

REPUBLIC OF SOUTH AFRICA

**IMPLEMENTATION OF THE
ROME STATUTE OF THE
INTERNATIONAL CRIMINAL
COURT ACT REPEAL BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 40403 of 3 November 2016)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 23—2016]

ISBN 978-1-4850-0338-0

No. of copies printed 800

BILL

To repeal the Implementation of the Rome Statute of the International Criminal Court Act, 2002; and to provide for matters connected therewith.

Preamble

MINDFUL that—

- the Republic of South Africa is a founder member of the African Union;
- the Republic of South Africa plays an important role in resolving conflicts on the African continent and encourages the peaceful resolution of conflicts wherever they occur;
- the Republic of South Africa, in exercising its international relations with heads of state of foreign countries, particularly heads of state of foreign countries in which serious conflicts occur or have occurred, is hindered by the Implementation of the Rome Statute of the International Criminal Court Act, 2002, which together with the Rome Statute of the International Criminal Court compel South Africa to arrest heads of state of foreign countries wanted by the International Criminal Court for the crime of genocide, crimes against humanity and war crimes and to surrender such persons to the International Criminal Court, even under circumstances where the Republic of South Africa is actively involved in promoting peace, stability and dialogue in those countries; and
- the Republic of South Africa wishes to give effect to the rule of international customary law which recognises the diplomatic immunity of heads of state in order to effectively promote dialogue and the peaceful resolution of conflicts wherever they may occur, but particularly on the African continent,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Repeal of laws

1. (1) The Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), is hereby repealed. 5

(2) Section 13 of the South African Red Cross Society and Legal Protection of Certain Emblems Act, 2007 (Act No. 10 of 2007), is hereby repealed.

(3) Section 20 of the Implementation of the Geneva Conventions Act, 2012 (Act No. 8 of 2012), is hereby repealed.

Transitional provision and saving

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2. (1) For the purposes of this section—

- (a) “Court” means the International Criminal Court established by Article 1 of the Rome Statute;

- (b) “the effective date” means the date on which the withdrawal by the Republic from the Rome Statute in terms of Article 127 of the Rome Statute became effective; and
- (c) “the Rome Statute” means the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998 and ratified by the Republic on 10 November 2000. 5

(2) Any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the Republic had a duty to cooperate and which commenced prior to the effective date and the continued consideration of any matter 10 which was already under consideration by the Court prior to the effective date contemplated in Article 127 of the Rome Statute, must be dealt with and concluded in terms of the provisions of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), as if that Act had not been repealed in 15 terms of section 1 of this Act.

Short title and commencement

3. This Act is called the Implementation of the Rome Statute of the International Criminal Court Act Repeal Act, 2016, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE IMPLEMENTATION
OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL
COURT ACT REPEAL BILL, 2016**

1. BACKGROUND TO AND OBJECTS OF BILL

- 1.1 The Bill provides for the repeal of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002).
- 1.2 The Republic of South Africa which is a founder member of the African Union plays an important role in resolving conflicts on the African continent and encourages the peaceful resolution of conflicts wherever they occur. The Republic of South Africa, in exercising its international relations with heads of state of foreign countries, particularly heads of state of foreign countries in which serious conflicts occur or have occurred, is hindered by the Implementation of the Rome Statute of the International Criminal Court Act, 2002, which together with the Rome Statute of the International Criminal Court compel South Africa to arrest heads of state of foreign countries wanted by the International Criminal Court for the crime of genocide, crimes against humanity and war crimes and to surrender those persons to the International Criminal Court, even under circumstances where the Republic of South Africa is actively involved in promoting peace, stability and dialogue in those countries.
- 1.3 The Republic of South Africa wishes to give effect to the rule of international customary law which recognises the diplomatic immunity of heads of state in order to effectively promote dialogue and the peaceful resolution of conflicts wherever they may occur, but particularly on the African continent.
- 1.4 The Republic of South Africa has adopted the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), which—
 - provides for the immunities and privileges of diplomatic missions and consular posts and their members, heads of states, special envoys and certain representatives, the United Nations, and its specialised agencies, and other international organisations and of certain other persons;
 - makes provision for immunities and privileges pertaining to international conferences and meetings; and
 - enacted into law the Convention on the Privileges and Immunities of the United Nations, 1946, the Convention on the Privileges and Immunities of the Specialised Agencies, 1947, the Vienna Convention on Diplomatic Relations, 1961, and the Vienna Convention on Consular Relations, 1963. The Implementation of the Rome Statute of the International Criminal Court Act, 2002, was adopted shortly after the Diplomatic Immunities and Privileges Act, 2001, and in effect negates the immunities and privileges required to manage diplomatic relations. As such, the Implementation of the Rome Statute of the International Criminal Court Act, 2002, is in conflict with and inconsonant with the provisions of the Diplomatic Immunities and Privileges Act, 2001.
- 1.5 In order to continue to provide immunity to heads of state of foreign countries in which conflicts take place, the Implementation of the Rome Statute of the International Criminal Court Act, 2002, will be repealed.
- 1.6 In order to give effect to Article 127 of the Rome Statute, clause 2 of the Bill provides for a transitional clause to deal with cooperation with the International Criminal Court, established by Article 1 of the Rome Statute, in connection with criminal investigations and proceedings in relation to which the Republic had a duty to cooperate and which commenced prior to the date on which the withdrawal became effective. In terms of the clause such proceedings must be dealt with and concluded in terms of the provision of the Implementation of the Rome Statute of the International Criminal Court Act, 2002, as if the said Act has not been repealed.

- 1.7 Clause 3 provides for the short title and commencement. In terms of clause 3 the Bill comes into operation on a date fixed by the President by proclamation in the *Gazette*. The reason for this clause is to provide that the Bill will come into operation on an appropriate date after the formalities for withdrawal, as provided for in Article 127 of the Rome Statute, have been complied with.

2. CONSULTATION

The Bill gives effect to a decision by Cabinet that the Republic of South Africa is to withdraw from the Rome Statute. There was consultation at ministerial level, and consultation will also take place during the Parliamentary process.

3. IMPLICATIONS FOR PROVINCES

None.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

- 5.1 The Department of Justice and Constitutional Development and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-4850-0338-0