

CHAPTER 60

THE INTERNATIONAL CRIMES ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

Page

1. The International Crimes (Procedures for Obtaining Evidence) Rules.....	3
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**THE INTERNATIONAL CRIMES (PROCEDURES
FOR OBTAINING EVIDENCE) RULES**

[Legal Notice 177 of 2010]

1. Citation

These Rules may be cited as the International Crimes (Procedures for Obtaining Evidence) Rules, 2010.

2. Interpretation

In these Rules, unless the context otherwise requires—

"Act" means the International Crimes Act (Cap. 60);

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to national security; and

"Court" means the Court of law and includes the designated judge;

"judge" means a designated judge under rule 5;

"Prosecutor" means the Prosecutor of the International Criminal Court.

3. Application

These Rules shall apply where the Attorney-General has authorized the taking of evidence and production of evidence under sections 78 and 79 of the Act.

4. Request by the International Criminal Court

The International Criminal Court may make a request to the Attorney-General for the taking of evidence and production of documents in relation to an investigation by the Prosecutor, or to any proceedings before the International Criminal Court.

5. Designation of a judge

- (1) Upon receipt of a request made under rule 4 and where the Attorney-General is satisfied that the requirements of section 77 of the Act have been met, the Attorney-General shall request the Chief Justice to designate a judge to take the evidence or preside over the production of any document and notify the Attorney-General of such designation.
- (2) The judge shall be assisted by a secretary or a clerk, who shall be an advocate of the High Court of Kenya of not less than two years' standing, a stenographer and a videographer, who shall all take a judicial oath of office.

6. Registry and custody of documents

- (1) A separate registry with sufficient support staff and a filing system shall be established at a secure location for the purposes of proceedings under sections 78 and 79 of the Act, which shall be under the exclusive control of the judge.
- (2) All records and documents relating to any proceedings before the International Criminal Court shall be confidential and kept under seal, unless the judge, for good cause, orders otherwise.
- (3) At the conclusion of the proceedings under sections 78 and 79 of the Act, the judge shall cause an inventory to be taken of all records and documents that shall not have been sent to the Attorney-General, which shall be sealed and handed over to the Cabinet Secretary.

7. Forwarding of the request

Upon the designation of a judge under rule 5, the Attorney-General shall forward the request received under rule 4, together with the particulars of the intended witnesses or documents to the Chief Justice who shall promptly transmit the request to the judge.

[Subsidiary]

8. Issuance of summons

- (1) On receipt of the request under rule 7, the Court shall issue summons to the intended witnesses together with a summary of the issues upon which any intended witness is requested to testify on.
- (2) Where the request relates to the production of any document, the Court shall issue summons to the person in possession of the document or who has authority over the document requiring him or her to appear and produce the document.
- (3) The summons shall be served on the intended witnesses personally and there shall be a period of fifteen days between the date of service of the summons and the date any intended witness is required to appear.
- (4) The Court may, for sufficient cause which shall be recorded, dispense with personal service of the summons or vary the period specified under subrule (3).

9. The proceedings

- (1) The proceedings shall be conducted in closed session but the Court may, on its own motion or upon application by a witness or a representative of the International Criminal Court, conduct proceedings in open court if it is satisfied that the security of the witness or national security shall not be compromised or the open court proceedings are in interest of justice.
- (2) The proceedings before the Court shall be recorded by means of video and stenography and a witness shall be entitled to a copy of the record relating to his or her testimony.
- (3) At any stage of the proceedings, the Attorney-General or the Director of Public Prosecutions may appear as *amicus curiae*.

10. Taking of evidence

- (1) When the evidence of a witness is being taken by the Court, the witness may provide a background and context of the issues he or she is called to testify on, be asked questions by the judge on the basis of the issues or questions framed by the International Criminal Court and may provide further clarification on any issues arising in the course of the testimony.
- (2) A witness may decline to answer any questions if, in his or her opinion, the answer may incriminate him or her or compromise national security.
- (3) The judge shall make a ruling upon hearing any objections raised under subrule (2).
- (4) A witness may, in writing, request further particulars on the issues of the intended testimony and such request shall be filed in Court and served on the Attorney-General, who shall forward the request to the International Criminal Court.
- (5) A witness may, at any stage of the proceedings, indicate that he is unable to answer a question sufficiently for lack of sufficient particulars and the Court may make such order thereon as it deems just and fair.
- (6) A witness who has been summoned to give evidence or to produce a document shall appear and be entitled to legal representation in terms of section 82 of the Act.
- (7) A record shall be made of formal statements made by any person who is questioned in connection with an investigation or with proceedings and such record shall be signed by both the person who records and conducts the questioning and by the person who is questioned through his or her Counsel, if any, in the presence of the Prosecutor or the judge.
- (8) The record under subrule (7) shall note the date, time and place of, and all the persons present during the questioning and shall also note if any person has not signed the record and the reasons therefor.
- (9) The judge shall have a duty to ensure that all the rights and privileges of a person required under sections 78 and 79 of the Act to give evidence or to produce evidence or documents are observed, respected and protected, including the right to have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to No. 16 of 2008 meet the requirements of fairness, if any, of

the proceedings or documents produced in Court are not in a language which that person fully understands or speaks.

11. Application of general provisions

Where any matter is not specifically provided for under these rules, the general provisions and procedures provided in the laws applicable under section 4 of the Act as well as those of relevant national laws shall apply.
