



**Cour
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**International
Criminal
Court**

Cooperation agreements





Cooperation agreements

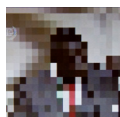


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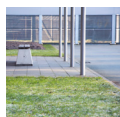


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Introductory Note

The Rome Statute system is based primarily on two pillars, namely the International Criminal Court (“ICC” or “Court”) and the States Parties to the Rome Statute of the ICC, individually as well as collectively in the form of the Assembly of States Parties. While the Rome Statute regulates relations between the Court and States Parties, it does not cover all contingencies. Therefore, cooperation agreements - negotiated bilateral agreements between the Court and States Parties - are an essential tool for regulating successful cooperation, particularly under Parts IX and X of the Rome Statute.

States Parties have a significant legal and financial interest in ensuring appropriate and timely cooperation with the Court. They have long recognized the importance of effective and efficient trials and due process, the rights of the defense and other parties and participants, and the cost of trials, which could increase if delays in the delivery of State cooperation occur and/or cooperation cannot be secured.

Cooperation agreements address all aspects of the Court’s activities under the Rome Statute, including but not limited to protection of victims and witnesses, enforcement of sentences, interim release and release of persons.

The existence of cooperation agreements increases legal certainty both for States Parties and for the Court. Without prejudice to Rome Statute provisions, they acknowledge where States Parties retain specific decision-making power, and establish clear procedures about how that power is exercised in relation to their obligations to the Court, including clear channels for communication on specific issues.

They provide a vehicle for States to share knowledge, expertise, and good practices, thus contributing to capacity-building efforts and related initiatives both at the ICC and at the national level. As a result, an increased mutual understanding of the ICC’s operational needs and the States’ own internal organization and legal regime is achieved.

Finally, the conclusion of cooperation agreements is a concrete demonstration of the States Parties’ commitment to the Court and its mandate, and encourages other States Parties to make similar commitments, strengthening the legal and logistical network supporting successful investigations and prosecutions, and related Court activities.

Witness Relocation

Article 68(1) of the Rome Statute stipulates the responsibility of the Court to protect the safety, and physical and psychological well-being of victims and witnesses.

One of the many ways to protect victims or witnesses who are at high risk is to relocate them away from the source of threat. This relocation can be permanent or temporary, depending on the personal circumstances of the person relocated or when host States are only able to accommodate the victim or witness for a limited period of time. All of these types of relocations can be achieved through *ad hoc* arrangements or witness relocation arrangements.



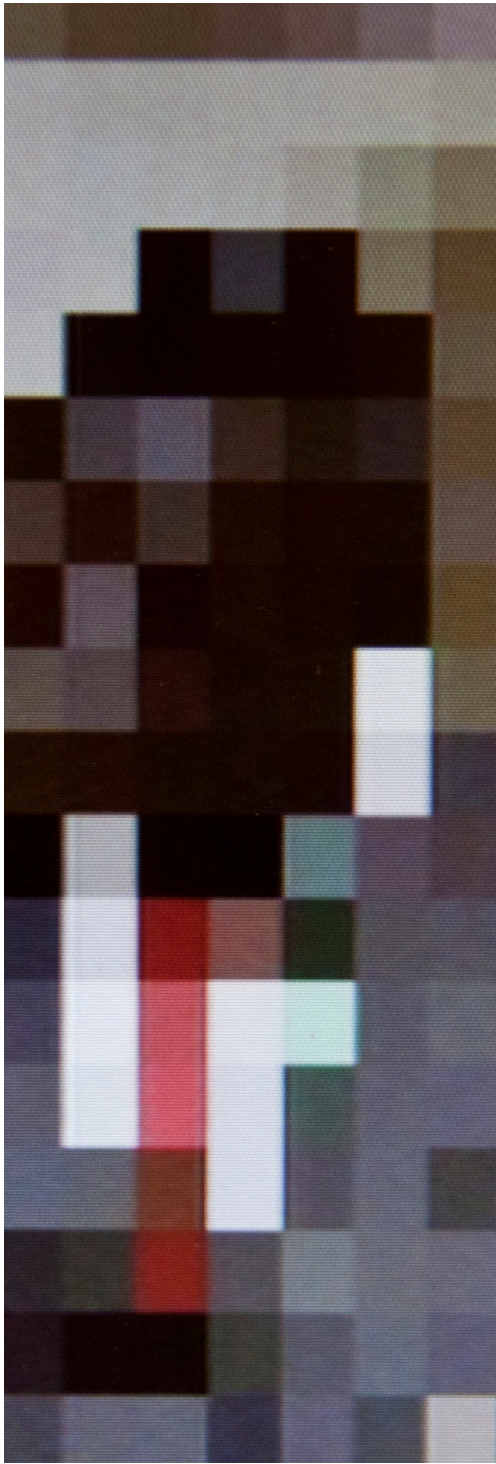
More specifically, Rule 16(4) of the Rules of Procedure and Evidence (“RPE”) states that the Registrar, on behalf of the Court, may enter into negotiations with States in order to find arrangements on the provision of relocation and support services for victims and witnesses.

Protection measures provided to the victims and witnesses should always be proportionate to the urgency and seriousness of the threat. As relocation entails a high level of intrusiveness in the lives of victims and witnesses and their close families, less drastic protection measures need to be considered before deciding on relocation. Therefore, international relocations are only warranted in a very limited number of cases.

Relocation is a measure of last resort, only to be considered when all other measures are deemed insufficient to ensure protection.

Witness testimonies account for a significant amount of evidence presented before the Court. Consequently, witnesses play an important role and provide key contributions to the fairness of the trial process. For witnesses who are at grave risk, relocation can be crucial in reducing the level of risk to them, ensuring their protection, and ultimately enabling them to testify.

The ability of the Court to exercise its mandate is intrinsically connected to the provision of effective protection to the victims and witnesses. In other words, without clear assurances that victims and witnesses will be protected, the appearance of witnesses may be delayed and the trial process may be disrupted.



Questions

Answers

How many witness relocation arrangements have been signed with the Court?

To date, the Court has concluded eighteen arrangements with States on the protection and relocation of witnesses. Several other States have also agreed to cooperate with the Court through *ad hoc* arrangements.

Is the absence of a protection programme at the national level an obstacle to the signing of a relocation arrangement?

No. For some witnesses, simply being relocated to another country and gaining physical distance from the source of the threat can constitute sufficient protection.

What options are there for cooperation if a State is not in a position to sign an arrangement?

There are several options. For example, States may enter into an *ad hoc* protection arrangement, which offers more flexibility as there is no need for a cooperation agreement to be signed. The process of *ad hoc* arrangements normally begins with the Court sending a specific cooperation

request to the State concerned for the temporary or permanent relocation of a victim or witness. Following this, the Court and the State engage in further discussions which address all of the concerns of the State, ultimately enabling it to accept the victim or witness in its territory.

What is the difference between temporary and permanent relocation?

Temporary relocation means that a State can undertake to host a witness in its territory for an agreed amount of time. This could be used, for example, to relocate a person and his/her family urgently because the Court is yet to conclude an arrangement with another State for their permanent relocation.

In the case of a permanent relocation, the victim or witness is relocated for an undetermined period of time. It is therefore necessary to ensure the effective integration of the victim or witness into his/her new society and that he or she is afforded the opportunity to become self-sustainable. This would include the witness being provided legal residency status, being able to find housing, employment and have access to medical care. In both cases it is

essential that the person is authorised to stay in the States' territory legally.

Does a State which is willing to sign a Witness relocation arrangement need to have specific legislation in place for immigration procedures?

Witness relocation arrangements can be tailored to the specific situation and needs of the State concerned, ensuring that they are fully compatible with the State's relevant national legislation. The only minimum requirement is that permanently relocated witnesses receive facilities, benefits, and entitlements, which should be at least equal to that which is provided to refugees under Article 1 of the Convention and its Protocol relating to the Status of Refugees.

How do States address concerns over the criminal record of an individual whose protection is sought?

A State which has signed a witness relocation arrangement is not obliged to accept all the witnesses for whom the Court sends a request. When the Court sends individual requests for each witness, it provides all relevant information available. The final decision as to whether to accept a person for relocation will always remain with the State.

Witnesses allegedly implicated in crimes or with criminal records can also provide essential information to the Court about the crimes or offences that have been committed, and can thus be essential to the Court's mission to achieve justice.

The Rome Statute demands that the Court protects these witnesses as well, which it can only do with the support of States.

Can a state decide to terminate relocation services?

Witness relocation arrangements normally include a 'termination of services' clause, which, through an agreed procedure, allows for the safe removal of the victim or witness from the State's territory.

Does the signing of a relocation arrangement create an additional burden for a State which has already accepted and accommodated a large number of refugees?

The Court will not usually ask any State to host many individuals per year. The State can decide on the number of witnesses it is willing to accept. As mentioned above, the final decision to accept a victim or witness' relocation remains with the State. As more States enter into relocation arrangements, the broader the burden-sharing can be among States.

Making contributions to the Special Fund for Relocations ("SFR") is also an important way for States Parties to assist the Court. The SFR allows a cost-neutral solution for States which are willing to receive victims and witnesses but perhaps are financially unable to make relocation arrangements with the Court. Therefore, for certain States, the Court can bear the cost of the relocations through the funds collected in the SFR. States may accept victims and witnesses for relocations and may also contribute to the SFR.

What would happen in the event of integration-related problems with the witness?

The final aim of a relocation process is to have the victim or witness integrated into the relocation State, thus rendering the individual self-sufficient rather than being a financial burden on the hosting State. The Victims and Witnesses Section (“VWS”) of the Registry prepares protected individuals to achieve that goal.

Should integration problems occur, the Court will remain available to provide assistance through the expert resources within the VWS.

Together, the Court and the State will seek an appropriate and effective solution for the specific problem in a way that best addresses the needs of both the individual and the State.

Have there been any problems or challenges reported in past relocation arrangements?

States receiving victims or witnesses have generally been very successful in achieving the integration of relocated individuals. Some challenges occasionally arise in the area of family law, where the cultural practices of the witness and his/her family differ from those of the host State significantly. In these circumstances, the Court is available to provide advice from its specialised staff in the VWS.

Is it imperative that the family be transferred alongside the relocated witness?

The Court is bound to protect all persons at risk, and this may include the closest family members of the victim or witness. Depending on their composition, families are usually not separated in order to maintain the nuclear family unit.

Once the individual is in the territory of the receiving State, how does the Court assess the presence of any remaining threat?

The Court can monitor and assess the risk of the individual to see if there is a continuous need for his/her protection. The State and the Court will agree on their methods of doing so. For example, the VWS will provide an independent and expert assessment. This assessment will then be shared with the State upon request.

Can the State make the relocation arrangement public?

The effectiveness of a protection measure such as international relocation relies on confidentiality. Therefore, in order to administer the protection programme effectively, the Court never reveals the States with which it is cooperating publicly. However, a State is free to decide whether it will announce publicly that it has signed a relocation arrangement with the Court.

Release of persons, including interim release

The release of persons, including interim release, is an essential right of the accused, and their effective exercise and implementation requires that States sign agreements in order to facilitate these processes.

Rule 185(1) of the RPE provides that where a person surrendered to the Court is released from the custody of the Court because:



1 the Court does not have jurisdiction

2 the case is inadmissible because

the case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, (unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute),

the case is not of sufficient gravity to justify further action by the Court,

the person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted in application of the *ne bis in idem* principle;



The Court shall, as soon as possible, make arrangements for the transfer of the person to a State that is obliged to receive him/her, to another State that agrees to receive him/her, or to a State requesting his/her extradition with the consent of the original surrendering State, taking into account the views of the person concerned.

The right to be released, as specified in Rule 185(1) of the RPE, can be exercised, under given conditions, throughout all stages of the proceedings.

The consequences of the absence of States Parties willing to accept released persons are serious. For example, individuals who cannot be successfully relocated may remain de facto detained, despite having been released. In this respect, other international criminal tribunals such as the International Criminal Tribunal for Rwanda, have had encountered difficulties finding States willing to accept acquitted persons on their territory. In addition to the egregious impact such a situation would have on the released person, it prevents the Court's system from functioning and runs counter to the Court's objective of applying the highest international standards.

Moreover, in the case that the Pre-Trial or Trial Chamber grants a person with interim release, in order for it to be effective, the Court must rely on States Parties and their willingness to accept the person on their territory. If States Parties are unwilling to do so, this could hamper the possibility of interim release or render it impossible.

Questions

Answers

How many interim release agreements have been signed with the Court?

The Kingdom of Belgium is the only State Party to have signed an interim release agreement with the Court.

How many release of persons agreements have been signed with the Court?

None.

Are there any measures to mitigate concerns relating to the person not complying with the rules of the host State?

The relocated person is obliged to abide by host State's laws. As with witness relocation agreements, the person is expected to integrate into the host State.

The Court will fully disclose all relevant information regarding the concerned person with the State. If, nevertheless, the State has serious concerns, it can inform the Court, which will then take all necessary measures.

If the person is indigent, will the Court help secure funds in order for the State to receive the released person?

It is for the receiving State Party to provide the necessary funds. Nonetheless, the Court, on a case-by-case basis, will strive to secure funds, if the State Party cannot do so.

If not, how can the financial impact on the host state be mitigated?

This is a topic to be discussed on a case-by-case basis. The greater the number of agreements concluded with the Court, the more possibilities exist to share the responsibility and financial impact.

In practice and up to this date, interim release has only been granted in Article 70 cases, i.e. cases involving allegations of offences against the administration of justice.

How many persons have there been acquitted before the Court?

To date, there has been one accused acquitted, Mathieu Ngudjolo Chui, who has returned to the Democratic Republic of the Congo ("DRC").

What are the protection measures and obligations of the receiving State Party?

As the conditions negotiated in the cooperation agreement are non-exhaustive, the Chamber will define the obligations of the receiving State Party prior to the release of the individual, and the receiving State will be able to present its observations on these conditions.



Enforcement of Sentences

Unlike other cooperation agreements, Part X of the Rome Statute, and in particular Article 103 and Rule 200(1)(5) of the RPE comprehensively set out the legal provisions governing the enforcement of sentences. Hence, the parameters of these agreements are closely based on a pre-existing statutory framework to which all States Parties have already consented.

The responsibilities of both the Court and States are defined by three primary principles, namely that:

The sentenced person will serve the sentence in the prison facilities of the State of enforcement, subject to the State's domestic legislation

The State of enforcement is bound by the sentence imposed by the Court

The Court supervises the enforcement of the sentence, and the conditions of detention must be consistent with widely accepted international treaty standards governing the treatment of prisoners



The process applicable to such agreements is twofold:

First, when entering into an Agreement on the Enforcement of Sentences with the Court, a State must indicate its general willingness to accept sentenced persons. Such a bilateral agreement provides all the legal provisions governing the enforcement of sentences. A Model Enforcement Agreement facilitates this drafting process, bringing together all the relevant provisions of the Rome Statute system and drawing on the experience of the *ad hoc* tribunals. As per Article 103(1)(b), the State may attach conditions to its willingness to enforce sentences, which the ICC Presidency may accept or not, depending on their compatibility with the Rome Statute. Once an agreement on the enforcement of sentences is reached and enters into force, the State is added to the Court's list of States willing to accept sentenced persons.

The second phase can only take place once a judgment against a sentenced person has become final, in other words, not subject to any further appeal. At this stage, pursuant to Article 103(1)(c), the Presidency may designate where the sentenced person will serve the sentence by selecting a specific State from the Court's list.

In making this choice, the Presidency will consider relevant factors listed in Article 103(3) (a)-(e), including the principle of equitable distribution, the views and nationality of the sentenced person, and the application of widely accepted international treaty standards governing the treatment of prisoners.

The conclusion of such agreements is a high priority as an increasing number of proceedings before the Court approach the enforcement phase. A wider list of willing States is necessary to ensure greater equitable distribution as well as greater flexibility, enabling the Court to take fully into account the cultural or family background or other relevant links of the sentenced person when designating a State of enforcement.



Questions

Answers

How many enforcement of sentence agreements have been signed with the Court?

As of 1 May 2017, ten enforcement of sentences agreements have been in force between the Court and, Austria, the United Kingdom, Belgium, Finland, Denmark, Serbia, Mali, Norway and, most recently, Argentina and Sweden.

Furthermore, the DRC was designated as the State of enforcement for two convicted persons pursuant to an *ad hoc* agreement with the Court.

Is it an obstacle to the signing of such an agreement that the State does not meet the standards required for the enforcement of sentences issued by the Court?

This does not have to be an obstacle. For those States that are willing to work towards improving their prison conditions to meet the necessary minimum international standards, the Court may help States to receive assistance for this purpose.

To this end, the Court has concluded a Memorandum of Understanding with the United Nations Office on Drugs and Crime

(UNODC), the UN body responsible for assisting States in the implementation of UN standards and norms governing the treatment of prisoners and management of prison facilities.

The UNODC can therefore provide technical assistance in improving the conditions of the prison system up to the required standard.

Once a State has concluded an enforcement agreement, does it have to accept any sentenced individual if requested by the Court?

No, a State that has concluded an enforcement agreement is not obliged to accept any particular sentenced person.

Indeed, the system is based on “double consent”: States must first declare willingness to accept sentenced persons in general and express their consent again in a specific case concerning a specific individual.

This ensures that States are free to undertake enforcement responsibilities in a manner consistent with their domestic legal systems and particular circumstances.

It also gives considerable flexibility to the State to make any necessary determination on a case-by-case basis.

Is it an obstacle to the signing of such an agreement that the State's domestic legislation provides a maximum possible term of imprisonment which cannot be exceeded?

No, it is not an obstacle to the signing of an agreement. The State would still be able to enforce sentences issued by the Court whose length is compatible with the national laws of the State in question.

Can the ICRC negative assessment of the detention facilities of a State prevent the ICC from ordering the transfer of an individual to such State?

The ICRC serves as a monitoring body for most international criminal tribunals' detention facilities, more specifically for the ICC since 2006.

The ICRC is internationally recognized for its independent work in monitoring detention facilities in order to ensure that detained persons are treated humanely and in accordance with the highest international standards.

Therefore, when deciding on the State of enforcement of the sentence, the Court will make such decision taking into account the wishes of the person to be transferred as well as the willingness of the State to receive such person.

Should the sentenced individual inform the Court that he/she does not wish to serve the sentence of imprisonment in his/her national State, although the State in question has indicated its willingness to accept the individual, what would be the alternative solution?

In the designation process, the Presidency considers a range of factors, including the willingness of potential States of enforcement as well as the views of the sentenced person, which ought to be assessed altogether and on a case-by-case basis.

Does the Court monitor the conditions of imprisonment of the receiving State?

Yes, the enforcement of a sentence of imprisonment will be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards on the treatment of prisoners. In any event, the conditions of imprisonment should not be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.

Annexes

Model Agreement on Interim Release

Exchange of letters on the interim release

(For reference only, model agreement currently under review)

Date:

Excellency,

I have the honour to refer to the discussions held between the International Criminal Court (hereafter: “the Court”), and the [FULL STATE NAME] (hereafter: “[SHORT STATE NAME]”), concerning arrangements between the Court and [SHORT STATE NAME] for the interim release into the territory of [SHORT STATE NAME] of detained persons as granted by the relevant Chambers of the Court.

I have the honour to confirm on behalf of the Court the following understanding: Without prejudice to any specific decision by the relevant Chamber on this matter, [SHORT STATE NAME] agrees, subject to the terms of this letter and your reply (hereafter: “Exchange of Letters”), to receive into its territory persons who have been granted interim release by a Pre-Trial Chamber pursuant to Article 60 of the Rome Statute or by a Trial Chamber in accordance with Article 61(11) of the Rome Statute with or without conditions in accordance with Rule 119 of the Rules of Procedure and Evidence.

I. Terminology

- (a) “Interim Release” is understood to refer to the temporary release into the territory of [SHORT STATE NAME] of a person detained by the Court under the conditions established by the relevant Chamber.
- (b) “Person” is understood as a person benefiting from Interim Release.

II Purposes of this Exchange of Letters

- (c) [SHORT STATE NAME] hereby indicates to the Registrar its willingness to accept person(s) granted Interim Release by a Chamber, subject to any conditions attached by [SHORT STATE NAME] and agreed upon with the Registrar.

III. Representatives of the Parties

- (d) The Registrar of the Court (“the Registrar”), or his/her authorised designate, shall represent the Court in all matters relating to this Exchange of Letters.
- (e) A representative to be chosen by the Government and communicated to the Court shall representin all matters relating to this Exchange of Letters.

IV. Procedure for acceptance of the person(s) granted Interim Release into the territory of [SHORT STATE NAME]:

- (f) For the purposes of the interim release observations of [SHORT STATE NAME] shall be sought in accordance with Regulation 51 of the Regulations of the Court.
- (g) Once the above-mentioned consultations have been completed, the Registrar shall request that [SHORT STATE NAME] accept such a person on its territory. Such requests (hereafter: “Requests”) shall be considered on a case by case basis by [SHORT STATE NAME].
- (h) Requests shall be in writing, and shall be addressed to [SHORT STATE NAME] by the Registrar as soon as possible after the decision granting interim release has been issued.
- (i) Requests shall refer to the Person by his or her full personal name, as determined by the Registrar. Requests shall be accompanied by details on the charges against the Person, the conditions of his or her release where applicable, and any other information which the Registrar considers relevant. A copy of the decision granting the interim release shall be joined. The Registrar will provide any further information as [SHORT STATE NAME] may request, subject to the Registrar having access to such information and there being no legal impediment to communicating it to [SHORT STATE NAME].
- (j) When [SHORT STATE NAME] accepts a person on its territory, all specific measures and any conditions agreed upon by the Parties may in no case be modified unilaterally by [SHORT STATE NAME].

V. Conditions of acceptance of a Person in the territory of [SHORT STATE NAME] pursuant to this Exchange of Letters:

- (k) Where [SHORT STATE NAME] agrees to a Request, the Registrar in consultation with the competent national authorities of [SHORT STATE NAME] shall arrange for the transfer of the Person to the territory of [SHORT STATE NAME].

- (l) During his/her stay in the territory of [SHORT STATE NAME] on interim release, the Person shall be subject to the laws of [SHORT STATE NAME] and shall fully comply with the conditions imposed on him or her for his or her release. Any violation of the laws of [SHORT STATE NAME] and/ or of the conditions imposed for the release shall immediately be reported to the Court. The competent authorities of [SHORT STATE NAME] may, in consultation with the Registrar, take such interim measures as they deem appropriate and as are compliant with applicable national laws and the Rome Statute, with particular reference to Articles 55, 66 and 67, to prevent continued violation and to ensure the Person's appearance before the Court. Violations of the laws of [SHORT STATE NAME] and conditions imposed for the release could result in the immediate revocation of the interim release and transfer of the Person into the custody of the Court.
- (m) In order to ensure compliance with its order and conditions imposed, the Court may, *inter alia*:
- (i) when necessary, request any information, report or any up dates from the competent authorities of [SHORT STATE NAME] regarding the observance of the conditions by the Person;
 - (ii) where appropriate, instruct the Registry to visit the Person;
 - (iii) where appropriate, periodically consult with the competent authorities of [SHORT STATE NAME];
 - (iv) take any measure it deems appropriate.
- (n) If, after delivery of the Person to the territory of [SHORT STATE NAME], an order is issued, in accordance with the Statute and the Rules, for the appearance of the Person for a hearing, the Registrar shall arrange for the temporary transfer of the Person to the Court in consultation with the competent authorities of [SHORT STATE NAME].

VI. Status of Person(s) under Interim Release:

- (o) [SHORT STATE NAME] shall grant the Person under Interim Release such status as it deems appropriate under its national laws. Subject to any appropriate arrangements established by the competent authorities of [SHORT STATE NAME] and the Registrar for the exercise by the Person of his or her right of communication with the Court, communication between the Person and the Court shall be unimpeded and confidential.
- (p) During his/her stay in the territory of [SHORT STATE NAME], the Person shall not be tried before the courts of [SHORT STATE NAME] with respect to conduct which formed the basis of crimes for which the Person is accused by the Court.

- (q) During his/her stay in the territory of [SHORT STATE NAME], the Person shall not be tried before the courts of [SHORT STATE NAME] or extradited to a third State for any conduct engaged in prior to that Person's transfer to the territory of [SHORT STATE NAME] unless specifically authorised by the Court in accordance with Article 101 of the Rome Statute and Rules 196 and 197 of the Rules of Procedure and Evidence.
- (r) Communications between the Person and any defence counsel appointed or assigned by the Court and members of the Person's defence team shall similarly be unimpeded and confidential, with full respect for the privileged nature of such communications. To facilitate this, [SHORT STATE NAME] undertakes to expeditiously issue visas to defence counsel and members of the Person's defence team who are entering [SHORT STATE NAME] for the purpose of visiting the Person.
- (s) The Person shall have the right to receive at least three visits per year from his or her nuclear family members. This assistance will include expeditiously issuing visas to these family members visiting the Person.

VII. As to the costs related to the provision of Interim Release:

- (t) The Court shall bear all costs and expenses incurred in connection with the travel of the Person between [SHORT STATE NAME] and the Court.
- (u) When the Person has been declared indigent, all the costs and expenses incurred in connection with the provision of Interim Release pursuant to this Exchange of Letters shall be agreed on a case by case basis with [SHORT STATE NAME]. When the Person is not indigent, all the costs and expenses incurred in connection with the provision of Interim Release pursuant to this Exchange of Letters shall be borne by the Person.

VIII. As to the termination of Interim Release:

- (v) Interim Release under this Agreement shall cease:
 - (i) at the expiration of the period for which the interim release had been granted;
 - (ii) upon the death of the Person;
 - (iii) following a decision of the Court including if the Person is ordered to return under the custody of the ICC;
 - (iv) upon decision of the State after consultation with the Court.

- (w) Following the cessation of the Interim Release, the competent authorities of [SHORT STATE NAME] in consultation with the Registrar shall arrange for the return of the Person to the custody of the Court
 - (i) Where [SHORT STATE NAME] or the Court wishes to terminate Interim Release for a Person, it (hereafter: "Terminating Party") shall inform the other of its intention and consult with it in writing. The Terminating Party shall then notify, also in writing, the Person as soon as is practicable by such a termination.
 - (ii) In the event that Interim Release is terminated in accordance with paragraph (v) (iv), the Registrar shall have a period of two months in which to obtain the agreement of another State to assume the responsibilities of [SHORT STATE NAME] under the provisions of this Exchange of Letters. If the Registrar is unable to conclude such an agreement within that period, the person shall be transferred back to the custody of the ICC.

IX. As to the duration of the provisions of this Exchange of Letters:

- (x) The provisions of this Exchange of Letters shall enter into force on the day following the receipt of the confirmation of [SHORT STATE NAME] of the provisions of this Exchange of Letters.
- (y) This Exchange of Letters shall remain in force until it is terminated by either Party in accordance with section VI.

X. As to the resolution of disputes:

- (z) Any dispute, controversy, or claim arising out of, or relating to, this Exchange of Letters shall be settled by consultations between the Parties.

I would be grateful if you would confirm that the above is also the view of the

Government of

Please accept, Excellency, the assurances of my highest consideration.

Registrar of the International Criminal Court

Model Agreement on the Release of Persons

Model framework agreement between the International Criminal Court and the Government of [...] on the Release of Persons

The International Criminal Court (hereinafter “the Court”), and the Government of [...] (hereinafter “the Government”),

NOTING rule 185, paragraph 1, of the Rules of Procedure and Evidence adopted pursuant to Article 51 of the Rome Statute of the International Criminal Court (hereinafter “the Rome Statute”), according to which “where a person surrendered to the Court is released from the custody of the Court because the Court does not have jurisdiction, the case is inadmissible under Article 17, paragraph 1(b), (c) or (d), the charges have not been confirmed under Article 61, the person has been acquitted at trial or on appeal, or for any other reason, the Court shall, as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to a State which is obliged to receive him or her, to another State which agrees to receive him or her, or to a State which has requested his or her extradition with the consent of the original surrendering State”;

IN ORDER to establish a framework for the acceptance of persons released by the Court and to set out the general conditions under which people shall be released in the territory of [...];

HAVE AGREED as follows:

Article 1

Purpose and Scope of the Framework Agreement

1. The present Framework Agreement provides the general conditions for the release of persons on the territory of [...].
2. The actual release of a given released person on the territory of [...] shall be made pursuant to a specific agreement, setting up the specific conditions of the release (hereinafter “the release agreement”).
3. Unless provided otherwise in the release agreement, the general conditions provided in the present Framework Agreement shall apply to the release of persons on the territory of [...].

Article 2

Procedure

1. Where one of the conditions provided under rule 185(1) of the Rules of Procedure and Evidence for the release of a person is met, the Registry (hereinafter “the Registry”) after hearing the released person, shall consult with the authorities of [...] to determine whether they are prepared to accept the released person on their territory.

2. Together with its request, the Registry shall provide to the Government a copy of the decision releasing the person and information regarding the stage of the procedure.
3. The Government shall reply within 30 days of the receipt of the request.
4. The present Article does not prevent the Registry from proactively consulting with the Government on its possible agreement to have the person released on the territory of [...], should one of the conditions referred to in paragraph 1 materialize. In such case, the copy of the decision referred to in paragraph 2 shall be transmitted at a later stage upon its issuance by the Court.

Article 3

Transfer

1. The Registry, in consultation with the competent national authorities of [...], shall make appropriate arrangements for the proper conduct of the transfer of the released person from the Court to the territory of [...]. These arrangements include, where applicable, addressing requests for the lifting of travel ban to the competent authorities in a timely manner.
2. If, after the delivery of the released person to the territory of [...], the Court in accordance with the Rome Statute and Rules, orders that the released person appear for a hearing before the Court, the authorities of [...] endeavour to make all appropriate arrangements, including, where applicable, timely requests for the lifting of travel ban, to facilitate the person's transfer to the Court for the time necessary for the appearance and the person's return upon completion thereof.

Article 4

Conditions of release

1. The conditions of release set by the Court pursuant to rule 119 of the Rules of Procedure and Evidence are mandatory. They shall prevail on this Framework Agreement and on the release agreement concluded under Article 1(2) above.
2. Once the Court has entered a release agreement with the Government for the release of a person on its territory, the Court shall seek the views of the Government prior to amending or revoking any conditions of release. Should the Government find that it would not be in a position to implement the new conditions of release contemplated by the Court, it should notify the Court accordingly and specify whether it would consider the contemplated new conditions of release a cause of termination of the release agreement. In such a case, should the Court nevertheless decide to order the contemplated new conditions of release, the release agreement shall be terminated immediately.

Article 5

Rights and obligations of the released person

1. The person shall undertake to respect the laws of [...].
2. The released person shall, as a minimum, have the right to receive at least three visits per year from his or her nuclear family members. The list of members of the person's nuclear family shall be specified in the release agreement and shall be modified in case of birth, adoption, marriage, divorce or death. The relevant authorities of [...] shall facilitate these family visits. This assistance shall include expeditiously issuing visas to these family members visiting the released person. Besides, the Government applies its national legislation governing the right to family reunification to the released person.

Article 6

Support and assistance to the released person

The Government agrees to provide the released person with the following facilities:

- (a) Housing;
- (b) Education, including skills and language training, where necessary, for purposes of gaining employment;
- (c) Health and social services, including specialist medical care where necessary;
- (d) Access to opportunities to obtain employment;
- (e) Documents to enable travel to and from...; and
- (f) Any other applicable facilities and benefits without prejudice to any rights which the person would be entitled to under the laws of [...].

Article 7

Communications

1. Communications between a released person and the Court shall be unimpeded and confidential. These shall be considered official communications under Article 11 of the Agreement on the Privileges and Immunities of the Court ("APIC").
2. Paragraph 1 of the present Article also applies to communications between the released person and his/her Counsel appointed or assigned by the Court and members of the person's defence team, as identified in the release agreement. The Court updates the Government of any change in the released person's defence team.

Article 8

Ne bis in idem

The released person shall not be tried with respect to crimes for which that person has already been convicted or acquitted by the Court.

Article 9

Rule of speciality

1. The rule of speciality provided under Article 101 of the Rome Statute continues to apply to persons released under this Framework Agreement. As such, these persons cannot be proceeded against, punished, extradited or detained for any conduct committed prior to the person's surrender to the Court, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.
2. The State of [...] or any third State wishing to have the released person extradited on its territory may request an exception to the rule of speciality, as referred to in paragraph 1 above. In such a case, the procedure of waiver provided under Article 101(2) of the Rome Statute shall apply and the Court shall inform the requesting State(s) accordingly.

Article 10

Costs

1. The ordinary costs for the release in the territory of [...] shall be borne by the authorities of [...].
2. Other costs identified under Article 100(1) of the Rome Statute, shall be borne by the Court.

Article 11

General cooperation

1. The competent national authorities of [...] shall take all necessary measures to ensure the efficient execution of this Framework Agreement and to ensure the appropriate security, safety and protection of the released persons. Such measures encompass the requisite amendments to the national legislation and/or administrative framework of the State of [...] which are necessary for the implementation of the present Framework Agreement and the conclusion of Release Agreements.
2. The Court and [...] shall designate a focal point for the implementation of this Framework Agreement. Unless specified otherwise, the same focal point shall be designated for the implementation of any subsequent release agreement.

Article 12

Entry into force

This Agreement shall enter into force 30 days after signature.

Article 13

Amendments

This Agreement may be amended, after consultation, by mutual consent of both parties.

Article 14

Consultations

1. The Court and the State of [...] endeavour to consult with each other on any differences that may arise with respect to the interpretation or application of the Present Framework Agreement.
2. Article 97 of the Rome Statute applies *mutatis mutandis* to problems with respect to the implementation of the present Framework Agreement.

Article 15

Termination of the Agreement

1. Either party may, after consultation, terminate this Agreement with two months prior written notice.
2. Termination of the present Framework Agreement shall have no impact on the continued application of any Release Agreement entered pursuant to Article 1(2) above. Articles 4 to 10 above shall continue to apply in relation to such Release Agreements.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

Done at this day of, 20... in

FOR THE COURT

FOR THE GOVERNMENT OF [...]

Model Agreement on Enforcement of Sentences

Model agreement between the Government/Kingdom/Republic of [...] and the International Criminal Court on the enforcement of sentences of the International Criminal Court

The International Criminal Court (hereinafter referred to as the “Court”) and The Government/Kingdom/Republic of [...] (hereinafter referred to as “[...]”),

PREAMBLE

RECALLING Article 103(1)(a) of the Rome Statute of the International Criminal Court (hereinafter referred to as “Rome Statute”), adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries, according to which sentences of imprisonment pronounced by the Court shall be served in a State designated by the Court from a list of States which have indicated their willingness to accept sentenced persons;

RECALLING Rule 200(5) of the Rules of Procedure and Evidence of the Court (hereinafter referred to as “Rule(s)”), according to which the Court may enter into bilateral arrangements with States with a view to establishing a framework for the acceptance of persons sentenced by the Court, consistent with the Rome Statute;

RECALLING the widely accepted international standards governing the treatment of prisoners¹ including the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted by General Assembly resolution 70/175 of 17 December 2015, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111 of 14 December 1990;

NOTING the willingness of [...] to accept persons sentenced by the Court;

IN ORDER to establish a framework describing the conditions under which such sentences will be enforced in [...];

HAVE AGREED as follows:

Article 1

Purpose and scope of the Agreement

The Agreement shall regulate matters relating to or arising from the enforcement of sentences pronounced by the Court and served in [...].

¹ Articles 21(3), 103(3)(b), 106(1) of the Rome Statute

Article 2

Procedure and information relating to designation

1. After the sentencing of an accused person by the Trial Chamber, the Presidency of the Court (hereinafter referred to as “Presidency”) shall communicate with [...] and request [...] to provide, within 30 calendar days, an indication of its readiness, as a practical matter, to receive a person convicted by the Court.

2. If [...] indicates its readiness, as a practical matter, to receive a person convicted by the Court, the Presidency shall request [...] to provide the Court with updated information regarding its national detention regime, including, *inter alia*, recently promulgated legislation and administrative guidelines.

3. If the Presidency designates [...] as the State in which the sentenced person shall serve his or her sentence, it shall notify [...] of its decision. When notifying [...] of its designation as the State of enforcement, the Presidency shall transmit, *inter alia*, the following information and documents:

- (a) The name, nationality, date and place of birth of the sentenced person;²
- (b) A copy of the final judgment of conviction and of the sentence imposed;³
- (c) The length and commencement date of the sentence and the time remaining to be served;⁴
- (d) The date on which the sentenced person is eligible for review concerning the reduction of his or her sentence;
- (e) With due respect for medical confidentiality, any necessary information concerning the state of the sentenced person’s health, including any medical treatment that he or she is receiving.⁵

4. [...] shall promptly decide upon the Court’s designation, in accordance with its national law, and inform the Presidency whether it accepts the designation.⁶

Article 3

Transfer of the sentenced person

1. The sentenced person shall be transferred to [...] as soon as possible after [...] accepts the designation.⁷

2 Rule 204(a) of the Rules of Procedure and Evidence

3 Rule 204(b) of the Rules of Procedure and Evidence

4 Rule 204(c) of the Rules of Procedure and Evidence

5 Rule 204(d) of the Rules of Procedure and Evidence

6 Article 103(1)(c) of the Rome Statute

7 Rule 206(2) of the Rules of Procedure and Evidence

2. The Registrar of the Court (hereinafter referred to as “Registrar”) shall ensure the proper transfer of the sentenced person in consultation with [...] and the host State.⁸

Article 4

Supervision of enforcement of sentence and conditions of imprisonment

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international standards governing the treatment of prisoners.⁹

2. In order to supervise the enforcement of sentences of imprisonment, the Presidency shall:

- (a) When necessary, request any information, report or expert opinion from [...] or from any reliable sources;
- (b) Where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying [...], for meeting the sentenced person and hearing his or her views, without the presence of national authorities;
- (c) Where appropriate, give [...] an opportunity to comment on the views expressed by the sentenced person pursuant to sub-paragraph (b).¹⁰

3. Communications between a sentenced person and the Court shall be unimpeded and confidential.¹¹ The Presidency, in consultation with [...], shall respect these requirements when establishing appropriate arrangements for the exercise by the sentenced person of his or her right to communicate with the Court about the conditions of imprisonment.¹²

4. The conditions of imprisonment shall be governed by the law of [...] and shall be consistent with widely accepted international standards governing the treatment of prisoners. In no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in [...].¹³

5. [...] shall notify the Court of any circumstances, including the exercise of any conditions agreed under Article 103(1) of the Rome Statute, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days’ notice of any such known or foreseeable circumstances. During this period, [...] shall take no action that might prejudice its obligations under Article 110 of the Rome Statute.¹⁴

8 Rule 206(3) of the Rules of Procedure and Evidence

9 Articles 21 (3), 106(1) of the Rome Statute

10 Rule 211(1)(b)–(d) of the Rules of Procedure and Evidence

11 Article 106(3) of the Rome Statute

12 Rule 211(1)(a) of the Rules of Procedure and Evidence

13 Article 21(3), 106(2) of the Rome Statute

14 Article 103(2)(a) of the Rome Statute

6. [...] shall promptly inform the Presidency of any important event concerning the sentenced person.¹⁵

7. When a sentenced person is eligible for a prison programme or benefit available under the domestic law of [...] which may entail some activity outside the prison facility, [...] shall communicate that fact to the Presidency, together with any relevant information or observation, sufficiently in advance to enable the Court to exercise its supervisory function.¹⁶

8. [...] shall allow the inspection of the conditions of imprisonment and treatment of the sentenced person(s) by the International Committee of the Red Cross (hereinafter referred to as "ICRC") at any time and on a periodic basis, the frequency of visits to be determined by the ICRC. After each visit to the enforcement State by the ICRC:

- (a) The ICRC shall submit a confidential report on its findings together with recommendations, as necessary, to [...] and to the Presidency.
- (b) [...] and the Presidency shall consult each other on the findings of the report. The Presidency shall thereafter request [...] to report any changes in the conditions of imprisonment as a result of the recommendations by the ICRC.
- (c) [...] and the Presidency shall submit a joint response to the ICRC within 30 calendar days of receiving the report. The joint response shall address the findings of the report and detail measures to implement the recommendations of the report by [...] and the Presidency.

Article 5

Appearances before the Court

If, after transfer of the sentenced person to [...], the Court orders that the sentenced person appear before the Court, the sentenced person shall be transferred temporarily to the Court, conditional on his or her return to [...] within the period decided by the Court. The time spent in the custody of the Court shall be deducted from the term of the overall sentence remaining to be served in [...].

Article 6

Limitation on prosecution or punishment

1. The sentenced person shall not be tried before a court of [...] for a crime referred to in Article 5 of the Rome Statute for which that person has already been convicted or acquitted by the Court.¹⁷

¹⁵ Rule 216 of the Rules of Procedure and Evidence

¹⁶ Rule 211(2) of the Rules of Procedure and Evidence

¹⁷ Article 20(2) of the Rome Statute

2. The sentenced person in the custody of [...] shall not be subject to prosecution or punishment or to extradition to another State for any conduct engaged in prior to that person's transfer to [...], unless such prosecution, punishment or extradition has been approved by the Presidency at the request of [...].¹⁸

- (a) When [...] intends to prosecute or enforce a sentence against the sentenced person for any conduct engaged in prior to the sentenced person's transfer, it shall notify its intention to the Presidency and transmit to it the following documents:
 - (i) A statement of the facts of the case and their legal characterization;
 - (ii) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;
 - (iii) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;
 - (iv) A protocol containing views of the sentenced person obtained after the person has been informed sufficiently about the proceedings.¹⁹
- (b) In the event of a request for extradition made by another State, [...] shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.²⁰
- (c) The Presidency may in all cases request any document or additional information from [...] or the State requesting the extradition.²¹
- (d) The Presidency may decide to conduct a hearing.²²
- (e) The Presidency shall make a determination as soon as possible. This determination shall be notified to all those who have participated in the proceedings.²³
- (f) If the request for prosecution, punishment, or extradition to another State concerns the enforcement of a sentence, the sentenced person may serve that sentence in [...] or be extradited to another State only after having served the full sentence pronounced by the Court.²⁴

18 Article 108(1) of the Rome Statute

19 Rule 214(1) of the Rules of Procedure and Evidence

20 Rule 214(2) of the Rules of Procedure and Evidence

21 Rule 214(3) of the Rules of Procedure and Evidence

22 Rule 214(6) of the Rules of Procedure and Evidence

23 Rule 215(1) of the Rules of Procedure and Evidence

24 Rule 215(2) of the Rules of Procedure and Evidence

- (g) The Presidency may authorize the temporary extradition of the sentenced person to another State for prosecution only if it has obtained assurances which it deems to be sufficient that the sentenced person will be kept in custody in that State and transferred back to [...], after the prosecution.²⁵

3. Paragraph 2 of this Article shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of [...] after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.²⁶

Article 7

Appeal, revision, reduction, and extension of sentence

1. Subject to the conditions contained in the Agreement, the sentence of imprisonment shall be binding on [...], which shall in no case modify it.²⁷
2. [...] shall not release the person before expiry of the sentence pronounced by the Court.²⁸ [...] shall terminate the enforcement of the sentence as soon as it is informed by the Court of any decision or measure as a result of which the sentence ceases to be enforceable.
3. The Court alone shall have the right to decide any application for appeal and revision and [...] shall not impede the making of any such application by the sentenced person.²⁹
4. The Court alone shall have the right to decide any reduction of sentence and shall rule on a reduction of sentence after having heard the person.³⁰
5. Where the Presidency extends the term of imprisonment pursuant to Rule 146(5), the Presidency may ask for observations from [...].³¹

Article 8

Escape

1. If the sentenced person escapes from custody, [...] shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record.³²
2. If the sentenced person escapes from custody and flees [...], [...] may, after consultation with the Presidency, request the person's extradition or surrender from the State in which the person is located pursuant to any existing bilateral or multilateral arrangements, or may request that the Presidency seek the person's surrender, in accordance with Part 9 of the Rome Statute. It may direct that the person be delivered to [...] or to another State designated by the Court.³³

²⁵ Rule 215(3) of the Rules of Procedure and Evidence

²⁶ Article 108(3) of the Rome Statute

²⁷ Article 105 of the Rome Statute

²⁸ Article 110(1) of the Rome Statute

²⁹ Article 105(2) of the Rome Statute

³⁰ Article 110(2) of the Rome Statute

³¹ Rule 146(5) of the Rules of Procedure and Evidence; Regulation 118(1) of the Regulations of the Court

³² Rule 225(1) of the Rules of Procedure and Evidence

³³ Article 111 of the Rome Statute

3. If the State in which the sentenced person is located agrees to surrender him or her to [...], pursuant to either international agreements or its national legislation, [...] shall so advise the Registrar in writing. The person shall be surrendered to [...] as soon as possible, if necessary in consultation with the Registrar. The Registrar shall provide all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with Rule 207.³⁴

4. If the sentenced person is surrendered to the Court, the Court shall transfer him or her to [...]. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of [...], designate another State, including the State to the territory of which the sentenced person has fled.³⁵

5. In all cases, the entire period of detention in the territory of the State in which the sentenced person was in custody after his or her escape and, where paragraph 4 of this Article is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he or she was located shall be deducted from the sentence remaining to be served.³⁶

Article 9

Change in designation of [...] as the State of enforcement

1. The Presidency, acting on its own motion or at the request of [...] or the sentenced person or the Prosecutor, may, at any time, decide to transfer a sentenced person to a prison of another State.³⁷

2. Before deciding to change the designation of [...] as the State of enforcement, the Presidency may:

- (a) Request views from [...];
- (b) Consider written or oral presentations of the sentenced person and the Prosecutor;
- (c) Consider written or oral expert opinion concerning, *inter alia*, the sentenced person;
- (d) Obtain any other relevant information from any reliable sources.³⁸

3. The Presidency shall inform the sentenced person, the Prosecutor, the Registrar and [...] of its decision and of the reasons therefor.³⁹

34 Rule 225(2) of the Rules of Procedure and Evidence

35 Rule 225(3) of the Rules of Procedure and Evidence

36 Rule 225(4) of the Rules of Procedure and Evidence

37 Article 104(1) of the Rome Statute; Rule 209(1) of the Rules of Procedure and Evidence

38 Rule 210(1) of the Rules of Procedure and Evidence

39 Rule 210(3) of the Rules of Procedure and Evidence

Article 10

Transfer of the sentenced person upon completion of the sentence

1. [...] shall notify the Presidency:
 - (a) 90 calendar days before the scheduled completion of the sentence, that the sentence will be completed;
 - (b) 30 calendar days before the scheduled completion of the sentence of the relevant information concerning the intention of [...] to authorize the person to remain in its territory or the location where it intends to transfer the person.⁴⁰
2. Following completion of the sentence, a sentenced person who is not a national of [...] may, in accordance with the law of [...], be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless [...] authorizes the person to remain in its territory.⁴¹
3. Subject to the provisions of Article 6, [...] may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.⁴²

Article 11

Costs

1. The ordinary costs for the enforcement of the sentence in the territory of [...] shall be borne by [...].
2. Other costs, including those for the transport of the sentenced person to and from the seat of the Court and to and from [...], shall be borne by the Court.⁴³
3. In case of escape, the costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.⁴⁴

Article 12

Channels of Communication

1. The channel of communication for [...] shall be [...].
2. The channel of communication for the Court shall be the Legal and Enforcement Unit of the Presidency.

⁴⁰ Rule 212 of the Rules of Procedure and Evidence

⁴¹ Article 107(1) of the Rome Statute

⁴² Article 107(3) of the Rome Statute

⁴³ Rule 208(1)–(2) of the Rules of Procedure and Evidence

⁴⁴ Rule 225(2) of the Rules of Procedure and Evidence

Article 13

Entry into force

The Agreement shall enter into force upon the signature of both the President of the Court and the [...] of [...].

Article 14

Amendments and termination

1. The Agreement may be amended, after consultation, by mutual consent of the parties.
2. [...] may at any time withdraw its conditions of acceptance for the inclusion in the list of States of enforcement. Any amendments or additions to such conditions shall be subject to confirmation by the Presidency.⁴⁵
3. The Agreement may be terminated, after consultation, by either party with two months prior written notice. Such termination shall not affect sentences in force at the time of the termination, and the provisions of the Agreement shall continue to apply until such sentences have been completed, terminated or, if applicable, the sentenced person has been transferred in accordance with Article 9 of the Agreement.⁴⁶

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed the Agreement.

Done at this day of, 201..., in duplicate, in the English language.

FOR THE COURT

FOR [...]

Judge [INSERT NAME]

[INSERT NAME]

President of the International Criminal Court [INSERT TITLE]

⁴⁵ Rule 200(3) of the Rules of Procedure and Evidence

⁴⁶ Rule 200(4) of the Rules of Procedure and Evidence

Acronyms

D

DRC Democratic Republic of the Congo

I

ICC International Criminal Court

ICRC International Committee of the Red Cross

R

RPE Rules of Procedure and Evidence

S

SFR Special Fund for Relocations

U

UNODC United Nations Office on Drugs and Crime

V

VWS Victims and Witnesses Section

