

**Draft Statute of the Criminal Court for Latin America and the Caribbean against transnational organized crime**

**December 2017**

\*Possible member countries: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

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## **PART I. ESTABLISHING THE COURT**

### **Article 1 – Principles, Definitions and Purposes**

1. This international treaty establishes the Criminal Court for Latin America and the Caribbean against transnational organized crime, hereinafter “the Court.”
2. The Court shall be a permanent institution, complementary to the national systems of criminal justice. Its purpose shall be to investigate and prosecute the leaders and heads of criminal organizations responsible for committing the crimes indicated herein and in the United Nations Convention Against Transnational Organized Crime and their attached protocols (Palermo Convention, 2000), in accordance with the mechanisms established herein.

For these purposes, the Court will be authorized to exercise its jurisdiction over persons for acts that constitute a transnational crime committed by organized criminal groups in cases that the national systems of justice are unwilling or unable to try.

### **Article 2 – Independence of the Court and Relationship with Other International and Regional Organizations**

1. The Court will be independent of any pre-existing international or regional organization and of any that may be created in the future. It may cooperate with them through an agreement that must be approved by the Assembly of States Parties (ASP) using the mechanisms established herein.
2. Nothing herein shall be interpreted in a way that in any manner limits or diminishes existing or developing standards of international law for purposes other than this Statute.

### **Article 3 - Seat of the Court**

1. The Court will sit in the territory of one of the States Parties, the location to be determined during the first session of the Assembly of States Parties.
2. The Court will conclude with the host State an agreement regarding both the establishment and proper functioning of the headquarters, as well as diplomatic immunities indicated herein. The host State will be responsible for ensuring the security of the members, officials and others involved in the cases under the Court's jurisdiction, as well as the security of the diplomatic seat of the Court, as established in this statute.
3. The Court may sit elsewhere if it sees fit, in accordance with the terms hereof.

**Article 4 – Legal Status and Powers of the Court**

1. The Court will have international legal status and the necessary legal capacity for the fulfilment of its purposes and the performance of its duties.
2. The Court may exercise its duties and powers in accordance with the terms hereof in the territory of any State Party and, by special agreement, in the territory of any other State that so requests.

## **PART II. COMPETENCE, ADMISSIBILITY AND APPLICABLE LAW**

### **Article 5 - Crimes within the jurisdiction of the Court**

1. The Court will be competent to judge those who direct, administer, organize or promote a transnational organized criminal group intended to commit any of the following crimes:

- a) Illicit Trafficking in Narcotic Drugs and Psychotropic Substances
- b) Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition
- c) Trafficking in Persons
- d) Smuggling of Migrants
- e) Trafficking in Cultural Property
- f) Money Laundering
- g) Transnational Bribery

2. The Assembly of States Parties, by a majority of two thirds of its members, may extend the jurisdiction of the Court to additional crimes, and must consider any further crime added to the Palermo Convention at the first session of the ASP following the adoption of said new crime.

3. For the crimes included in paragraph 1 of this article, the Court may impose a penalty of 4 to 30 years of imprisonment, plus the accessory penalties stipulated herein.

### **Article 6 – Definitions**

1. “Organized criminal group” means a structured group of three or more persons, existing for a period of time, and acting in concert with the aim of committing one or more crimes specified herein, in order to obtain, directly or indirectly, a financial or other material benefit.

2. The crime will be considered transnational if:

- a) It is committed in more than one State;
- b) It is committed within one State but a substantial part of its execution, direction or control is carried out in another State or States;

c) It is committed in one State but has substantial effects in another State or States, or the proceeds of the crime are used in another State or States.

3. a) "Trafficking of narcotics" means the production, manufacture, extraction, preparation, supply, distribution, sale, delivery in any condition, brokerage, shipment, shipment in transit, transport, importation, exportation or financing of operations concerning any of the above for any narcotic or psychotropic substance, contrary to current international law.

b) "Firearm" means any weapon covered in the Protocol against the illicit manufacture and trafficking of firearms, their parts and components and ammunition, as a supplement to the United Nations Convention against transnational organized crime.

c) "Trafficking of persons" means the capture, transport, transfer, taking or receiving of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deceit, abuse of power or of a situation of vulnerability, the granting or receiving of payments or benefits to obtain the consent of a person who has authority over another for the purposes of exploitation, or the financing of operations concerning the above. It will at least include the exploitation of the prostitution of others and any other form of sexual exploitation, forced labor or services, slavery and similar practices, servitude and the extraction of organs, under the Protocol to Prevent, Suppress and Punish the Trafficking of Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

d) "Smuggling of migrants" means facilitating the illegal entry of a person to a State Party of which he or she is not a national or resident, for the purpose of obtaining, directly or indirectly, a financial or other material benefit, as established in the Protocol against the Illicit Trafficking of Migrants by Land, Sea and Air, which is a supplement to the United Nations Convention against Transnational Organized Crime.

e) "Illicit trafficking of cultural property" means the importation, exportation or transfer of ownership of cultural property, in violation of the provisions adopted by the States Parties under the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the UNIDROIT Convention for Stolen or Illicitly Exported Cultural Objects, and the Convention on Measures to Prohibit and Impede the Illicit Importation, Exportation and Transfer of Ownership of Cultural Property.

f) 'Money laundering' means the process by which the assets of illicit origin from any of the crimes specified herein or in the legislation of the States Parties, understood as the previous crime, enter the legal economic system as having been obtained lawfully, whether by converting, transferring, administering, selling, taxing, simulating or in any other way putting the goods on the market, provided that they are worth more than ten million U.S. dollars (US\$10,000,000) or the equivalent, whether in a single or successive acts.

If the above-mentioned crime is subject to a final sentence in one of the States Parties, it will be considered to have been committed in both States when the one in which the money laundering operation as defined in the United Nations Convention against Corruption took place is a State other than the one in which the crime was first committed.

#### **Article 7- Temporal Jurisdiction**

1. The Court will only have jurisdiction over crimes committed after the entry into force of this Statute.
2. For States that join subsequently, the Court will exercise its jurisdiction only for crimes committed after this Statute comes into force for that State.

#### **Article 8 - Personal Jurisdiction**

The Court will have jurisdiction only over persons who were at least eighteen (18) years old at the time of the alleged commission of a crime.

#### **Article 9 – Prerequisites for the Exercise of Jurisdiction**

1. The States Parties hereto accept the jurisdiction of the Court for the crimes specified herein.
2. States that are not parties hereto and request the Court to intervene must deposit their request with the Secretary of the Court, and consent to having the Court exercise its jurisdiction for the crime in question. The accepting State will cooperate with the Court without delay or exception, as provided herein.

#### **Article 10 - Questions of Admissibility**

1. Keeping in mind article 1, the Court will determine the admissibility of a case on the basis of the following:
  - a. The case has not been investigated or tried by a State that has jurisdiction over it, because it was unwilling or unable to do so.
  - b. The accused was subject to an international arrest order and at least six months passed without the execution of his arrest.
  - c. The State Party with jurisdiction over the case issued a final sentence of not guilty, and agreed to have the case heard by the Court as *res judicata irrita*.
  - d. The case has not previously been nor is currently subject to an investigation or trial by an international or regional tribunal.

2. In the cases mentioned above, in order to determine the inability or failure to decide to investigate or try a particular case, the Court will consider whether the State in question, owing to a total or substantial collapse of its national judicial system or to a lack thereof, is unable or unwilling to try the accused, but has the necessary evidence and testimony and/or to conduct the trial for any other reason of fact or law.

#### **Article 11 – Statutory Limitations**

1. The States Parties commit to amend their national constitutions so that the crimes under the jurisdiction of the Court are not subject to any statute of limitations.
2. Once all the States Parties have made these amendments, the crimes under the jurisdiction of the Court will not be subject to any statute of limitations.

#### **Article 12 – Intent**

1. Unless provided otherwise, a person will be criminally responsible and may be punished for a crime in the jurisdiction of the Court only if the material elements of the crime were committed intentionally and with knowledge of the material elements of the crime.
2. For the purposes of this article, an act is deemed intentional if:
  - a. The person in question meant to do it;
  - b. The consequence was intended, or the person in question was aware of what would happen in the normal course of events.
3. For the purposes of this article, “knowledge” means awareness of a particular circumstance or that a consequence would occur in the normal course of events. The terms “knowingly” and “with knowledge” have the same meaning.

#### **Article 13 - Circumstances Exempting Persons from Criminal Liability**

1. Without prejudice to the other exculpatory circumstances established herein, no person will be criminally responsible who, at the time of the action in question:

- a. Had a mental illness or deficiency that made him or her unable to appreciate the illegality or nature of his or her conduct, or limited his or her ability to control his or her conduct so as not to break the law;
- b. Was in a state of intoxication that deprived him of the ability to appreciate the illegality or nature of his conduct, or limited his ability to control his conduct so as not to break the law, unless he was intoxicated voluntarily, knowing that, as a result of being intoxicated, he would probably engage in conduct deemed to be a crime in the jurisdiction of the Court, or overlook the risk of that occurring;
- c. Was acting reasonably in his own or another person's defence or to protect property that was essential for his own or another person's survival from the imminent use of illicit force, such actions being in proportion to the degree of danger for him, the other person or the property being protected. Using force in an act of defence is not sufficient to exempt an individual from criminal liability under this paragraph;
- d. Engaged in conduct that would presumably be a crime under the jurisdiction of the Court as a consequence of coercion arising from a threat of imminent death or continued or imminent serious bodily harm for him or another person, and was compelled to act in a necessary and reasonable way to avoid that threat, provided that he did not intend to cause greater harm than the harm he was trying to avoid. That threat may:

d.i. Have been made by other persons, or

d.ii. Have arisen from circumstances beyond his control.

- 2. The Court will determine if the exculpatory circumstances admitted hereunder apply in the particular case.

#### **Article 14 - Error in Fact or Error in Law**

- 1. Errors of fact are exculpatory only if they remove the intent required for the crime.
- 2. Errors of law concerning whether a particular type of conduct constitutes a crime in the jurisdiction of the Court are not considered exculpatory. However, an error of law may be considered exculpatory if it was inevitable.

## **PART III. COMPOSITION AND ADMINISTRATION OF THE COURT**

### **Article 15 - Organs of the Court**

The Court will consist of the following organs: the Presidency; an Appeals Division, a Trial Division, and a Pre- Trial Division;; the Prosecution; the Defence; the Secretariat. Equitable representation of both genders will apply for all positions not subject to election by the States Parties.

### **Article 16 - Performance of the Duties of Magistrates**

1. The magistrates on the Court will be chosen to work exclusively in this position and will be available to perform their duties as soon as their term begins.
2. The magistrates who constitute the Presidency will perform their duties exclusively as soon as they are elected.
3. Depending on the volume of work of the Court, and in consultation with its members, the Presidency may decide how much time will be necessary for the other magistrates and officials to perform their duties exclusively.

### **Article 17 - Selection of Magistrates**

1. Each State Party must nominate a judge as a member of the Court. In appointing judges, it must follow the procedure provided for appointing members of its supreme court.
2. The judge proposed will join the Court upon approval by a simple majority of the Assembly of States Parties.
3. Judges will hold their position for seven years, and may not be re-elected.

### **Article 18 - Independence of Magistrates**

1. Magistrates will be independent in performing their duties.

2. Magistrates will not carry on any activity that may be incompatible with the exercise of their judicial duties or undermine confidence in their independence.
  
3. Magistrates who are required to perform their duties exclusively at the Court cannot hold any other professional position except teaching and research, provided that the volume or nature thereof does not interfere with the performance of their duties as magistrates of the Court.
  
4. Questions concerning the application of paragraphs 2 and 3 will be resolved by an absolute majority of the magistrates. The magistrate in question will not participate in the decision.

## **PART IV. VICTIMS AND THEIR RIGHTS**

### **Article 19 - Complainants**

1. The Court may admit as complainants the victims of the acts specified herein.
2. The Court may admit as complainants civil society organizations whose purpose is related to fighting organized crime.
3. The Court may admit as *amicus curiae* civil society organizations that, while not acting as witnesses, may provide information on the *modus operandi* of the persons and organizations under investigation, or any other information deemed relevant.

## **PART V. COMPOSITION AND ADMINISTRATION OF THE PROSECUTION**

### **Article 20 - The Prosecution**

1. The Prosecution will act independently as a separate organ of the Court. It will be tasked with receiving referrals and corroborated information on crimes under the jurisdiction of the Court, in order to proceed with an analysis and, if applicable, move forward with an investigation and prosecution before the Court. The members of the Prosecution will neither request nor comply with instructions from outside the Court.
2. The Prosecution will consist of a representative of each State Party hereto.
3. The Prosecution will be headed by the Prosecutor. The Prosecutor will have full authority to direct and administer the Prosecution, including the staff, facilities and other resources. The Prosecutor may be assisted by one or more deputy prosecutors, specially appointed for particular cases that so require, who may perform any of the appropriate duties hereunder. The prosecutors must be of different nationalities, and will perform their duties exclusively; they may have no other professional or commercial occupation, except for academia.
4. The Prosecutors will be of high moral character, with a high level of competence and extensive practical experience in prosecuting or substantiating criminal cases. They must have an excellent knowledge and mastery of at least one of the working languages of the Court.
5. The Prosecutor will be elected in a secret ballot by an absolute majority of the members of the Assembly of States Parties. He will hold his position for nine years and cannot be re-elected.
6. The Prosecutor will not carry on any activity that may interfere with the performance of his duties or reduce confidence in his independence.
7. The Presidency may, at the request of the Prosecutor, relieve him or her of acting in a particular case.

8. The Prosecutor will not participate in any case that, on any ground, may reasonably cast doubt on his or her impartiality.
9. The Prosecutor will name expert legal advisers on specific issues, such as sexual violence, gender-based violence and violence against children, drug trafficking, money laundering or any other subject that may require specialized knowledge or expertise.
10. As an exception to the principle of the public nature of hearings, the chambers of the Court may, in order to protect victims and witnesses, or an accused, order part of a trial to be held *in camera* or authorize the presentation of evidence by electronic or other special means. In particular, these measures will apply in the case of victims of sexual violence or minors who are victims or witnesses, unless otherwise decided by the Court considering all the circumstances, especially the opinion of the victim or witness concerned.
11. Throughout any phase of the trial, as deemed appropriated by the Court, the Court will allow for victims to bring forward opinions and observations if their personal interests are affected, but must do so in a manner that is not detrimental to the rights of the accused, or to a fair and impartial trial, or incompatible therewith. The legal representatives of the victims may present these opinions and observations when the Court sees fit, in accordance with the Rules of Procedure and Evidence.
12. When the disclosure of evidence or information hereunder would seriously endanger the security of a witness or his family, the Prosecutor may, for the purposes of any proceeding prior to the trial, not present this evidence or information, and instead present a summary thereof. Such measures cannot prejudice the rights of the accused, or the right to a fair and impartial trial, or be incompatible therewith.
13. Any State may request any measures as may be necessary to protect its officials or agents, as well as the confidentiality or secrecy of information.

## **PART VI. COMPOSITION AND ADMINISTRATION OF THE DEFENCE**

### **Article 21 - The Defence**

1. The Defence is an organ that ensures access to justice and comprehensive legal assistance, in individual and collective cases, in accordance with the principles, duties and provisions established herein. It takes any action to protect and defend the fundamental rights of individuals, especially those who are vulnerable and do not have their own legal defence.
2. The Defence will consist of 10 defence attorneys, eligible for the case of an accused who does not have his own defence attorney. The said defence attorney will not act permanently, but only when called upon.
3. The Defence will consist of persons of high moral character, with a high level of competence and extensive practical experience in criminal trials or the substantiation of criminal cases. They must have an excellent knowledge and mastery of at least one of the working languages of the Court.
4. The Defence Attorney will be elected in a secret ballot by an absolute majority of members of the Assembly of States Parties. He will hold his position for nine years and cannot be re-elected.
5. The Defence will have access to expert legal advisers appointed by the prosecution as specified herein.

## **PART VII. COMPOSITION AND ADMINISTRATION OF THE SECRETARIAT**

### **Article 22 - The Secretariat**

1. The Secretariat will be responsible for the non-judicial aspects of the administration of the Court and for providing it with services.
2. The Secretariat will be directed by the Secretary, who will be the chief administrative officer of the Court. The Secretary will exercise his duties under the authority of the President of the Court.
3. The Secretary must be a person of good moral character, highly competent and have an excellent knowledge and mastery of at least one of the working languages of the Court.
4. The Assembly of States Parties will recommend candidates for the position of secretary, who will be selected by the President.
5. The Secretary will serve for four years; he will hold this position exclusively and his term is renewable once.

## **PART VIII. COMPOSITION AND ADMINISTRATION OF THE STAFF**

### **Article 23 - The Staff**

1. The Prosecutor and the Defence Attorneys will appoint the qualified officials needed in their respective offices. In the case of the Prosecutor, this will include the appointment of investigators.
2. In appointing the officials, the Prosecutor and the Defence Attorneys will ensure the highest level of efficiency, competence and integrity.
3. The Secretary, with the consent of the Presidency, will propose regulations for staff, setting forth the conditions for appointing, compensating and dismissing the staff of the Court. The Staff Regulations will be subject to approval by the Assembly of States Parties.
4. The Court may, in exceptional circumstances, call on the expertise of staff provided free of charge by States Parties or intergovernmental or non-governmental organizations to collaborate in the work of any organ of the Court. The Prosecutor and the Defence may accept such offers in their respective fields. The staff provided free of charge will be employed in accordance with rules established by the Assembly of States Parties.

## **PART IX. THE ASSEMBLY OF STATES PARTIES**

### **Article 24 - Assembly of States Parties**

1. An Assembly of the States Parties hereto is established. Each State Party will have a representative in the Assembly, who may be accompanied by alternates and advisers. Other States signatories of this Statute or of the Final Act may participate in the Assembly as observers.

2. The Assembly will:

- a. Consider and approve, as appropriate, the recommendations of the Preparatory Committee;
- b. Supervise the Presidency, the Prosecutor and the Secretariat on matters related to the administration of the Court;
- c. Consider the reports and activities of the Board pursuant to paragraph 3 and take the appropriate action with respect thereto;
- d. Consider and decide on the budget of the Court;
- e. If appropriate, in accordance with article 36, change the number of magistrates;
- f. Perform the other duties under this Statute and the Rules of Procedure and Evidence.

3. The Assembly will have a Board, consisting of a President, two Vice Presidents and 18 members elected by the Assembly for a period of three years;

- a. The Board will be representative, taking into account, in particular, the principle of equitable geographic distribution and proper representation of the principal legal systems of the world;
- b. The Board will meet as often as necessary, but at least once a year, and will assist the Assembly in the performance of its duties.

4. The Assembly may establish the subsidiary organs that it deems necessary, including an independent supervision mechanism responsible for inspecting, evaluating and investigating the Court in order to make it more effective and efficient.

5. The President of the Court, the Prosecutor and the Secretary or their representatives may, as appropriate, participate in sessions of the Assembly and of the Board.
6. The Assembly will meet at the seat of the Court or at United Nations Headquarters once a year and, when required, hold extraordinary sessions. Unless indicated otherwise herein, the extraordinary sessions will be convened by the Board on its own initiative or on request by a third of the States Parties.
7. Each State Party will have one vote. The Assembly and the Board will do everything possible to reach decisions by consensus. If they cannot reach consensus, and unless this Statute provides otherwise:
  - a. Decisions on fundamental questions will be by a two-thirds majority of those present and voting, and an absolute majority of the States Parties will constitute a quorum for voting;
  - b. Decisions on questions of procedure will be made by a simple majority of the States Parties present and voting.
8. States Parties that are in arrears in paying their financial contributions to the expenses of the Court will not have a vote in the Assembly and on the Board, if the amount owed is equal to or greater than the total of the contributions owed for the previous two full years. Nevertheless, the Assembly may permit such States to vote in the Assembly and on the Board if the Assembly concludes that the delay is due to circumstances beyond the control of the State Party concerned.
9. The Assembly will approve its own standing orders.
10. The official and working languages of the Assembly will be Spanish, Portuguese and English.

## **PART X. COMMON PROVISIONS FOR ALL THE ORGANS, PARTIES, WITNESSES, VICTIMS AND COMPLAINANT ORGANIZATIONS**

### **Article 25 - Privileges and Immunities**

1. The Court shall enjoy, in the territory of each State Party, such privileges and immunities as are necessary for the fulfilment of its purposes.
2. The magistrates, the prosecutor and deputy prosecutors, the defence attorney, the complainants and the Secretary, when performing their duties or in relation thereto, will have the same privileges and immunities granted to the heads of diplomatic missions. Once their term of office has ended, they will continue to be accorded immunity from legal process of every kind in respect of words which had been spoken or written and acts which had been performed by them in their official capacity.
3. The private defence attorneys, experts, witnesses or other persons whose presence is required in the Court will be treated as required for the proper operation of the Court, in accordance with the agreement on the privileges and immunities of the Court.

### **Article 26 – Protection of Witnesses, Victims, Experts and Complainants**

1. Using the security forces placed at its disposal by the States Parties, the Court will provide the protection that it considers necessary for all the witnesses, victims, experts, complainants, members of organizations presenting *amicus curiae* briefs and officials of all organs of the Court.
2. The Court will create a system to protect witnesses, victims, experts and complainants and make it available to all who request it, in cases where their physical safety is in danger.
3. The Court may also offer this protection to witnesses, victims, experts and complainants participating in proceedings related to organized crime, if the judges of the State concerned so request.

4. The system mentioned above will be the one already offered by the States Parties in their domestic legislation. This protection will be in effect from the start of the trial until 10 years after the sentence.

#### **Article 27 - Salaries, Stipends and Living Allowances**

The Magistrates, the Prosecutor, the Defence Attorney and the Secretary will receive the salaries, stipends and living allowances decided by the Assembly of States Parties. These salaries and stipends will not be reduced during their term of office.

#### **Article 28 - Official and Working Languages**

1. The official languages of the Court will be Spanish, Portuguese and English. The sentences of the Court, as well as other decisions on fundamental questions before the Court, will be published in the official languages. The Presidency, in accordance with the criteria established in the Rules of Procedure and Evidence, will determine what decisions concern fundamental questions for the purposes of this paragraph.
2. The working languages of the Court will be Spanish, Portuguese and English. The Rules of Procedure and Evidence will determine in what cases other official languages may be used as a working language.
3. The Court will authorize any of the parties or any of the States that are permitted to intervene in a proceeding, at their request, to use a language other than Spanish, Portuguese and English, when it sees fit to do so.

## **PART XI. RIGHTS OF THE ACCUSED**

### **Article 29 - Rights of the Accused**

1. Presumption of innocence:
  - a. Everyone will be presumed innocent until proven guilty before the Court in accordance with applicable law.
  - b. It will fall to the Prosecutor to prove the guilt of the accused.
  - c. In issuing a guilty verdict, the Court must be convinced that the accused is guilty beyond any reasonable doubt.
  
2. In responding to any charge, the accused will have a right to be heard publicly, taking into account the provisions of this Statute, and to a fair and impartial trial, as well as the following minimum guarantees:
  - a. To be informed without delay and in detail, in a language that he understands and speaks perfectly, of the nature, the cause and the content of the charges against him;
  - b. To have sufficient time and resources to prepare his defence and to communicate freely and confidentially with a defence attorney of his choice;
  - c. To be judged without undue delay;
  
3. The accused will have a right to be present during the trial and to defend himself personally or be assisted by a defence attorney of his choice; to be informed, if he does not have a defence attorney, of his right to one and, if it is in the interest of justice, a defence attorney will be appointed for him, at no cost to him if he cannot pay;
  - a. To question witnesses for the prosecution or have them questioned and to have witnesses for the defence appear and be questioned under the same conditions as witnesses for the prosecution. The accused will also have a right to object and to present any other admissible evidence in accordance herewith;

- b. To be assisted free of charge by a competent interpreter and to obtain the translations required for the sake of equity, if the proceedings in Court or the documents presented to the Court are in a language that he neither understands nor speaks;
  - c. To not be obliged to testify against himself or to admit guilt and to remain silent, without this being held against him in determining his guilt or innocence;
  - d. To testify orally or in writing in his defence without swearing an oath; and
  - e. To not bear the burden of proof or be required to present evidence in reply.
4. In addition to any other disclosure of information stipulated herein, the Prosecutor will disclose to the defence, as soon as possible, the evidence in his possession or under his control and that, at trial, would indicate or tend to indicate the innocence of the accused or to reduce his guilt or that may affect the credibility of the evidence presented by the prosecution.

## **PART XII. PENALTIES**

### **Article 30 - Applicable Penalties**

1. The Court will apply the penalties provided herein, taking into account the aggravating and extenuating factors of the particular case, and considering as aggravating the hierarchical position of the accused within the structure of the criminal organization, whether he was a public official under the domestic law of the States Parties, and also the number of States in which the crime was committed. The Court will also consider as an aggravating factor the use of protected legal goods, whether for transnational organized crimes or for related offences specified by the States Parties, in accordance with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and their additional protocols.
  
2. The Judge may reduce the penalty if the accused:
  - a) Reveals the identity of accomplices, participants or accessories after the fact of the acts under investigation or of related acts, providing sufficient information to bring them to trial or to significantly advance the investigation.
  - b) Provides information for seizing instruments, objects or effects related to the crimes described here as well as valuables, goods, money or any other important asset used in committing the crime.
  - c) Provides information that will lead to the dismantling of organizations intending to commit the crimes described here.
  
3. Furthermore, the Court may:
  - a. Impose a fine under the terms of the Rules of Procedure and Evidence.
  - b. Order seizure of the proceeds, goods and assets arising directly or indirectly from this crime, without prejudice to the rights of third parties in good faith.
  - c. Submit to the pertinent judicial bodies of the States Parties a request for confiscation to be considered and applied for the above purposes under current national law.

### **Article 31 – Precautionary Measures**

1. The Court may embargo and seize goods and apply any type of precautionary measure for the persons and objects involved in the trial.

### **Article 32 - Imposition of the Penalty**

1. The Court, in imposing a prison sentence, will consider the time already served in detention.
2. When a person is found guilty of more than one crime, the Court will impose a penalty for each one of them, and a common penalty specifying the total length of the prison sentence.

### **Article 33 - Trust Fund**

1. The Assembly of States Parties will establish a trust fund to benefit victims of crimes, and their families, in the jurisdiction of the Court.
2. The Court may order that money and goods received as fines or seized be transferred to the Trust Fund.
3. The Trust Fund will be administered according to criteria set by the Assembly of States Parties.

### **Article 34- Application of Penalties by Countries and National Legislation**

1. Nothing in this paragraph will interfere with the enforcement of pre-existing penalties at the national level. The penalties established by this Court will not be combined with them but will be enforced after.

## **PART XIII. INTERNATIONAL COOPERATION, JUDICIAL ASSISTANCE AND THE SECURITY FORCES**

### **Article 35 - General Obligation to Cooperate**

The States Parties, in accordance with the terms hereof, will cooperate fully with the Court in relation to the investigation and prosecution of crimes in the jurisdiction of the Court, in accordance with the Inter-American Convention on Mutual Assistance in Criminal Matters.

### **Article 36 - Terms Used**

For the purposes hereof:

1. "Surrender" means the surrender of a person by a State to the Court in accordance with the terms hereof;
2. "Extradition" means the delivery of a person by a State to another State in accordance with the terms of a treaty or convention, or its domestic law.

### **Article 37 –Security Forces**

Each State will appoint a special group within its established security forces to enforce the decisions and orders of the Court, and will report on them to the State to which said forces will subsequently belong.

Article 37 bis – Regional Intelligence Agency

The States Parties will share information and intelligence, and cooperate in the investigation of crimes subject to the jurisdiction of the Court. The means for creating the Regional Intelligence Agency will be covered in the Additional Protocol.

## **PART XIV. EXECUTION OF THE PENALTY**

### **Article 38 – Duty of States in Executing Prison Sentences**

1. A prison sentence will be executed in a State designated by the Court, other than the State of which the accused is a citizen and the States in which he was convicted of the crime. The State in which the sentence will be served will be chosen from a list of States that have indicated their willingness to receive such convicts.
2. Each State will designate a maximum security penitentiary for the purposes of housing the detainees and convicts for the crimes within the jurisdiction of this Court.
3. In stating its willingness to receive a convict, the State may set conditions, subject to acceptance by the Court and conformity with this Part.
4. The State designated in a particular case will indicate to the Court without delay if it accepts the designation.
  - a. The State executing the penalty will notify the Court of any circumstances, including the conditions under paragraph 1, that could materially affect the conditions or duration of the prison sentence. The Court must be informed of known or foreseeable circumstances at least 45 days in advance.
5. The Court, on exercising its discretionary authority to designate a State under paragraph 1, will take into account:
  - a. The principle that the States Parties must share the responsibility for executing prison sentences in accordance with the principles of equitable distribution stated in the Rules of Procedure and Evidence;
  - b. The application of standards concerning the treatment of prisoners set forth in generally accepted international treaties;
  - c. The nationality of the convict and the States in which the crime was committed;

- d. Other factors relating to the circumstances of the crime or the convict, or the effective execution of the penalty, as may be appropriate in the designating of the executing State.

#### **Article 39 - Limitations on Trial or Punishment for Other Crimes**

1. Convicts who are in the custody of the executing State will not be tried or punished or extradited to another State for conduct that preceded their transfer to the executing State, unless at the request of said State, the Court has approved such trial, punishment or extradition.
2. The Court will resolve the question after hearing the convict.
3. Paragraph 1 of this article will not apply if the convict remains voluntarily for more than 30 days in the territory of the executing State after completing the full sentence imposed by the Court or if he returns to the territory of that State after leaving it.

#### **Article 40 - Execution of Fines and Seizure Orders**

1. The States Parties will enforce the fines or seizure orders imposed by the Court under Part VII, without prejudice to the rights of third parties and in accordance with the procedure established in their domestic law.
2. A State Party that cannot enforce the seizure order will take measures to collect the value of the proceeds, the goods or the assets that the Court ordered seized, without prejudice to the rights of third parties.
3. The goods, or the proceeds of the sale of immovable property or, if applicable, the sale of other goods that the State Party may obtain in executing a decision of the Court shall be transferred to the Court.

## **Part XV. AMENDMENTS AND TRANSITIONAL PROVISIONS**

### **Article 41 - Amendments**

1. Seven years after the coming into force of this Statute, any State Party may propose amendments to it by informing the Secretariat.
2. Three months after the date of notification, the Assembly of States Parties will decide, by simple majority, whether to consider the proposal, which must be done as part of a Review Conference.
3. The approval of any amendment will require a special majority of two thirds of the States Parties, except in the case of limitation of the jurisdiction or powers of the Court and/or crimes that it is competent to judge, in which case a special majority of three quarters of the States Parties will be required.
4. Any amendment will come into force for the States Parties 12 months after the same proportion of States has given the Secretary their instruments of ratification or accession.
5. If an amendment was accepted by three quarters of the States Parties under paragraph 4, State Parties that do not accept it may withdraw from this Statute immediately, by giving notice no later than one year after the amendment took effect.
6. The Secretary will distribute to the States Parties the amendments approved at a meeting of the Assembly of States Parties or a Review Conference.

### **Article 42 - Amendments to Institutional Provisions**

1. Notwithstanding article 41(1), any State Party may at any time propose exclusively institutional amendments to the provisions of this Statute, that is, amendments concerning the organization of the Court and its organs and related administrative questions. The text of the proposed amendment will be presented to the Secretary or to the person designated by the Assembly of States Parties, who will distribute it without delay to the States Parties and the other participants in the Assembly.

2. The amendments presented under this article on which it is not possible to reach consensus will be approved by the Assembly of States Parties or by a Review Conference with a majority of two thirds of the States Parties. These amendments will take effect for the States Parties six months after their approval by the Assembly or the Conference, as the case may be.

#### **Article 43 - Revision of the Statute**

1. Seven years after this Statute comes into force, the Secretary will convene a Review Conference of the States Parties to consider amendments to the Statute. The review may include the list of crimes indicated in article 5 but will not be limited to them. The Conference will be open to participants in the Assembly of States Parties and under the same conditions as apply there.
2. Subsequently, at any time, at the request of a State Party and for the purposes of paragraph 1, the Secretary General, with the approval of a majority of the States Parties, will convene a Review Conference of the States Parties.
3. The provisions of paragraphs 3 to 6 of article 41 will apply to the approval and entry into force of any amendment of the Statute considered at a Review Conference.

#### **Article 44 – Transitional Provision**

1. Notwithstanding the terms of paragraphs 1 and 2 of article 11, a State, on becoming a party hereto, may declare that, for a period of seven years from the date on which the Statute came into force for it, it will not accept the jurisdiction of the Court for the category of crimes in article 8 when the commission of one of these crimes by its national or in its territory has been reported. The declaration under this article may be withdrawn at any time. The terms of this article will be reconsidered at the Review Conference convened under article 43(1).

## **PART XVI. FINAL PROVISIONS**

### **Article 45 - Signature, Ratification, Acceptance, Approval or Accession**

1. This Statute will be open to the signature of all States in Latin America and the Caribbean.
2. This Statute will be subject to the ratification, acceptance or approval of the signatory States. The instruments of ratification, acceptance or approval will be deposited with the Secretary.
3. This Statute will be open to subsequent accession by any State in Latin America or the Caribbean. The instruments of accession will be deposited with the Secretary General.

### **Article 46 - Entry into Force**

1. This Statute will enter into force on the first day of the month following the date on which the tenth instrument of ratification, acceptance, approval or accession was deposited with the Secretary.
2. For every State that ratifies, accepts, approves or accedes to the current Statute, it will come into force on the first day of the month following the date on which it deposited its instrument of ratification, acceptance, approval or accession.

### **Article 47 – Withdrawal**

1. Any State Party may withdraw from this Statute by giving the Secretary General written notice. The withdrawal will take effect one year after the date on which notification was received, unless a later date is indicated in the notice.
2. Withdrawal will not exempt the State from its obligations under this Statute while it is a party to it, in particular the financial obligations that it has contracted, as well as the obligation not to frustrate the object and purpose of the treaty with respect to fighting organized crime. Withdrawal will not prevent cooperation with the Court on criminal investigations and trials, with which the withdrawing State is obliged to cooperate and that began before the effective date of withdrawal; neither will

the withdrawal in any way prevent continued consideration of questions before the Court before the date on which the withdrawal takes effect.

**PART XVII. AUTHENTIC TEXTS**

**Article 48 - Authentic Texts**

1. The original of this Statute is equally authentic in Spanish, Portuguese and English and will be deposited with the Secretary General, who will send a certified copy to all States Parties.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Statute.