitize and provide training and assistance to approximately 400 delegates from 80 countries.

ICCLR, with funding from the Department of Foreign Affairs, has also provided country-specific ICC technical assistance to governments in Cambodia, Lao Peoples Democratic Republic, and the Philippines. Currently there are plans to continue to provide this type of follow-up assistance over the next twelve months, in five regions.

ICCLR is also in the process of publishing further materials to assist States with the process of ensuring that the ICC will be as effective as possible. At the moment, these supplementary materials are in various stages of development and include: (i) An Annotated Rome Statute; (ii) a Guide to Implementation Issues arising from the Supplemental Agreements currently under negotiation by the ICC Preparatory Commission, such as the *Draft Agreement on Privileges and Immunities*; and (iii) a Guide to the Impact of the ICC on Correctional Services.

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3. INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT AND ITS RULES OF PROCEDURE & EVIDENCE

In July 1998, the *Rome Statute of the International Criminal Court* was adopted by 120 States participating in a diplomatic conference in Rome. The Rome Statute sets out the structure and functions of the first ever permanent international criminal tribunal, which will have jurisdiction to try persons accused of genocide, crimes against humanity, war crimes, and the crime of aggression. This is a remarkable historical achievement, and 139 States from all over the globe have since shown their support for this institution by becoming signatories to the Rome Statute. Under the Statute, the International Criminal Court (ICC) will commence its work once 60 States have also ratified or acceded to the Statute (see article 126). At the time of writing, more than 50 States had become Parties, suggesting that the Statute will most likely enter into force some time in 2002. (An up-to-date guide to the ratification status of the Rome Statute is available online via <http://www.un.org/law/icc> and <http://www.iccnw.org>)

However, even at the time the Rome Statute was adopted, it was clear that the Statute alone could provide only a basic framework for the establishment of the Court. There was a multitude of details that could not be included within one document, and warranted separate discussions. Thus, Resolution F, *Final Act* of the July 1998 Rome Conference established a Preparatory Commission (Prepcom) to work on various supplemental agreements to the Rome Statute, in order to address these outstanding issues. The Prepcom has been meeting regularly since February 1999, and continues to finalise these issues with a view to the eventual adoption of all draft texts by the Court's Assembly of States Parties, once the Rome Statute enters into force. (All of the Prepcom's reports and draft texts are available at: <http://www.un.org/law/icc/prepcomm/prepfra.htm>)

One of the main tasks for the Prepcom was to draft the ICC's Rules of Procedure and Evidence (RPE), which will enter into force once adopted by a two-thirds majority of members of the ICC Assembly of States Parties (see articles 51 and 112 of the Rome Statute). The "finalized draft text" of these RPE was completed in June 2000, and adopted by consensus by all the States participating in the Prepcom process. In other words, this "finalized draft text" represents the views of States from every region and principal legal system of the world. Therefore, it is extremely unlikely that any State will wish to make changes to the "finalized draft text" before it is adopted by the Assembly of States Parties and becomes part of the law pertaining to the ICC.

Of the 225 rules contained in the "finalized draft text" of June 2000, many of these would be of interest to States currently in the process of ratifying and implementing the Rome Statute. Many rules would also be of interest to those States Parties with existing implementing laws wishing to establish effective administrative procedures to complement these. In some cases, the "Rules of Procedure and Evidence" were already mentioned explicitly in certain provisions in the Rome Statute. They were identified as a source of further details yet to be negotiated in specific provisions. For example, see the references to the RPE in article 57, paragraph 3 (e) on forfeiture of an accused person's assets, article 70, paragraph 2 on the exercise of jurisdiction over offences against the administration of the Court, and article 92, paragraph 3 on provisional arrest procedures. However, the Rome Statute could not include the RPE numbers, because these were drafted after the Statute was finalised. In addition, some of the RPE have been drafted to provide further clarification of some of the Court's procedures with the benefit of hindsight, even though this need for clarification was not foreseen when the Rome Statute was being drafted.

3.1 Relationship between the Rome Statute and the RPE

The RPE are an instrument for the application of the Rome Statute. They are intended to emphasise and further ensure the high standards of due process set forth in the Statute. They need to be read in conjunction with the relevant provisions of the Rome Statute, because the texts of the rules do not repeat the wording of the Statute.

Most importantly, the Rome Statute takes precedence over the RPE in all cases (article 51). Many States participating in the Preproc process were concerned that the wording of the RPE potentially could change the meaning of certain provisions in the Rome Statute. Therefore, throughout the negotiations every effort was made to ensure that the integrity of the Rome Statute would not be undermined by the RPE. In addition, the Rome Statute makes it clear that all the rules must be “consistent with” the Statute and, “in the event of a conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail” (article 51, paragraphs 4 & 5).

The Explanatory note at the beginning of the “finalized draft text” of the RPE also emphasizes the primacy of the Rome Statute: “In all cases, the Rules of Procedure and Evidence should be read in conjunction with and subject to the provisions of the Statute.” See also the “*Summary of statements made in plenary in connection with the adoption of the report of the Working Group on the Rules of Procedure and Evidence and the report of the Working Group on the Elements of Crimes*”, also available at the ICC website of the UN.

Once the ICC has assumed jurisdiction over a case, States Parties are under an obligation to cooperate with the ICC in its investigations and prosecutions (article 86, Rome Statute). A number of rules pertain to these obligations, and are highlighted in this Checklist. However, the RPE are not intended to place additional obligations on States Parties. They merely clarify procedures and requirements which are already provided for under the Rome Statute. When States are implementing these procedures and requirements, it may be more efficient to implement them with the additional clarifications provided by the RPE.

4. INTRODUCTION TO THE CHECKLIST AND GUIDE TO ABBREVIATIONS

This Checklist is intended for all those who may be involved in implementing the *Rome Statute of the International Criminal Court* and the *Rules of Procedure & Evidence* for the Court. It provides a summary and overview of material contained in two documents that ICCLR has produced: “*International Criminal Court Manual for the Implementation of the Rome Statute*” and “*International Criminal Court Rules of Procedure & Evidence – Implementation Considerations*”. Together, those two documents provide comprehensive details of State Party obligations under the Rome Statute, and other implementation considerations pertaining to both the Rome Statute and the RPE. Readers should refer to both of those documents for more details on the implementation considerations outlined in this Checklist (they are both available at the website of ICCLR: <http://www.icclr.law.ubc.ca>).

In addition, this Checklist provides references to relevant examples of implementing legislation from a wide range of jurisdictions. At this stage, the Checklist only contains references to legislation that is available in English, and is on the world wide web. At some future time, it is hoped to translate this document into other languages and expand it to include other relevant legislation that is available. Note that many of the documents referred to in this Checklist are unofficial translations. Note also that any “Bills” or “Drafts” have yet to become law in their respective jurisdictions.

The Rome Statute is abbreviated to “RS”, while the following abbreviations are used for each piece of legislation:

- AU** – *International Criminal Court Bill 2001 (Exposure Draft)*, introduced August 2001, Australia
- AU(C)** - *International Criminal Court (Consequential Amendments) Bill 2001 (Exposure Draft)*, introduced August 2001, Australia
- AZ** - *Criminal Code of the Republic of Azerbaijan*, adopted 30 December 1999, entered into force 1 September 2000 (unofficial translation)
- AZ(E)** - *Law of the Republic of Azerbaijan on Extradition of Criminals*, adopted 15 May 2001, entered into force 19 June 2001 (unofficial translation)
- AZ(L)** - *Law of the Republic of Azerbaijan on Legal Assistance in Criminal Matters*, adopted June 2001 (unofficial translation)
- CA** - *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. C-24, assented to 29 June 2000, entered into force 23 October 2000, Canada
- CA(E)** - *Extradition Act*, S.C. 1999, c. C-18, assented to 17 June 1999, amendments concerning the International Criminal Court entered into force 23 October 2000, Canada
- CA(L)** - *Mutual Legal Assistance in Criminal Matters Act*, R.S. 1985, c. 30 (4th Supp.), 1988, c. 37 assented to 28 July 1988, amendments concerning the International Criminal Court entered into force 23 October 2000, Canada
- ES** - *Rome Statute of the International Criminal Court Ratification Act (Draft)*, Estonia (unofficial translation)
- ES(P)** - *Amendment Act to the Code of Criminal Procedure (Draft)*, Estonia (unofficial translation)
- ES(C)** - Special Part, *Penal Code*, Estonia (unofficial translation)
- FI** - *Act on the implementation of the provisions of a legislative nature of the Rome Statute of the International Criminal Court and on the application of the Statute*, No. 1284/2000, issued in Helsinki 28 December 2000, Finland (unofficial translation)
- FI(C)** - *The Penal Code of Finland*, No. 39/1889 (unofficial translation)
- FI(A)** - *Act on the amendment of the Penal Code*, No. 1285/2000, issued in Helsinki 28 December 2000, Finland (unofficial translation)
- FI(D)** - *Decree on the application of Chapter 1, section 7 of the Penal Code* (No. 627/1996 as amended by Decrees 353/1997, 118/1999, 537/2000 and 370/2001), 11 September 2001, Finland (unofficial translation)
- FI(L)** - *International Legal Assistance in Criminal Matters Act*, No. 4/1994, 5 January 1994, Finland (unofficial translation)
- GE** - *Act on the Rome Statute of the International Criminal Court of 17 July 1998 (ICC Statute Act)*, entered into force 4 December 2000, Germany (unofficial translation)
- GE(C)** *Draft of an Act to Introduce the Code of Crimes against International Criminal Law (CCAICL – Introductory Act)*, 22 June 2001

- GE(E)** - *An Act to Amend the Basic Law (Article 16)*, entered into force 29 November 2000, Germany (unofficial translation)
- NZ** - *International Crimes and International Criminal Court Act 2000*, No. 26/2000, assented to 6 September 2000, most sections entered into force 1 October 2000, New Zealand
- NO** - *Act No. 65 of 15 June 2001 relating to the implementation of the Statute of the International Criminal Court of 17 July 1998 (the Rome Statute) in Norwegian Law* (unofficial translation)
- PO** - *Penal Code of 6 June 1997*, Poland (nb. further amendments are being considered) (unofficial translation)
- SA** - *International Criminal Court Bill*, introduced July 2001, South Africa
- SW** - *Federal Law on Cooperation with the International Criminal Court (CICCL) of 22 June 2001*, Switzerland (unofficial translation)
- UK** - *International Criminal Court Act 2001*, Chapter 17, enacted 11 May 2001, United Kingdom (note also the availability of Explanatory Notes for this Act)
- UK(S)** - *International Criminal Court (Scotland) Bill*, introduced April 2001, United Kingdom, Scottish Parliament
- UK(M)** - *The Magistrates' Courts (International Criminal Court) (Forms) Rules 2001*, No. 2600/2001 (L. 27), entered into force 1 September 2001, United Kingdom
- UK(F)** - *The International Criminal Court Act 2001 (Enforcement of Fines, Forfeiture and Reparation Orders) Regulations 2001*, No. 2379/2001, entered into force 1 August 2001, United Kingdom
- UK(R)** - *The International Criminal Court Act 2001 (Elements of Crimes) Regulations 2001*, No. 2505/2001, entered into force 1 September 2001, United Kingdom

All of these examples are available in English, most of them via the Council of Europe website on the International Criminal Court: www.legal.coe.int/criminal/icc, with the following exceptions:

- the two Draft Exposure Bills from Australia are available at: www.aph.gov.au/house/committee/jsct/ICC/legislation.htm
- all Canadian legislation is available via: <http://laws.justice.gc.ca/en/index.html>; the *Crimes Against Humanity and War Crimes Act* is available at <http://laws.justice.gc.ca/en/C-45.9/38096.html>, the *Extradition Act* is available at <http://laws.justice.gc.ca/en/E-23.01/51876.html>, and the *Mutual Legal Assistance in Criminal Matters Act* is available at <http://laws.justice.gc.ca/en/M-13.6/77818.html> (note that all Canadian legislation is also available in French via: <http://laws.justice.gc.ca/fr/index.html>)
- the New Zealand *International Crimes and International Criminal Court Act 2000* is available at <http://rangi.knowledge-basket.co.nz/gpacts/public/text/2000/an/026.html>
- the South African *International Criminal Court Bill* is available at <http://www.polity.org.za/govdocs/bills/2001/b42-01.pdf>

IMPLEMENTATION ISSUE	Ref. in RS & RPE	TYPE OF IMPLEMENTING REQUIREMENTS AND CONSIDERATIONS	Example
THE “COMPLEMENTARY” JURISDICTION OF THE COURT			
Taking full advantage of the Court’s “complementary” jurisdiction	<p>Pre- amble</p> <p>Arts. 1 5-8 9 11 17 19-20 22-33</p> <p>Rules 51-62 133 144</p>	<ul style="list-style-type: none"> • [optional but desirable for the effective functioning of the Court] determine whether the State wishes to investigate and prosecute ICC crimes itself, in which case ensure that there are laws and procedures in place to carry out such investigations and prosecutions in accordance with the relevant provisions of the Rome Statute to ensure that the ICC will defer to the State’s jurisdiction (articles 1, 5-8, 17, 19-20, 25, 27-33) • ensure that no person may be tried by national authorities concerning a crime for which that person has already been convicted or acquitted by the ICC (article 20(2)) • [optional but desirable for the effective functioning of the Court] implement into national legislation the crimes within the jurisdiction of the ICC (see articles 5-8) • [optional but desirable for the effective functioning of the Court] implement into national legislation the elements of crimes (see article 9 and the <i>Elements of Crimes</i>, adopted by the Preparatory Commission for the ICC, 30 June 2000) • [optional but desirable for the effective functioning of the Court] implement into national legislation the general principles of criminal law under the Rome Statute (see articles 22-33) • [optional but desirable for the effective functioning of the Court] grant “universal” or other appropriate jurisdiction to all relevant national authorities, in order to facilitate prosecution of ICC crimes at the national level, wherever and whenever they have been committed • [optional] implement procedures to enable relevant authorities to take full advantage of the Court’s “complementary” jurisdiction, in accordance with articles 17-19 and rules 51-62, 133, 144) 	<p>AU(C) - all</p> <p>AZ - Art. 100-119</p> <p>CA - ss. 4-14</p> <p>ES(C) - Chap. 8</p> <p>FI(C) Chap. 1, 11-12</p> <p>FI(D) - all</p> <p>GE(C) - all</p> <p>NZ - ss. 8-13</p> <p>PO - Art. 114, Chap. XVI</p> <p>SA - s. 4</p> <p>UK - Pt 5</p> <p>UK (R) - all</p> <p>UK(S)</p>

			- Part 1 UK (S) Pt 1
INTERNATIONAL COOPERATION UNDER PART 9			
Recognising the jurisdiction of the ICC	Pre- amble Arts. 1 12 13 126	<ul style="list-style-type: none"> recognise the complementary jurisdiction of the ICC to investigate and prosecute all crimes listed in the Rome Statute, from the date of entry into force of the Statute, including jurisdiction over natural persons committing crimes on State Party territory and State Party nationals, but not over persons who were under 18 years old at the time of the commission of the crime (articles 1, 12(1), & 13, and see article 126 re entry into force of the Statute) accept the jurisdiction and authority of the Court to exercise its functions and powers on the State Party's territory, as provided under the Rome Statute (article 4(2)) grant jurisdiction to all relevant national authorities over all persons and objects that may be involved in ICC proceedings 	AU - s. 3, Pt 5 ES - Art. 1 NZ - s. 3, Pt 9 SA - ss. 3, 5, 6 SW - Art. 27
Full cooperation with the Court	Arts. 86 87(7) 88	<ul style="list-style-type: none"> ensure that there are no limits on cooperation with the ICC, apart from those listed in the Statute (articles 86 & 87(7)) ensure that there are procedures available under national law for all of the forms of cooperation specified in Part 9 of the Statute (article 88) 	ES(P) - Art. 415 FI - s. 4

<p>Responding to requests for assistance (generally)</p>	<p>Arts. 50(2) 87 91 96 99</p> <p>Rules 3 15 40-43 117 176-180 187 194</p>	<ul style="list-style-type: none"> • ensure that there are procedures and/or laws in place to recognise the validity of all requests for assistance from the ICC that comply with the requirements of the Rome Statute (articles 50(2), 87(2), 91 & 96) • advise the ICC of any special requirements under national law for executing requests (article 96(3)) • ensure that requests can be executed in accordance with any specifications that accompany the request, as long as these are not prohibited under national law (article 99(1)) • provide for an urgent response to any urgent requests for assistance from the Court (article 99(2)) • ensure that all replies by the State are transmitted to the Court in their original language and form (article 99(3)) • ensure that there are procedures and/or laws in place to facilitate prompt and effective execution of all requests from the ICC for cooperation, except as provided for under the Rome Statute (see articles 72, 73, 93(1)(l), 93(3), 93(4), & 93(5) - discussed below) 	<p>AU - Pt 2</p> <p>NZ - Pt 3</p> <p>NO - s. 3</p> <p>SW - Arts. 3, 42</p>
<p>Consulting with the Court where there may be difficulties in executing requests</p>	<p>Arts. 93 (1)(l) 93(3) 93(5) 97</p> <p>Rule 81</p>	<ul style="list-style-type: none"> • ensure that the relevant authorities consult with the Court where execution of a particular measure would normally be prohibited in the State on the basis of an existing fundamental legal principle of general application (article 93(3)), or where the State has identified problems which may impede or prevent the execution of the request (article 97) • ensure that there are procedures in place to allow the relevant national authorities to consider whether certain types of assistance can be provided subject to conditions, at a later date, or in an alternative manner, where the type of assistance requested would normally be prohibited by the law of the requested State (articles 93(1)(l), 93(3) & 93(5)) 	<p>AU - s. 12</p> <p>NZ - s. 30</p> <p>SW - Art. 4</p>
<p>Postponement of the execution of requests for assistance</p>	<p>Arts. 94 95</p>	<ul style="list-style-type: none"> • ensure that there is a procedure in place for checking whether the execution of a request from the ICC would interfere with an ongoing State investigation or prosecution, once a request is received (article 94) • ensure that there are procedures in place for consulting with the Court, and possibly postponing execution of a request, where execution of a particular request would interfere with an ongoing State investigation or prosecution of <i>a different</i> matter (in accordance with article 94) or of <i>the same</i> matter (in accordance with article 95) 	<p>AU - ss 15, 51, 53</p>
<p>Cost of executing requests</p>	<p>Art. 100</p> <p>Rule 208</p>	<ul style="list-style-type: none"> • ensure that sufficient funds are available to cover the cost of executing certain requests from the Court (only those not listed in article 100(1)) 	<p>AU - s. 173</p>

Designation of an “appropriate channel” for receiving requests	Arts. 50 87 Rules 176-180	<ul style="list-style-type: none"> • [optional] upon ratification, designate a preferred channel for communication with the Court (article 87(1)) • [optional] upon ratification, designate a preferred language of correspondence, either an official language of the State or a working language of the Court (English or French) (articles 50(2) & 87(2)) • ensure that there are appropriate procedures and institutions available under national law for receiving requests for cooperation and communicating with the Court, and changing the channels and language of communication if need be, in accordance with rules 176-180 • ensure that the State is also able to receive requests transmitted through appropriate regional organisations or through Interpol (article 87(1)(b)) 	<p>AU - ss. 9, 10</p> <p>ES(P) - Art. 398</p> <p>FI - s. 2</p> <p>NZ - s. 25</p> <p>SW - Arts. 3, 10</p>
Protecting victims, witnesses and their families when executing requests	Art 87(4)	<ul style="list-style-type: none"> • be prepared to provide and handle certain information in a manner that protects the safety and well-being of victims, witnesses, and their families, as the Court directs (article 87(4)) 	<p>NZ - s. 29 (2)</p>
Provision for future amendments	Arts. 51 121 Rules 1-3	<ul style="list-style-type: none"> • [optional but desirable] make provision for possible future amendments to national laws and procedures for cooperating with the ICC, where this is necessary once the Rules of Procedure & Evidence have been adopted by the Assembly of States Parties (articles 51 & 121) 	
ARREST AND SURRENDER			
Arresting a person in accordance with a warrant issued by the ICC	Arts. 59 89 91 97 Rules 117 181-184 187-	<ul style="list-style-type: none"> • ensure that there is a procedure and/or laws in place to verify the contents of all requests for arrest and surrender received from the ICC, that comply with Article 91 • provide all relevant personnel with the authority to arrest both nationals and non-nationals, in relation to any crime within the jurisdiction of the ICC, in accordance with a request for arrest and surrender and in accordance with the relevant procedures under national law (articles 59 & 89) • require all relevant authorities to take immediate steps to respond to all requests for arrest and surrender from the Court (article 59) and require the relevant authority to consult with the ICC if it identifies any problems which may impede or prevent execution of the 	<p>AU - Pt 3</p> <p>CA (E) - Pt 2</p> <p>FI - s. 3</p> <p>NZ - Pt 4</p> <p>SA</p>

	189	<p>request (article 97)</p> <ul style="list-style-type: none"> ensure that the relevant authorities consult with the Court, if requested, regarding any requirements under national law that may apply to the surrender process in the requested State (article 91(4)) take into account the distinct nature of the Court to ensure that any requirements under national law are no more burdensome than those applicable to extradition requests from other States (article 91(2)(c)) keep accurate records of any time that the person spends in custody, so that the ICC can take this into account when determining any sentences of imprisonment (see article 78) 	<p>- Pt 3</p> <p>SW - Chap. 3</p> <p>UK - Pt 2</p>
Arresting a person in accordance with a provisional warrant issued by the ICC	<p>Arts. 58 (5) 59 (1) 92 97</p> <p>Rules 117- 120 123 181- 184 188 189</p>	<ul style="list-style-type: none"> ensure that there is a procedure and/or laws in place to verify the contents of all requests for provisional arrest received from the ICC, that comply with article 92 (2) provide all relevant personnel with the authority to provisionally arrest both nationals and non-nationals, in relation to any crime <p>within the jurisdiction of the ICC, in accordance with a request for provisional arrest and in accordance with the relevant procedures under national law (articles 58(5), 59(1) & 92)</p> <ul style="list-style-type: none"> require all relevant authorities to take immediate steps to respond to all requests for provisional arrest from the Court (article 59(1)) require the relevant authority to consult with the ICC if it identifies any problems which may impede or prevent execution of the request (article 97) ensure that there is a procedure and/or laws in place to allow a provisionally arrested person to be released from custody, if the required documentation for an arrest does not arrive within a certain time to be stipulated in the Rules of Procedure and Evidence (article 92(3) – the Finalized draft text of the Rules of Procedure and Evidence provides for a time limit of 60 days from the date of provisional arrest (rule 188) require all relevant authorities to immediately re-arrest the person if the documentation arrives subsequently (article 92(4)) [optional but desirable for the effective functioning of the Court]if national laws allow it, make provision for the voluntary surrender of a provisionally arrested person (article 92(3)) keep accurate records of any time that the person spends in custody, so that the ICC can take this into account when determining any sentences of imprisonment (see article 78) 	<p>AU - Pt 3</p> <p>CA(E) - Pt 2</p> <p>FI - s. 3</p> <p>NZ - Pt 4</p> <p>SA - Pt 3</p> <p>SW - Chap. 3</p> <p>UK - Pt 2</p>
Preventing certain persons from absconding	<p>Art. 19 (8)(c)</p> <p>Rules 57 61</p>	<ul style="list-style-type: none"> ensure that there are laws and/or procedures in place to prevent persons who are the subject of a warrant from absconding, pending a decision on the admissibility of a case under article 19 (article 19(8)(c)) 	

<p>Taking protective measures for the purpose of forfeiture, where a warrant or summons has been issued</p>	<p>Arts. 57 (3)(e)</p> <p>93 (1)(k)</p> <p>Rule 99</p>	<ul style="list-style-type: none"> • require the relevant authorities to identify, trace and freeze or seize the proceeds, property and assets and instrumentalities of crimes within the ICC's jurisdiction, for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties, pursuant to • a request from the ICC, where a warrant or summons has been issued (articles 57(3)(e) & 93(1)(k)) 	<p>AU - Pt 4 Div 14</p> <p>CA - ss. 27- 32</p> <p>CA(L) - s. 9.1, 9.2</p> <p>FI - s. 8</p> <p>NZ - ss. 111, 112, 126- 135</p> <p>SA - ss. 22- 29</p> <p>SW - Art. 41, 58</p> <p>UK - ss. 37, 38, Sch. 5, 6</p> <p>UK(S) - ss. 19, 20</p>
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Protecting the rights of persons being arrested	Art. 55 66 67(1) and ICCPR Rules 20-22 111-113 117	<ul style="list-style-type: none"> • ensure that the person being arrested is presumed to be innocent until proven guilty before the ICC in accordance with the applicable law (article 66) • require all relevant authorities to observe the right of all persons to a fair trial, starting from the moment the person is arrested, in accordance with the minimum guarantees set out in article 67 and the rights set out under article 55(1) • require all relevant authorities to observe the rights of persons being questioned in relation to any ICC proceeding, in accordance with article 55(2) • ensure that free legal assistance is available to arrested persons who do not have sufficient means to pay for such assistance (article 55(2(c)) • [optional but desirable] if possible, segregate accused persons from convicted persons in any detention facility and ensure that they are accorded the treatment that is appropriate to their status as unconvicted persons (article 10, <i>International Covenant on Civil & Political Rights</i>) <p>[optional but desirable] if possible, ensure that there are sufficient funds to compensate persons who are wrongfully detained or arrested by State authorities</p>	SA - s. 10
Hearing before a competent judicial authority	Arts. 59(2) 89(4) 97 Rules 117 183 184	<ul style="list-style-type: none"> • require all arrested persons to be brought before the competent judicial authority as soon as possible after being arrested (article 59(2)) • require the competent judicial authority to determine that the warrant applies to the person, that the person has been arrested in accordance with the proper process under national law, and that the person's rights under national law have been respected (article 59(2)) • [optional but desirable] if possible, provide redress at the national level where the person was not arrested in accordance with the proper process under national law and/or the person's rights under national law were not respected, as long as such redress does not interfere with the surrender of the person • require the relevant authority to consult with the ICC if it identifies any problems which may impede or prevent the subsequent surrender of the person (article 97), or if the arrested person is already being investigated or serving a term of imprisonment for a different offence (article 89(4)) 	AU - s. 23 NZ - s. 39 UK - ss. 4, 5 SA - s. 10
Serving a summons to appear before the ICC	Art. 58(7) Rules 112 117 119	<ul style="list-style-type: none"> • ensure that there is a procedure and/or laws in place to verify the contents of a summons for a person to appear before the ICC, that complies with article 58(7) • ensure that there are laws and/or procedures in place to allow for the service of such a summons within the territory of the State and, if possible, on its nationals wherever they may be (article 58(7)) • inform the ICC as to what conditions restricting liberty (other than 	AU - Pt 4 Div 7 FI - s. 5

	123	<p>detention) are allowable under national law, in relation to a summons to appear before the ICC (article 58(7))</p> <ul style="list-style-type: none"> ensure that any allowable conditions attaching to a summons are enforced by the relevant authority 	<p>SA - ss. 19, 21</p> <p>UK - s. 31</p> <p>UK(S) - s. 15</p>
Surrendering a person to the ICC	<p>Arts. 59(7) 89(1) 89(4)</p> <p>Rules 117 183 184</p>	<ul style="list-style-type: none"> grant the relevant authority the power to order any person to be surrendered to the ICC, pursuant to a request from the ICC (article 89(1)) ensure that there are no grounds available for refusing to surrender any person to the ICC when requested, including both nationals and non-nationals (article 89(1)) ensure that there are procedures and/or laws in place to require a person to be transported and surrendered to the ICC as soon as possible after the relevant national authority makes the order for surrender (article 59(7)) require the relevant authority to consult with the ICC if the person being sought for surrender is being proceeded against or is serving a sentence in the requested State for a crime other than the one for which surrender is sought (article 89(4)) 	<p>AU - Pt 3 Div 4</p> <p>CA(E) - Pt 2</p> <p>ES - Art. 3</p> <p>NO - s.2</p> <p>NZ - ss. 33-35, 43-76</p> <p>SA - s. 10</p> <p>SW - Chap. 3</p> <p>UK - Pt 2</p> <p>UK(M) - all</p>
Requirements for surrender in the requested State	<p>Art. 91 (2)(c)</p> <p>Rules 117 187</p>	<ul style="list-style-type: none"> take into account the distinct nature of the ICC when determining national requirements for the surrender process – these requirements should not be more burdensome than those applicable to requests for extradition between States and should, if possible, be less burdensome (article 91(2)(c)) [optional but desirable for the effective functioning of the Court] if possible, introduce a streamlined approach for surrendering persons to the ICC quickly, such as removing any right of appeal to a national authority if adapting extradition procedures to enable surrender to the ICC, ensure that there are no grounds for refusing to surrender a person 	<p>CA(E) - Pt 2</p> <p>UK - Pt 2, Sch. 2</p>

		to the ICC and in particular that all ICC crimes are extraditable offences if dual criminality is a requirement	
Postponement of requests for surrender (ne bis in idem challenges)	Arts. 20 89(2) Rule 181	<ul style="list-style-type: none"> • require the relevant authority to consult immediately with the ICC if a person being sought for surrender makes a challenge on the basis of ne bis in idem (ie. where the ICC is seeking the person's surrender in relation to a crime for which the person claims to have already been convicted or acquitted) (article 89(2)) • require the relevant authority to surrender the person, if the ICC has already determined that the case is admissible in accordance with article 20 (article 89(2)) • ensure that there are procedures and/or laws in place for determining whether to postpone execution of the request for surrender, if the ICC has yet to make a determination on the admissibility of the case (article 89(2)) 	AU - s. 32 NZ - s. 57
Competing requests to surrender a person	Art. 90 Rule 186	<ul style="list-style-type: none"> • ensure that there are procedures and/or laws in place to enable and require the appropriate authority to deal with competing requests for surrender in accordance with the provisions of article 90 	AU - ss. 36-39 NZ - ss. 61-64 SW - Art. 14
Conflicts with other international obligations	Art. 98 Rule 195	<ul style="list-style-type: none"> • ensure that non-nationals who would normally enjoy diplomatic or other immunity may be surrendered when requested by the ICC, where the consent of the State of nationality of the requested person has been obtained or is not required (article 98(1)) • ensure that all requested persons who are also the subject of international agreements may be surrendered to the ICC, where the consent of the State of nationality of the requested person has been obtained or is not required (article 98(2)) • [optional but desirable for the effective functioning of the Court] if possible, ensure that no restrictions are placed, by means of international agreements, on the ability of other States to surrender State Party nationals to the ICC when requested (article 98(2)) • [optional but desirable for the effective functioning of the Court] if possible, be prepared to disclose to the ICC any international obligations or agreements that may conflict with a request for surrender, if the Court requires this information 	AU - s. 13 NZ - s. 66 UK - s. 23
Absence of immunity for Heads of State	Art. 27	<ul style="list-style-type: none"> • ensure that no immunities under national laws will prevent a person from being surrendered to the ICC when requested (articles 27 & 	AZ(E) - Art. 1.3

		89(1))	CA(E) - s. 6.1 NZ - s. 31 UK - s. 23
No limitations period	Art. 29	<ul style="list-style-type: none"> ensure that no limitations periods under national laws will prevent a person from being surrendered to the ICC when requested (articles 29 & 89(1)) 	
Surrendering persons who may face life imprisonment	Art. 89(1)	<ul style="list-style-type: none"> ensure that all persons who would normally be exempt under national laws from imposition of any of the penalties set out in article 77, may be surrendered to the ICC when requested (articles 77 & 89(1)) 	
No trial by jury	Art. 39 (2)(b)	<ul style="list-style-type: none"> ensure that all persons who would normally have a right to trial by jury may be surrendered to the ICC when requested, even though they will be tried by a three-judge chamber of the ICC and not by a jury of their peers (articles 39(2)(b) & 89(1)) 	
Allowing suspects to be transported across State territory en route to the ICC	Art. 89(3) Rule 117	<ul style="list-style-type: none"> authorise transportation through State territory of any person being surrendered to the ICC by another State, except where transit through the State would impede or delay the surrender (article 89(3)(a)) [optional but desirable for the effective functioning of the Court] if possible and where necessary, authorise transportation through State territory of any convicted person being sent from the ICC to another State to serve a term of imprisonment ensure that no authorisation is required if the person is transported by air and no landing is scheduled on the territory of the transit State (article 89(3)(d)) ensure that there are laws and/or procedures in place to detain a person until they can resume their journey, when an unscheduled landing occurs on the territory of the transit State, as long as the detention does not exceed 96 hours from the time of the unscheduled landing, unless a request for transit is received within that time (article 89(3)(e)) if there is an unscheduled landing and a transit request is required by the transit State, ensure that there are laws and/or procedures to 	AU - Pt 9 CA(E) - s. 76 NZ - ss. 136-138 SA - s. 12 SW - Art. 13 UK - ss. 21, 22

		<p>detain the person until the request for transit is received and transit is effected, as long as the detention does not exceed 96 hours from the time of the unscheduled landing, unless the request is received within that time (article 89(3)(e))</p> <ul style="list-style-type: none"> keep accurate records of any time that the person spends in custody, and arrange for these to be transmitted to the Court for its purposes, so that the ICC can take this into account when determining any sentences of imprisonment (see article 78) 	
EVIDENCE			
Collecting and preserving evidence for the ICC	<p>Arts. 64(9) 66 67(1) 69</p> <p>Rules 63 69</p>	<ul style="list-style-type: none"> when collecting and preserving evidence for ICC proceedings, States should try to ensure that all relevant standards under national laws, internationally recognised human rights, and the relevant provisions of the Rome Statute are respected, in order to ensure the admissibility of that evidence before the ICC (articles 64(9), 66, 67(1), & 69) 	<p>AU - Pt 4 Div 11, Pt 6</p> <p>NZ - Pt 5</p>
Allowing the ICC Prosecutor to execute requests directly	<p>Art. 99(4)</p>	<ul style="list-style-type: none"> ensure that there are procedures in place to consult with the ICC if necessary, to negotiate reasonable conditions or address any concerns on the part of the State, when the ICC Prosecutor wishes to execute requests directly on the State's territory, in accordance with article 99(4)(a) or (b) 	<p>NZ - s. 123</p>
Identifying and locating persons	<p>Art. 93 (1)(a)</p>	<ul style="list-style-type: none"> empower the relevant authorities to obtain necessary information as to the identity and location of persons, when the ICC requests this information (article 93(1)(a)) ensure that nationals and non-nationals can be identified and located when they are present upon, or about to leave or enter State territory (article 93(1)(a)) 	<p>AU - Pt 4 Div 4</p> <p>NZ - s. 81</p> <p>SA - s. 14</p>
Obtaining expert reports and opinions	<p>Art. 93 (1)(b)</p> <p>Rule 81</p>	<ul style="list-style-type: none"> ensure that there are laws and/or procedures in place to assist the ICC in obtaining reports and opinions from experts as required (article 93(1)(b)) 	<p>NZ - s. 82</p>

Questioning victims and witnesses	<p>Arts. 55(1)</p> <p>93 (1)(b)</p> <p>100 (1)(b)</p> <p>Rule 111</p>	<ul style="list-style-type: none"> • provide all relevant personnel with the authority to question victims and witnesses in relation to ICC proceedings, when requested (article 93(1)(b)) • as far as possible, ensure that an adequate record is created and maintained by the State, of any statements taken from victims or witnesses in connection with an ICC investigation • as far as possible, ensure that all relevant personnel respect the rights of all persons involved in ICC investigations, as set out under article 55(1) • ensure that competent translators and interpreters are available free of charge to the victim or witness, if required (article 55(1)(c)) [nb. the ICC will usually pay for these (article 100(1)(b))] 	<p>AU - ss. 63, 64</p> <p>NZ - ss. 82, 83</p> <p>SA - ss. 15, 16</p> <p>SW - Art. 34</p> <p>UK - ss. 29, 30</p> <p>UK(S) - ss. 13, 14</p>
Questioning accused persons	<p>Art. 55(2)</p> <p>93 (1)(c)</p> <p>Rules 20 111 112 113</p>	<ul style="list-style-type: none"> • provide all relevant personnel with the authority to question a person being investigated or prosecuted by the ICC, when requested (article 93(1)(c)) • as far as possible, ensure that an adequate record is created and maintained by the State, of any statements taken from a person being investigated or prosecuted by the ICC • require all relevant authorities to observe the rights of persons being questioned in relation to an ICC proceeding, in accordance with article 55(2) 	<p>AU - Pt 4 Div 6</p> <p>NZ - ss. 89, 90</p> <p>SW - Art. 35</p> <p>UK - s. 28, Sch 3</p> <p>UK(S) - s. 12</p>

<p>Serving documents, such as requests to testify before the ICC</p>	<p>Art. 93 (1)(d)</p>	<ul style="list-style-type: none"> ensure that there are laws and/or procedures in place to allow for the effective service of documents from the ICC on all State Party nationals and all persons who are on the State's territory (article 93(1)(d)) 	<p>AU - Pt 4 Div 7</p> <p>FI - s. 5</p> <p>NZ - s. 91</p> <p>SA - ss. 19, 21</p> <p>UK - s. 31</p> <p>UK(S) - s. 15</p>
<p>Assisting witnesses and experts to attend ICC proceedings</p>	<p>Arts. 93 (1)(e) 100 (1)(a)</p>	<ul style="list-style-type: none"> provide assistance to witnesses and experts in order to facilitate the voluntary appearance of such persons before the ICC (article 93(1)(e)) [nb. the ICC will usually pay for the costs associated with the travel and security of witnesses and experts (article 100(1)(a))] 	<p>AU - Pt 4 Div 8</p> <p>FI - ss. 5, 6</p> <p>NZ - ss. 92-94</p>
<p>Conducting searches of persons</p>	<p>Art. 93 (1)(h)</p>	<ul style="list-style-type: none"> empower the relevant authorities to conduct searches of persons for the purposes of ICC investigations, in accordance with internationally recognised human rights (article 93(1)(h)) 	<p>AU - Pt 6 Div 4, Div 5</p> <p>NZ - s. 77</p> <p>SA - s. 30</p>
<p>Preserving testimonial evidence</p>	<p>Art. 93 (1)(j) Rule 81</p>	<ul style="list-style-type: none"> ensure that there are laws and/or procedures in place to preserve and protect all testimonial evidence collected for the purposes of ICC investigations (article 93(1)(j)) 	

<p>Protecting victims and witnesses</p>	<p>Art. 93 (1)(j)</p> <p>Rules 81 85-99</p>	<ul style="list-style-type: none"> ensure that there are laws and/or procedures in place to provide adequate protection for victims, witnesses, and their families who are involved in ICC proceedings, including both nationals and non-nationals (article 93(1)(j)) 	<p>AU - Pt 4 Div 13</p> <p>CA - ss. 71-75</p> <p>NZ - ss. 85, 87, 110</p> <p>NO - ss. 6, 8</p> <p>SA - s. 17</p> <p>SW - Art. 32</p>
<p>Providing protection for accused persons</p>	<p>Arts. 57 (3)(c)</p> <p>64 (6)(e)</p> <p>Rules 76</p> <p>77</p> <p>81</p> <p>115</p> <p>116</p>	<ul style="list-style-type: none"> ensure that there are laws and/or procedures in place to provide adequate protection for accused persons who are involved in ICC proceedings, including both nationals and non-nationals (articles 57(3)(c) & 64(6)(e)) 	<p>NO - s. 5</p>

Transferring persons in custody	Arts. 93 (1)(f) 93(7) Rules 192 193	<ul style="list-style-type: none"> • [optional but desirable for the effective functioning of the Court] if possible, ensure that there are laws and/or procedures in place to allow for the temporary transfer to the ICC of persons in custody in the State, for purposes of identification or for obtaining testimony or other assistance, as long as such persons freely give their informed consent to such transfers, and in accordance with any conditions agreed between the State and the ICC (articles 93(1)(f) & 93(7)) 	<p>AU - Pt 4 Div 9</p> <p>NZ -ss. 95- 99</p> <p>SA - s. 20</p> <p>SW - Art. 26, 39</p> <p>UK - s. 32</p>
Providing other types of assistance	Arts. 93 (1)(l) 93(5)	<ul style="list-style-type: none"> • [optional but desirable for the effective functioning of the Court] if possible, be prepared to provide any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the work of the ICC, and subject to any conditions that may be negotiated with the Court (articles 93(1)(l) & 93(5)) 	<p>NZ - s. 113</p> <p>SW - Chap. 4</p>
Identification and whereabouts of items of evidence	Arts. 57 (3)(b) 93 (1)(a) 99 (4)(b) Rules 76 77 81 115 116	<ul style="list-style-type: none"> • empower the relevant authorities to obtain necessary information as to the whereabouts of any items of evidence requested by the Court (article 93(1)(a)) • ensure that there are no limits on the types of evidence which can be identified and located by the relevant authorities (article 93(1)(a)) • ensure that there are laws and/or procedures in place to monitor and/or restrict the movement of items of evidence across State borders, particularly if any neighbouring States are non-States Parties • wherever possible, allow the ICC Prosecutor and relevant defence counsel to look for items of evidence on State territory, after consulting with the State in accordance with articles 57(3)(b) and 99(4)(b) (article 93(1)(a)) 	<p>NZ - s. 81</p>
Service of documents	Art. 93 (1)(d)	<ul style="list-style-type: none"> • ensure that there are laws and/or procedures in place to allow for the effective service of documents from the ICC concerning items of evidence (article 93(1)(d)) 	<p>NZ - s. 91</p> <p>UK(S) - s. 15</p>

Examination of places or sites, including grave sites	Art. 93 (1)(g)	<ul style="list-style-type: none"> ensure that there are appropriate laws and/or procedures in place to allow the relevant authorities to examine places or sites within State territory, including the exhumation and examination of grave sites, as far as possible in accordance with respect for any traditions and beliefs that may pertain to the places or sites or their contents (article 93(1)(g)) 	<p>AU - Pt 4 Div 10</p> <p>NZ - s. 100</p> <p>UK - ss. 33, 35</p>
Search and seizure of items of evidence	Art. 93 (1)(h) Rules 77 78 84	<ul style="list-style-type: none"> empower the relevant authorities to conduct searches for and to seize items of evidence requested by the ICC, in accordance with internationally recognised human rights and as far as possible in accordance with respect for any traditions and beliefs that may pertain to the items (article 93(1)(h)) 	<p>AU - Pt 4 Div 11, Pt 6</p> <p>CA(L) - ss. 10-16</p> <p>NZ - ss. 77, 78, 101-108</p> <p>SA - s. 30</p> <p>UK - s. 33</p>
Provision of records and documents, including official documents	Art. 93 (1)(i) Rules 77 78 84	<ul style="list-style-type: none"> ensure that there are laws and/or procedures in place to require the relevant authorities to provide official and other documents to the ICC when requested (article 93(1)(i)) 	<p>AU - Pt 4 Div 12</p> <p>CA(L) - s. 18</p> <p>NZ - ss. 82, 84, 86, 88, 109</p> <p>UK - s. 36</p> <p>UK(S) - s. 18</p>

Preserving items of evidence	Art. 93 (1)(j)	<ul style="list-style-type: none"> • ensure that there are laws and/or procedures in place to restrict and control which persons have access to evidence once it has been collected, in order to ensure its preservation (article 93(1)(j)) • ensure that any item of evidence likely to deteriorate is stored under appropriate conditions that minimise the likelihood of such deterioration (article 93(1)(j)) 	<p>AU - Pt 4 Div 13</p> <p>NZ - s. 110</p>
Identifying, tracing and freezing evidence of proceeds, etc. of crime	Art. 93 (1)(k)	<ul style="list-style-type: none"> • enable the relevant authorities, before or after conviction, to identify, trace, and freeze or seize the proceeds, property and assets and instrumentalities of crimes, for the purposes of eventual forfeiture, without prejudice to the rights of bona fide third parties (article 93(1)(k)) 	<p>AU - Pt 4 Div 14</p> <p>CA - ss. 27-32</p> <p>CA(L) - s. 9.1, 9.2</p> <p>FI - s. 8</p> <p>NZ - ss. 111, 112, 126-135</p> <p>SA - ss. 22-29</p> <p>SW - Art. 41, 58</p> <p>UK - ss. 37, 38, Sch. 5, 6</p> <p>UK(S) - ss. 19, 20</p>

Protection of national security information	Arts. 72 93(4) Rule 81	<ul style="list-style-type: none"> • ensure that there are procedures in place to ascertain whether a request for cooperation from the ICC concerns the production of any documents or disclosure of any information which relates to the State’s national security, in which case the State Party may deny such a request for assistance, in whole or in part, in accordance with article 72 (article 93(4)) • ensure that there are procedures in place to allow the State to intervene in an ICC proceeding if the State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and the State is of the opinion that disclosure would prejudice its national security interests (article 72(4)) • ensure that the relevant national authorities will take all reasonable steps to seek to resolve by cooperative means any concerns over potential prejudice to the State’s national security interests, acting in conjunction with the ICC Prosecutor, the defence, the Pre-trial Chamber or the Trial Chamber, as the case may be (article 72(5)) • require the relevant authority to notify the Prosecutor or the Court of specific reasons for any decision not to provide or disclose the information or documents, unless a specific description of the reasons would itself necessarily result in such prejudice to the State’s national security interests, once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests (article 72(6)) • be prepared to undertake further consultations with the Court, including in camera and ex parte hearings for the purpose of enabling the Court to consider the State’s representations, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused (article 72(7)(a)(i)) 	AU - Pt 8 NZ - Pt 8 NO - s. 7 SW - Art. 44 UK - s. 39
Protection of third party information	Art. 73	<ul style="list-style-type: none"> • require the relevant national authority to seek the consent of the originator of any document or information in the custody, possession or control of the State, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, and which is requested by the Court (article 73) • require the relevant national authority to inform the Court if the State is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator and the originator does not consent to disclosure • ensure that there are procedures in place where the State Party is the originator of documents that have been requested from another State, and those documents or information were disclosed to the other State in confidence by the originator, in order to allow the originator of those documents or information in the custody, possession or control of the other State, to consent to disclosure of the information or document to the ICC, or to undertake to resolve 	AU - Pt 7 NZ - ss. 164-165

		the issue of disclosure with the Court in accordance with the provisions of article 72 where necessary (article 73)	
ENFORCEMENT			
Enforcement of fines and forfeiture and reparations orders (pp. 78-80)	Arts. 75(4) 75(5) 93 (1)(k) 109 Rules 99 217- 222	<ul style="list-style-type: none"> require the relevant authorities, after conviction, to identify, trace, and freeze or seize the proceeds, property and assets and instrumentalities of crimes, for the purposes of eventual forfeiture, without prejudice to the rights of bona fide third parties, when requested by the ICC (articles 75(4) & 93(1)(k)) ensure that there are laws and/or procedures in place to give effect to any reparations orders made by the ICC, in accordance with the provisions of article 109 (article 75(5)) ensure that there are laws and/or procedures in place to give effect to penalties that are imposed by the ICC on a convicted person in the form of fines or forfeiture orders, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of national law (article 109(1)) ensure that there are laws and/or procedures in place to recover the value of any proceeds, property or assets ordered by the ICC to be forfeited, without prejudice to the rights of bona fide third parties, where the State is unable to give effect to an order for forfeiture (article 109(2)) require the relevant authority to transfer to the ICC any property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by the State as a result of its enforcement of a judgement of the Court (article 109(3)) 	<p>AU - Pt 10, 11</p> <p>FI - s. 9</p> <p>NZ - Pt 6</p> <p>NO - s. 11</p> <p>SA - ss. 25-29</p> <p>UK - s. 49</p> <p>UK(F) - all</p> <p>UK(S) - s. 25</p>
Enforcement of sentences of imprisonment [optional but desirable for the effective functioning of the Court]	Arts. 103 - 108 110 – 111 Rules 198- 216 223- 225	<p>[all optional but desirable for the effective functioning of the Court]</p> <ul style="list-style-type: none"> determine whether or not to accept persons sentenced by the ICC to a term of imprisonment (article 103(1)(a)) determine any conditions that the State may wish to attach to the acceptance of sentenced persons, which are to be agreed upon with the Court, and may include further prosecution, punishment or extradition to a third State at the conclusion of the person's sentence (articles 103(1)(b) & 108) require the relevant authority to inform the Court promptly if the State chooses to accept a particular designation by the Court (article 103(1)(c)) require the relevant authority to notify the Court at least 45 days in advance of any known or foreseeable circumstances, including the exercise of conditions, which could materially affect the terms or extent of the imprisonment, once the State has accepted the sentenced person, and ensure that the relevant authorities do not take any prejudicial action during that 45 day period (article 	<p>AU - Pt 12</p> <p>CA - ss. 15, 34-40</p> <p>FI - s. 7</p> <p>NZ - ss. 139- 156</p> <p>NO - s. 10</p> <p>SA</p>

		<p>103(2)(a))</p> <ul style="list-style-type: none"> • assist the Court as far as possible in transferring the person to another State, where necessary (articles 104 & 107) • ensure that any sentence imposed by the ICC cannot be modified or reduced by national authorities, including releasing the person before expiry of the sentence imposed by the Court, subject to any conditions which the State may have specified when it accepted the sentenced person (articles 105(1) & 110) • ensure that all communications between the prisoner and the ICC are unimpeded and confidential and in particular that the person is not impeded from making applications to the ICC for appeal and revision (articles 105(2) & 106(3)) • ensure that the conditions of imprisonment for the sentenced person are consistent with widely accepted international treaty standards governing treatment of prisoners and that they are not more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement (article (106(2)) 	<p>- s. 31</p> <p>SW - Chap. 5</p> <p>UK - Pt 4</p> <p>UK(S) - ss. 23, 24</p>
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MISCELLANEOUS OBLIGATIONS

Protecting the privileges and immunities of ICC personnel	Art. 48	<ul style="list-style-type: none"> • enable the Court to enjoy in the territory of the State Party such privileges and immunities as are necessary for the fulfilment of the Court's purposes (article 48(1)) • recognise and protect the privileges and immunities of the ICC judges, Prosecutor, Deputy Prosecutors and Registrar, as set out in article 48(2) • recognise and protect the privileges and immunities necessary for the performance by the Deputy Registrar, the staff of the Office of the Prosecutor, and the staff of the Registry, of their respective functions, in accordance with the agreement on the • privileges and immunities of the Court (article 48(3)) – see Draft Agreement on the Privileges and Immunities of the International Criminal Court, adopted by the Preparatory Commission for the ICC, 5 October 2001 • recognise and protect the rights of counsel, experts, witnesses, and any other person required to be present at the seat of the Court, to be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court (article 48(4)) – see Draft Agreement on the Privileges and Immunities of the International Criminal Court, adopted by the Preparatory Commission for the ICC, 5 October 2001 	<p>CA - s. 54</p> <p>ES(P) - Art. 415</p> <p>SA - s. 6</p> <p>UK - Sch. 1</p>
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<p>Creating offences against the administration of justice of the ICC</p>	<p>Art. 70 Rules 162-172 217 220-221</p>	<ul style="list-style-type: none"> • extend existing domestic criminal laws penalizing offences against the integrity of the State’s own investigative or judicial process to offences against the administration of justice of the ICC, where committed on the State Party’s territory or by its nationals (article 70(4)(a)) • ensure that all relevant national authorities have the jurisdiction and authority to investigate and prosecute these offences • provide sufficient resources to enable national prosecutions to be treated diligently and conducted effectively (article 70(4)(b)) • ensure that all relevant authorities can provide full co-operation to the ICC, in accordance with the domestic laws of the requested State, while the Court is determining whether to investigate or prosecute one of these offences, or to request the host State to take jurisdiction over the matter (article 70(2) and rule 162) • ensure that all relevant authorities can provide full co-operation to the ICC, in accordance with the domestic laws of the requested State, if the Court decides to investigate and prosecute one of these offences (article 70(2) and rule 167) • ensure that there are laws and/or procedures in place to require national authorities to enforce fines and forfeiture orders imposed by the ICC for offences against the administration of justice of the ICC, without modification by national authorities, without prejudice to the rights of bona fide third parties and in accordance with the procedure of national law (articles 70(3) & 109(2), and rules 166(5), 217, 220 & 221) • [optional but desirable for the effective functioning of the Court] make provision for the enforcement of sentences of imprisonment of persons convicted of these offences by the ICC, in accordance with Part 10, Rome Statute, except articles 104-6, 108 & 110 (see rule 163(3)) 	<p>CA - ss. 16-26</p> <p>FI(A) - ss. 12a, 19a, 20</p> <p>NZ - ss. 14-23</p> <p>NO - s. 12</p> <p>SA - s. 36</p>
<p>Provision of certain information where the ICC wishes to investigate the same matter as a State Party</p>	<p>Arts. 13-15 18-19, 56 93 (1)(j) Rules 52-56 61 81 112(5) 114</p>	<ul style="list-style-type: none"> • ensure that there is a procedure in place to enable the State that is already investigating a matter to notify the ICC within one month of receiving notice from the ICC that the Court wishes to investigate the same matter (article 18(2)), taking into account the right of a State to request additional information from the Prosecutor (rule 52(2)) • ensure that there is a procedure in place for the State to request the Prosecutor to defer an investigation in accordance with article 18(2) and rule 53 • ensure that there is a procedure in place for the State to submit observations to the Pre-Trial Chamber where the Prosecutor has nevertheless requested the authorisation of the investigation in accordance with article 18(2) (rule 55) • ensure that there is a procedure in place for responding to any requests for periodic updates made by the ICC Prosecutor, where 	<p>NZ - ss. 110, 114-120</p>

		<p>the Prosecutor has deferred an investigation at the request of a State Party (article 18(5) and rule 56(2))</p> <ul style="list-style-type: none"> • ensure that there is a procedure in place for providing the relevant information on national proceedings, where the ICC Prosecutor has deferred an investigation without a request from a State Party, but requests the State Party to provide that information (article 19(11)) [nb. this information can be provided on a confidential basis and may not be subject to disclosure – see rule 81] • ensure that all relevant evidence in the possession of the State will be preserved and protected, until it is clear whether the State or the ICC will eventually take charge of the investigation or prosecution (article 93(1)(j)) • [optional but desirable for the effective functioning of the Court] if possible, provide that all relevant authorities are in a position to co-operate with the ICC Prosecutor and any other relevant personnel, if the Prosecutor has been authorised by the Pre-trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence, where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available, in accordance with articles 18(6), 19(8), and 56, and rules 57, 61, 112(5), and 114 	
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RELATIONSHIP BETWEEN THE ICC AND STATES PARTIES

Entry into force of the Rome Statute	Art. 126	<ul style="list-style-type: none"> • States Parties must ensure that the relevant implementing laws and procedures are in place by the time the Statute enters into force in accordance with article 126 	
Signing and ratifying or acceding to the Statute without any reservations	Arts. 112(1) 120 125	<ul style="list-style-type: none"> • ensure that no reservations are made to the Statute by States Parties (article 120) • if possible, ensure that signatory States ratify, accept or approve the Statute as soon as possible, so that the number of Parties to the Statute reaches 60 as soon as possible, thereby enabling the Court to come into operation (articles 125(2) & 126) • if possible, ensure that non-signatory States accede to the Statute as soon as possible (article 125(3)) 	
Withdrawing from the Statute	Art. 127	<ul style="list-style-type: none"> • ensure that States Parties follow the procedure and observe the relevant obligations and duties set out in article 127, if they wish to withdraw from the Statute 	

Settlement of disputes	Art. 119	<ul style="list-style-type: none"> any disputes concerning the judicial functions of the Court should be referred to the Court for settlement (article 119(1)) ensure that any disputes between two or more States Parties relating to the interpretation or application of the Statute are settled in accordance with article 119(2) 	
Declaration on war crimes	Art. 124	<ul style="list-style-type: none"> [optional but undesirable] States may declare at the time they become a Party to the Statute that they do not accept the jurisdiction of the ICC over war crimes committed by their nationals or on their territory, for a period of 7 years after the entry into force of the Statute for the State concerned (article 124) 	
Financing of the Court	Arts. 112(8), 115, 117	<ul style="list-style-type: none"> provide the Court, in a timely manner, with the required financial contributions, which will be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based, and ensure that the State Party does not fall into arrears equal to or exceeding 2 years' worth of contributions, or the State Party will lose its right to vote in the Assembly of States Parties, unless failure to pay is due to conditions beyond the control of the State Party (articles 112(8), 115(a) & 117) 	
Allowing the Court to sit in the State's territory	Arts. 3(3), 62 Rule 100	<ul style="list-style-type: none"> [optional but desirable for the effective functioning of the Court] ensure that there are laws and procedures in place to allow the ICC to sit in the State's territory, in accordance with the relevant provisions of the Statute and the Rules of Procedure and Evidence (articles 3(3) & 62) 	<p>AU - Pt 5</p> <p>NZ - Pt 9</p> <p>SA - ss. 5, 6</p>
Nomination of judges and provision of other personnel to the Court	Arts. 36, 41(2), 42(7), 44(4)	<ul style="list-style-type: none"> [optional but desirable for the effective functioning of the Court] nominate judges and provide other personnel to the Court in accordance with the relevant provisions of the Statute and ensure the impartiality of all such persons (36, 41(2), 42(7) & 44(4)) 	
Rights of States Parties	Many	<ul style="list-style-type: none"> [optional but desirable for the effective functioning of the Court] ensure that there are appropriate procedures and/or laws in place in order to effectively exercise all the rights of States Parties provided for under the Statute (eg. articles 13(a), 14, 15(6), 18(1), 19(3), 50(3), 52(3), 53(3)(a), 69(3), 93(10), 96(4), 112(9), 112 & 113) 	

Looking to the Future	Arts. 5 9 48(4) 51 54 - 55 65(5) 67 68(5) 112 121 – 123	<ul style="list-style-type: none"> once the Court is operational, ensure that laws and/or procedures are in place to ensure the efficient functioning of the Court in relation to the Assembly of States Parties (article 112), elements of crimes (article 9), rules of procedure and evidence (article 51), review of the Statute (articles 121-123), the Crime of Aggression (article 5), and assistance of defence counsel (articles 48(4), 54, 55, 65(5), 67 & 68(5)) 	
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