

18 November 1999
English
Original: French

**Preparatory Commission for the International
Criminal Court**

**Working Group on Rules of Procedure and Evidence
concerning parts 9 and 10 of the Statute**

New York

16-26 February 1999

26 July-13 August 1999

29 November-17 December 1999

**Proposal submitted by France concerning part 10 of the Rome
Statute of the International Criminal Court
concerning enforcement**

The proposals formulated by France are based on the following texts:

Draft Rules of Procedure and Evidence of the International Criminal Court proposed by Australia, document PCNICC/1999/DP.1, part 12, rules 135 to 143.

Draft general outline of the Rules of Procedure and Evidence proposed by France, document PCNICC/1999/DP.2, rules 112 to 125.

The numbering of the proposed rules corresponds to that which the Preparatory Commission is using at this point.

General issues

These issues relate to: (a) the rules concerning exchanges between the Court and States, whether or not parties (channels for transmitting requests, authorities to whom requests are addressed and languages in which they are transmitted); (b) the organ of the Court responsible for exercising the functions concerning enforcement (France proposes that it should be the Presidency); (c) the rights of a sentenced person to proceedings conducted in implementation of part 10.

Exchanges between the Court and States

Rule 10.1

The relevant provisions of article 87 and of rules X to XX¹ shall be applicable, *mutatis mutandis*, to any communication between the Court and a State concerning enforcement of sentences.

This would seem to be the simplest and most reasonable way to settle all questions concerning communications with States, channels of communication and languages to be used.

Authority responsible for implementation of part 10

Rule 10.2

Subject to consideration of applications for revision² the functions attributed to the Court under part 10 of the Statute shall be exercised by the Presidency. The powers of the Presidency may be delegated by it to one of its members, save in matters concerning implementation of article 110, paragraph 3.

This solution is justified by the fact that the functions of the Presidency, which in the draft of the International Law Commission were very onerous, are much less so in the Statute of the International Criminal Court, since the functions that were entrusted to the Presidency have been transferred to the Pre-trial Chamber. It is justified especially by the need to establish uniform judicial practice to deal with all prisoners, whatever their place of detention and whatever Chamber passed judgement on them; this is particularly important when it comes to reduction of sentences; it is the only means of ensuring equality of treatment other than entrusting this task to the Chamber which passed the judgement and then establishing a right of appeal, which would be much more onerous. Besides, that Chamber would no longer be in operation by the time the review provided for in article 110 took place since, in the case of life imprisonment, the review takes place after 25 years. The judges hold office for a term of 9 years; their term is not renewable.

Rights of sentenced person

Rule 10.3

In order to present his or her views in proceedings conducted in implementation of part 10 of the Statute and rules X to XX,³ the sentenced person shall have the right:

(a) To make a submission himself or herself or to be assisted by counsel of his or her own choosing throughout the entire proceedings; if the sentenced person has no counsel he or she must be informed of his or her right to counsel and, whenever the interests of justice so require, to be assigned counsel by the Presidency, free of charge if he or she has no means to pay for counsel; counsel has the right to represent the sentenced person in any hearing before the Presidency;

(b) To be assisted free of charge by a competent interpreter and to benefit from any translation necessary for the presentation of his or her submissions, if the

¹ Rules concerning the implementation of part 9.

² See rules 10.16 and 10.17.

³ Rules concerning implementation of part 10.

language used in the proceedings before the Presidency or in any document submitted to the Presidency is one that he or she does not understand and speak perfectly;

(c) To have the time and the facilities necessary to prepare his or her submissions, including by communicating freely and confidentially with his or her counsel.

Issues dealt with article by article

Rules concerning article 103

Rule 10.4

(a) States willing to accept sentenced persons shall so inform the Registrar specifying what conditions, if any, they attach to their acceptance. The Presidency shall decide whether to include that State in the list provided for in article 103, paragraph 1, if it deems the conditions acceptable.

The Presidency may request any additional information from that State prior to taking a decision.

(b) States that are not parties may not be included in the list provided for in article 103, paragraph 1, unless they have undertaken to respect the provisions of part 10 and rules X to XX.⁴

(c) The Registrar shall keep up to date the list of States that are willing to accept sentenced persons.

(d) A State included in the list may at any time withdraw the conditions it has formulated under article 103, paragraph 1 (b). It may not amend or add to them without the consent of the Presidency.

(e) A State which is included in the list may at any time inform the Registrar that it no longer wishes to be on the list referred to in article 103, paragraph 1. Withdrawal from the list shall in no way affect enforcement of the sentences imposed by the Court in the territory of said State, as regards sentenced persons the State has already accepted.

Rule 10.5

(a) The transfer shall not take place until the decision on the conviction and the decision on the sentence have become final.

(b) No transfer may take place if less than six months of the sentence remains to be served, save in exceptional cases determined by the Presidency.

Rule 10.6

(This rule is based on rule 136 proposed by Australia.)

Paragraph (a) proposed by Australia is acceptable, however the word "Court" should be replaced by the word "Presidency" and the following phrase should be added: "To that end, the sentenced person shall be informed of the list referred to in article 103, paragraph 1, and any conditions set by States.

⁴ Rules concerning the implementation of part 10.

Paragraph (b) proposed by Australia is satisfactory, provided that the word “Court” is replaced by the word “Presidency” and that the words “shall have (x) days” is replaced by the words “shall have whatever time the Presidency decides”. In addition, the following phrase should be added at the end: “and to make written submissions, if necessary”.

Paragraph (c) proposed by Australia is acceptable provided that the word “Court” is replaced by the word “Presidency”. The hearing should be optional. Accordingly, the second half of the first sentence should read: “the Presidency may hold a hearing ...”.

France suggests that there should be a paragraph (d):

When making a ruling on the circumstances referred to in article 103, paragraph 3 (e), the Presidency may consult the Prosecutor.

Rule 10.7

When the Presidency notifies the designated State of its decision, it shall also communicate the following information and documents:

- (a) The name, nationality and place of birth of the sentenced person;**
- (b) A copy of the final judgement of conviction and of the sentence imposed;**
- (c) The length and starting date of the sentence and the time remaining to be served;**
- (d) Any necessary information concerning the state of health of the sentenced person, including any treatment he or she is receiving, subject to his or her consent.**

This rule is in line with the Conventions on the transfer of sentenced persons, specifically that of the Council of Europe of 21 March 1983 which is open to non-member States. The aim is to enable the State designated by the Presidency to take its decision with full knowledge of the facts, as far as possible, and subject to the protection of medical confidentiality. The aim is also to provide the State of enforcement with a document (judgement of conviction and sentence imposed) showing the grounds upon which the sentenced person is being detained.

Rule 10.8

If the designated State rejects the designation, the Presidency may designate another State or decide that the sentence shall be served in a penitentiary establishment provided by the host State. The Presidency shall then communicate to the Prosecutor and to the sentenced person the name of the State responsible for enforcing the sentence.

Rule 10.9

(See rule 137 of the Australian draft.)

- (a) The sentenced person shall be transferred to the State of enforcement as soon as possible after it accepts.**
- (b) The Registrar shall ensure the proper conduct of the transfer in liaison with the authorities of the State of enforcement and the host State.**

This proposal is very similar to the article 137 proposed by Australia, except that in paragraph (a) above the transfer does not take place after the State is designated but after it accepts the sentenced person pursuant to article 103, paragraph 1 (c).

Rule 10.10

(a) A State party shall authorize the transportation through its territory, in accordance with the procedures provided for in its national legislation, of any sentenced person transferred by the Court to a designated State in accordance with article 103, paragraph 1, save where transit through its territory would impede or delay the transfer.

(b) The request for transit shall be transmitted by the Registrar. It shall contain:

A description of the sentenced person;

A brief statement of the facts of the case and their legal characterization;

A copy of the final judgement of conviction and of the sentence imposed.

(c) The sentenced person shall be detained in custody during the period of transit. The provisions of article 108 shall apply to the transit State.

(d) No authorization is required if the sentenced person is transported by air and no landing is scheduled on the territory of the transit State.

(e) If an unscheduled landing occurs in the territory of the transit State, that State may require that the Court present the request provided for in paragraph (b) of this rule; this request may be presented by the Court by any medium capable of delivering a written record. The transit State shall detain the person being transported until that request is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time. The fact that the sentenced person has been released from custody shall not prejudice the subsequent arrest and surrender of that person under the conditions provided for in article 92 or article 89.

(f) The provisions of the present rule shall apply, *mutatis mutandis*, to any transit process in implementation of part 10 of the Statute and rules X to XX.⁵

Rule 10.11

(a) The ordinary costs for the enforcement of the sentence in the territory of the State designated by the Presidency shall be borne by that State.

(b) Other costs, including those for the transport of the sentenced person and those referred to in article 100 (c) and (d) shall be borne by the Court.

The costs relating to the enforcement of sentences may be high. It can be deduced from article 103, paragraph 4, that the costs are borne by the State designated by the Presidency, but it seems preferable to specify that this is the case.

Rules concerning article 104**Rule 10.12**

(See Australian draft, rule 138.)

⁵ Rules concerning implementation of part 10.

(a) The Presidency, acting on its own motion or at the request of the sentenced person, may at any time act in accordance with article 104, paragraph 1.

(b) The Prosecutor may also request the Presidency to transfer the sentenced person by referring to the circumstances mentioned in article 103, paragraph 3 (e).

(c) The request of the sentenced person or of the Prosecutor shall be made in writing and shall set out the grounds upon which the transfer is sought. It shall be notified, if necessary, to the other party to the procedure, which may respond thereto.

This text reproduces the Australian draft with one addition: the Prosecutor may also request the transfer of the sentenced person in certain circumstances (article 103, paragraph 3 (e)).

Rule 10.13

Before taking a decision, the Presidency may:

(a) Request submissions from the State of enforcement;

(b) Delegate a judge of the Court or a member of the staff of the Court to hear the oral submissions of the sentenced person, in the presence of that person's counsel if he or she so requests, without the presence of the authorities of the State of enforcement;

(c) Hear the views of the sentenced person by video conference;

(d) Order any report or expert opinion concerning *inter alia* the sentenced person, if necessary by enlisting the cooperation of the State of enforcement;

(e) Obtain relevant information from any reliable sources.

Rule 10.14

(a) In order to designate another State of enforcement, the Presidency shall act in accordance with rules 10.6 (a), (b) and (d), 10.7 and 10.8.

(b) If no State is designated in accordance with article 103, paragraph 1, the Presidency shall order the transfer of the sentenced person to a prison facility made available by the host State.

(c) When the Presidency has decided to transfer the sentenced person to a prison of another State, the transfer shall be effected as soon as possible after the initial State of enforcement has been informed.

(d) The Registrar shall ensure the proper conduct of the transfer in liaison with the authorities of the States concerned.

(e) The provisions of this rule shall be applicable to the case covered in article 103, paragraph 2 (b).

No provision is made for a hearing, since the person has already been heard or has submitted written pleas concerning his or her wish to leave the State of enforcement and has been able to submit written pleas on the choice of another State.

Rule 10.15

If the Presidency refuses the transfer, it shall as soon as possible inform the sentenced person and the Registrar of its decision and of the reasons therefor.

Rules concerning article 105

There is a need to ensure consistency between the practical application of this article and the application of the article on revision: the most difficult problem is the “retransfer” to the Court of the sentenced person serving his or her sentence in a State. The revision procedure takes place in two stages but rule 8.11 proposed by Australia and France (PCNICC/1999/WGRPE/DP.32) provides for a hearing at the first stage of revision. Since the applications may be numerous, it seems preferable to require “retransfer” of the person to the Court only for the final determination of an application for revision.

Rule 10.16

For the conduct of the hearing provided for in rule 8.12,⁶ the Appeals Chamber may decide to order the transfer of the sentenced person to the seat of the Court, to hear him or her by video conference or to authorize the person’s counsel to represent him or her at the hearing.

Rule 10.17

(a) For the conduct of the hearing provided for in rule 8.12,⁷ the Appeals Chamber shall order sufficiently in advance the transfer of the sentenced person to the seat of the Court.

(b) The determination of the Court shall be notified without delay to the State of enforcement.

(c) The provisions of rule 10.9 (b) shall be applicable.

Rules concerning article 106

Rule 10.18

(a) On the basis of proposals from the Registrar, and after consulting the Prosecutor, the Presidency shall prepare:

- Draft regulations concerning the detention in custody of persons awaiting sentence or appeal before the Court;**
- Draft regulations concerning the detention in custody of persons sentenced by the Court who remain in a prison facility made available to the Court by the host State.**

These drafts shall be adopted by the judges of the Court by an absolute majority.

(b) These two sets of regulations shall specify the arrangements for the exercise of the right of any person in the custody of the Court to complain to a judge of the Court⁸ about the conditions of his or her detention.

⁶ See document PCNICC/1999/WGRPE/DP.32 containing a proposal submitted by Australia and France to govern revision of conviction or sentence.

⁷ Ibid.

⁸ Depending on the circumstances, this may be the Presidency (when final sentence has been pronounced against the person) or the chamber considering the case, or a judge delegated by it (when final sentence has not yet been pronounced against the person).

Rule 10.19

In order to monitor the enforcement of sentences of imprisonment, the Presidency may:

(a) Delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying the State of enforcement, for meeting the sentenced persons and hearing their submissions, if any, without the presence of the national authorities;

(b) Request any information, report or expert opinion from the State of enforcement or from any reliable sources.

Rule concerning article 107

This article does not require numerous rules because it is more concerned with relations between States. However, France believes that provision should be made for the Court to be informed in the event of a forced expulsion of the person from the territory of the State of enforcement. The Court must be informed of the person's whereabouts, particularly if all the decisions concerning sentencing to a fine or reparations to victims have not been enforced.

Rule 10.20

For the purpose of the enforcement of fines and forfeiture measures, and of reparation measures ordered by the Court, the Presidency may, at least 30 days before the scheduled completion of the sentence served by the sentenced person, request the State of enforcement to transmit to it the relevant information concerning that State's intention to authorize the person to remain in its territory or the location where it intends to transfer the person.

Rules concerning article 108

Article 108 provides for the application of a rule of speciality designed to protect the sentenced person from any prosecution in the State of enforcement or in third countries, but provides that the Court may authorize such prosecution. The proposed rules attempt to settle the following points:

- In order to enable the Court to give a ruling, the State must give it all the necessary information; in the case of a request for extradition, the request must be transmitted to the Court;
- Provision must also be made for the conduct of a hearing with the participation of the Prosecutor and of the sentenced person assisted by his or her lawyer; since the person is in custody in the territory of a State, it is the responsibility of the Court to determine the arrangements for his or her participation (video conference);
- Lastly, in the case of prosecution for offences committed after the transfer, provision must at least be made for the Court to be informed.

Rule 10.21

(See Australian draft, rule 139.)

(a) For the application of article 108, when the State of enforcement wishes to prosecute, try or enforce a sentence against the sentenced person for any conduct engaged in prior to that person's transfer, it shall notify its intention to the Presidency and transmit to it, in one of the working languages of the Court, the following documents:

- A statement of the facts of the case and their legal characterization;
- A copy of any applicable legal provisions, including those concerning the statute of limitations and the applicable penalties;
- A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce.

(b) In the event of a request for extradition made by another State, the State of enforcement shall transmit the entire request to the Presidency.

(c) The Presidency may in all cases request any document or additional information from the State of enforcement or the State requesting extradition.

Rule 10.22

(a) Any information or documents transmitted to the Presidency under rule 10.21 shall be transmitted to the Prosecutor and to the sentenced person, who may both make written submissions.

(b) The Presidency may, acting on its own motion or at the request of the Prosecutor or of the sentenced person, decide to conduct a hearing in the presence of the Prosecutor and, at their request, of the representatives of the States concerned. The sentenced person shall participate in the hearing by video conference, unless the Presidency decides to obtain the oral submissions of the sentenced person either by delegating a judge of the Court or a member of the staff of the Court or by enlisting the assistance of the national authorities of the State of enforcement, in the presence of the sentenced person's counsel if he or she so requests.

Rule 10.23

(a) The Presidency shall make a determination as soon as possible, taking into account all relevant factors and particularly the need for the guarantees of due process recognized by international law to be always respected. This determination shall be notified to all those who have participated in the proceedings.

(b) If the request submitted under rule 10.21 (a) or (b) concerns the enforcement of a sentence, the sentenced person may serve that sentence in the State designated by the Court to enforce the sentence pronounced by it or be extradited to a third State only after having served the full sentence pronounced by the Court.

(c) The Presidency shall authorize extradition of the sentenced person to a third State for prosecution or trial only if it has obtained assurances which it deems to be sufficient that the sentenced person will be transferred at the end of the prosecution or after the trial to the State responsible for enforcement of the sentence pronounced by the Court. The sentenced person must remain in the custody of the third State until his or her transfer to the State responsible for enforcement of the sentence pronounced by the Court.

Rule 10.24

The provisions of rules 10.21 to 10.23 shall be applicable *mutatis mutandis* to article 107, paragraph 3.

Rule 10.25

The Presidency shall be informed by the State of enforcement of any important event concerning the sentenced person, and of any prosecution of that person for events subsequent to his or her transfer.

Rules concerning article 109

In the report on the international seminar on victims' access to the International Criminal Court (PCNICC/1999/WGRPE/INF/2), the conclusions of workshop 4 on reparations contain recommendations to be inserted in the Rules of Procedure and Evidence relating to part 10 of the Statute:

- Insert a provision to the effect that orders of the Court be sent to the competent authorities;
- Ensure that national rules do not defeat an order for reparations.

Also in this connection, the Preparatory Committee had in April 1998 referred to the Rules of Procedure and Evidence a proposal concerning transmission of the judgement of the Court to the Registrar, which France proposes should be reproduced in its entirety (document A/CONF.183/2/Add.1).

Rule 10.26

(a) The judgement of the Court under article 75 shall be transmitted by the Registrar to the States with which the sentenced person appears to have direct connection by reason of either nationality, domicile or habitual residence or by virtue of the location of the sentenced person's assets and property or with which the victim has such connections.

(b) Third parties who, following a request from the Court under article 75, paragraph 3, have not made submissions may not contest the application of the order of the Court before the national authorities.

Paragraph (a) reproduces the text of the document of the Preparatory Committee, which stated "The following provision has been considered by the Preparatory Committee and it was deemed that it would be appropriate for the Rules". Paragraph (b) is an addition.

Rule 10.27

For the application of article 76, the national authorities shall apply the order of the Court regarding the criminal responsibility of the sentenced person, reparations, the principles applicable to forms of reparation as well as the scope of any damage, loss or injury determined, in accordance with the procedure provided under their national legislation, without being able to invoke provisions of domestic law or provisions resulting from international agreements liable to obstruct the action of the victims or affect their right to reparations.

This rule is based partly on article 106 of the Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia.

Rule 10.28

(a) For the enforcement of decisions taken pursuant to article 75, the Prosecutor, the sentenced person, the victims or their legal representatives, the national authorities of the State of enforcement or any interested third party may submit to the Presidency any question concerning the disposition or allocation of the property, assets or money in question.

(b) The Presidency shall decide on the sale or allocation of any property or asset or the allocation of money, either directly to the victims or to national or international organizations assisting the victims.

(c) The Presidency shall take its decision following a procedure the modalities of which it shall determine.

This rule is based on footnote No. 2, concerning article 109, paragraph 3, to the report of the Working Group of 11 July 1998 (A/CONF.183/C.1/WGE/L.14/Add.1), which reads: "The Working Group noted that there were a number of potential complex problems which may arise in the implementation of this provision, including questions about the disposition of various types of property, which should be addressed in the Rules".

The following rules propose a mechanism to respond to the problems which will undoubtedly arise in connection with the enforcement of forfeiture and reparation measures. In particular, it is not for national authorities to decide on the allocation of confiscated property (should such property be sold and the proceeds transferred to the Court or should the property be transferred directly to an organization assisting the victims, orphans ...). France proposes that the Presidency should handle these problems, which cannot all be envisaged at the time when the decision is taken and do not fall with the ambit of the application of national procedural legislation.

Rule 10.29

For the enforcement of decisions taken by the Court pursuant to article 75, the Presidency may, at the request of the victims or their legal representatives or at the request of the Prosecutor, order the provisional attachment of any property, asset or money, and request, where necessary, the cooperation of any State in accordance with part 9 of the Statute, when such measures were not requested previously by the Court.

This rule seems to be necessary in situations where the chamber which took the decision to order reparations in accordance with article 75 did not order provisional measures because no property had been located at the time of the decision. The aim is to prevent the sentenced person from organizing the "disappearance" of his or her property at this stage.

Rule 10.30

Rules 10.26 to 10.29 shall be applicable, *mutatis mutandis*, to the enforcement of decisions taken by the Court pursuant to article 77, paragraph 2.

Rule 10.31

In all cases, when the Presidency decides on the allocation or disposition of property, assets or money belonging to the sentenced person, it shall give priority to the enforcement of measures concerning reparations to victims.

Rule 10.32

The Presidency shall ensure that the notifications and other measures necessary for the procedures linked to the exercise of the right of victims to reparations shall be effected with regard to the sentenced person.

This rule concerns in particular cases in which national authorities, by virtue of their internal procedures, need to notify the sentenced person of any procedure concerning his or her property and involving a forfeiture measure or any measure relating to reparations to victims.

Rule 10.33

(See Australian draft, rule 106.)

When the sentenced person fails to pay a fine imposed as a penalty, the Presidency, in the circumstances envisaged in rule 10.28, shall order the sale of any property or assets belonging to the sentenced person, in order to recover the amount due for the unpaid fine.

The provisions of rule 10.29 shall be applicable.

This rule corresponds to rule 106 of the Australian draft, which is included in the part relating to penalties. It is very useful to have a rule on this point, with a view, in particular, to recovering money for victims, but France considers that this problem concerns the enforcement and not the imposition of penalties. It is therefore more appropriately placed in part 10.

Rules concerning article 110

Article 110 contains several references to the Rules of Procedure and Evidence. It is necessary to establish:

- The procedure for the review by the Presidency of the question of reduction of sentence and especially the possibility of holding a hearing and the way in which the sentenced person is to participate in the proceedings;
- The grounds for reduction of sentence; and
- The intervals at which the Court should conduct subsequent reviews.

Rule 10.34

(a) For the application of article 110, paragraph 3, the Presidency shall conduct a hearing unless it decides otherwise by a specially reasoned decision;

(b) Prior to the hearing, the Presidency shall request, within a time limit which it shall establish, written submissions from the sentenced person.

The Presidency shall also request, within the time limit which it shall establish, written submissions from:

The Prosecutor, in the cases provided for in article 110, paragraph 4 (a) and (b);

The victims or their legal representatives, in the cases provided for in article 110, paragraph 4 (b) and in rule 10.36 (c);

The State of enforcement, in the cases provided for in rule 10.36 (a), (b) and (d);

(c) In all cases, the Presidency shall personally hear the views of the sentenced person by video conference or by delegating one of the judges of the Court to hear his or her oral submission without the presence of the authorities of the State of enforcement.

(d) The Presidency shall communicate its reasoned decision to all the parties involved in the proceedings as soon as possible.

Rule 10.35

For the application of article 110, paragraph 5, the Presidency shall review the question of reduction of sentence every three years, unless it establishes a shorter interval in its decision taken pursuant to article 110, paragraph 3. It shall decide on the eventual holding of a hearing without being bound by rule 10.34 (a).

Rule 10.36

In taking the decision concerning reduction of sentence, the Presidency shall take account of the following factors, in addition to those set out in article 110, paragraph 4 (a) and (b):

- (a) The conduct of the sentenced person while in detention;
- (b) The possibility of resocializing the sentenced person;
- (c) Any action taken by the sentenced person for the benefit of the victims;
- (d) The state of physical or mental health of the sentenced person.

Rules concerning article 111

This article raises complex legal issues, inasmuch as it refers to “bilateral or multilateral arrangements” which do not exist in the current state of the law. The Rules of Procedure and Evidence must therefore provide pragmatic solutions. It is not possible to envisage the application by States of existing extradition agreements, since extradition concerns only prosecutions conducted or sentences pronounced by the national authorities of the requesting State.

Rule 10.37

(a) The State of enforcement shall advise the Registrar in writing as soon as possible that the sentenced person has escaped. The Presidency can then proceed in accordance with part 9 of the Statute.

(b) However, if the State in which the sentenced person is located agrees to surrender him or her to the State of enforcement, pursuant to either international agreements or its national legislation, the State of enforcement shall so advise the Registrar in writing. The person shall be surrendered to the State of enforcement as soon as possible, if necessary in consultation with the Registrar, who shall provide all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with rule 10.10.

The costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

(c) If the sentenced person is surrendered to the Court pursuant to part 9 of the Statute, the Court shall transfer him or her to the State of enforcement. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of the initial State of enforcement and in accordance with article 103 and rules 10.6 to 10.9, designate another State, including the State to the territory of which the sentenced person has fled.

(d) In all cases, the entire period of detention in the territory of the State in which the sentenced person was arrested after his or her escape shall be deducted from the sentence remaining to be served.

Rule supplementing rule 9.15 contained in part 9 (this rule could also be included in part 9)

It is necessary to make provision for cases in which the Court must hear a sentenced person as a witness; the provisions of article 93, paragraph 7, concern the case of a person held in custody by a State for its own purposes, whose transfer is requested by the Court for the purpose of obtaining testimony or other assistance. The situation considered here is different, since the State holds in custody in its territory on behalf of the Court a person sentenced by the Court. A specific provision is therefore necessary.

Rule 10.38

(a) The Chamber of the Court which is considering the case may order the temporary transfer to the seat of the Court of any person sentenced by the Court whose testimony or other assistance is necessary to the Court. The provisions of article 93, paragraph 7, shall not apply.

(b) The Registrar shall ensure the proper conduct of the transfer in liaison with the authorities of the State of enforcement. When the purposes of the transfer have been fulfilled, the Court shall return the sentenced person to the State of enforcement.
