



**Cour  
Pénale  
Internationale**

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**International  
Criminal  
Court**

# Cooperation agreements





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# Introductory Note

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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 defence 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

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**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

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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.

## WITNESS RELOCATION

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**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.



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## Questions

Answers



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

To date, the Court has concluded twenty-two 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

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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 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 case is not of sufficient gravity to justify further action by the Court,
3. The charges have not been confirmed under Article 61 (confirmation of charges before trial)
4. The person has been acquitted at trial or on appeal
5. Or by any other reason (e.g. Interim Release)



The Court shall, as soon as possible, make arrangements for the transfer of the person to a State that is obliged to receive them, to another State that agrees to receive them, or to a State requesting their 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 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.



## RELEASE OF PERSONS

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**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.**



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## Questions

Answers

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

The Kingdom of Belgium and the Argentine Republic are the only State Parties to have signed interim release agreements with the Court.

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

The Argentine Republic is the only State Party to have signed a release of persons agreement with the Court.

**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.

**How many persons have there been acquitted before the Court?**

To date, there have been four accused acquitted, Mathieu Ngudjolo Chui, Laurent Gbagbo, Charles Blé Goudé, and Jean-Pierre Bemba Gombo.

**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

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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:

1. The sentenced person will serve the sentence in the prison facilities of the State of enforcement, subject to the State's domestic legislation
2. The State of enforcement is bound by the sentence imposed by the Court
3. 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.





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# Questions

## Answers

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

As of February 2023, agreements on the enforcement of sentences are currently in force between the ICC and Argentina, Austria, Belgium, Colombia, Denmark, Finland, Georgia, Mali, Norway, Serbia, Slovenia, Sweden and the United Kingdom of Great Britain and Northern Ireland.

Similar agreements have also been signed with France and Spain; these are yet to enter into force, pending the finalisation of the necessary domestic procedures.

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.





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## Annexes

Model Agreement on  
Witness Relocation

Model Agreement on  
Interim Release

Model Agreement on  
the Release of Persons

Model Agreement on  
Enforcement of Sentences





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**Model  
Agreement on  
Witness Relocation**



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organisation Party

**CONFIDENTIAL**

**Relocation Agreement  
between  
the International Criminal Court  
and  
[...]  
with respect to Witness Protection**

Entry into force:  
XX Month 202X



## RELOCATION AGREEMENT BETWEEN THE INTERNATIONAL CRIMINAL COURT AND [...] WITH RESPECT TO WITNESS PROTECTION

The International Criminal Court (hereinafter referred to as “ICC”), represented by the Registry, and [...], represented by the Government of [...] (hereinafter referred to as “the Government”),

**CONSIDERING** that [...] is a State Party to the Rome Statute of the International Criminal Court (“Rome Statute”);

**RECALLING** that article 68(1) of the Rome Statute stipulates, *inter alia*, that the Court shall take appropriate measures to protect the safety and physical well-being of victims and witnesses;

**RECALLING** that article 43(6) of the Rome Statute provides, *inter alia*, that the Court’s Victims and Witnesses Unit shall provide protective measures and security arrangements for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses;

**RECALLING** that article 93(1)(j) of the Rome Statute provides that States Parties shall, under procedures of national law, comply with requests by the Court to provide assistance in the form of the protection of victims and witnesses, in relation to investigations or prosecutions;

**RECALLING** that rule 16(4) of the Rules of Procedure and Evidence provides that agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others who are at risk on account of testimony given by such witnesses may be negotiated with the States by the Registrar on behalf of the Court;

**NOTING** that the Court and [...] hereby agree to cooperate at the operational level subject to the terms of this Agreement;

**COGNIZANT** of the importance of this Agreement, which both Parties herein acknowledge that it has been concluded voluntarily;

**CONSIDERING** the Agreement on the Privileges and Immunities of the Court [...] by [...] on [...];

**HAVE AGREED** as follows:

## **Article 1**

### ***Purpose***

This Agreement establishes a framework for cooperation between the Parties for the relocation of victims, witnesses and others who are at risk on account of testimony given by witnesses of the Court for protection purposes.

## **Article 2**

### ***Definitions***

1. "Victims and Witnesses Unit" ("VWU") and "Victims and Witnesses Section" ("VWS") are used interchangeably.
2. "Persons at risk" means witnesses of the Court, victims who appear before the Court and others at risk on account of testimony given by witnesses of the Court who are included in the ICC Protection Programme.
3. "Close relations" includes:
  - a. the spouse or partner of a Person at risk; and
  - b. dependants who are considered by the Court to be part of the family household.
4. "Relocated Person(s)" refers to those Persons at risk and their Close relations who will be provided with Relocation Services according to this Agreement.
5. "Relocation" is understood to refer to the relocation to [...] of (a) witness(es) and his or her or their Close relations.
6. "Relocation Services" means the facilities and benefits, described in article 5 below, provided to the Person(s) at risk and his or her or their Close relations.
7. "Referral" means the written request submitted for relocation purposes.
8. The Registry and the Government are hereinafter referred to separately as "Party" and jointly as "Parties".
9. The Annex(es) to this Agreement form(s) part of the Agreement.

**Article 3**  
*Representatives of the Parties*

1. The Registrar of the Court (“Registrar”) or his or her authorized representative shall represent the Court in all matters relating to this Relocation Agreement.
2. The Government shall communicate to the Court the identity of its representative in all matters relating to this Relocation Agreement.

**Article 4**  
*Procedure for requesting Relocation Services*

1. Where the Registry considers that a Person at risk requires Relocation, it shall submit a Referral to the Government.
2. The Referral shall be accompanied by both a psycho-social assessment and a threat assessment, and the full details of the Person(s) at risk and his or her or their Close relations, as set out in Annex 1 of this Agreement. The Registry may provide any further information as may be requested by the Government, provided that such information does not constitute testimony of the Person(s) at risk or other confidential information that cannot be disclosed.
3. Where the Registry considers that, in addition to the Relocation Services provided herein, protective measures are necessary to ensure the protection of the Person(s) at risk and their Close relations, such requirement shall be indicated in the Referral.
4. The Government shall consider the Referral without delay, and shall respond within two months from the date when such Referral is made. However, where the Registry considers that circumstances require the Person(s) at risk and their Close relations to be relocated immediately, the Government, following consultations with the Registry, shall consider the Referral immediately and in any case no later than one month following the receipt of the Referral.
5. The provisions of the present Agreement shall be binding only once the Government has given its agreement for the relocation of the Person(s) at risk and his or her or their Close relations on its territory. The obligations shall apply only to the Person(s) at risk and his or her or their Close relations who have been accepted pursuant to the provisions of the present Agreement.

**Article 5**  
*Nature of the Relocation Services*

1. Where the Government agrees to a Referral, the Registry shall arrange for the transfer of the Relocated Person(s) to the territory of [...].
2. The Government shall provide to the Relocated Person(s) the same facilities, benefits and entitlements as those provided to persons who qualify as “refugees” under the terms set out in article 1 of the 1951 Convention on the Status of Refugees, as amended by the 1967 Protocol.
3. In addition to the services provided pursuant to paragraph 2 above, the Government shall provide the Relocated Person(s) with such facilities, benefits and services as would allow them to fully integrate into the society of [...]. Such facilities, benefits and services shall include, *inter alia*, the following:
  - a. housing;
  - b. education, including skills and language training, where necessary, for purposes of gaining employment and selfsufficiency;
  - c. health and social services, including specialist medical care where necessary;
  - d. access to opportunities to obtain employment;
  - e. identification and travel documents, if necessary; and
  - f. any other applicable facilities and benefits.
4. Such services and facilities provided under this Agreement shall be without prejudice to any rights to which the Relocated Person(s) would be entitled under the laws of [...]
5. If, upon receipt of a Referral, the Government agrees that a Protection Requirement exists, it shall, in consultation with the Registry, take whatever measures it deems necessary to protect the Relocated Person(s). If appropriate, the Government shall enter them into the national witness protection programme.

**Article 6**  
*Status of Relocated Persons*

1. The Government shall grant the Relocated Person(s) similar legal status to that granted to refugees under national law for the duration of the Relocation on the territory of [...].
2. The Government shall immediately notify the Registry when it is informed that a Relocated Person has died or if his or her whereabouts are unknown.

**Article 7**  
***Termination of Relocation Services***

1. The Registry shall make an assessment to determine whether the risk and/or threat to life of the Relocated Person(s) under this Agreement persist.
2. If, on the basis of the assessment, the Registry concludes that Relocation Services are no longer required, it shall inform the Government accordingly. The Government may then either terminate or continue to provide the Relocation Services.
3. The Government shall not return the Relocated Person(s) to a State where his or her or their life or well-being would be at risk on the basis of his or her or their nationality, religion, race or political conviction or where he or she or they would risk being subjected to measures causing intolerable mental pressure, as identified in the risk assessment conducted by the Registry, unless the Registry and the Relocated Person(s) express their consent in writing.
4. If, after the entry into force of this Agreement and following the transfer of the Relocated Person(s) to [...], for any legal or practical reasons the Government is unable to implement the obligations under this agreement, the Registry and the Government shall promptly consult to resolve the matter. The Government shall continue to provide the Relocation Services until the matter is resolved.

**Article 8**  
***Financial implications***

1. The Court shall bear all costs and expenses incurred in connection with the transfer of the Relocated Person(s) to the territory of [...] and the travel of the Relocated Person(s) between [...] and the Court.
2. While the mandate of the Court does not extend to covering the remainder of any costs incurred, the liability for those costs shall be decided by an agreement concluded between the Government and the Registry.

**Article 9**  
***Privileges and immunities***

Nothing in or relating to this Agreement constitutes a waiver, express or implied, of any of the privileges and immunities of the Parties.

**Article 10**  
*Channel of communication*

1. The channel of communication on behalf of the Registry shall be the Chief of the VWS or any other authorized representative; and
2. The channel of communication on behalf of the Government shall be [...] or any other authorized representative.

**Article 11**  
*Amendment and termination*

1. This Agreement may be amended with the mutual written consent of the Parties.
2. This Agreement may be terminated by either Party giving one hundred and eighty (180) days' written notice to the other Party.
3. Notwithstanding paragraph 2 of this article, the Parties shall ensure that termination does not prejudice the provision of Relocation Services and the status granted to the Relocated Person(s) on the territory of [...] under this Agreement.

**Article 12**  
*Settlement of disputes*

Any dispute, controversy or claim arising out of, or relating to, this Agreement shall be settled by negotiation or by a mutually agreed method of settlement between the Court and the Government.

**Article 13**  
*Entry into force*

This Agreement shall enter into force on the date of its signature by both Parties.

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

Done in duplicate at [...] this [...] day of [...] in the English language.

[(if signed in more than one language):

Done in duplicate at [...], this [...] day of [...], in the English and [Spanish/French] languages, the English version being authoritative.]

**FOR THE ICC REGISTRY**

**FOR THE GOVERNMENT OF [...]**

\_\_\_\_\_

\_\_\_\_\_

NAME:

NAME:

TITLE:

TITLE:

Date:

Date:







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# **Model Agreement on Interim Release**



**Cour  
Pénale  
Internationale**  

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**International  
Criminal  
Court**

Insert logo of other  
organisation Party

**Framework Agreement  
between  
the International Criminal Court  
and  
the [State's name]  
on Interim Release**

Entry into force:  
XX Month 202X

## FRAMEWORK AGREEMENT BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE [STATE'S NAME] ON INTERIM RELEASE

The International Criminal Court (hereinafter referred to as the “ICC” or “the Court”), represented by the Registrar, and the [State’s name] (hereinafter referred to as the “[...]”), represented by the [title of the person signing the agreement],

**NOTING** the aims and purposes of the ICC;

**RECALLING** that under articles 60, 61(11) and 83(1) of the Rome Statute of the International Criminal Court (hereinafter referred to as the “the Rome Statute”), the Court can grant interim release, with or without conditions, to a person subject to a warrant of arrest or who has already been arrested if it considers that the conditions set forth in article 58(1) of the Rome Statute are not met;

**NOTING** rule 119 of the Rules of Procedure and Evidence (hereinafter referred to as “the Rules”) listing the conditions which the Court can put on the interim release;

**CONSIDERING** that [State’s name] is a State Party to the Rome Statute since [date];

**NOTING** that [State’s name] ratified/acceded to the Agreement on the Privileges and Immunities of the International Criminal Court on [date];

**IN ORDER** to establish a framework agreement for the acceptance of persons granted interim release by the Court in accordance with the Rome Statute and the Rules and to set out the general conditions under which persons shall be released in the territory of the [State’s name] (“Framework Agreement”);

**HAVE AGREED** as follows:

### **Article 1**

#### *Purpose*

1. The present Framework Agreement defines the general conditions for the acceptance of a person granted interim release in the territory of the [State’s name], in accordance with the Rome Statute, the Rules and other applicable legal framework, subject, where applicable, to conditions imposed by the Court and agreed upon by the [State’s name].
2. The acceptance of a person granted interim release in the territory of the [State’s name] shall be made pursuant to a further agreement entered into by the Parties for each specific case (“Interim Release Agreement”).
3. Unless provided otherwise in the Interim Release Agreement, the general conditions provided in the present Framework Agreement shall apply to the acceptance of persons granted interim release by the Court in the territory of the [State’s name].

**Article 2**  
*Definitions*

1. For the purpose of this Framework Agreement, "ICC" means the Court established in article 1 of the Rome Statute, without prejudice to the independence of the Office of the Prosecutor as a separate organ of the Court.
2. For the purpose of this Framework Agreement, "Person" is understood as a person granted interim release in accordance with the Rome Statute, the Rules and other applicable legal framework.
3. For the purpose of this Framework Agreement, "Interim Release" is understood to refer to the temporary release into the territory of the [State's name] of a person detained by the Court under the conditions, if any, established by a Chamber in consultation with the Prosecutor, the Person, the State and victims whom the Chamber considers could be at risk as a result of the interim release, in accordance with 119(3) of the Rules.
4. For the purpose of this Framework Agreement, "[...]" means [...].
5. The ICC and the [State's name] are hereinafter each indistinctly referred to as "Party" and jointly referred to as "Parties".

**Article 3**  
*Procedure*

1. For the purposes of the interim release of a Person, observations shall be sought from the [State's name] in accordance with regulation 51 of the Regulations of the Court.
2. Once the consultations in paragraph 1 above have been completed, the Registry of the ICC ("Registry") shall send to the [State's name] a written request for the acceptance of the Person on the [State's name]'s territory ("Request"). The Request shall refer to the Person by his or her full personal name. Together with its request, the Registry shall provide to the [State's name] details on the charges against the Person; where applicable, the conditions of his or her interim release; a copy of the Court's decision granting the interim release of the Person; and other relevant information as deemed necessary for a specific case.
3. The [State's name] shall reply to the Registry as soon as possible, the latest within [30] days of the receipt of the Request.
4. When the [State's name] accepts a Person on its territory, it may, under no circumstances unilaterally modify any specific measures and conditions agreed upon by the Parties.
5. The present article does not prevent the Registry, prior to sending a formal Request pursuant to paragraph 2 of this article, from proactively consulting with the [State's name] on its possible agreement to accept the Person on its territory. In such case, the copy of the decision and other information referred to in paragraph 2 of this article shall be transmitted at a later stage, when available.

#### **Article 4**

##### ***Conditions of acceptance of the Person into the territory of the [State's name]***

1. Where the [State's name] agrees to the Request, the Registry, in consultation with the competent authorities of the [State's name], shall arrange for the transfer of the Person to the territory of the [State's name].
2. During his/her stay in the territory of the [State's name], the Person shall be subject to the laws of the [State's name] and shall fully comply with the conditions imposed on him or her for his or her interim release. Any violation of the laws of the [State's name] and/or of the conditions imposed for the release shall immediately be reported to the Court. The competent authorities of the [State's name] may, in consultation with the Registry, 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 the [State's name] or conditions imposed for the Interim Release could result in the immediate revocation of the Interim Release and transfer of the Person into the custody of the Court.
3. In order to ensure compliance with its order and conditions imposed, the Court may, *inter alia*:
  - a. when necessary, request any information, report or updates from the competent authorities of the [State's name] regarding the observance of the conditions by the Person;
  - b. where appropriate, instruct the Registry to visit the Person;
  - c. where appropriate, periodically consult with the competent authorities of the [State's name];
  - d. take any measure it deems appropriate.
4. If, after the transfer of the Person to the territory of the [State's name], an order is issued, in accordance with the Rome Statute, the Rules and other applicable legal framework, for the appearance of the Person for a hearing, the Registry shall arrange for the temporary transfer of the Person to the Court in consultation with the competent authorities of the [State's name].

#### **Article 5**

##### ***Status of the Person***

1. The [State's name] shall grant the Person such status as agreed between the Court and the [State's name]. Subject to any appropriate arrangements established by the competent authorities of the [State's name] and the Registry 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.

2. During his/her stay in the territory of the [State's name], the Person shall not be tried before the courts of the [State's name] with respect to any conduct which forms the basis of crimes for which the Person is accused by the Court, subject to the Rome Statute, Rules and other applicable legal framework.
3. During his/her stay in the territory of the [State's name], the Person shall not be tried before the courts of the [State's name] or extradited to a third State for any conduct engaged in prior to the Person's transfer to the territory of the [State's name] unless specifically authorized by the Court in accordance with article 101(2) of the Rome Statute and rules 196 and 197 of the Rules.
4. In accordance with rule 73 of the Rules, 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 and subject to the Agreement on the Privileges and Immunities of the International Criminal Court when applicable. To facilitate this, the [State's name] undertakes to expeditiously issue visas to Defence counsel and members of the Person's Defence team who are entering the [State's name] for the purpose of visiting the Person.
5. The Person shall have the right to receive visits from his or her nuclear family (hereinafter referred to as "family members"). The list of the Person's family members shall be specified in the Interim Release Agreement and shall be modified in case of birth, adoption, marriage, divorce or death. The [State's name] shall make adequate arrangements by which visas for family members visiting the Person are processed promptly.

## **Article 6**

### *Costs*

1. The Court shall bear all costs and expenses incurred in connection with the travel of the Person between the [State's name] and the Court.
2. All other expenses incurred in connection with the provision of Interim Release pursuant to this Framework Agreement shall be agreed upon, following consultations with the [State's name], in accordance with article 100(1) of the Rome Statute.
3. The following is a non-exhaustive list of the expenses incurred in connection with the provision of Interim Release, referred to above:
  - 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, within the conditions set by the Court;

- e. Documents to enable travel to and from the [State's name]; and
- f. Any other applicable facilities and benefits without prejudice to any rights which the Person would be entitled to under the laws of the [State's name].

**Article 7**  
*Channel of communication*

1. The channel of communication between the Parties for the purposes of this Framework Agreement is the Registrar of the ICC and the [...].
2. The designated channel of communication may be changed without amending the provisions of this Framework Agreement by providing a written notification to the other Party.
3. Without prejudice to the designated channel of communication, the Parties 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 Interim Release Agreements.

**Article 8**  
*Confidentiality*

1. [State's name] shall keep confidential a request for cooperation and any documents supporting the Request, except to the extent that the disclosure is necessary for the execution of the Request.
2. The Parties shall ensure that any persons handling such requests for cooperation and supporting documentation are fully aware of the obligation to keep such materials confidential and handle the materials properly in the manner required to secure such confidentiality.

**Article 9**  
*Implementation*

1. The competent national authorities of the [State's name] shall take all necessary measures to ensure efficient implementation of this Framework Agreement, including appropriate security, safety and protection of the Persons.
2. The [State's name] shall adopt requisite amendments to the national legislation and/or administrative framework of the [State's name] which are necessary for the implementation of this Framework Agreement and the conclusion of Interim Release Agreements.

**Article 10**  
*Termination of Interim Release*

1. The Interim Release under this Framework Agreement shall be terminated:
  - a. upon the expiration of the period for which the Interim Release had been granted;
  - b. upon the death of the Person;
  - c. following a decision of the Court, including if the Person is ordered to return to the custody of the ICC;
  - d. upon decision of the [State's name] after consultation with the Court.
2. Following the termination of the Interim Release the competent authorities of the [State's name], in consultation with the Registrar, shall arrange for the return of the Person to the custody of the Court, in accordance with the Rome Statute, the Rules and other applicable legal framework.
3. Where the [State's name] or the Court wishes to terminate the Interim Release, it shall inform the other Party of its intention and consult with it in writing. It shall then notify, also in writing, the Person of the termination, as soon as practicable.
4. In the event that the Interim Release is terminated in accordance with paragraph 1(d) of this article, the Registrar shall be granted a period of two months to obtain the agreement of another State to undertake the responsibilities of the [State's name] under this Framework Agreement. If the Registrar is unable to conclude such an agreement within that period, the Person shall be transferred back to the custody of the Court.

**Article 11**  
*Amendment and termination*

1. The provisions of this Framework Agreement may be amended with the mutual written consent of the Parties. Such amendments shall constitute an integral part of this Framework Agreement.
2. This Framework Agreement may be terminated by either Party with ninety (90) days' written notice to the other Party.
3. Notwithstanding paragraph 2 of this article, the provisions of this Framework Agreement shall survive any termination to the extent necessary to permit the continued application of any Interim Release Agreement concluded pursuant to article 1(2) of this Framework Agreement. To this end, the Parties shall ensure that termination is not detrimental to each other's interests and is without prejudice to a Person.
4. The obligations relating to confidentiality under article 8 of this Framework Agreement do not cease upon termination of the agreement.



**Article 12**  
*Settlement of disputes*

1. All differences arising out of the interpretation or application of this Framework Agreement or any Interim Release Agreement concluded pursuant to article 1(2) of this Framework Agreement shall be settled by consultation, negotiation or other agreed mode of settlement.
2. If the difference is not settled in accordance with paragraph 1 of this article within ninety (90) days following a written request by one of the Parties, it shall, at the request of either Party, be referred to an arbitral tribunal according to the procedure set forth in paragraphs 3 to 6 of this article.
3. The arbitral tribunal shall be composed of three members: one to be chosen by each Party and the third, who shall be the chairperson of the tribunal, to be chosen by the other two members. If either Party has failed to make its appointment of a member of the tribunal within sixty (60) days of the appointment of a member by the other Party, that other Party may invite the President of the International Court of Justice to make such appointment. Should the first two members fail to agree upon the appointment of the chairperson of the tribunal within sixty (60) days following their appointment, either Party may invite the President of the International Court of Justice to choose the chairperson.
4. Unless the Parties otherwise agree, the arbitral tribunal shall determine its own procedure and the expenses shall be borne by the Parties as assessed by the tribunal.
5. The arbitral tribunal, which shall decide by a majority of votes, shall reach a decision on the difference on the basis of the provisions of the present Framework Agreement and the applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the Parties.
6. The decision of the arbitral tribunal shall be communicated to the Court and [State's name].

**Article 13**  
*Entry into force*

This Framework Agreement shall enter into force on the date of its signature by the Registrar of the ICC and [...], or their duly authorized representatives.

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

Done in duplicate in the English and [LANGUAGE OF TRANSLATION: Spanish/ French] languages, the English version being authoritative.

**FOR THE ICC**

**FOR THE [State's name]**

\_\_\_\_\_

[INSERT NAME]

\_\_\_\_\_

[INSERT NAME]

Registrar

[INSERT TITLE]

Date and place:

Date and place:





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**Model  
Agreement  
on the Release  
of Persons**



**Cour  
Pénale  
Internationale**  

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**International  
Criminal  
Court**

Insert logo of other  
organisation Party

**Framework Agreement  
between  
the International Criminal Court  
and  
the [State's name]  
on the Release of Persons**

Entry into force:  
XX Month 202X

## FRAMEWORK AGREEMENT BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE [STATE'S NAME] ON THE RELEASE OF PERSONS

The International Criminal Court (hereinafter referred to as the “ICC” or “the Court”), represented by the Registrar, and the [State’s name] (hereinafter referred to as the “[...]”), represented by the [title of the person signing the agreement],

**NOTING** the aims and purposes of the ICC;

**RECALLING** that under rule 185(1) of the Rules of Procedure and Evidence of the ICC (“Rules”), “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”;

**CONSIDERING** that [State’s name] is a State Party to the Rome Statute of the International Criminal Court since [date];

**NOTING** that [State’s name] ratified/acceded to the Agreement on the Privileges and Immunities of the International Criminal Court on [date];

**IN ORDER** to establish a framework agreement for the acceptance of persons released by the Court and to set out the general conditions under which the persons shall be released on the territory of the [State’s name] (“Agreement”);

**HAVE AGREED** as follows:

### **Article 1**

#### *Purpose*

1. The present Agreement defines the general conditions for acceptance of a person released by the Court on the territory of the [State’s name], in accordance with the Rome Statute, the Rules and other applicable legal framework.
2. The acceptance of a person released on the territory of the [State’s name] shall be made pursuant to a further agreement entered into by the Parties for each specific case (“Release Agreement”).
3. Unless provided otherwise in the Release Agreement, the general conditions provided in the present Agreement shall apply to the acceptance of persons released by the Court in the territory of the [State’s name].

**Article 2**  
*Definitions*

1. For the purpose of this Agreement, “ICC” means the Court established in article 1 of the Rome Statute, without prejudice to the independence of the Office of the Prosecutor as a separate organ of the Court.
2. For the purpose of this Agreement, “Release” is understood to refer to the release of a person surrendered to the Court from the custody of the Court into the territory of the [State’s name] as provided in rule 185(1) of the Rules.
3. For the purpose of this Agreement, “Released Person” means a person surrendered to the Court who is released from the custody of the Court as provided in rule 185(1) of the Rules.
4. The ICC and the [State’s name] are hereinafter each indistinctly referred to as “Party” and jointly referred to as “Parties”.

**Article 3**  
*Procedure*

1. Where one of the conditions provided under rule 185(1) of the Rules for the release of a person is met, the Registry of the ICC (“Registry”), after consultation with the Released Person, shall consult with the authorities of the [State’s name] to determine whether they are prepared to accept the Released Person on their territory.
2. The Registry shall send the [State’s name] a request for the acceptance of the Released Person on the [State’s name]’s territory. Together with its request, the Registry shall provide to the [State’s name] a copy of the Court’s decision concerning the release of the Released Person and other relevant information as deemed necessary for a specific case.
3. The [State’s name] shall reply to the Registry within 30 days of the receipt of the request.
4. The present article does not prevent the Registry, prior to sending a formal request pursuant to paragraph 2 of this article, from proactively consulting with the [State’s name] on its possible agreement to have the person released on the territory of the [State’s name], should one of the conditions provided under rule 185(1) of the Rules materialise. In such case, the copy of the decision referred to in paragraph 2 of this article shall be transmitted at a later stage, upon its issuance by the Court.

**Article 4**  
*Transfer*

1. The Registry, in consultation with the competent national authorities of the [State’s name], shall make appropriate arrangements for the proper conduct of the transfer of the Released Person from the ICC to the territory of the [State’s name]. These arrangements include, where applicable, addressing to the competent authorities, in a timely manner, requests for the lifting of a travel ban, etc.

2. If, after the transfer of the Released Person to the territory of the [State's name], 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 the [State's name] shall make all appropriate arrangements, including, where applicable, timely requests for the lifting of a 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 5**

##### *Rights and obligations of the Released Person*

1. The [State's name] shall ensure that the released is able to receive visits from his or her nuclear family, in accordance with the applicable legal framework.
2. The list of members of the person's nuclear family (hereinafter referred to as "family members") shall be specified in the Release Agreement and shall be modified in case of birth, adoption, marriage, divorce or death.
3. The relevant authorities of the [State's name] shall arrange visas for the family members specified in paragraph 2 of this article. This assistance shall include expeditiously issuing visas to these family members visiting the Released Person.
4. The [State's name] undertakes to expeditiously issue visas to defence counsel and members of the Released Person's defence team, as identified in the Release Agreement, who are entering the [State's name] for the purpose of the professional relationship with the Released Person.
5. The [State's name] applies its national legislation governing the right to family reunification to the Released Person.
6. The Released Person has a duty to respect the laws and regulations of the [State's name].

#### **Article 6**

##### *Support and assistance to the Released Person*

1. The [State's name] agrees to provide the Released Person with the following facilities:
  - a. A legal status which permits long-term residence in [State's name];
  - b. Housing, as agreed by the parties on a case-by-case basis;
  - c. Education, including skills and language training, where necessary, for purposes of gaining employment;
  - d. Access to health and social services, including specialist medical care where necessary;
  - e. Access to opportunities to obtain employment;
  - f. Documents to enable travel to and from the [State's name]; and



- g. Any other applicable facilities and benefits without prejudice to any rights which the person would be entitled to under the laws of the [State's name].

**Article 7**  
*Communications*

1. Communications between a Released Person and the Court shall be unimpeded and confidential. These communications shall be considered official communications and shall enjoy the facilities as provided in article 11 of the Agreement on the Privileges and Immunities of the Court.
2. In accordance with rule 73 of the Rules, communications made in the context of the professional relationship between the Released Person and any defence counsel and members of the Released Person's defence team, as identified in the Release Agreement, shall be unimpeded and confidential, with full respect for the privileged nature of such communications.

**Article 8**  
*Ne bis in idem*

1. The Released Person shall not be tried in the territory of [State's name] with respect to crimes for which that person has already been convicted or acquitted by the Court, as provided in article 20 of the Rome Statute.

**Article 9**  
*Costs*

1. The ordinary costs for the release in the territory of the [State's name] shall be borne by the authorities of the [State's name].
2. Other costs identified in article 100(1) of the Rome Statute shall be borne by the Court.

**Article 10**  
*Channel of communication*

1. The channel of communication between the Parties for the purposes of this Agreement is the Registrar of the ICC and the [...].
2. The designated channel of communication may be changed without amending the provisions of this Agreement by providing a written notification to the other Party.
3. Without prejudice to the designated channel of communication, the Parties shall designate a focal point for the implementation of this Agreement. Unless specified otherwise, the same focal point shall be designated for the implementation of any subsequent Release Agreements.

**Article 11**  
*Confidentiality*

1. [State's name] shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for the execution of the request.
2. The Parties shall ensure that any persons handling requests for cooperation and supporting documentation are fully aware of the obligation to keep such materials confidential and handle the materials properly in the manner required to secure such confidentiality.

**Article 12**  
*Implementation*

1. The competent national authorities of the [State's name] shall take all necessary measures to ensure efficient implementation of this Agreement, including appropriate security, safety and protection of the released persons.
2. The [State's name] shall adopt requisite amendments to the national legislation and/or administrative framework of the [State's name] which are necessary for the implementation of this Agreement and the conclusion of Release Agreements.

**Article 13**  
*Amendment and termination*

1. The provisions of this Agreement may be amended with the mutual written consent of the Parties. Such amendments shall constitute an integral part of this Agreement.
2. This Agreement may be terminated by either Party with ninety (90) days' written notice to the other Party.
3. Notwithstanding paragraph 2 of this article, the provisions of this Agreement shall survive any termination to the extent necessary to permit the continued application of any Release Agreement concluded pursuant to article 1(2) of this Agreement. To this end, the Parties shall ensure that termination is not detrimental to each other's interests and is without prejudice to a release person.
4. The obligations relating to confidentiality under article 12 of this Agreement do not cease upon termination of the Agreement.

**Article 14**  
*Settlement of disputes*

1. All differences arising out of the interpretation or application of this Agreement or any Release Agreement concluded pursuant to article 1(2) of this Agreement shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 of this article within ninety (90) days following a written request by one of the Parties, it shall, at the request of either Party, be referred to an arbitral tribunal according to the procedure set forth in paragraphs 3 to 6 of this article.
3. The arbitral tribunal shall be composed of three members: one to be chosen by each Party and the third, who shall be the chairperson of the tribunal, to be chosen by the other two members. If either Party has failed to make its appointment of a member of the tribunal within sixty (60) days of the appointment of a member by the other Party, that other Party may invite the President of the International Court of Justice to make such appointment. Should the first two members fail to agree upon the appointment of the chairperson of the tribunal within sixty (60) days following their appointment, either Party may invite the President of the International Court of Justice to choose the chairperson.
4. Unless the Parties otherwise agree, the arbitral tribunal shall determine its own procedure and the expenses shall be borne by the Parties as assessed by the tribunal.
5. The arbitral tribunal, which shall decide by a majority of votes, shall reach a decision on the difference on the basis of the provisions of the present Agreement and the applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the Parties.
6. The decision of the arbitral tribunal shall be communicated to the Court and [...].

**Article 15**  
*Entry into force*

This Agreement shall enter into force on the date of its signature by the Registrar of the ICC and [...], or their duly authorised representatives.

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

Done in duplicate in the English and [LANGUAGE OF TRANSLATION: Spanish/ French] languages, the English version being authoritative.

**FOR THE ICC**

**FOR THE [State's name]**

\_\_\_\_\_

\_\_\_\_\_

[INSERT NAME]

[INSERT NAME]

Registrar

[INSERT TITLE]

Date and place:

Date and place:





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**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 prisoners<sup>1</sup> 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 [...].

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<sup>1</sup> 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;<sup>2</sup>
  - b. A copy of the final judgment of conviction and of the sentence imposed;<sup>3</sup>
  - c. The length and commencement date of the sentence and the time remaining to be served;<sup>4</sup>
  - 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.<sup>5</sup>
4. [...] shall promptly decide upon the Court’s designation, in accordance with its national law, and inform the Presidency whether it accepts the designation.<sup>6</sup>

## Article 3

### *Transfer of the sentenced person*

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

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<sup>2</sup> Rule 204(a) of the Rules of Procedure and Evidence

<sup>3</sup> Rule 204(b) of the Rules of Procedure and Evidence

<sup>4</sup> Rule 204(c) of the Rules of Procedure and Evidence

<sup>5</sup> Rule 204(d) of the Rules of Procedure and Evidence

<sup>6</sup> Article 103(1)(c) of the Rome Statute

<sup>7</sup> 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.<sup>8</sup>

#### **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.<sup>9</sup>
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).<sup>10</sup>
3. Communications between a sentenced person and the Court shall be unimpeded and confidential.<sup>11</sup> 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.<sup>12</sup>
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 [...].<sup>13</sup>
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.<sup>14</sup>
6. [...] shall promptly inform the Presidency of any important event concerning the sentenced person.<sup>15</sup>

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<sup>8</sup> Rule 206(3) of the Rules of Procedure and Evidence

<sup>9</sup> Articles 21 (3), 106(1) of the Rome Statute

<sup>10</sup> Rule 211(1)(b)–(d) of the Rules of Procedure and Evidence

<sup>11</sup> Article 106(3) of the Rome Statute

<sup>12</sup> Rule 211(1)(a) of the Rules of Procedure and Evidence

<sup>13</sup> Article 21(3), 106(2) of the Rome Statute

<sup>14</sup> Article 103(2)(a) of the Rome Statute

<sup>15</sup> Rule 216 of the Rules of Procedure and Evidence



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.<sup>16</sup>
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.<sup>17</sup>

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<sup>16</sup> Rule 211(2) of the Rules of Procedure and Evidence

<sup>17</sup> 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 [...].<sup>18</sup>
  - 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.<sup>19</sup>
  - 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.<sup>20</sup>
  - c. The Presidency may in all cases request any document or additional information from [...] or the State requesting the extradition.<sup>21</sup>
  - d. The Presidency may decide to conduct a hearing.<sup>22</sup>
  - 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.<sup>23</sup>
  - 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.<sup>24</sup>

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<sup>18</sup> Article 108(1) of the Rome Statute

<sup>19</sup> Rule 214(1) of the Rules of Procedure and Evidence

<sup>20</sup> Rule 214(2) of the Rules of Procedure and Evidence

<sup>21</sup> Rule 214(3) of the Rules of Procedure and Evidence

<sup>22</sup> Rule 214(6) of the Rules of Procedure and Evidence

<sup>23</sup> Rule 215(1) of the Rules of Procedure and Evidence

<sup>24</sup> 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.<sup>25</sup>
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.<sup>26</sup>

#### **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.<sup>27</sup>
2. [...] shall not release the person before expiry of the sentence pronounced by the Court.<sup>28</sup> [...] 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.<sup>29</sup>
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.<sup>30</sup>
5. Where the Presidency extends the term of imprisonment pursuant to Rule 146(5), the Presidency may ask for observations from [...].<sup>31</sup>

#### **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.<sup>32</sup>

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<sup>25</sup> Rule 215(3) of the Rules of Procedure and Evidence

<sup>26</sup> Article 108(3) of the Rome Statute

<sup>27</sup> Article 105 of the Rome Statute

<sup>28</sup> Article 110(1) of the Rome Statute

<sup>29</sup> Article 105(2) of the Rome Statute

<sup>30</sup> Article 110(2) of the Rome Statute

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

<sup>32</sup> Rule 225(1) of the Rules of Procedure and Evidence

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.<sup>33</sup>
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.<sup>34</sup>
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.<sup>35</sup>
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.<sup>36</sup>

## 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.<sup>37</sup>
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;

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<sup>33</sup> Article 111 of the Rome Statute

<sup>34</sup> Rule 225(2) of the Rules of Procedure and Evidence

<sup>35</sup> Rule 225(3) of the Rules of Procedure and Evidence

<sup>36</sup> Rule 225(4) of the Rules of Procedure and Evidence

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

- d. Obtain any other relevant information from any reliable sources.<sup>38</sup>
3. The Presidency shall inform the sentenced person, the Prosecutor, the Registrar and [...] of its decision and of the reasons therefor.<sup>39</sup>

## **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.<sup>40</sup>
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.<sup>41</sup>
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.<sup>42</sup>

## **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.<sup>43</sup>
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.<sup>44</sup>

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<sup>38</sup> Rule 210(1) of the Rules of Procedure and Evidence

<sup>39</sup> Rule 210(3) of the Rules of Procedure and Evidence

<sup>40</sup> Rule 212 of the Rules of Procedure and Evidence

<sup>41</sup> Article 107(1) of the Rome Statute

<sup>42</sup> Article 107(3) of the Rome Statute

<sup>43</sup> Rule 208(1)–(2) of the Rules of Procedure and Evidence

<sup>44</sup> Rule 225(2) of the Rules of Procedure and Evidence

**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.

**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.<sup>45</sup>
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.<sup>46</sup>

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

Done at ..... this ..... day of ....., 202..., in duplicate, in the English language.

**FOR THE ICC**

**FOR THE [State's name]**

\_\_\_\_\_  
Judge [INSERT NAME]  
President of the International Criminal Court

\_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]

<sup>45</sup> Rule 200(3) of the Rules of Procedure and Evidence

<sup>46</sup> Rule 200(4) of the Rules of Procedure and Evidence

# Acronyms

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<b>DRC</b>	Democratic Republic of the Congo
<b>ICC</b>	International Criminal Court
<b>ICRC</b>	International Committee of the Red Cross
<b>RPE</b>	Rules of Procedure and Evidence
<b>SFR</b>	Special Fund for Relocations
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>VWS</b>	Victims and Witnesses Section



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