



THE REPUBLIC OF KENYA

LAWS OF KENYA

INTERNATIONAL CRIMES ACT

NO. 16 OF 2008

Revised Edition 2009 [2008]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

NO. 16 OF 2008

INTERNATIONAL CRIMES ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title.
2. Interpretation.
3. Act to bind the Government.
4. Rome Statute to have force of law.
5. Obligations imposed by Rome Statute or ICC Rules.

**PART II – INTERNATIONAL CRIMES AND OFFENCES
AGAINST ADMINISTRATION OF JUSTICE**

International Crimes

6. Genocide, etc.
7. General principles of criminal law.
8. Jurisdiction to try offences under section 6.

Offences against Administration of Justice

9. Bribery of judges and officials.
10. Obstructing justice.
11. Obstructing officials.
12. Perjury.
13. Witness giving contradictory evidence.
14. Fabricating evidence.
15. Offences relating to affidavits.
16. Intimidation.
17. Retaliation against witnesses.
18. Jurisdiction to try offences under sections 9 to 17.
19. Co-operation as regards offences against administration of justice.

**PART III – GENERAL PROVISIONS
RELATING TO REQUESTS FOR ASSISTANCE**

20. Requests for assistance.
21. Requests to be made through authorised channel.
22. Urgent requests.
23. Execution of requests.
24. Consultation.
25. Confidentiality of request.
26. Response to be sent to ICC.
27. Official capacity of person no bar to request.

PART IV – ARREST AND SURRENDER OF PERSONS TO ICC

*Request for Arrest and Surrender**Section*

- 28. Request for arrest and surrender.
- 29. Minister to request issue of arrest warrant.
- 30. Issue of arrest warrant.
- 31. Cancellation of warrant.

Provisional Arrest in Certain Cases

- 32. Provisional arrest warrant.
- 33. Notice to be given to Minister.
- 34. Procedure where provisional arrest warrant issued.

Remand and Bail

- 35. Procedure following arrest.
- 36. Procedure for bail.
- 37. Powers of High Court.
- 38. Detention in place other than prison.

Eligibility for Surrender

- 39. Determination of eligibility for surrender.
- 40. Adjournment of hearing.
- 41. Surrender by consent.
- 42. Procedure following determination on eligibility or consent to surrender.

Surrender and Temporary Surrender

- 43. Minister to determine whether person to be surrendered.
- 44. Surrender order may take effect at later date.
- 45. Temporary surrender to ICC.
- 46. Decision to return to Kenya after trial.
- 47. Request to return to ICC after temporary surrender.
- 48. Kenyan sentences continue to run.
- 49. Form and execution of surrender order or temporary surrender order.
- 50. Surrender to State of enforcement.

Restrictions on Surrender

- 51. Refusal of surrender.
- 52. Postponement of execution of request for surrender.
- 53. Previous proceedings against person sought.
- 54. Ongoing Kenyan investigation or proceedings involving different conduct.
- 55. Person being prosecuted in Kenya for same conduct.
- 56. Other challenges to admissibility.
- 57. Request from ICC and other State relating to same conduct.
- 58. Procedure where competing request from State Party.
- 59. Procedure where competing request from non-State Party.
- 60. Request from ICC and other State relating to different conduct.
- 61. Notification of decision on extradition to requesting State.
- 62. Conflict with obligations to another State.

*Appeals against Determinations of Eligibility for Surrender***Section**

- 63. Appeal on question of law by way of case stated.
- 64. Custody pending determination of appeal.
- 65. Waiver of rights to apply for *habeas corpus* or to lodge appeal.
- 66. Powers of court on appeal.
- 67. Further provisions relating to powers of court on appeal.

Discharge of Person

- 68. Discharge of person if Minister declines to order surrender.
- 69. Discharge of person if not surrendered within two months.
- 70. Discharge of person if not re-surrendered.
- 71. Discharge of person under this Part does not preclude further proceedings.

Miscellaneous Provisions relating to Arrest and Surrender

- 72. Search and seizure on arrest.
- 73. Disposal of property seized.
- 74. Information about time spent in custody in Kenya.
- 75. Consent to trial of surrendered person for previous offences.

**PART V – DOMESTIC PROCEDURES
FOR OTHER TYPES OF CO-OPERATION**

Finding Persons or Things, and Obtaining Evidence

- 76. Assistance in locating or identifying persons or things.
- 77. Assistance in gathering evidence.
- 78. Taking evidence.
- 79. Producing documents or other articles.
- 80. Protection of witnesses.
- 81. ICC may give evidence certificate.
- 82. Certain persons may appear.
- 83. Powers of Judge may be exercised by Registrar.

Questioning Persons

- 84. Assistance in questioning persons.
- 85. Procedure where questioning by Kenyan agency.

Service of Documents and Appearance of Witnesses

- 86. Assistance in arranging service of documents.
- 87. Request for voluntary appearance of witness.
- 88. Consent required and assurances may be sought.
- 89. Attorney-General may facilitate appearance.

Temporary Transfer of Prisoners

- 90. Request for temporary transfer of prisoner.
- 91. Consent required and assurances may be sought.
- 92. Attorney-General may arrange for transfer.
- 93. Effect of transfer on prisoner's sentence.
- 94. Request for information about time spent in custody overseas.