

INTERNATIONAL CRIMINAL COURT ACT

Act 27 of 2011 – 15 January 2012

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INTERNATIONAL CRIMINAL COURT ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the International Criminal Court Act.

2. Interpretation

In this Act—

“ancillary offence” —

- (a) in relation to an offence under section 4 (1), means an attempt, a conspiracy or an act of complicity;
- (b) includes an offence referred to under section 4 (2);

“crime against humanity” has the same meaning as in the Statute and in Part I of the Schedule;

“forfeiture order” means an order, issued by the International Criminal Court, aimed at recovering the proceeds of an international crime or the value of such proceeds;

“genocide” has the same meaning as in the Statute and in Part II of the Schedule;

“international crime” means the crime of genocide, a crime against humanity or a war crime, and includes an ancillary offence;

“International Criminal Court” means the International Criminal Court established by the Statute;

“prisoner” means a person who is in custody within or outside a prison—

- (a) to serve a sentence; or
- (b) pending his trial or sentence for an offence;

“Statute” means the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court on 17 July 1998 and ratified by Mauritius on 5 March 2002;

“surrender” means the delivering up of a person by Mauritius to the International Criminal Court pursuant to the Statute;

“war crime” has the same meaning as in the Statute and in Part III of the Schedule.

3. Status of Statute and application of Act

(1) Notwithstanding any other enactment, the Statute shall have force of law in Mauritius.

(2) This Act shall bind the State.

PART II – OFFENCES AND JURISDICTION OF COURTS OF MAURITIUS

4. International crimes

(1) Notwithstanding any other enactment, any person who commits—

- (a) a crime against humanity;
- (b) genocide; or
- (c) a war crime,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 45 years.

(2) Any person who—

- (a) directly and publicly incites others to commit genocide; or
- (b) contributes to the commission of an international crime by a group of persons acting with a common purpose, where such contribution is intentional and is either—
 - (i) made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the International Criminal Court; or
 - (ii) made in the knowledge of the intention of the group to commit the crime,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 45 years.

(3) Where a person commits an international crime outside Mauritius, he shall be deemed to have committed the crime in Mauritius if he—

- (a) is a citizen of Mauritius;
- (b) is not a citizen of Mauritius but is ordinarily resident in Mauritius;
- (c) is present in Mauritius after the commission of the crime; or
- (d) has committed the crime against a citizen of Mauritius or against a person who is ordinarily resident in Mauritius.

5. Responsibility of commanders and superiors

(1) It shall not be a defence for a person charged with an international crime to plead that he had no responsibility for the crime if the crime was committed by forces under his effective command and control, or, as the case

may be, his effective authority and control, as military commander, or a person effectively acting as a military commander, and there was a failure to exercise proper control over those forces where—

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

(2) It shall not be a defence for a person, other than a person referred to in subsection (1), to plead that he had no responsibility for the crime if the crime was committed by subordinates under his effective authority and control as a superior, and there was a failure to exercise proper control over those subordinates where—

- (a) he knew, or consciously disregarded information which clearly indicated, that his subordinates were committing or about to commit the offence;
- (b) the offence concerned activities that were within his effective responsibility and control; and
- (c) he failed to take all necessary and reasonable measures within his power to prevent or repress its commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) Nothing in this section shall be read as restricting or excluding any liability of the commander or superior under any other enactment or the liability of persons other than the commander or superior.

6. Official capacity and superior's orders

(1) It shall not be a defence to an offence under section 4 nor a ground for a reduction of sentence for a person convicted of an offence under that section to plead that he is or was Head of State, a member of a Government or Parliament, an elected representative or a government official of a foreign State.

(2) (a) It shall not be a defence to an offence under section 4 nor a ground for a reduction of sentence for a person convicted of an offence under that section to plead that he did the act constituting such offence in obedience to, or in conformity with, the law in force at the time, or pursuant to an order by a Government or a superior, whether military or civilian, unless—

- (i) the person was under a legal obligation to obey the order of the Government or the superior in question;
- (ii) the person did not know that the order was unlawful; and
- (iii) the order was not manifestly unlawful.

(b) For the purposes of paragraph (a), orders to commit genocide or a crime against humanity shall be regarded as being manifestly unlawful.

7. Contempt of International Criminal Court

(1) Any person who, in relation to any proceedings before the International Criminal Court—

- (a) gives false testimony when under an obligation, pursuant to Article 69, paragraph 1 of the Statute, to tell the truth;
- (b) presents evidence that he knows is false or forged;
- (c) corruptly influences a witness, obstructs or interferes with the attendance or testimony of a witness, retaliates against a witness for giving testimony or destroys, tampers with or interferes with the collection of evidence;
- (d) impedes or intimidates an official of the International Criminal Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his duties;
- (e) retaliates against an official of the International Criminal Court on account of duties performed by that or another official,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to penal servitude for a term not exceeding 5 years.

(2) An offence under subsection (1) shall be subject to a period of limitation of 5 years from the date on which the offence was committed, unless during that period an investigation or a prosecution has been initiated.

8. Jurisdiction

(1) A prosecution for an offence under section 4 (1) or an ancillary offence shall take place before a Judge without a jury.

(2) A prosecution for an offence under section 7 shall take place before the Intermediate Court.

PART III – STATUS AND PRIVILEGES OF INTERNATIONAL CRIMINAL COURT

9. Seat and status of International Criminal Court

(1) The International Criminal Court may sit in Mauritius, in such place as may be appointed by the President, at the request of the International Criminal Court, by Proclamation.

(2) The International Criminal Court shall be a body corporate.

(3) The International Criminal Court shall have such immunities and privileges as may be necessary to enable it to perform its functions in Mauritius.

10. Privileges and immunities

(1) The Judges, the Prosecutor, the Deputy Prosecutors and the Registrar of the International Criminal Court, when performing their functions in Mauritius, shall be immune from the criminal and civil jurisdiction of the courts of Mauritius and shall enjoy such immunities and privileges as are accorded a representative of another State or government under the Diplomatic Relations Act and as may be prescribed.

(2) The Deputy Registrar, and the staff of the International Criminal Court, counsel, experts, witnesses and other persons involved in proceedings before the International Criminal Court shall enjoy such privileges and facilities necessary for the performance of their functions in Mauritius as may be prescribed.

(3) Any person—

- (a) required to be present at the seat of the International Criminal Court; or
- (b) or attending meetings of the Assembly of State Parties to the Statute, including its subsidiary organs,

shall enjoy such privileges and facilities necessary for the performance of his functions in Mauritius as may be prescribed.

PART IV – ARREST AND SURRENDER OF PERSONS

11. Endorsement of warrant of arrest

(1) Any request from the International Criminal Court for the arrest or provisional arrest and surrender of a person for whom a warrant of arrest has been issued by the International Criminal Court shall be directed to the Attorney-General and accompanied by—

- (a) sufficient information, describing the person sought, to identify the person;
- (b) information as to that person's probable location;
- (c) a copy of the warrant of arrest issued by the International Criminal Court; and
- (d) such other documents as may be necessary to satisfy a Judge that there is sufficient ground for the surrender of that person to the International Criminal Court.

(2) The Attorney-General shall, on receipt of that request, forward it and the accompanying documents to a Judge, who shall endorse the warrant of arrest for execution in Mauritius.

12. Provisional warrant

(1) Where the Attorney-General receives a request in relation to an urgent case from the International Criminal Court for the provisional arrest of a person who is suspected or accused of having committed an offence contemplated in the Statute, or who has been convicted by the International Criminal Court of such an offence, the Attorney-General shall apply for a warrant of arrest for that person.

(2) On an application by the Attorney-General stating under oath that he has reason to believe that—

- (a) the request of the International Criminal Court has been made on grounds of urgency for the arrest of a person who is suspected or accused of having committed an offence contemplated in the Statute or who has been convicted by the International Criminal Court;
- (b) a warrant of arrest has been issued, or a judgment of conviction has been delivered, against the person in question;
- (c) a formal request for the surrender of the person to the International Criminal Court will be made subsequently;
- (d) the person concerned is in, or on his way to, Mauritius; and
- (e) the purpose of the arrest is—
 - (i) to bring the person concerned before the International Criminal Court to stand trial; or
 - (ii) to take him to a place where he is to undergo imprisonment under a sentence of the International Criminal Court,as the case may be,

a Magistrate may issue a warrant for the arrest of that person and notify the Attorney-General that a warrant has been issued.

(3) The warrant shall contain—

- (a) sufficient information, describing the person sought, to identify the person, and information as to that person's probable location;
- (b) a concise statement of the offence for which the person's arrest is sought and of the facts which are alleged to constitute that offence, including, where possible, the date and location of the offence;
- (c) a statement of the existence of a warrant of arrest or a judgment of conviction against the person sought; and
- (d) a statement that a request for surrender of the person sought will follow.

13. Postponement of execution of request

(1) The Attorney-General shall not postpone the execution of a request for arrest and surrender at any time before the surrender of the person, unless the request would interfere with an investigation or prosecution in Mauritius involving a different offence from that for which surrender is requested.

(2) The Attorney-General shall consult with the International Criminal Court and agree on a period of time for postponement of the execution of the request in accordance with Article 94 of the Statute, and the Attorney-General shall proceed with the execution of the request after the lapse of that period, unless otherwise agreed with the International Criminal Court.

(3) Where the Attorney-General decides to postpone the execution of a request for arrest and surrender in accordance with this section after he has forwarded a request pursuant to section 11 or 12, he shall—

- (a) notify the Magistrate of the postponement and the Magistrate shall adjourn any pending proceedings until further notice from the Attorney-General; and
- (b) notify the Magistrate at the relevant time whether the execution of the request is to proceed or not, and the Magistrate shall proceed accordingly with the execution of the request or the discharge of the person.

(4) A decision by the Attorney-General to postpone the execution of a request shall not affect the validity of any act that has been done or any warrant or order made under this Part prior to the decision, and any such warrant or order shall remain in force unless cancelled by the International Criminal Court.

14. International obligations

(1) Where the Attorney-General considers that the execution of a request for the arrest and surrender of a person may be in conflict with the obligations of Mauritius to a foreign country under international law or international agreements referred to in Article 98 of the Statute, he shall consult with the International Criminal Court.

(2) Where, after the consultation, the Attorney-General is satisfied that the execution of the request would not conflict with any of the obligations referred to in subsection (1), the Attorney-General shall sign a certificate stating that the execution of the request does not conflict with any of those obligations.

(3) A certificate signed under subsection (2) shall be conclusive evidence of the matters stated in the certificate.

(4) Where, after the consultation, the Attorney-General is not satisfied that the execution of the request would not conflict with any of the obligations referred to in subsection (1), the Attorney-General shall postpone the execution of the request unless and until the foreign country has made the necessary waiver or given the necessary consent.

(5) Notwithstanding any other enactment, a request under this Part may be executed in respect of an offence which was committed prior to the commencement of this Act.

15. Proceedings after arrest

(1) Any person who detains a person under a warrant of arrest or a warrant for his further detention shall, without undue delay, bring that person before a Magistrate of the District Court of Port Louis, whereupon that Magistrate shall hold an enquiry relating to the request for the surrender of that person to the International Criminal Court, in order to establish whether—

- (a) the warrant applies to the person in question;

- (b) the person has been arrested in accordance with the procedures laid down by the law of Mauritius; and
- (c) the rights of the person have been respected.

(2) The Magistrate may, at any time during the enquiry, postpone that enquiry to enable the relevant authorities of Mauritius to have any appropriate consultation on any problem experienced with the execution of any request of the International Criminal Court for co-operation or judicial assistance.

- (3) (a) Where, during the enquiry, a challenge is made to the effect that—
- (i) the International Criminal Court does not have jurisdiction to deal with the case;
 - (ii) the case is being investigated or prosecuted by the competent authorities in Mauritius or any other country;
 - (iii) the case has been investigated by the competent authorities in Mauritius or any other country and a decision has been made not to institute criminal proceedings against the person concerned;
 - (iv) the person concerned has already been tried for the conduct which led to the institution of the enquiry;
 - (v) the case is not of sufficient gravity to justify further action by the International Criminal Court; or
 - (vi) the person is subject to an agreement under Article 98 of the Statute,

the Magistrate shall record that challenge and may postpone the proceedings pending the decision of the International Criminal Court regarding the challenge.

(b) Where the International Criminal Court rejects the challenge, the Magistrate shall proceed with the enquiry.

(c) In case of competing requests between the International Criminal Court and another State, the matter shall be settled in accordance with Article 90 of the Statute.

(4) Any deposition or statement made under oath, whether or not it was made in the presence of the detained person referred to in subsection (1), any document, record or judgment of conviction or any warrant issued by the International Criminal Court, or any copy or sworn translation, may be received in evidence at any such enquiry, save that a true copy or translation may only be received in evidence if the document is certified as a true copy or translation by a Judge of the International Criminal Court or by a member of the staff of the International Criminal Court authorised by the Judge.

(5) Where, after considering the evidence adduced at the enquiry referred to in subsection (1), the Magistrate is satisfied that the requirements of subsection (1) (a) to (c) have been complied with and that the person concerned may be surrendered to the International Criminal Court—

- (a) for prosecution in the International Criminal Court for the alleged crime or offence;

- (b) for the imposition of a sentence by the International Criminal Court for the crime or offence in respect of which the person has been convicted; or
- (c) to serve a sentence already imposed by the International Criminal Court,

the Magistrate shall issue an order committing that person to prison pending his surrender to the International Criminal Court unless a request for interim release has been granted pursuant to section 16.

(6) The Magistrate issuing the order of committal referred to in subsection (5) or postponing the enquiry referred to in subsection (1), shall immediately forward to the Attorney-General a copy of the order or request for a decision of the International Criminal Court, together with any other necessary report.

(7) The enquiry referred to in this section may be dispensed with if the person concerned agrees in writing to his surrender to the International Criminal Court.

(8) No order for the surrender of any person may be executed—

- (a) before the period allowed for an appeal has expired, unless that person has waived his right of appeal in writing; or
- (b) before such an appeal has been disposed of.

(9) (a) Any person against whom an order has been issued under subsection (5) may, within 21 days of the date of the order, appeal against such order to the Supreme Court.

(b) On appeal, the Supreme Court may make such order in the matter as it may deem fit.

(c) No order for the surrender of any person may be executed—

- (i) before the period allowed for an appeal has expired, unless that person has waived his right of appeal in writing; or
- (ii) before such an appeal has been disposed of.

16. Interim release

(1) A person arrested shall have the right to apply to a Magistrate for interim release and, on any such application, the Magistrate shall consider whether—

- (a) given the gravity of the alleged crime, there are urgent and exceptional circumstances to justify interim release; and
- (b) necessary safeguards have been or will be taken to ensure that the person will surrender to the International Criminal Court.

(2) It shall not be open to the Magistrate to consider whether the warrant of arrest was properly issued in accordance with Article 58, paragraph 1 (a) and (b) of the Statute.

(3) The Pre-Trial Chamber of the International Criminal Court shall be informed by the Magistrate of any request for interim release and the Magistrate shall give full consideration to any recommendation made by the Pre-Trial Chamber in the matter.

17. Rights of persons during an enquiry

In respect of an enquiry under this Part, every person shall—

- (a) not be compelled to incriminate himself or to confess guilt;
- (b) not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
- (c) if questioned in a language other than a language he fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness;
- (d) not be subjected to arbitrary arrest or detention or be deprived of his liberty except on such grounds and in accordance with such procedures as are established in the Statute;
- (e) be informed, before being questioned, that there are grounds to believe that he has committed a crime within the jurisdiction of the International Criminal Court;
- (f) have the right to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (g) have the right to legal assistance of his choice, or, if he does not have legal assistance, to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; and
- (h) have the right to be questioned in the presence of Counsel unless the person has voluntarily waived his right to Counsel.

18. Removal of person surrendered

(1) Any person in respect of whom an order to be surrendered has been made under section 15 (5), or who agrees to his surrender, may be removed from Mauritius in the custody of a person authorised by the International Criminal Court to receive him and if the person escapes while being so removed, he may be arrested without a warrant by any person.

(2) Any person who—

- (a) while being so removed, escapes or attempts to escape from custody; or
- (b) rescues or attempts to rescue from custody any person being so removed,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 5 years.

19. Entry into and passage through Mauritius

Any person entering and passing through Mauritius in custody by virtue of a warrant or order issued by the International Criminal Court shall, during his passage through Mauritius, be deemed to be in lawful custody and may be held in any police cell, prison or such other detention facility as may be designated by the Attorney-General.

20. Discharge of person not surrendered

(1) Where the International Criminal Court informs the Attorney-General that a person arrested in terms of this Act is no longer required to be surrendered to it or into the custody of a State for purposes of serving a sentence imposed by the International Criminal Court, as the case may be, the Attorney-General shall inform the Magistrate who ordered the surrender accordingly.

(2) The Magistrate concerned shall, on receipt of such notification, immediately cancel any order issued under section 15 (5).

PART V – CO-OPERATION AND JUDICIAL ASSISTANCE

21. Areas of co-operation and judicial assistance

(1) The State shall, subject to any other enactment and the Statute, co-operate with, and render assistance to, the International Criminal Court in relation to investigations and prosecutions in the following areas—

- (a) the identification and whereabouts of persons or the location of items;
- (b) the taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the International Criminal Court;
- (c) the questioning of any person being investigated or prosecuted;
- (d) the service of documents, including judicial documents;
- (e) facilitating the voluntary appearance of persons as witnesses or experts before the International Criminal Court;
- (f) the temporary transfer of persons in custody for purposes of identification or for obtaining testimony or other assistance;
- (g) the examination of places or sites, including the exhumation and examination of grave sites;
- (h) the execution of searches and seizures;
- (i) the provision of records and documents, including official records and documents;
- (j) the protection of victims and witnesses and the preservation of evidence;

- (k) the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of international crimes for the purpose of eventual forfeiture, without prejudice to the rights of *bona fide* third parties; and
- (l) any other type of assistance which is not prohibited by law, with the view to facilitating the investigation and prosecution of crimes within the jurisdiction of the International Criminal Court.

(2) The Attorney-General shall inform the International Criminal Court of any proceedings undertaken in Mauritius pursuant to Part II.

(3) Notwithstanding any other enactment, assistance may be rendered under this Part in respect of an offence which was committed prior to the commencement of this Act.

22. Request for assistance in obtaining evidence

(1) A request by the International Criminal Court for assistance in obtaining evidence in Mauritius for use in the International Criminal Court shall be submitted in writing to the Attorney-General.

(2) On receipt of such request, the Attorney-General shall satisfy himself that—

- (a) proceedings have been instituted in the International Criminal Court;
- (b) there are reasonable grounds for believing that an international crime within the jurisdiction of the International Criminal Court has been committed; or
- (c) an investigation in respect of the alleged crime is being conducted by the Prosecutor of the International Criminal Court.

(3) For the purposes of subsection (2), the Attorney-General may rely on a certificate issued by a Judge of the International Criminal Court or the Prosecutor of the International Criminal Court, confirming one or more of the requirements referred to in subsection (2).

(4) Where the Attorney-General is satisfied that one or more of the requirements referred to in subsection (2) have been complied with, he shall submit the request referred to in subsection (1) to the Magistrate within whose area of jurisdiction the witness resides or is believed to be present, as well as to the Director of Public Prosecutions.

23. Taking or production of evidence

(1) Where, in order to comply with a request, it is necessary for the evidence received by a Magistrate under Part IV to be verified in any manner, the Magistrate shall specify the nature of the verification required.

(2) A Magistrate may, where he thinks necessary in order to protect—

- (a) victims, witnesses, or a person alleged to have committed an international crime; or

(b) confidential or sensitive information,
direct that the public be excluded from the Court.

(3) The Magistrate shall ensure that a register is kept of the proceedings that indicates—

- (a) which persons with an interest in the matter were present;
- (b) which of those persons were represented and by whom; and
- (c) whether any of those persons was denied the opportunity of cross-examining a witness as to any part of his testimony.

(4) The register shall not be open to inspection except as authorised by the Attorney-General or with the leave of the Magistrate.

(5) A copy of the register of proceedings shall be sent to the Attorney-General for transmission to the International Criminal Court.

24. Examination of witnesses

(1) The Magistrate to whom a request has been forwarded in terms of section 22 (4) shall cause the person whose evidence is required to be summoned to appear before him to give evidence or to produce any book, document or object.

(2) On the appearance of that person, the Magistrate shall administer an oath to him and take the evidence of that person.

(3) On completion of the examination of the witness, the Magistrate taking the evidence shall, as soon as possible, transmit to the Attorney-General the record of the evidence certified by him to be correct, together with a certificate setting out the costs incurred in connection with the execution of the International Criminal Court's request, including any extraordinary costs which have emanated from the execution of that request.

(4) Where the services of an interpreter were used at the examination of the witness, the interpreter shall certify that he has translated truthfully and to the best of his ability and that certificate shall accompany the documents referred to in subsection (3).

(5) The Attorney-General shall, on receipt of the documents referred to in subsections (3) and (4), submit them to the Registrar of the International Criminal Court, indicating which costs emanating from the execution of the request, in his opinion, should be borne by the International Criminal Court in terms of Article 100 of the Statute.

25. Rights and privileges of witnesses

(1) In respect of the giving of evidence or the production of any book, document or object at an examination under section 24, the law of Mauritius relating to privilege applicable to such a witness in a Court in similar proceedings shall apply.

(2) A person summoned to appear before a Magistrate in terms of section 24 may be assisted by a law practitioner in the proceedings referred to in that section.

(3) Article 68 of the Statute shall apply to an examination under section 24.

26. Admissibility of documents

Any deposition, affidavit, record of any conviction or any document confirming any order of the International Criminal Court or any copy or sworn translation may be received in evidence at any proceedings under this Act where it is—

- (a) authenticated in the manner in which a foreign document has to be authenticated to enable it to be produced in any Court in Mauritius;
- (b) signed by a Judge of the International Criminal Court or any person authorised by him; or
- (c) authenticated in the manner provided for in any agreement with the International Criminal Court.

27. Disclosure prejudicial to national security

(1) Nothing in this Act shall require or authorise the production of a document or the disclosure of information, which would be prejudicial to the security of Mauritius.

(2) A certificate by or on behalf of the Prime Minister to the effect that it would be prejudicial to the security of Mauritius for a document to be produced, or for information to be disclosed shall be conclusive evidence of that fact.

28. Securing attendance of witnesses

(1) Every summons issued by a Judge or the Prosecutor of the International Criminal Court for the attendance of a person in any proceedings before the International Criminal Court shall be transmitted to the Attorney-General.

(2) On receipt of a summons, the Attorney-General shall immediately transmit it to the Magistrate within whose area of jurisdiction the person resides or is present.

(3) The Magistrate shall, if satisfied that the summons was issued by the International Criminal Court, endorse it for service upon such person, and the endorsed summons may be served as if it were a summons issued by the Magistrate.

(4) A return of service indicating that the summons was properly served on the person concerned, together with a certificate by the Magistrate to the effect that such person failed to appear at the time and place specified in the summons, shall be *prima facie* proof that the person failed to appear before the International Criminal Court.

29. Transfer of prisoner to give evidence or to assist in investigation

(1) Where the Attorney-General receives a request from the International Criminal Court or from its Prosecutor for the transfer of a prisoner in Mauritius into the custody of the International Criminal Court, for the purpose of giving evidence or assisting in an investigation, the Attorney-General shall transmit the request to the Commissioner of Prisons.

(2) Where the prisoner consents to the transfer, the Commissioner of Prisons may issue a warrant for the transfer of the prisoner into the custody of the International Criminal Court, in accordance with the arrangements made with the Registrar or the Prosecutor of the International Criminal Court.

(3) Any period of imprisonment served in the custody of the International Criminal Court by a prisoner transferred under this section shall be regarded as a period of imprisonment served in Mauritius for the purposes of calculating the remaining term of imprisonment of that person.

(4) The Commissioner of Prisons shall, where it appears that the term of imprisonment of the transferred prisoner will expire while that prisoner is still in the custody of the International Criminal Court, inform the Registrar of the Court in writing of the date on which that term of imprisonment will expire.

30. Attorney-General may request assistance

The Attorney-General may make a request to the International Criminal Court for assistance in accordance with this Part in an investigation into, or trial in respect of, conduct that may constitute an international crime within the jurisdiction of the International Criminal Court.

31. Consultations with International Criminal Court

(1) The Attorney-General shall consult with the International Criminal Court, without delay, if, for any reason, there are or may be problems with the execution of a request for co-operation.

(2) Before refusing a request for assistance of a kind mentioned in paragraph 1 (1) of Article 93 of the Statute, the Attorney-General shall consult with the International Criminal Court to ascertain whether the assistance requested could be provided—

- (a) subject to conditions; or
- (b) at a later date or in an alternative manner.

(3) Without limiting the types of conditions under which assistance may be provided, the Attorney-General may agree to information or documents being sent to the Prosecutor of the International Criminal Court on a confidential basis.

PART VI – OTHER FORMS OF ASSISTANCE

32. Request for enforcement of fine or forfeiture order

(1) Where the Attorney-General receives a request from the International Criminal Court for the enforcement of a fine or any order for forfeiture in Mauritius, he shall lodge with the Master and Registrar a certified copy of the order where he is satisfied that the order is not subject to any review or appeal and that the request is supported by—

- (a) a concise statement of the purpose of the request, and the assistance sought, including the legal basis and the ground for the request;
- (b) as much information as possible about the location or identification of any person or place that shall be found in order for the assistance sought to be provided;
- (c) a concise statement of the essential facts underlying the request;
- (d) the reasons for and details of any procedure or requirement to be followed;
- (e) such information as may be required by the law of Mauritius in order to execute the request; and
- (f) any other information that is available and may be relevant in the circumstances.

(2) The Master and Registrar with whom a certified copy of an order is lodged under subsection (1) shall register such order in respect of the persons or items specified therein.

33. Service of process

(1) Where the Attorney-General receives a request for assistance in effecting the service of any process or document, he shall send the request, together with the process or document, to the Master and Registrar for service on the person concerned.

(2) The Master and Registrar shall cause the process or document to be served on the person concerned in the manner specified in the request and shall send the return of service to the Attorney-General for transmission to the International Criminal Court.

34. Registration of sentence or compensatory order

(1) Where the Attorney-General receives a request from the International Criminal Court for assistance in Mauritius to recover a fine to which a person has been sentenced in criminal proceedings in the International Criminal Court, or for the execution of an order for the payment of compensation for damages to any person made in such proceedings, he shall ascertain that—

- (a) the sentence or order is final and not subject to review or appeal;

- (b) the person on whom the sentence was imposed or against whom the order was made, had the opportunity of defending himself;
- (c) the sentence or order cannot be satisfied in full except by confiscating and realising property; and
- (d) the person concerned holds property in Mauritius.

(2) On being satisfied of the requirements under subsection (1), the Attorney-General shall lodge with the Clerk of a Court in Mauritius having jurisdiction or the Master and Registrar, as the case may be, a certified copy of the document confirming the sentence or order.

(3) The Clerk of the Court or the Master and Registrar, as the case may be, shall forthwith give written notice of the registration of the sentence or order to the person on whom it was imposed or against whom it was made or who has effective control over the relevant property in Mauritius.

35. Registration of forfeiture order

(1) Where the Attorney-General receives a request for assistance in executing a forfeiture order in Mauritius made by the International Criminal Court, he shall ascertain that—

- (a) the order is final and not subject to review or appeal;
- (b) the person against whom the order was made had the opportunity of defending himself;
- (c) the order cannot be satisfied in full except by confiscating and realising property;
- (d) the order is enforceable by the International Criminal Court;
- (e) the person concerned holds property in Mauritius; and
- (f) the request is supported by—
 - (i) a concise statement of the purpose of the request, including the legal basis and the ground for the request;
 - (ii) as much information as possible about the location or identification of the property in question;
 - (iii) a concise statement of the essential facts underlying the request;
 - (iv) the reasons for and details of any procedure or requirement to be followed; and
 - (v) any other information that is available and may be relevant in the circumstances.

(2) On being satisfied that the requirements of subsection (1) have been complied with, the Attorney-General shall lodge with the Clerk of a Court in Mauritius having jurisdiction or the Master and Registrar, as the case may be, a certified copy of the forfeiture order.

(3) The Clerk or the Master and Registrar of the Court registering a forfeiture order shall forthwith issue a notice in writing, addressed to the person against whom the order has been made, to the effect that—

- (a) the order has been registered at the Court concerned; and
- (b) the said person may, within the prescribed period and in the prescribed manner, apply to that Court for the setting aside of the registration of the order.

(4) (a) Where the person against whom the forfeiture order has been made is present in Mauritius, the notice referred to in subsection (3) shall be served on the person in the prescribed manner.

(b) Where the said person is not present in Mauritius, he shall be informed of the registration of the forfeiture order in such manner as the Court may determine.

36. Effect of registration

(1) Notwithstanding any other enactment, a sentence or an order of the International Criminal Court shall have effect as a sentence or order of a Court in Mauritius.

(2) Any sentence or order registered in terms of section 34 or 35 shall have the effect of a civil judgment of a Court in favour of the State, as represented by the Attorney-General.

(3) A forfeiture order may not be executed before the expiry of the period within which an application for the setting aside of the registration may be made, or if such application has been made, before the application is finally determined.

(4) The Attorney-General shall, subject to any agreement or arrangement between the International Criminal Court and Mauritius, pay over to the International Criminal Court any amount realised in the execution of a sentence or recovered in terms of an order, less any expenses incurred in connection with the execution of such sentence or order.

37. Setting aside registration of forfeiture order

(1) On the application of any person against whom the registration of a forfeiture order in terms of section 35 has been made, the registration may be set aside if the Court at which it was registered is satisfied that—

- (a) the order was registered in breach of this Act;
- (b) the order is subject to review or appeal;
- (c) the person against whom the order was made, through no fault on his part, did not appear at the proceedings concerned or did not receive notice of the said proceedings as prescribed by the Statute or, if no such notice has been prescribed, that he did not receive reasonable notice of the proceedings so as to enable him to defend himself at the proceedings; or
- (d) the order has already been satisfied.

(2) The Court hearing an application referred to in subsection (1) may, at any time, postpone the hearing of the application to such date as it may determine.

38. Entry, search and seizure

(1) The International Criminal Court or the Prosecutor of the International Criminal Court shall submit any request for assistance in the entering and searching of premises, the search of a person and the seizure of a book, document or object that has a bearing on a crime or an offence committed within the jurisdiction of the International Criminal Court, to the Attorney-General in writing.

(2) The request shall contain sufficient information that there is reasonable ground for believing that the entry, search or seizure of the book, documents or object has a bearing on a crime or an offence committed within the jurisdiction of the International Criminal Court or that such entry, search or seizure of a book, document or object is necessary to determine if such a crime or such an offence has been so committed and that an investigation in that respect is being conducted by the Prosecutor of the International Criminal Court.

(3) On receipt of such a request, the Attorney-General shall forward it to the Commissioner of Police with a view to obtaining the necessary warrant required in the circumstances.

(4) A Magistrate may, if it appears to him from the information submitted that there is reasonable ground for believing that any book, document or object, which has a bearing on the investigation concerned, is in the possession or under the control of any person or on or in any premises within the Magistrate's area of jurisdiction, issue the necessary warrant required in the circumstances.

(5) The warrant shall clearly specify the acts which may be performed under it by the police officer to whom it is issued.

(6) The warrant shall remain valid until—

- (a) it is executed;
- (b) it is cancelled by the person who issued it or by any person with similar authority;
- (c) the expiry of 3 months from the date of its issue; or
- (d) the purpose for which the warrant was issued no longer exists, whichever may occur first.

(7) A police officer shall, immediately before executing the warrant—

- (a) identify himself to the person referred to in the warrant or the owner or person in control of the premises, if the person is present;

- (b) hand over to the person a copy of the warrant or, if the person is not present, affix that copy to a prominent place on the premises; and
- (c) supply the person at his request with particulars regarding his authority to execute the warrant.

(8) Every entry, search and seizure under this section shall be—

- (a) conducted with strict regard to decency and order, including the protection of a person's right to dignity, freedom, security and privacy; and
- (b) executed by day unless the execution by night is justifiable and necessary.

(9) The seizure of a book, document or object under this section shall be effected by removing it from the premises concerned or, if that removal is not reasonably practicable, by sealing or otherwise safeguarding it on or in the premises.

(10) A police officer who may under this section enter and search any premises—

- (a) shall, immediately before the entry, demand admission to the premises and make known the purpose of the entry and search, unless there is reasonable ground for believing that a book, document or object in respect of which the search is being conducted, may be destroyed, disposed of or tampered with if that admission is first demanded and that purpose is made known;
- (b) may use such force as is reasonably necessary to overcome resistance to the entry or search or the seizure of a book, document or object under this section;
- (c) may utilise or request the assistance of any person to identify any book, document or object which has a bearing on the alleged crime or offence or to conduct the entry or search or the seizure of any book, document or object under this section.

(11) A person from whose possession or control a book, document or object has been removed under this section may, at his own expense and under the supervision of a police officer, make a copy or take an extract from it.

(12) A police officer who removes a book, document or object from any premises under this section shall issue a receipt to the person who is the owner, or in possession or in control, of the premises or, if that person is not present, affix it to a prominent place on the premises.

(13) Where, during the conduct of a search or the carrying out of a seizure under this section, a person claims that a book, document or object found on or in the premises contains privileged information and refuses the examination or removal of the book, document or object, the police officer conducting the search or carrying out the seizure shall, if he is of the opinion

that the book, document or object contains information which has a bearing on the alleged crime or offence, seize the book, document or object and submit it to the Magistrate having jurisdiction for safe custody until a Court has made a ruling on the question whether the information is privileged or not.

(14) Where the information is found not to be privileged, the book, document or object seized under this section shall be handed over to the International Criminal Court or the Prosecutor of the International Criminal Court.

(15) Where criminal proceedings, in respect of which a book, document or object has been seized under this section, are not instituted within a reasonable time after the seizure or it appears that the book, document or object is not required in criminal proceedings for the purposes of evidence or an order of the International Criminal Court, the Attorney-General shall request the International Criminal Court or the Prosecutor of the International Criminal Court to return the book, document or object to the person from whom it was seized.

PART VII – ENFORCEMENT OF SENTENCE OF IMPRISONMENT

39. Enforcement of sentence of imprisonment

(1) Where the International Criminal Court, in terms of paragraph 1 of Article 103 of the Statute, designates Mauritius as a State in which a person upon whom the International Criminal Court has imposed a sentence of imprisonment shall serve that sentence, it shall inform the Attorney-General as soon as possible of such designation.

(2) The Attorney-General may accept the International Criminal Court's designation on such conditions as he thinks fit and inform the International Criminal Court accordingly.

(3) (a) Where the International Criminal Court accepts any such conditions, any person on whom the International Criminal Court has imposed a sentence of imprisonment shall, subject to Article 104, paragraph (b) of the Statute, be committed to a prison in Mauritius and a warrant for his detention lawfully issued by the International Criminal Court shall be deemed to be a valid warrant for the purposes of the Reform Institutions Act.

(b) Where the International Criminal Court decides to transfer a sentenced person referred to in paragraph (a) to a prison of another State, the Attorney-General shall, in consultation with the Commissioner of Prisons, arrange for the removal of that person from Mauritius in the custody of a person authorised by the International Criminal Court and section 19 shall apply to that person.

(4) (a) Subject to Articles 105 and 106 of the Statute, a person referred to in subsection (3) shall be subject to the Reform Institutions Act.

(b) A sentence of imprisonment referred to in subsection (3) (a) may only be modified by the relevant authorities in Mauritius at the request of the

International Criminal Court, as a result of an appeal by the person serving the sentence to or review by, the International Criminal Court in terms of its Rules.

(c) The State shall, as far as possible, ensure that communications between persons serving a sentence referred to in subsection (3) (a) and the International Criminal Court can take place freely and confidentially.

PART VIII – MISCELLANEOUS

40. Attorney-General may enter into agreement

(1) The Attorney-General may, on such conditions as he thinks fit, enter into any agreement with the International Criminal Court, including any agreement relating to the provision of assistance to the International Criminal Court and he may agree to any amendment or revocation of such agreement.

(2) Any agreement entered into under subsection (1) and any amendment or revocation to such an agreement shall be published in the *Gazette*.

41. Act not to limit provision of other assistance

Nothing in this Act may be construed so as to prevent or abrogate or derogate from any arrangement or practice for the provision of assistance to the International Criminal Court otherwise than in the manner provided for by this Act.

42. Conversion of currencies

Where any amount payable in terms of an order registered under section 34 or 35 is expressed in a currency other than that of Mauritius, the conversion shall be made at the rate legally applicable as published by the Bank of Mauritius, at the time and place of, and to the currency utilised in, the underlying expenditure or transaction.

43. Regulations

(1) The Attorney-General may make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide for—

- (a) the proof of any matter for the purposes of this Act;
- (b) giving effect to any provision of the Statute;
- (c) prescribing any matter which it is necessary or expedient to prescribe for attaining the objects of the Act.

(3) Regulations made under subsection (1) may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 5 years.

44. — 45. —

SCHEDULE

[Section 2]

PART I – CRIME AGAINST HUMANITY

1. “Crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack—

- (a) deportation or forcible transfer of population;
- (b) enforced disappearance of persons;
- (c) enslavement;
- (d) extermination;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) murder;
- (g) persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law in connection with any act referred to in this paragraph or any crime within the jurisdiction of the International Criminal Court;
- (h) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
- (i) the crime of apartheid;
- (j) torture;
- (k) any other inhumane act of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1—

“attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit the attack;

“deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

“enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time;

“enslavement” means the exercise of any power attaching to the right of ownership over a person and includes the exercise of that power in the course of trafficking in persons, in particular women and children;

“extermination” includes the intentional infliction of conditions of life, such as the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

“forced pregnancy” means, subject to the domestic law of a State relating to pregnancy, the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law;

“persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

“the crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

“torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in one’s custody or under one’s control but shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

3. For the purposes of paragraphs 1 and 2, “gender” refers to both sexes, male and female, within the context of society and does not indicate any different meaning.

PART II – GENOCIDE

“genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, by—

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

PART III – WAR CRIME

“war crime” means—

- (a) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention—
 - (i) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (ii) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (iii) taking of hostages;
 - (iv) torture or inhuman treatment, including biological experiments;
 - (v) unlawful deportation or transfer or unlawful confinement;

- (vi) wilful killing;
- (vii) wilfully causing great suffering, or serious injury to body or health;
- (viii) wilfully depriving a prisoner of war or other protected person of the rights of a fair and regular trial;
- (b) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts—
 - (i) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f) of the Statute, enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (iv) compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (v) conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities;
 - (vi) declaring abolished, suspended or inadmissible in a Court of law the rights and actions of the nationals of the hostile party;
 - (vii) declaring that no quarter will be given;
 - (viii) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (ix) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (x) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xi) employing poison or poisoned weapons;
 - (xii) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to the Statute, by an amendment in accordance with the relevant provisions set forth in Articles 121 and 123;
 - (xiii) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

- (xiv) intentionally directing attacks against buildings, materials, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (xv) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (xvi) intentionally directing attacks against personnel, installations, materials, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (xvii) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (xviii) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (xix) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- (xx) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (xxi) killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xxii) making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (xxiii) pillaging a town or place, even when taken by assault;
- (xxiv) subjecting a person who is in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person;
- (xxv) the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (xxvi) utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

- (c) in the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause—
- (i) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (ii) taking hostages;
 - (iii) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted Court, affording all judicial guarantees which are generally recognised as indispensable;
 - (iv) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (d) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts—
- (i) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f) of the Statute, enforced sterilisation, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
 - (ii) conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities;
 - (iii) declaring that no quarter will be given;
 - (iv) intentionally directing attacks against buildings, materials, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (v) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (vi) intentionally directing attacks against buildings, materials, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (vii) intentionally directing attacks against personnel, installations, materials, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (viii) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ix) killing or wounding treacherously a combatant adversary;

- (x) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (xi) pillaging a town or place, even when taken by assault;
 - (xii) subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the persons concerned nor carried out in their interest, and which cause death to or seriously endanger the health of such persons;
 - (xiii) employing poison or poisoned weapons;
 - (xiv) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xv) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
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