

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,594 of 19th April, 2007

B. 20/07

INTERNATIONAL CRIMINAL COURT ACT 2007

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BILL

FOR

AN ACT to give effect to the Statute of the International Criminal Court (“ICC Statute”); to provide for offences under the law of Gibraltar corresponding to offences within the jurisdiction of the International Criminal Court (ICC); and for connected purposes.

ENACTED by the Legislature of Gibraltar.

PART I

PRELIMINARY

Title and commencement.

1. This Act may be cited as the International Criminal Court Act 2007 and comes into operation on the day of publication.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Article” means the articles of the ICC Statute;

“Commissioner” means the Commissioner of Police appointed under section 32 of the Police Act 2006;

“court” means the Supreme Court of Gibraltar;

“delivery order” means an order made under section 9 of this Act;

“the ICC” means the International Criminal Court established by Article 1 of the Statute of the International Criminal Court, done at Rome on 17th July 1998;

“ICC Crime” means a crime, other than the crime of aggression, over which the ICC has jurisdiction in accordance with the ICC Statute;

“ICC prisoner” means a prisoner detained in Gibraltar in pursuance of a sentence of the ICC;

“ICC Statute” means the Statute of the International Criminal Court, done at Rome on 17th July 1998;

“freezing order” means an order made under section 44;

“Gibraltarian” has the meaning assigned to it by section 3 of the Gibraltarian Status Act;

“Minister” means the Minister responsible for Justice;

“Ordinarily resident” means a person resident in Gibraltar by virtue of a certificate or permit of residence issued under the Immigration Control Act;

“rules of court” means the rules made by the Chief Justice for the purposes of regulating the procedure of the Supreme Court.

PART II

LEGAL CAPACITY, STATE OR DIPLOMATIC IMMUNITIES OF THE ICC

Legal capacity, State or diplomatic immunities.

3.(1) The ICC shall have corporate personality.

(2) Any State or diplomatic immunity attaching to a person by reason of a connection with a State party to the ICC Statute does not prevent proceedings under this Act in relation to that person.

(3) Where—

(a) State or diplomatic immunity attaches to a person by reason of a connection with a State, other than a State party, to the ICC Statute; and

(b) waiver of that immunity is obtained by the ICC in relation to a request for that person's surrender,

the waiver shall be treated as extending to proceedings under this Act in connection with that request.

(4) A certificate by the Attorney General—

(a) that a State is or is not a party to the ICC Statute; or

(b) that there has been such a waiver as is mentioned in subsection (3),

is conclusive evidence of that fact for the purposes of this Act.

(5) The Governor may, in any particular case, after consultation with the ICC and the State concerned, direct that proceedings (or further proceedings) under this Act which, but for subsection (2) or (3), would be prevented by State or diplomatic immunity attaching to a person shall not be taken against that person.

(6) In this section "State or diplomatic immunity" means any privilege or immunity attaching to a person, by reason of the status of that person or

another as head of State, or as representative, official or agent of a State, under—

- (a) the Diplomatic Privileges Act, the Consular Relations Act or the International Organisations Act;
- (b) any other legislative provision made for the purposes of implementing an international obligation; or
- (c) any rule of law derived from international law.

Proof of orders, etc. of the ICC.

4.(1) An order, judgment, warrant or request of the ICC which purports to—

- (a) bear the seal of the ICC; or
- (b) be signed by a person in the capacity as a judge or officer of the ICC,

shall, for the purposes of this Act, be deemed without further proof to have been duly sealed or to have been signed by that person.

(2) A document, duly authenticated, which purports to be a copy of an order, judgment, warrant or request of the ICC shall, for the purposes of this Act, be deemed without further proof to be a true copy.

(3) For the purpose of subsection (2), a document shall not be considered as duly authenticated unless it purports to be certified by any person in the capacity as a judge or officer of the ICC.

Admissibility of evidence about proceedings, etc.

5.(1) For the purposes of this Act, a certificate purporting to be issued by or on behalf of the ICC stating that—

- (a) an investigation has been initiated by the ICC, or that proceedings before the ICC have been instituted and have not been concluded;
- (b) an order of the ICC is in force and is not subject to appeal;

- (c) property recoverable under a forfeiture order made by the ICC remains unrecovered; or
- (d) any person has been notified of any proceedings in accordance with the ICC Statute,

is admissible in proceedings under this Act as evidence of the facts stated.

(2) In proceedings under Part III, IV or V of this Act, a statement contained in a duly authenticated document which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given, in proceedings before the ICC is admissible as evidence of any fact stated in it.

(3) For the purpose of subsection (2), a document is duly authenticated if it purports to be certified by any person in his capacity as a judge or officer of the ICC, to have been received in evidence or to be a copy of document so received or to be the original document setting out or summarising the evidence or a true copy of that document.

(4) Nothing in this section shall affect the admissibility of any evidence, whether contained in a document or otherwise, which is admissible apart from this section.

PART III

ARREST AND DELIVERY OF PERSONS

Proceedings on request

Request for arrest and surrender.

6.(1) Where the Minister receives a request from the ICC for the arrest and surrender of a person alleged to have committed an ICC crime, or to have been convicted by the ICC, he shall transmit the request and the documents accompanying it to the Attorney General.

(2) If the request is accompanied by a warrant of arrest and the Attorney General is satisfied that the warrant appears to have been issued by the ICC, he shall apply to the court to endorse the warrant for execution in Gibraltar.

(3) If, in the case of a person convicted by the ICC, the request is not accompanied by a warrant of arrest, but is accompanied by—

- (a) a copy of the judgment of conviction;
- (b) information to demonstrate that the person sought is the one referred to in the judgment of conviction; and
- (c) where the person sought has been sentenced, a copy of the sentence imposed and a statement of any time already served and the time remaining to be served,

the court shall issue a warrant for the arrest of the person to whom the request relates.

(4) In this Part a warrant endorsed or issued under this section is referred to as a “section 6 warrant”.

Request for provisional arrest.

7.(1) Where the Minister receives from the ICC a request for the provisional arrest of a person alleged to have committed an ICC crime or to have been convicted by the ICC, he shall transmit the request to the Attorney General who shall take such actions as he deems necessary.

(2) If it appears to the Attorney General that an application for a warrant should be made—

- (a) he shall apply to the court for a warrant for the arrest of the person referred to in subsection (1); and
- (b) on an application referred to in paragraph (a) which shall accompany a statement on oath by the Minister that—
 - (i) a request has been made on grounds of urgency by the ICC for the arrest of a person; and
 - (ii) he has reason to believe that the person is in, or on his way to, Gibraltar,

the court shall issue a warrant for the arrest of that person.

(3) In this Part, a warrant issued under this section is referred to as a “provisional warrant”.

Dealing with person arrested under the provisional warrant.

8.(1) A person arrested under a provisional warrant shall be brought before the court as soon as is practicable.

(2) Where a section 6 warrant, in respect of the person arrested, is produced before the court, it shall proceed as if that person had been arrested under that warrant.

(3) If no section 6 warrant is produced, the court shall remand the person arrested pending the production of a section 6 warrant.

(4) If at any time when the person is remanded under this section, there is produced to the court a section 6 warrant in respect of the person arrested—

- (a) the court shall terminate the period of remand; and
- (b) that person shall be treated as if he has been arrested under that warrant—
 - (i) if he was remanded in custody, at the time the warrant was produced to the court; or

- (ii) if he was remanded on bail, when he surrenders to his bail.

(5) If no section 6 warrant is produced to the court before the end of the period of the remand, including any extension of that period, the court shall discharge the person arrested.

(6) A discharge of a person under subsection (5) does not prevent any subsequent arrest of that person under a section 6 warrant.

Proceedings for delivery order.

9.(1) Where a person is arrested under a section 6 warrant, that person shall be brought before court as soon as is practicable.

(2) Where the court is satisfied that—

(a) the warrant—

(i) is a warrant of the ICC and has been duly endorsed under section 6(2); or

(ii) has been duly issued under section 6(3); and

(b) the person brought before the court is the person named or described in the warrant,

it shall make a delivery order.

(3) For the purposes of this Act, a “delivery order” is an order to the effect that the person be delivered up—

(a) into the custody of the ICC; or

(b) if the ICC so directs in the case of a person convicted by it, into the custody of the State of enforcement or any territory of that State,

in accordance with arrangements to be made under section 53 for cooperation with the ICC.

(4) In the case of a person alleged to have committed an ICC crime, the court may adjourn the proceedings for a delivery order pending the outcome of any challenge before the ICC to the admissibility of the case or to the jurisdiction of the ICC.

(5) In deciding whether to make a delivery order the court shall not enquire—

- (a) as to whether the warrant issued by the ICC was duly issued; or
- (b) in the case of a person alleged to have committed an ICC crime, as to whether there is evidence to justify his trial for the offence he is alleged to have committed.

(6) Whether or not it makes a delivery order, the court may of its own motion, and shall, on the application of the person arrested, determine whether—

- (a) the person was lawfully arrested in pursuance of the warrant; and
- (b) his rights have been respected.

(7) In making a determination under subsection (6) the court shall apply the principles which would be applied on an application for judicial review.

(8) If it appears to the court that—

- (a) the person brought before the court is not the person named or described in the warrant;
- (b) the person has not been arrested with the proper process in pursuance of the warrant; or
- (c) the rights of the person under section 19 of the Criminal Procedure Act have not been respected,

the court shall notify the Attorney General of that fact and the Attorney General shall transmit the notification to the Minister who shall cause it to be transmitted to the ICC.

Supplementary provisions as to proceedings before the Supreme Court.

10. On any proceedings for a delivery order instituted under section 9–

- (a) the court shall have all necessary powers including the power to adjourn the case and meanwhile to remand the person whose surrender is sought, as if the proceedings were the summary trial of an information against that person;
- (b) if the court adjourns the proceedings, it shall on doing so remand the person whose surrender is sought; and
- (c) the provisions of the Legal Aid and Assistance Act relating to such proceedings, or any appeal proceedings following thereon, shall apply to that person.

Consent to surrender.

11.(1) A person arrested under this Part, may consent to being delivered up into the custody of the ICC, or in the case of a person convicted by the ICC, of the State of enforcement or any territory of that State and such consent is hereinafter referred to as “consent to surrender”.

(2) A consent to surrender may be given–

- (a) by the person himself; or
- (b) in circumstances in which it is inappropriate for the person to act for himself, by reason of his physical or mental condition or his youth, by an appropriate person acting on his behalf.

(3) Consent to surrender shall–

- (a) be given in writing in the form to be prescribed by rules of court; and
- (b) be signed in the presence of a justice of the peace.

(4) Where a consent to surrender has been given by a person who is brought before the court–

- (a) it shall forthwith make a delivery order; and
- (b) that person shall be taken to have waived his rights to review of a delivery order under section 15.

(5) Where consent to surrender has been given, notice of that fact shall be given—

- (a) if the person is in custody, to the Superintendent of Prisons, police officer or other person in whose custody that person is;
- (b) if the person is on bail, to the officer in charge of the police station at which he is required to surrender to custody.

(6) For the purposes of subsection (5) notice shall be treated as given if it is sent by registered post, or any other means of recorded delivery, addressed to the officer mentioned in that subsection.

Proceedings where court refuses order.

12.(1) Where the court refuses to make a delivery order, it shall—

- (a) make an order remanding the person arrested; and
- (b) notify the Attorney General of its decision and of the grounds for such refusal.

(2) If the court is informed without delay that an appeal is to be brought under section 13, the order remanding the person arrested shall continue to have effect and if it is not so informed, it shall discharge the person arrested.

Appeal against refusal of delivery order.

13.(1) If the court refuses to make a delivery order, the Attorney General may file an appeal against the decision of the court to the Court of Appeal and no leave is required for such an appeal, which shall be by way of re-hearing.

(2) If the Court of Appeal allows the appeal it may—

- (a) make a delivery order; or

- (b) remit the case to the court to make a delivery order in accordance with the decision of the Court of Appeal.

(3) If the Court of Appeal dismisses the appeal, the Attorney General may file an appeal to Her Majesty in Council with the leave of the Court of Appeal.

(4) Her Majesty in Council may exercise any of the powers conferred on the Court of Appeal by subsection (2).

(5) Where a delivery order is made by the Court of Appeal or Her Majesty in Council, the provisions of section 14(1)(a) and (c), (2) and (3) shall apply in relation to the Court of Appeal as they apply to the court in order to make a delivery order.

(6) An order for the remand of the arrested person that continues in force under section 12(2) shall cease to have effect if the Court of Appeal dismisses the appeal and the Attorney General does not, without delay—

- (a) apply for leave to appeal to Her Majesty in Council; or
- (b) inform the Court of Appeal that he intends to apply for such leave.

(7) Subject to subsection (6), an order for the remand of the arrested person shall have effect so long as the case is pending.

Procedure where court makes order.

14.(1) Where the court makes a delivery order in respect of a person, it shall—

- (a) commit the person to custody or on bail to await the Minister's directions as to the execution of the order;
- (b) inform the person of his rights under section 15 in a language and in terms which appear to the court to be one that he fully understands and speaks; and
- (c) notify the Attorney General and the Minister of its decision.

(2) A person committed to custody under subsection (1)(a), shall be committed to prison or to the custody of a police officer and the court may subsequently grant bail of that person.

(3) The Attorney General shall forthwith transmit to the Minister any notification received by him under this section.

Right to review of delivery order.

15.(1) The Minister shall not give directions for the execution of a delivery order until after the end of the period of 15 days beginning with the date on which the order is made.

(2) Subsection (1) does not apply if the person in respect of whom the order is made—

- (a) waives his rights under this section; or
- (b) is taken to have done so under section 11(4)(b).

(3) If before the end of the period referred to in subsection (1) an application for habeas corpus is made by the person in respect of whom the delivery order is made, or on his behalf, directions for the execution of the order shall not be given while proceedings on the application are still pending.

(4) Proceedings on any application referred to in subsection (3) shall be treated as pending until they are discontinued or there is no further possibility of an appeal and for this purpose any power of the Court of Appeal or Her Majesty in Council, as the case may be, to allow an appeal out of time shall be disregarded.

(5) On an application for habeas corpus to which this section applies the court shall set aside the delivery order and make an order for the person's discharge if it is not satisfied of the matters mentioned in section 9(2), 9(5) or 9(8).

Waiver of right to review.

16.(1) A person in respect of whom a delivery order has been made may waive his right to review of the order.

- (2) Waiver of the right to review may be made—
- (a) by the person himself; or
 - (b) in circumstances in which it is inappropriate for the person to act for himself by reason of his physical or mental condition or his youth by a person approved by the court to act on his behalf.
- (3) Waiver of the right to review of the order shall—
- (a) be made in writing in the form to be prescribed by rules of court; and
 - (b) be signed in the presence of a justice of the peace.
- (4) Where a person has waived his right to review of the delivery order—
- (a) no application for habeas corpus may be made; and
 - (b) the order shall be taken for all purposes to be validly made.
- (5) Where a person has waived his right to review, notice of such waiver shall be given—
- (a) if the person is in custody, to the Superintendent of Prisons, police officer or other person in whose custody he is; or
 - (b) if the person is on bail, to the officer in charge of the police station at which he is required to surrender to custody.
- (6) A notice given under subsection (5) shall be treated as given if it is sent by registered post, or other means of recorded delivery addressed to the officer mentioned in that subsection.

Effect of warrant of arrest.

17.(1) For the purposes of any provision of law for the time being in force in Gibraltar which relates to warrants of arrest—

- (a) a section 6 warrant endorsed or issued in Gibraltar; or

(b) a provisional warrant issued in Gibraltar,

shall be treated as if it were a warrant for the arrest of a person for an offence committed in Gibraltar.

(2) A warrant referred to in subsection (1) may be executed in Gibraltar, and may be so executed by any police officer.

(3) A person arrested under any warrant referred to in subsection (1) shall be deemed to continue in legal custody until, in accordance with this Part, he is brought before the court.

Effect of delivery order.

18.(1) A delivery order made under section 9 is sufficient authority for any person acting in accordance with the directions of the Minister to receive the person to whom the order relates, keep him in custody and convey him to the place where he is to be delivered up into the custody of the ICC in accordance with arrangements to be made under section 53 for cooperation with the ICC.

(2) A person in respect of whom a delivery order is in force is deemed to be in legal custody at any time when, being—

(a) in Gibraltar; or

(b) on board a Gibraltar ship,

that person is taken under the order to or from any place or is being kept in custody pending his delivery up under the order.

(3) A person authorised for the purposes of a delivery order to take another person to whom the order relates to or from any place or, to keep that other person in custody, has all the powers, authority, protection and privileges of a police officer.

(4) If a person in respect of whom a delivery order is in force escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place where or to which, by virtue of this Part, he is required to be or to be taken.

Bail and custody.

19.(1) In exercise of the power to remand a person under this Part, the court may—

- (a) remand him in custody, that is, commit him for the period of the remand to prison, or to the custody of a police officer; or
- (b) remand him on bail, that is, direct him to surrender himself into the custody of the officer in charge of the police station at the time appointed for him to do so.

(2) Where the court—

- (a) grants bail but is unable to release the person because no surety or suitable surety is available; and
- (b) fixes the amount in which the surety is to be bound with a view to the recognizance of the surety being entered into subsequently,

it shall, in the meantime, commit the person to the custody of a police officer.

(3) During the period between the surrender of a person to custody and the end of the period of remand, he shall be treated as committed to the custody of the police officer to whom he surrenders.

(4) Where it appears to the officer in charge of the police station that the end of the period of remand will be unexpectedly delayed, he shall grant the person bail subject to a duty to surrender himself into the custody of the officer in charge of the police station at the time appointed for that person to do so.

(5) Where a person required to surrender to custody in accordance with subsection (4) fails to do so—

- (a) the court may issue a warrant for his arrest;
- (b) the provisions of section 17 apply in relation to the warrant; and

(c) on his arrest, the person shall be brought before the court which shall reconsider the question of bail.

(6) The court shall not grant an application for bail in proceedings under this Part unless—

- (a) the Attorney General and the Minister are notified of that application;
- (b) the Minister ensures that the ICC is consulted; and
- (c) a full consideration of any recommendation made by the ICC is given by the court.

(7) In considering any application for bail in proceedings under this Part, the court shall consider whether—

- (a) given the gravity of the offence or offences the person is alleged to have committed or, as the case may be, of which that person has been convicted by the ICC, there are urgent and exceptional circumstances justifying release on bail; and
- (b) any necessary measures have been or will be taken to secure that the person will surrender to custody in accordance with the terms of his bail.

(8) The time appointed under subsection (1)(b) or (4) for a person to surrender to custody—

- (a) shall be a time appointed by the officer in charge of the police station and notified in writing to the person remanded; and
- (b) shall not be more than 24 hours before the time at which it appears to that officer that the period of remand is likely to end.

Discharge of person not delivered up.

20.(1) If the person in respect of whom a delivery order has been made is not delivered up under the order within 40 days after it was made, an application may be made by him or on his behalf for his discharge.

(2) The application referred to in subsection (1) shall be made to the court.

(3) On an application under this section the court shall order the person's discharge unless reasonable cause is shown for the delay.

Discharge of person no longer required to be surrendered.

21. Where the ICC issues a notification to the Minister that a person arrested under this Part is no longer required to be surrendered—

- (a) the Minister shall inform the Attorney General who shall notify the court of that fact; and
- (b) the court shall, on receipt of the notification, make an order for his discharge.

Request for transit.

22.(1) Where the Minister receives a request from the ICC for the transit of a person being surrendered by any State and the Minister accedes to the request—

- (a) that request shall be treated for the purpose of this Part as if it were a request for that person's arrest and surrender;
- (b) the warrant accompanying the request shall be deemed to have been endorsed under section 6(2); and
- (c) the person to whom the request relates shall be treated on arrival in Gibraltar as if he had been arrested under that warrant.

(2) In relation to a case where this section applies—

- (a) the reference in section 9(2)(a)(i) to the warrant having been duly endorsed under section 6(2) shall be read as a reference to the Minister having acceded to the request for transit; and
- (b) section 15(1) shall have effect as if the reference to 15 days (the period during which directions to execute delivery order are not to be given) were a reference to two days.

(3) A person in transit under this section shall not be granted bail.

Unscheduled landing.

23.(1) If a person being surrendered by another State makes an unscheduled landing in Gibraltar, he may be arrested by any police officer and shall be brought before the court as soon as is practicable.

(2) The court shall, in the circumstances referred to in subsection (1), remand him in custody pending—

- (a) receipt by the Minister of a request from the ICC for his transit; and
- (b) the Minister's decision whether to accede to the request.

(3) If no request referred to in subsection (2) is received by the Minister before the end of the period of 96 hours beginning with the time of the arrested person's unscheduled landing—

- (a) the Minister shall forthwith notify the court of that fact; and
- (b) the court shall, on receipt of the notification, discharge the arrested person.

(4) If the Minister receives a request referred to in subsection (2) before the end of the period mentioned in subsection (3), he shall notify the court without delay of his decision whether to accede to the request.

(5) If the Minister notifies the court that he has decided to accede to the request—

- (a) the court shall, on receipt of the notification, terminate the period of remand; and
- (b) the provisions of section 22 shall apply with the substitution for the reference in subsection (1)(c) of that section to the time of arrival in Gibraltar of a reference to the time of notification to the court.

(6) If the Minister notifies the court that he has decided not to accede to the request, the court shall, on receipt of the notification, discharge the arrested person.

Delivery up of person subject to criminal proceedings.

24.(1) Where the Minister receives a request from the ICC for the arrest and surrender or provisional arrest of a person and—

- (a) criminal proceedings against that person are pending or in progress before any court in Gibraltar or that person has been dealt with in such proceedings; or
- (b) extradition proceedings are pending or in progress in Gibraltar against that person or a warrant or order has been made in such proceedings in respect of that person,

the Minister shall ensure that the relevant court is informed of the request.

(2) The court shall, if necessary, adjourn the proceedings before it, for such period or periods as it deems fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.

(3) If a delivery order is made and the criminal proceedings are still pending or in progress,—

- (a) the Minister shall ensure that the ICC is consulted before directions are given for the execution of the order; and
- (b) the Attorney General may direct that the criminal proceedings be discontinued.

(4) Where the Attorney General directs that criminal proceedings shall be discontinued, the court before which the proceedings are pending or in progress shall—

- (a) order the discontinuance of those proceedings; and
- (b) make any other order necessary to enable the delivery order to be executed, including any necessary order as to the custody of the person concerned.

(5) A discontinuance of criminal proceedings, referred to in subsection (4), in respect of an offence, does not prevent the institution of fresh proceedings in respect of that offence.

(6) In this section, “criminal proceedings” means proceedings before any court in Gibraltar—

- (a) for dealing with an individual accused of an offence;
- (b) for dealing with an individual convicted of an offence; or
- (c) on an appeal from any proceedings within paragraph (a) or (b).

Documents having effect as warrants.

25.(1) For the purposes of this Part the copy of a warrant issued by the ICC which is transmitted to the Minister shall be treated as if it were the original warrant.

(2) Where a facsimile transmission is used—

- (a) for the making of a request by the ICC or the transmission of any supporting documents; or
- (b) for the transmission of any document in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted and any such document shall be admissible in evidence.

(3) Where the ICC amends a warrant of arrest, the provisions of this Part apply to the amended warrant as if it were a new warrant and this does not affect the validity of anything done in reliance on the old warrant.

Effect on custodial sentences.

26.(1) Where in pursuance of this Part a person who is a prisoner is delivered up—

- (a) into the custody of the ICC; or

- (b) into the custody of a State where he is to undergo imprisonment under a sentence of the ICC,

he shall continue to be liable to complete any term of imprisonment or detention to which he had been sentenced by a court in Gibraltar and in that case there shall be counted towards the completion of that term any time during which he is in the custody of the ICC or of another State.

(2) Where in pursuance of this Part a court orders the discharge of a person who is a prisoner, the discharge is without prejudice to the liability of the prisoner to complete any term of imprisonment or detention to which he has been sentenced by a court in Gibraltar and a prisoner to whom such an order relates and whose sentence has not expired shall be transferred in custody to the place where he is liable to be detained under the sentence to which he is subject.

(3) Where in pursuance of this Part a delivery order is made in respect of a person who is a prisoner, the order may include provision authorising the return of the prisoner into the custody of the Prison Superintendent—

- (a) in accordance with arrangements to be made under section 53 for cooperation with the ICC; and
- (b) in the case of a prisoner taken to a place where he is to undergo imprisonment of the ICC, in accordance with arrangements to be made under section 53 with a State where that place is situated,

and for his transfer in custody to the place where he is liable to be detained under the sentence of the national court to which he is subject.

(4) In this section “prisoner” means a person serving a sentence in a prison or other institution to which the Prison Act applies.

Power to suspend or revoke other orders.

27. Where the court makes a delivery order in respect of a person for whom an order, other than a sentence of imprisonment or detention, has been made in criminal proceedings before a court in Gibraltar, the court may make any order necessary to enable the delivery order to be executed, and may in particular suspend or revoke any such delivery order.

Extradition proceedings.

28.(1) Where—

- (a) the Minister receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person; and
- (b) extradition proceedings against that person are pending or in progress before a court in Gibraltar,

the Minister shall inform the court of the request.

(2) Where the Minister informs the court of a request referred to in subsection (1), the court shall, if necessary, adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.

(3) If a delivery order is made and the extradition proceedings are still pending or in progress, the Minister—

- (a) shall ensure that the ICC is consulted before directions are given for the execution of the order; and
- (b) may direct that the extradition proceedings be discontinued.

(4) Where the Minister directs that extradition proceedings be discontinued, the court before which the proceedings are pending or in progress shall—

- (a) order their discontinuance; and
- (b) make any other order necessary to enable the delivery order to be executed, including any necessary order as to the custody of the person concerned.

(5) The discontinuance of extradition proceedings under this section in respect of an offence, does not prevent the institution of fresh extradition proceedings in respect of the offence.

PART IV

OTHER FORMS OF ASSISTANCE

Introduction

Provision of assistance.

29.(1) The powers conferred by this Part are exercisable for the purpose of providing assistance to the ICC in relation to investigations or prosecutions where—

- (a) an investigation has been initiated by the ICC; and
- (b) the investigation and any proceedings arising out of it have not been concluded.

(2) Where facsimile transmission is used—

- (a) for the making of a request by the ICC or the transmission of any supporting documents; or
- (b) for the transmission of any document in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted and any such document shall be receivable in evidence accordingly.

(3) Nothing in this Part shall be read as preventing the provision of assistance to the ICC otherwise than under this Part.

Form of assistance

Questioning.

30.(1) Where the Minister receives a request from the ICC for assistance in questioning a person being investigated or prosecuted, that person shall not be questioned in pursuance of the request unless—

- (a) he has been informed of his rights under Article 55; and

- (b) he consents to be interviewed.
- (2) The provisions of Article 55 are set out in Schedule 1.
- (3) Consent for the purposes of subsection (1)(b) may be given—
 - (a) by the person himself; or
 - (b) in circumstances in which it is inappropriate for the person to act for himself by reason of his physical or mental condition or his youth, by an appropriate person acting on his behalf.
- (4) A consent under this section may be given orally or in writing, but if given orally it shall be recorded in writing as soon as is reasonably practicable.

Taking or production of evidence.

31.(1) Where the Minister receives a request from the ICC for assistance in the taking or production of evidence, the Minister shall transmit it to the court.

- (2) For the purpose of subsection (1), the court—
 - (a) shall have the same powers with respect to securing the attendance of witnesses and the production of documents or other articles as it has for the purpose of other proceedings before it; and
 - (b) may take evidence on oath.
- (3) A person shall not be compelled to give evidence or produce anything in proceedings under this section that he could not be compelled to give or produce in criminal proceedings in Gibraltar in which the court has jurisdiction.
- (4) If in order to comply with the request referred to in subsection (1), it is necessary for the evidence received by the court to be verified in any manner, it shall cause the evidence to be verified in such manner as is deemed to be appropriate to the court.

(5) No order for costs shall be made in proceedings under this section.

(6) For the purpose of this section, “evidence” includes documents and other articles.

(7) In taking evidence under this section, the court may, if it thinks necessary in order to protect—

- (a) victims and witnesses or a person alleged to have committed an ICC crime; or
- (b) confidential or sensitive information,

direct that the public be excluded from the court.

(8) The court shall ensure that—

- (a) a register is kept of the proceedings that indicates, in particular—
 - (i) which persons with an interest in the proceedings were present;
 - (ii) which of those persons were represented and by whom; and
 - (iii) whether any of those persons were denied the opportunity of cross-examining a witness as to any part of his testimony; and
- (b) a copy of the register of the proceedings is transmitted to the ICC.

(9) The register referred to in subsection (8) shall not be open to inspection except as authorised by the Minister or with the leave of the court.

Service of process.

32.(1) Where the Minister receives from the ICC a summons or any other document together with a request for it to be served on a person in Gibraltar, the Commissioner shall cause the document to be personally served on that person.

(2) If the document is served in the manner referred to in subsection (1), the Commissioner shall forthwith inform the Minister when and how it was served.

(3) If it does not prove possible to serve the document, the Commissioner shall forthwith inform the Minister of that fact and of the reason.

Transfer of prisoner to give evidence or assist in investigation.

33.(1) Where the Minister receives a request from the ICC for the temporary transfer of a prisoner to the ICC for the purposes of identification or for obtaining testimony or other assistance, he shall transmit the request to the Attorney General and the court shall, upon an application by the Attorney General, issue a warrant, (hereinafter referred to as a “transfer warrant”.) requiring the prisoner to be delivered up, in accordance with arrangements to be made under section 53, into the custody of the ICC.

(2) A transfer warrant referred to in subsection (1) shall not be issued unless the prisoner consents to transfer, but a consent may not be withdrawn after the issue of that warrant.

(3) The provision of sections 17 and 24 of this Act apply in relation to a transfer warrant under this section as they apply in relation to a delivery order under this Part.

(4) In this section “prisoner” means—

- (a) a person serving a sentence in a prison;
- (b) a person in custody awaiting trial; or
- (c) a person committed to prison for default in paying a fine.

Entry, search and seizure.

34. Where the Minister receives from the ICC a request for assistance which appears to it to require the exercise of any of the powers, conferred by any enactment, for the time being in force, of entry, search and seizure, the Minister shall transmit the request to the Commissioner who shall direct a police officer to apply to the court for a search warrant under section 25 of the Criminal Procedure Act and that warrant shall apply in relation to an ICC crime as it applies to a serious arrestable offence.

Taking of fingerprints or non-intimate sample.

35.(1) Where the Minister receives a request from the ICC for assistance in obtaining evidence as to identity of a person, the Minister shall transmit the request to the Attorney General together with a copy of the request to apply to the court to supervise the taking of the person's fingerprints or a non-intimate sample or both.

(2) The Minister shall not transmit a request under subsection (1) unless—

- (a) the Minister is satisfied that other means of identification have been tried and have proved inconclusive; and
- (b) the Minister has caused the ICC to be notified of that fact and the ICC has signified that it wishes to proceed with the request.

(3) Upon an application by Attorney General under subsection (1), the court may order the taking by a police officer of the person's fingerprints or a non-intimate sample or both.

(4) The order of the court referred to in subsection (3) may require the person to attend a police station to provide the necessary identification evidence and any such requirement—

- (a) shall give the person at least seven days within which he must so attend; and
- (b) may direct him to attend at a specified time or day or between specified times of day.

(5) If the person fails to attend in accordance with the order made under subsection (3), the court may issue a warrant for his arrest, and the person may be detained for such period as is necessary to enable the necessary identification evidence to be taken and the court shall inform the person concerned of the effect of this subsection.

(6) Subsections (4) and (5) shall not apply where the person concerned is in prison or is otherwise lawfully detained and in that case the necessary identification evidence may be taken at the place where he is detained or at such other place as the court may direct.

(7) The necessary identification evidence may be taken with consent in writing or without that consent in accordance with subsection (8) and the court shall inform the person concerned of the effect of this subsection.

(8) A police officer may take the necessary identification evidence without consent but only if authorised by the Commissioner in writing and, before fingerprints or samples are taken from a person, that officer shall inform that person that he is so authorised to take such identification evidence.

(9) After fingerprints or samples are taken with consent under this section, there shall be recorded as soon as is reasonably practicable the fact that—

- (a) the consent has been given for taking necessary identification evidence;
- (b) the evidence has been taken; and
- (c) the person has been informed of authorisation if the fingerprints or samples are taken without consent accordance with subsection (8),

and the Minister shall cause a copy of the record to be transmitted to the ICC together with the material obtained under this section.

(10) The fingerprints, samples or information derived from such samples may be used only for the purposes of an investigation into an ICC crime or an offence under Part VI.

(11) The fingerprints, samples or information derived from such samples may be checked against other fingerprints or samples taken under this section or information derived from such samples.

(12) Before fingerprints or samples are taken from a person under this section, that person shall be informed that they may be used as mentioned in subsection (10) or may be checked as mentioned in subsection (11).

(13) Proceedings before the ICC in respect of an ICC crime are criminal proceedings for the purposes of sections 8 and 28 of the Coroner Act.

Destruction of fingerprints and samples.

36. Where the fingerprints and samples of any person have been taken in pursuance of the provisions of section 35, then, if that person is acquitted, or the International Criminal Court determines not to commit him for trial, or if the information against him is dismissed, the fingerprints and samples and all copies and records of them shall be destroyed.

Provision of records and documents.

37. Where the Minister receives a request from the ICC for the provision of records and documents relating to the evidence given in any proceedings in Gibraltar in respect of conduct that would constitute an ICC crime or the results of any investigation of such conduct with a view to such proceedings, the Minister shall take such steps as appear to him to be appropriate with the sanction of the Court to obtain the records and documents requested, and on their being produced to him he shall cause them to be transmitted to the ICC.

Investigation of proceeds of ICC crime.

38.(1) Where the Minister receives a request from the ICC for assistance—

- (a) in ascertaining whether a person has benefited from an ICC crime; or
- (b) in identifying the extent or whereabouts of property derived directly or indirectly from an ICC crime,

the Minister shall transmit the request to the Attorney General to apply to the court for a production or access order or a search warrant.

(2) An application referred to in subsection (1) may be made without notice and may be granted without hearing.

Production or access orders.

39.(1) The Court may, upon an application under section 38, make an order under this section for production or access if it is satisfied that there are reasonable grounds for suspecting that –

- (a) a specified person has benefited from an ICC crime; and
- (b) the material to which the application relates is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the application is made.

(2) No such order referred to in subsection (1) shall be made if it appears to the Court that the material to which the application relates consists of or include items subject to legal privilege.

(3) The Court may order a specified person who appears to have in his possession, custody or power specified material, or material of a specified description, to which the application relates, either–

- (a) to produce the material to a police officer within a specified period for the police officer to take away (hereinafter referred to as a “production order”); or
- (b) to give a police officer access to the material within a specified period (hereinafter referred to as an “access order”).

(4) The specified period referred to in subsection (3) shall be seven days beginning with the date of the order unless it appears to the Court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(5) Where the Court makes an access order in relation to material on any premises he may, on an application by a police officer, order any person who appears to him to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

(6) In this section “specified” means specified in the order.

Special production or access orders.

40.(1) A production or access order may be made in relation to a person who the Court thinks is likely to have material to which the application relates in his possession, custody or power within the period of 28 days beginning with the date of the order.

(2) A production or access order may also be made in relation to material consisting of or including material that is expected to come into existence within that period and in that case it must specify a person within subsection (1).

(3) Where a production or access order is made by virtue of this section—

- (a) the order shall require the specified person to notify a named police officer as soon as is reasonably practicable after any material to which the application relates comes into his possession, custody or power; and
- (b) subsections (3) to (6) of section 39 have effect with the modifications referred to in subsection (4) of this section.

(4) The modifications are that—

- (a) the references in section 39(3) to material which the specified person has in his possession, custody or power shall be read as references to the material that comes into his possession, custody or power; and
- (b) the references in section 39(4) to the date of the order shall be read as a reference to the date of the notification required by subsection (3)(a) of this section.

(5) Provisions may be made by rules of court as to—

- (a) the discharge and variation of orders made under this Part; and
- (b) proceedings relating to such orders.

(6) In this section “specified” means specified in the order.

Effect of production or access order.

41.(1) Where the material to which the order referred to in section 39 or 40 relates consists of information contained in a computer—

- (a) a production order has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an access order has effect as an order to give access to the material in a form in which it is visible and legible.

(2) An order made under section 39 or 40 does not confer any right to production of, or access to, items subject to legal privilege.

(3) Subject to subsection (2), the order has effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

Order in relation to material in possession of Government department.

42.(1) Nothing in this Act shall prevent the making of an order under section 39 or 40 in relation to material in the possession, custody or power of a government department.

(2) Where an order is made in relation to material in the possession, custody or power of a government department, it—

- (a) shall be served as if the proceedings were civil proceedings against the department; and
- (b) may require any officer of the department, whether named in the order or not, who may for the time being have in his possession, custody or power the material concerned, to comply with it.

Search warrants.

43.(1) The court may issue a search warrant on an application made by the Attorney General under section 38 in pursuance of a request to the Minister from the ICC.

(2) A search warrant issued under this section authorises any police officer—

- (a) to enter and search the premises specified in the warrant; and
- (b) to seize and retain any material found on the search that is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant was issued.

(3) A warrant issued under this section does not confer any right to seize material that consists of or includes items subject to legal privilege.

(4) A search warrant under this section may be issued in a case where the court is satisfied—

- (a) that a production or access order made in relation to material on the premises has not been complied with;
- (b) that—
 - (i) there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime;
 - (ii) there are grounds for making a production or access order in relation to material on the premises; and
 - (iii) it would not be appropriate to make a production or access order in relation to the material for any of the reasons mentioned in subsection (5); or
- (c) that there are reasonable grounds for suspecting that—
 - (i) a specified person has benefited from an ICC crime;

- (ii) there is material on the premises which cannot be particularised at the time of the application but which—
 - (aa) relates to the specified person, or to the question whether that person has benefited from an ICC crime, or to any question as to the extent or whereabouts of the proceeds of an ICC crime; and
 - (bb) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the application is made; and
 - (cc) is under any of the circumstances mentioned in subsection (6).

(5) The reasons mentioned in subsection (4)(b)(iii) are that—

- (a) it is not practicable to communicate with any person entitled to produce the material;
- (b) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
- (c) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

(6) The circumstances mentioned in subsection (4)(c)(ii)(cc) are that—

- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) entry to the premises will not be granted unless a warrant is produced; or
- (c) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

Freezing orders in respect of property liable to forfeiture.

44.(1) Where the Minister receives a request from the ICC for assistance in the freezing or seizure of proceeds, property and assets or instrumentalities of crime for the purpose of eventual forfeiture, he shall transmit the request to the Attorney General.

(2) Upon receipt of the request under subsection (1), the Attorney General shall—

(a) act on behalf of the ICC for the purpose of applying for freezing order; and

(b) apply to the court for a freezing order under subsection (3).

(3) The court may make a freezing order on an application made under subsection (2) in pursuance of a request from the ICC.

(4) An application under this section may be made without notice and may be granted without a hearing.

(5) The court may make a freezing order if it is satisfied—

(a) that a forfeiture order has been made in proceedings before the ICC; or

(b) that there are reasonable grounds for believing that a forfeiture order may be made in such proceedings,

and that the property to which the order relates consists of or includes property that is or may be affected by such a forfeiture order.

(6) A “freezing order” is an order prohibiting any person from dealing with property specified in the order otherwise than in accordance with such conditions and exceptions as may be specified in the order.

(7) A freezing order shall provide for notice to be given to persons affected by the order.

(8) A freezing order may be varied or discharged in relation to any property on the application of any person affected by the order.

(9) A freezing order shall be discharged on the conclusion of the ICC proceedings in relation to which the order was made.

Appointment of receiver.

45.(1) Where a freezing order is in force, the court may at any time appoint a receiver—

- (a) to take possession of any property specified in the order; and
- (b) in accordance with the court's directions, to manage or otherwise deal with the property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the court.

(2) The court may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(3) The powers conferred on a receiver by this section shall be exercised with a view to securing that the property specified in the order is available for satisfying the forfeiture order or, as the case may be, any forfeiture order that may be made in the ICC proceedings in relation to which the order was made.

(4) A receiver appointed under this section shall not be liable to any person in respect of any loss or damage resulting from any action taken by him which he believed on reasonable grounds that he was entitled to take, except in so far as the loss or damage is caused by his negligence.

Seizure to prevent removal from jurisdiction.

46.(1) Where a freezing order has been made, a police officer may, for the purpose of preventing any property specified in the order from being removed from the jurisdiction, seize the property.

(2) The reference in subsection (1) to property being removed from the jurisdiction is to its being removed from Gibraltar.

(3) Property seized under this section shall be dealt with in accordance with the directions of the court.

Bankruptcy.

47.(1) Where a person is adjudged bankrupt in Gibraltar—

- (a) property for the time being subject to a freezing order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realised while managing or dealing with that property by virtue of section 45(1) for the time being in the hands of a receiver appointed under that section,

is excluded from the bankrupt's estate for the purposes of the Bankruptcy Act.

(2) Where a person has been adjudged bankrupt in Gibraltar, the powers conferred on a receiver appointed under section 45 shall not be exercised in relation to the property for the time being comprised in the bankrupt's estate for the purposes of the Bankruptcy Act.

Winding up.

48.(1) Where an order for the winding up of a company has been made or a resolution has been passed by a company for voluntary winding up, the functions of the liquidator or any provisional liquidator shall not be exercisable in relation to—

- (a) property for the time being subject to a freezing order made before the relevant time; and

- (b) any proceeds of property realised while managing or dealing with that property by virtue of section 45(1) for the time being in the hands of a receiver appointed under that section.

(2) Where an order is made or a resolution has been passed as is referred to in subsection (1), the powers conferred on a receiver appointed under section 45(1) shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable so as to—

- (a) inhibit him from exercising those functions for the purposes of distributing any property held by the company to the company's creditors; or
- (b) prevent the payment out of any property or expenses, including the remuneration of the liquidator or any provisional liquidator, properly incurred in the winding up in respect of the property.

(3) Nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers referred to in subsection (2).

(4) In this section—

“company” means any company which may be wound up under the Companies Act; and

“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

Protection of insolvency practitioners.

49.(1) Without prejudice to the generality of any provisions contained in the Bankruptcy Act or in any other Act, where an insolvency practitioner seizes or disposes of property which is subject to a freezing order and that practitioner believed that—

- (a) he was entitled to do so in the exercise of his function; and
- (b) he would be so entitled if the property were not subject to a freezing order,

the insolvency practitioner shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence.

(2) The insolvency practitioner shall have a lien on the property seized or the proceeds of its sale—

- (a) for such of his expenses as were incurred in connection with the insolvency proceedings in relation to which the seizure or disposal purported to take place; and
- (b) for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings.

(3) In this section “insolvency practitioner” means a person acting as an insolvency practitioner in Gibraltar.

(4) For the purposes of this Part—

- (a) “property” includes money and all other property, real or personal, heritable or movable, and including things in action and other intangible or incorporeal property; and
- (b) “dealing with property” includes (without prejudice to the generality of that expression)—
 - (i) where a debt is owed to a person, making a payment to any person in reduction of the amount of the debt; and

(ii) removing the property from Gibraltar.

(5) For the purposes of this Part, ICC proceedings are concluded-

- (a) when there is no further possibility of a forfeiture order being made in the proceedings; or
- (b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all the property liable to be recovered, or otherwise).

Production or disclosure prejudicial to national security.

50.(1) Nothing in this Act requires or authorises the production of documents, or the disclosure of information, which would be prejudicial to national security.

(2) For the purposes of this Act, a certificate signed by the Governor to the effect that it would be prejudicial to national security or for specified documents to be produced, for specified information to be disclosed, is conclusive evidence of that fact.

Verification of material.

51. If in order to comply with a request of the ICC it is necessary for any evidence or other material obtained under this Part to be verified in any manner, the Minister may give directions as to the nature of the verification required.

Transmission of material to the ICC.

52.(1) Any evidence or other material obtained under this Part by a person other than the Attorney General, together with any requisite verification, shall be sent to the Minister who shall ensure its transmission to the ICC.

(2) Where any evidence or other material is to be transmitted to the ICC there shall be transmitted-

- (a) where the material consists of a document, the original or a copy; and

- (c) where the material consists of any other article, the article itself or a photograph or other description of it,

as may be necessary to comply with the request of the ICC.

Arrangements for cooperation with the ICC.

53.(1) The Minister may make arrangements by agreement or otherwise for cooperation with the ICC in investigations or prosecutions.

(2) Where a request is received by the Minister from the ICC for any kind of cooperation, the request and any documents supporting the request shall be kept confidential except to the extent that the disclosure is necessary for execution of the request.

(3) The arrangements referred to in subsection (1) may be made, in particular, to provide the following assistance—

- (a) facilitating the voluntary appearance of persons as witnesses or experts before the ICC;
- (b) arrangements for delivering up of a person into the custody of the ICC or of the State of enforcement or of any territory of that State;
- (c) receiving of any person in custody and conveying of him to the place where he is to be delivered up into the custody;
- (d) return of the prisoner into the custody of the Prison Superintendent;
- (e) temporary transfer of prisoner to the ICC for the purposes of identification or for obtaining testimony or other assistance;
- (f) the examination of places or sites including the exhumation and examination of gravesites;
- (g) the protection of victims and witnesses and the preservation of evidence; or

- (h) any other type of assistance which is not prohibited by any law of Gibraltar, with a view to facilitating investigations and prosecutions.

PART V

ENFORCEMENT OF SENTENCES AND ORDERS

Sentences of imprisonment

Detention in Gibraltar in pursuance of an ICC sentence.

54.(1) This section shall apply if Gibraltar is designated by the ICC as a territory of the State of enforcement in which a person (“the prisoner”) is to serve a sentence of imprisonment imposed by it.

(2) Any designation made as referred to in subsection (1) shall not be effective unless the designation is accepted by the Minister and the ICC is informed of such acceptance.

(3) A prisoner subject to a warrant authorising his detention in Gibraltar shall be treated for all purposes, subject to section 55, as if he were subject to a sentence of imprisonment imposed in exercise of its criminal jurisdiction by a court in Gibraltar in which he is to be detained.

Domestic provisions not applicable to ICC prisoners and Temporary Transfers.

55.(1) Sections 29(2), 48, 51 and 54 of the Prison Act, 1986 do not apply in relation to a prisoner detained in Gibraltar in pursuance of a sentence of the ICC.

(2) Where the Minister receives a request from the ICC for the temporary return of the prisoner to the custody of the ICC for the purposes of any proceedings, or for the transfer of the prisoner to the custody of another State in pursuance of a change in designation of a territory or State of enforcement, he shall—

- (a) authorise in writing the prisoner’s temporary return or transfer in accordance with the request;

- (b) take all necessary steps in pursuance of arrangements made under section 53 with the ICC or, as the case may be, the other State; and
- (c) give such directions as to the custody, surrender and (where appropriate) return of the prisoner as appear to him appropriate to give effect to the arrangements.

(3) Where the prisoner is temporarily returned to the custody of the ICC, the authorisation of his detention in Gibraltar shall continue to have effect as a warrant so as to apply to him again on his return.

Power to make provision for enforcement of other orders.

56.(1) The Minister may make provision by regulations for the enforcement in Gibraltar—

- (a) fines or forfeitures ordered by the ICC, and
- (b) orders by the ICC against convicted persons specifying reparations to, or in respect of, victims.

(2) The regulations may authorise the Minister—

- (a) to appoint a person to act on behalf of the ICC for the purposes of enforcing the order, and
- (b) to give such directions to the appointed person as appear to him necessary.

(3) The regulations shall provide for the registration of the order by a court in Gibraltar as a precondition of enforcement.

An order shall not be so registered unless the court is satisfied that the order is in force and not subject to appeal.

If the order has been partly complied with, the court shall register the order for enforcement only so far as it has not been complied with.

(4) The regulations may provide that—

- (a) for the purposes of enforcement an order so registered has the same force and effect,
- (b) the same powers are exercisable in relation to its enforcement, and
- (c) proceedings for its enforcement may be taken in the same way,

as if the order were an order of a court in Gibraltar.

The regulations may for that purpose apply all or any of the provisions (including provisions of subordinate legislation) relating to the enforcement in Gibraltar of orders of a court of a country or territory outside Gibraltar.

(5) A court shall not exercise its powers of enforcement under the regulations in relation to any property unless it is satisfied—

- (a) that a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court, and
- (b) that the exercise of the powers will not prejudice the rights of bona fide third parties.

(6) The regulations may provide that the reasonable costs of and incidental to the registration and enforcement of an order are recoverable as if they were sums recoverable under the order.

(7) Regulations under this section may make different provision for different kinds of order.

PART VI

OFFENCES UNDER DOMESTIC LAW

Meaning of “genocide”, “crime against humanity” and “war crime”.

57. In this Part—

“genocide” means an act of genocide as defined in Article 6;

“crime against humanity” means a crime against humanity as defined in Article 7; and

“war crime” means a war crime as defined in Article 8.2.

Interpretation and application of Articles.

58.(1) In interpreting and applying the provisions of the Articles referred to in section 57, the court shall take into account any –

- (a) relevant judgment or decision of the court; and
- (b) other relevant international jurisprudence.

(2) The Articles referred to in section 57 shall, for the purposes of this Part, be construed subject to and in accordance with any relevant reservation or declaration made in the ratification of any treaty or agreement relevant to the interpretation of those Articles.

(3) The Attorney General may certify–

- (a) that a reservation or declaration referred to in subsection (2) has been made and the terms in which it was made;
- (b) if any such reservation or declaration is withdrawn in whole or in part, that fact and revoke or amend any certificate containing the terms of that reservation or declaration.

(4) The relevant provisions of the Articles of the ICC Statute referred to in section 57 and in this section are set out in Schedule 2 to this Act and no account shall be taken for the purposes of this Part of any provision of those Articles omitted from the text set out in that Schedule.

Commission of genocide, crimes against humanity and war crimes.

59. Where a person commits genocide, a crime against humanity or a war crime, that person commits an offence against the law of Gibraltar.

Conduct ancillary to genocide, etc. committed outside jurisdiction.

60.(1) It is an offence for a person to engage in conduct ancillary to an act to which this section applies.

(2) This section applies to an act that if committed in Gibraltar would constitute an offence under this section but which, being committed (or intended to be committed) outside Gibraltar, does not constitute such an offence.

(3) The reference in subsection (1) to conduct ancillary to such an act is to conduct that would constitute an ancillary offence in relation to that act if the act were committed in Gibraltar.

(4) This section applies where the conduct in question consists of or includes an act committed in Gibraltar, or outside Gibraltar by a Gibraltarian or a person ordinarily resident in Gibraltar.

Trial and punishment of offences.

61.(1) The offences under sections 59 and 60 and offences ancillary to an offence under those sections are triable only on indictment and proceedings for such an offence shall not be instituted except by or with the consent of the Attorney General.

(2) If the offence is not committed in Gibraltar—

- (a) proceedings may be taken; and
- (b) the offence may for incidental purposes be treated as having been committed,

in Gibraltar.

(3) A person convicted of an offence involving murder, or an offence ancillary to an offence involving murder, shall be dealt with as for an offence of murder or, as the case may be, the corresponding ancillary offence in relation to murder.

(4) In subsection (3) “murder” means the killing of a person in such circumstances as would, if committed in Gibraltar, constitute murder.

(5) A person who is convicted of an offence under section 59 or 60 or an offence ancillary to any offence under those sections, other than the offence referred to in subsection (3), that person is liable to imprisonment for a term not exceeding 30 years.

Offences in relation to the ICC.

62.(1) A person intentionally committing any of the acts mentioned in Article 70.1 (offences against the administration of justice) may be dealt with as for the corresponding domestic offence committed in relation to the court in Gibraltar.

(2) In interpreting and applying the provisions of Article 70.1 the court shall take into account any relevant judgment or decision of the ICC and of any other relevant international jurisprudence.

(3) The corresponding domestic offences referred to in subsection (1) are—

- (a) in relation to Article 70.1(a), an offence against section 244(1) of the Criminal Offences Act;
- (b) in relation to Article 70.1(c), an offence at common law; and
- (c) in relation to Article 70.1(b) or (d) to (f), an offence at common law.

(4) This section and, so far as may be necessary for the purposes of this section, the enactments and rules of law relating to the corresponding domestic offences apply to acts committed in Gibraltar.

(5) If an offence under this section, or an offence ancillary to such an offence, is not committed in Gibraltar—

- (a) proceedings may be taken; and
- (b) the offence may, for incidental purposes, be treated as having been committed,

in Gibraltar.

(6) The relevant provisions of Article 70.1 are set out in Schedule 3 to this Act.

Meaning of “ancillary offence”.

63.(1) References in this Part to an ancillary offence under the law of Gibraltar are to—

- (a) aiding, abetting, counselling or procuring the commission of an offence;
- (b) inciting a person to commit an offence;
- (c) attempting or conspiring to commit an offence; or
- (d) assisting an offender or concealing the commission of an offence.

(2) In subsection (1)(a) the reference to aiding, abetting, counselling or procuring is to conduct that in relation to an indictable offence would be punishable under section 17 of the Criminal Offences Act.

(3) In subsection (1)(b) the reference to incitement is to conduct amounting to an offence of incitement at common law.

(4) In subsection (1)(c) the reference to—

- (a) an attempt is to conduct amounting to an offence under section 7 of the Criminal Offences Act; and
- (b) conspiracy is to conduct amounting to an offence of conspiracy under section 11(1) of the Criminal Offences Act.

(5) In subsection (1)(d) the reference to—

- (a) assisting an offender is to conduct that in relation to an arrestable offence would amount to an offence under section 18 of the Criminal Offences Act; and
- (b) concealing an offence is to conduct that in relation to an arrestable offence would amount to an offence under section 19 of the Criminal Offences Act.

Saving for general principles of liability, etc.

64.(1) In determining whether an offence under this Part has been committed the court shall apply the principles of the law in Gibraltar.

(2) Nothing in this Part shall be read as restricting the operation of any enactment or rule of law relating to—

- (a) the extra-territorial application of offences including offences under this Part; or
- (b) offences ancillary to offences under this Part, wherever committed.

Responsibility of commanders and other superiors.

65.(1) This section applies in relation to—

- (a) offences under this Part; and
- (b) offences ancillary to offences under this Part.

(2) A military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under his effective command and control, or his effective authority and control, as a result of his failure to exercise control properly over such forces where he—

- (a) either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences; and
- (b) failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) With respect to superior and subordinate relationships not described in subsection (2), a superior is responsible for offences committed by subordinates under his effective authority and control, as a result of his failure to exercise control properly over such subordinates where—

- (a) he either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences;
- (b) the offences concerned activities that were within his effective responsibility and control; and

- (c) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(4) A person responsible under this section for an offence is regarded as aiding, abetting, counselling or procuring the commission of the offence.

(5) In interpreting and applying the provisions of this section, which corresponds to Article 28, the court shall take into account any relevant judgment or decision of the ICC and account may also be taken of any other relevant international jurisprudence.

(6) Nothing in this section shall be read as restricting or excluding–

- (a) any liability of the commander or superior apart from this section; or
- (b) the liability of persons other than the commander or superior.

(7) The relevant provisions of Article 28 are set out in Schedule 4 to this Act.

Mental element.

66.(1) References in this Part to a person committing–

- (a) genocide;
- (b) a crime against humanity;
- (c) a war crime; or
- (d) any of the acts mentioned in Article 70.1 (offences against the administration of justice in relation to the ICC),

shall be construed in accordance with this section.

(2) Unless otherwise provided by–

- (a) the Articles mentioned in the definition in section 57 of the crimes specified in subsection (1)(a) to (c) ;
- (b) section 60(1) or Article 70.1 (offences in relation to the ICC); or
- (c) section 63 (responsibility of commanders and other superiors),

a person is regarded as committing such an act or crime only if the material elements are committed with intent and knowledge.

(3) For the purposes of this section–

- (a) a person has intent in relation to –
 - (i) conduct, where he means to engage in the conduct; and
 - (ii) a consequence, where he means to cause the consequence or is aware that it will occur in the ordinary course of events; and
- (b) “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

(4) In interpreting and applying the provisions of this section (which corresponds to Article 30) the court shall take into account any relevant judgment or decision of the ICC and account may also be taken of any other relevant international jurisprudence.

(5) The relevant provisions of Article 30 are set out in Schedule 5 to this Act.

References to acts to include omissions, etc.

67. In this Part “act”, except where the context otherwise requires, includes an omission, and references to conduct have a corresponding meaning.

Extradition under the law of Gibraltar.

68.(1) This section applies to extradition under any provision of law on extradition in force in Gibraltar.

(2) The offences to which a provision of law referred to in subsection (1) applies include the following offences—

- (a) an offence under section 59 (Commission of genocide, crimes against humanity and war crimes);
- (b) an offence under section 60 (conduct ancillary to genocide etc. committed outside the jurisdiction);or
- (c) an ancillary offence in relation to any such offence.

(3) If any conduct would constitute an offence if committed in Gibraltar then, notwithstanding that it does not constitute such an offence a person whose surrender is sought in respect of that conduct may be surrendered by Gibraltar in pursuance of a provision of law on extradition in force in Gibraltar to which subsection (2) applies.

Extradition: offences not regarded as of political character, etc.

69.(1) This section applies to—

- (a) any offence that if committed in Gibraltar would be punishable as—
 - (i) an offence under section 59 (Commission of genocide, crimes against humanity and war crimes);
 - (ii) an offence under section 60 (conduct ancillary to genocide, etc. committed outside the jurisdiction); or
 - (iii) an ancillary offence, as defined in section 63, in relation to any such offence as is mentioned in subparagraph (i) or (ii); and
- (b) any offence punishable in Gibraltar under any law implementing international obligations of Gibraltar.

(2) For the purposes of this Act—

- (a) an offence to which this section applies shall not be regarded as an offence of a political character; and

- (b) no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character.

(3) It is not an objection to proceedings against a person in respect of an offence to which this section applies that under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused, or of which he was convicted, he could not have been punished for it.

Proceedings against persons becoming resident within the jurisdiction.

70.(1) This section applies in relation to a person who commits acts outside Gibraltar at a time when he is not a Gibraltarian or an ordinary resident in Gibraltar and who subsequently becomes Gibraltarian or an ordinary resident in Gibraltar.

(2) Proceedings may be brought against a person referred to in subsection (1) in Gibraltar for a substantive offence under this Part if—

- (a) he is resident in Gibraltar at the time the proceedings are brought; and
- (b) the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in Gibraltar.

(3) Proceedings may be brought against a person referred to in subsection (1) in Gibraltar for an offence ancillary to a substantive offence under this Part (or what would be such a substantive offence if committed in Gibraltar) if—

- (a) he is resident in Gibraltar at the time the proceedings are brought; and
- (b) the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in Gibraltar.

(4) In this section a "substantive offence" means an offence other than an ancillary offence.

(5) Nothing in this section shall be read as restricting the operation of any other provision of this Part.

Crown application.

71. This Act binds the Crown and applies to persons in the public service of the Crown, and property held for the purposes of the public service of the Crown, as it applies to other persons and property.

Power to make Regulations.

72.(1) The Minister may by Regulations make provision for carrying out the purposes of this Act.

(2) The Minister may, in particular, by Regulations make provision—

- (a) for fines or forfeitures ordered by the ICC;
- (b) for orders by the ICC against convicted persons specifying reparations to, or in respect of, victims.

(3) The Regulations made under subsection (2) may authorise the Minister—

- (a) to appoint a person to act on behalf of the ICC for the purposes of enforcing the order; and
- (b) to give such directions to the appointed person as appear to him necessary.

(4) The Regulations made under subsection (2) shall provide for registration of the order by the court as a precondition of enforcement.

(5) An order referred to in subsection (4) shall not be so registered unless the court is satisfied that the order is in force and not subject to appeal and if the order has been partly complied with, the court shall register the order for enforcement only so far as it has not been complied with.

(6) The Regulations made under subsection (2) may also provide—

- (a) that—

- (i) for the purposes of enforcement of an order registered by the court shall have the same force and effect;
- (ii) the same powers are exercisable in relation to the enforcement of the order; and
- (iii) proceedings for its enforcement may be taken in the same way,

as if the order were an order of the court in Gibraltar;

(b) that the court shall not exercise its powers of enforcement in relation to any property unless it is satisfied that—

- (i) a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court; and
- (ii) the exercise of the powers will not prejudice the rights of bona fide third parties;

(c) that the reasonable costs of and incidental to the registration and enforcement of an order are recoverable as if they were sums recoverable under the order; and

(d) for different provisions for different kinds of order.

(6) The Minister may by Regulations make—

- (a) such provisions as appears to him to be necessary or expedient to enable sittings of the ICC to be held in Gibraltar;
- (b) in particular, provisions with respect to the detention of persons in the custody of the ICC;
- (c) such provisions as appears to him to be necessary or expedient for giving effect to—
 - (i) any Rules of Procedure and Evidence having effect under Article 51, set out in Schedule 6; and

- (ii) any related agreement which applies to Gibraltar;
- (d) provisions specifying–
 - (i) the period for which a person may be remanded at any time; and
 - (ii) the total period for which a person may be so remanded,

having regard to the time limits specified in Rules of Evidence and Procedure for the purposes of Article 92.3, set out in Schedule 7.

(7) The Governor may by Regulations prescribe such privileges and immunities for–

- (a) the ICC as are necessary for the fulfilment of its purpose;
- (b) the Judges, the Prosecutor, the Deputy Prosecutors and the Registrar, when engaged on or with respect to the business of the ICC, as are accorded to the heads of diplomatic missions.

(8) The Minister may by regulations prescribe such privileges, immunities, facilities or treatment for–

- (a) the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry as are necessary for the performance of their functions; and
- (b) Counsel, experts, witnesses or any other person required to be present at the seat of the ICC, as are necessary for the functioning of the ICC.

SCHEDULE 1

Section 30(2)

RIGHTS OF PERSONS DURING INVESTIGATION: ARTICLE 55

ARTICLE 55

Rights of persons during an investigation

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

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:
 - (a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
 - (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;

- (c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and
- (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

SCHEDULE 2

Section 58(4)

**GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES:
ARTICLES 6 TO 9**

ARTICLE 6

Genocide

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

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

ARTICLE 7

Crimes against humanity

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

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;

- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack;
- (b) “Extermination” includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes

the exercise of such power in the course of trafficking in persons, in particular women and children;

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

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

ARTICLE 8

War crimes

2. For the purpose of this Statute, “war crimes” means:

- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Willful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
 - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, or of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or

charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined in Article 7, paragraph 2(f), enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxiii) Utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

- (iii) Taking of hostages;
 - (iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.
- (d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

- (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary;
 - (x) Declaring that no quarter will be given;
 - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.
- (f) Paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a

State when there is protracted armed conflict between governmental authorities and organised armed groups or between such groups.

ARTICLE 9

Elements of crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of State Parties.
2. Amendments to the Elements of Crimes may be proposed by:
 - (a) Any State Party;
 - (b) The judges acting by an absolute majority;
 - (c) The Prosecutor.

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

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

SCHEDULE 3

Section 62(6)

OFFENCES AGAINST THE ICC: ARTICLE 70

ARTICLE 70

Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:

- (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1 to tell the truth;
- (b) Presenting evidence that the party knows is false or forged;
- (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
- (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
- (e) Retaliating against an official of the Court on account of duties performed by that or another official;
- (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.

4.(a) Each State Party shall extend its criminal laws penalising offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;

NOTE:

Article 69.1, referred to in article 70.1(a), provides as follows:

- “1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, given an undertaking as to the truthfulness of the evidence to be given by that witness”.

SCHEDULE 4

Section 65(7)

Article 28

Responsibility of commanders and other superiors.

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

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
 - (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
 - (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

SCHEDULE 5

Section 66(5)

Article 30

Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
 - (a) In relation to conduct, that person means to engage in the conduct;
 - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purpose of this article, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “Know” and “knowingly” shall be construed accordingly.

SCHEDULE 6

Section 72(6)(c)(i)

Article 51

Rules of Procedure and Evidence

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

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

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.
4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.
5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

SCHEDULE 7

Section 72(6)(d)

Article 92

Provisional arrest

1.....

2.....

3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.

4.....

EXPLANATORY MEMORANDUM

This Bill gives effect to the Inter-governmental Treaty that forms the Rome Statute of the International Criminal Court (“ICC Statute”) in Gibraltar, and provides for offences under the law of Gibraltar corresponding to offences within the jurisdiction of the International Criminal Court (ICC).

The Bill for the International Criminal Court Act 2007 has six Parts and seven Schedules.

Part I provides for title, commencement and interpretation of certain terms used in the Bill.

Part II deals with the legal capacity, privileges and immunities of the ICC and its judges, prosecutor, etc. It also provides for proof or orders etc. of the ICC and admissibility or evidence about proceedings.

Part III enables the arrest and surrender of suspects at the request of the ICC. It also sets out the procedure to be followed when the Minister receives a request from the ICC for the arrest and surrender of an individual.

Clause 7 provides that, where the Minister receives a request for the provisional arrest of an individual before sending the formal request for surrender, an application shall be made by the Attorney General to the court and the court is required to issue a “provisional warrant”.

Clause 8 sets out what is to happen if a person is arrested under a provisional warrant; it reflects Article 92 of the Statute. The person must be brought as soon as is practicable before the Supreme Court. The Court is required to remand him until such time as a section 6 warrant is produced. If such a warrant is produced, the court will proceed as if the person concerned had been arrested under that warrant. If not, the person will be discharged.

Clause 9 provides for proceedings for delivery order with regard to the person arrested under the section 6 warrant.

Clause 13 provides that, if the Supreme Court refuses to make a delivery order, the Attorney General may file an appeal to the Court of Appeal and if the Court of Appeal dismisses the appeal, a further appeal shall lie to Her Majesty in Council.

Clause 17 provides for the execution of any warrant of arrest endorsed or issued under this Part and the legal custody of a person so arrested.

Clause 18 enables the execution of a delivery order. It provides that someone subject to a delivery order can be lawfully kept in custody pending or during the execution of the delivery order, whether in Gibraltar or on board a Gibraltar ship or Gibraltar aircraft or a Gibraltar hovercraft.

Clause 19 implements Article 59 of the ICC Statute which deals with the question of interim release pending surrender (i.e., bail).

Clauses 20 and 21 provide for two different situations in which a person arrested under this Part may be discharged. Clause 20 grants a person, subject to a delivery order, the right to make an application for discharge if he has not been delivered up within 40 days of the order being made. Clause 21 provides that a person must be discharged if the ICC informs the Minister that the person's surrender is no longer required.

Clause 22 is intended to implement the obligations under Article 89.3(a) (c) of the ICC Statute which obliges State Parties to authorise transport through their territory of a person being surrendered to the ICC by another State.

Clause 23 is intended to implement Article 89.3(e) of the ICC Statute that obliges a State to detain the person being transported until the request for transit is received from the ICC. The request for transit must be received within 96 hours or the individual must be released.

Clause 28 provides for extradition proceedings.

Part IV provides for other forms of assistance e.g. questioning, service of process, transfer of prisoner, investigation of proceeds of ICC crime, etc..

Article 88 of the ICC Statute requires State Parties to ensure that there are procedures available under national law for the forms of co-operation which are specified under Part 9 of the Statute. The main forms of assistance, other than the arrest and surrender of inspectors are outlined in Article 93.1.

Part IV is intended to implement the obligation under Articles 88 and 93.1 of the ICC Statute. It provides a legislative basis, where one is required, for the Minister to assist the ICC with its investigations or prosecutions.

Clause 53 specifies the areas for making cooperation arrangements with the ICC.

Part V provides for enforcement of sentences and orders.

Clause 54 enables the ICC to designate Gibraltar as a territory of the State of enforcement in which a prisoner is to serve a sentence of imprisonment imposed by the ICC.

Part VI is intended to incorporate the offences in the ICC Statute into domestic law.

Clause 60 incorporates the offences of genocide, crimes against humanity and war crimes as defined in the Statute into the law of Gibraltar. Clause 60 makes the conduct ancillary to such offences and offence against the law of Gibraltar. The ICC will have jurisdiction over these offences when committed in Gibraltar or when committed overseas by a Gibraltarian.

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