



**Agreement between the International Criminal Court and the
International Committee of the Red Cross on Visits to
Persons deprived of Liberty Pursuant to the Jurisdiction of
the International Criminal Court**

ICC-PRES/02-01-06

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The International Criminal Court (hereinafter "the ICC") and the International Committee of the Red Cross (hereinafter "the ICRC"):

Recalling that the ICRC is a strictly neutral, independent and impartial humanitarian organisation;

Recalling that the ICRC has been entrusted by the community of States in the 1949 Geneva Conventions and the 1977 Additional Protocols thereto with a mandate and specific tasks in cases of international armed conflict and with a broad right of initiative in situations of non-international armed conflict;

Recalling that the Statutes of the International Red Cross and Red Crescent Movement confer to the ICRC a broad right of initiative in situations other than armed conflicts and give mandate to the ICRC to work for the faithful application of international humanitarian law and to ensure protection of and assistance to military and civilian victims of armed conflicts or internal strife;

Recognizing that the ICRC has longstanding experience throughout the world of visits to persons arrested or detained or otherwise deprived of their liberty, sentenced or not sentenced, in particular in connection with all types of armed conflict and internal strife, and with other situations requiring the services of a specifically neutral and independent institution;

Recalling that the ICRC visits on a regular basis Detainees held by or under the authority of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone;

Recalling that during its periodic visits to prisons and any other places of detention and to Detainees, which are carried out on the basis of standard conditions and

procedures, the ICRC examines the conditions of detention and the treatment of the persons visited;

Recalling that in accordance with the Rome Statute of the ICC (hereinafter “the Rome Statute”), adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, the ICC may detain and impose a sentence of imprisonment on persons who fall under its jurisdiction;

Noting that the ICC may detain persons at its detention centre in The Hague and may also detain persons in detention centres in other countries;

Recalling that pursuant to the Rome Statute, sentences of imprisonment pronounced by the ICC shall be served in a State designated by the ICC from a list of States which have indicated their willingness to accept sentenced persons;

Recalling that pursuant to the Rome Statute and the Rules of Procedure and Evidence adopted in 2002 by the Assembly of the States Parties (hereinafter “the Rules”), the ICC shall ensure that the enforcement of sentences of imprisonment pronounced by the ICC is consistent with widely accepted international standards governing the treatment of persons deprived of liberty;

Recalling the Regulations of the Court adopted by the judges of the ICC in May 2004, and in particular regulation 94 which calls for regular and unannounced inspections of the detention centre by an independent institution;

Referring to the offers made by the ICRC in meetings with representatives of the ICC regarding visits to detainees held by the ICC or on its behalf and under its authority;

Agree as follows:

SECTION ONE
GENERAL PROVISIONS

ARTICLE 1

DEFINITIONS

“Chief Custody Officer” refers to the officer appointed by the ICC as the head of staff of the detention centre;

“Custodial State” refers to the State in which a person under a warrant of arrest issued by the ICC is detained while awaiting transfer to the seat of the ICC;

“Detainee” refers to any person detained by the ICC, in accordance with article 58 of the Rome Statute, or any person in custody of the ICC following transfer to the seat of the ICC for the purpose of article 93, paragraph 7 of the Rome Statute, or any person awaiting trial or appeal, or any person sentenced by the ICC and awaiting transfer to a State of enforcement, or any person otherwise detained under the authority of the ICC;

“Detention Centre” refers to all premises where Detainees are held by the ICC;

“ICRC delegates” refers to the expatriate personnel of the ICRC visiting team comprised of delegates, including medical professionals and interpreters;

“Party” refers to the ICRC or the ICC, individually;

“Parties” refers to the ICRC and the ICC, jointly;

“Presidency” refers to the Presidency of the ICC, pursuant to articles 34 and 38 of the Rome Statute;

“Registrar” refers to the Registrar of the ICC, pursuant to article 43 of the Rome Statute;

“Sentenced person” refers to a person sentenced by the ICC and serving a sentence of imprisonment in a State of Enforcement;

“State of Enforcement” refers to a State designated by the ICC from the list of States which have indicated their willingness to accept sentenced persons, in accordance with article 103 of the Rome Statute and rule 200 of the Rules.

ARTICLE 2

SCOPE OF THE AGREEMENT

1. As detailed in Section Two of this Agreement, the ICRC shall be authorised to visit all Detainees held by the ICC in the Detention Centre for the duration of their detention.
2. For this purpose, the ICRC shall have unlimited access to the Detention Centre, including the right to move inside the facility without restriction.
3. As detailed in Section Three of this Agreement, the ICRC may visit sentenced persons transferred to a State of enforcement in accordance with bilateral enforcement agreements concluded between the ICC and a State of enforcement.

SECTION TWO

VISITS TO DETAINEES HELD BY THE ICC

ARTICLE 3

PURPOSE OF THE VISITS

1. The purpose of ICRC visits is purely humanitarian and aims at ensuring that all Detainees are treated humanely and in conformity with widely accepted international standards governing the treatment of persons deprived of liberty.
2. The ICRC shall examine the material conditions of detention and the physical and psychological conditions and treatment of the Detainees. The ICRC shall ask the ICC to take any measure necessary to improve the Detainees' living conditions and treatment, if necessary.
3. The ICRC shall not question the reasons for detention ordered by the ICC. The ICRC may, however, submit appropriate suggestions to the ICC if it observes any problems regarding the respect of judicial guarantees.

ARTICLE 4

TERMS AND CONDITIONS FOR THE VISITS

To guarantee the effectiveness and credibility of its visits, the ICRC shall:

- a) Have unlimited access to all Detainees;
- b) Have access to all parts of the Detention Centre;
- c) Have the possibility to speak in private (without witnesses) with Detainees of the ICRC's choosing;

- d) Have the right to repeat its visits as often as the ICRC deems necessary;
- e) Have the assurance that the Registrar, or a staff member of the ICC designated by the Registrar, shall provide the ICRC with a list of the Detainees and their full details, or the Registrar or his/her designee shall authorise the ICRC to compile such a list during its visit.

ARTICLE 5

COMPOSITION OF VISITING TEAMS

The number of ICRC delegates and the composition of the respective teams necessary to carry out the visits shall be determined by the ICRC.

ARTICLE 6

TYPES AND FREQUENCY OF VISITS

1. The visits of the ICRC delegates shall be unannounced and the time allocated for such visits shall not be restricted. The ICRC shall determine the frequency of such visits.
2. The ICRC's visits shall be classified as follows, depending on the circumstances:
 - a) Complete visits, involving thorough and detailed inquiry into the Detainees' living conditions and treatment;
 - b) Follow-up visits, during which ICRC delegates check on any problem noted during previous visits or study particular cases;
 - c) Ad hoc visits, to deal with specific problems of a humanitarian nature involving either individual Detainees or the detained population as a whole.

ARTICLE 7

CONDUCT OF ICRC VISITS

1. Complete visits

Complete visits shall be organised and conducted in accordance with the ICRC's standard procedures, which consist of the following:

- a) Initial meeting with either the Registrar or a staff member of the ICC designated by the Registrar or the Chief Custody Officer or both.

This initial meeting is intended to enable the ICRC delegates to explain the nature of the ICRC and the purpose of their visit, as well as to set up the actual visiting procedure. At this stage, the ICC shall provide the ICRC delegates with all the necessary administrative data, (i.e. internal regulations, lists of Detainees, transfers in/out since the previous visit), initial information on the functioning of the Detention Centre, the main problems encountered by the ICC and any changes the ICC may have made since the previous ICRC visit.

- b) Complete tour of the Detention Centre:

The ICRC delegates visit the Detention Centre, guided by the Chief Custody Officer or a staff member of the ICC designated by the Chief Custody Officer. He/she shall answer the delegates' queries and ensure that access is provided to all parts of the Detention Centre. The time allocated for the tour shall not be restricted, and the ICRC delegates are free to decide whether they want to see all or part of the Detention Centre, depending on the type of visit being carried out.

- c) Private interviews with and registration of identities of Detainees:

In addition to recording the identity of the Detainees, the purpose of such interviews shall be to gather information on the conditions of detention and treatment and to understand the nature and gravity of the Detainees' individual problems.

- d) Final meeting with either the Registrar or a staff member of the ICC designated by the Registrar or the Chief Custody Officer or both:

During this final stage of the complete visit, the delegates orally submit their findings and recommendations and they take note of the replies to their findings/recommendations.

2. Follow-up and ad hoc visits

Follow-up or ad hoc visits may be organised and conducted depending upon their particular purpose in accordance with some or all of the procedures described above for complete visits.

3. When requested, the ICC shall designate a liaison officer to assist the ICRC delegates visiting the Detention Centre. The liaison officer shall ensure that the ICRC visits proceed smoothly. He/she shall liaise with the administration of the Detention Centre and, outside The Hague and The Netherlands, with territorial and central authorities.

ARTICLE 8

PRIVATE INTERVIEWS WITH DETAINEES

1. The ICRC delegates shall be entitled to conduct private interviews with the Detainees of their choosing out of the sight and earshot of the staff members of the Detention Centre.

The interviews shall be held in the Detention Centre and shall not be limited in time. The place for interviews within the Detention Centre shall be selected by the ICRC delegates.

2. Detainees shall have the right to express themselves freely and without restraint.

ARTICLE 9

ROLE OF ICRC MEDICAL DELEGATES WITH REGARD TO MEDICAL EXAMINATIONS

1. The ICRC medical delegates shall be entitled to converse with and examine in private all the Detainees of their choosing. Space shall be made available to them for that purpose.
2. The ICRC medical delegates shall be assisted by the medical staff of the Detention Centre and, in particular, shall be provided with all necessary information. The medical delegates shall also be allowed to consult the Detainees' medical records.

ARTICLE 10

FAMILIES OF DETAINEES

1. The ICRC delegates may contact the families of Detainees or any person whom the ICRC believes can supply relevant information for its work. The families may also contact the ICRC.
2. In the event of loss of contact between the Detainees and their families, the ICRC may offer the exchange of Red Cross messages in order to re-establish family communications. These messages shall be checked by the Chief Custody Officer or any other staff member of the ICC designated by him/her.

ARTICLE 11

REPORTS ON VISITS AND PRINCIPLE OF CONFIDENTIALITY

1. After each complete visit, the ICRC shall submit a report on its findings together with recommendations, as necessary, to the Presidency and to the Registrar. The ICRC recommendations shall aim at supporting the ICC's efforts to take measures to improve, if deemed necessary, the conditions of detention and treatment of the Detainees in conformity with widely accepted international standards governing the treatment of persons deprived of liberty.
2. The ICC shall maintain a dialogue with the ICRC regarding any questions of humanitarian concern which the ICRC may have raised in its reports. The ICC shall make every effort to implement the ICRC's recommendations and shall inform the ICRC, in writing, of any measures taken in response to its recommendations.
3. The content of the reports and other communication between the Parties on the conditions of detention and treatment of the Detainees shall remain confidential for the ICRC in conformity with its policy. The confidentiality principle shall also apply to the ICC as provided for in the Rules and the Regulations of the ICC.
4. In their respective publications, the ICRC and the ICC shall mention only the dates of the visits and the number of Detainees visited, with no comments on the conditions of detention or on the ICRC's observations/recommendations.

ARTICLE 12

INFORMATION FROM THE ICC

1. The Registrar shall provide the ICRC with detailed information as to the operations and practices of the Detention Centre. The Registrar shall also inform the ICRC of any changes

made to the legal, normative, administrative or organisational matters that may affect the conditions of detention and the standards governing the treatment of Detainees.

2. The Registrar shall inform without delay the ICRC, in writing, of any new Detainee's arrival and his/her legal status in the proceedings before the ICC. The Registrar shall also inform the ICRC, in writing, of any transfer from one centre of detention to another, including transfer of a sentenced person to a State of Enforcement. The Registrar shall further inform the ICRC upon the release, death or escape of a Detainee.
3. The information provided by the ICC should also include the detention in a Custodial State. Such information shall enable the ICRC to determine whether to approach the authorities in the Custodial State with a view to obtaining permission to visit the persons being held and to assess their conditions of detention and treatment.
4. The ICC shall transmit any information related to Detainees and ICRC visits to the Head of the ICRC Central Tracing Agency and Protection Division.

ARTICLE 13

ICRC MATERIAL ASSISTANCE

The ICRC delegates, depending upon the circumstances and the conditions observed during visits to the Detention Centre, may propose to the ICC that the ICRC provide limited assistance to the Detainees to improve the physical and psychological conditions of their detention.

SECTION THREE

VISITS TO SENTENCED PERSONS IN STATES OF ENFORCEMENT

ARTICLE 14

OBLIGATIONS UPON THE ICC

1. For the purposes of article 106 of the Rome Statute and rule 211 of the Rules, the ICC shall, to the extent possible, include in the agreements with States of Enforcement the possibility of visits by the ICRC according to its standard conditions and procedures.
2. The ICC shall inform the ICRC, in writing, about the transfer of a Detainee to a State of Enforcement. Such information shall include details of the centre of detention to which the sentenced person is being transferred and the expected date of transfer.

ARTICLE 15

OBLIGATIONS UPON THE ICRC

1. Where a State of Enforcement authorises the ICRC to visit sentenced persons in the State of Enforcement, the ICRC shall inform the ICC accordingly.
2. For the purpose of rule 211, sub-rule 1 (b) of the Rules and subject to the principle of confidentiality, the ICC may request information, reports or expert opinions from the ICRC concerning the conditions of detention and treatment of sentenced persons in the States of Enforcement where the ICRC is authorised to carry out visits as referred to in paragraph 1.
3. The ICRC shall provide the Presidency with copies of the confidential reports submitted by the ICRC to the authorities of the State of Enforcement following the ICRC's visits to sentenced persons transferred to that State.

SECTION FOUR
FINAL PROVISIONS

ARTICLE 16
AMENDMENTS

Amendments to this Agreement shall be agreed between the Parties by exchange of letters.

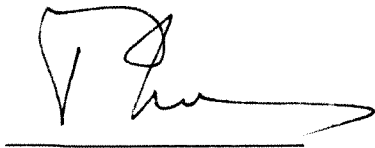
ARTICLE 17
ENTRY INTO FORCE

1. This Agreement shall enter into force on the date on which it is signed by both Parties.
2. This Agreement shall be brought to the attention of the Chief Custody Officer, who shall be charged with informing the staff members of the Detention Centre of its contents.
3. Either Party may terminate this agreement following two months' written notice to the other.

Signed, in duplicate, in English, in The Hague and Geneva, respectively.

For the ICC:

For the ICRC:



Philippe Kirsch
President

Jakob Kellenberger
President

Date: 29 March 2006

Date: 13 April 2006