

098

SCSL-2003-08-PT  
(2712-2822)  
SPECIAL COURT FOR SIERRA LEONE

2712

**IN THE APPEALS CHAMBER**

**Before:** Judge Robertson, President  
Judge King, Vice President  
Judge Ayoola  
Judge Winter  
Judge [unknown at time of filing]

**Registrar:** Mr Robin Vincent

**Date Filed:** 28<sup>th</sup> of October 2003

**THE PROSECUTOR**

V

**SAM HINGA NORMAN**

**Case No. SCSL-2003-08-PT**

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**DEFENCE AUTHORITIES FILED PURSUANT  
TO THE DIRECTION ON FILING AUTHORITIES  
OF 26 SEPTEMBER 2003**

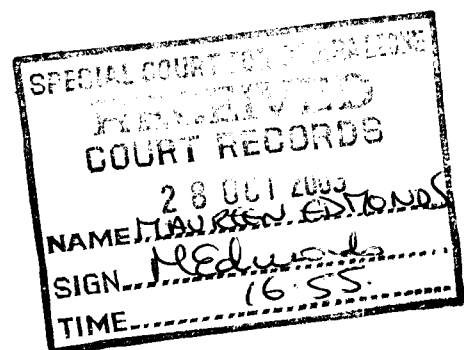
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Office of the Prosecutor

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Ms Quinmcy Whitaker, Co-Counsel



**PROSECUTOR v SAM HINGA NORMAN SCSL 2003-08-01****DEFENCE INDEX TO PRELIMINARY MOTION**  
**BASED ON LACK OF JURISDICTION:**  
**LAWFULNESS OF THE COURT**

1. Rule 72 - Rules of Procedure and Evidence
2. Lome Accord – 09.07.99
3. United Nations document S2000/915 – 4.10.2003
4. s10 Special Court Agreement (Ratification Act) 2002
5. Security Council Resolution 1315 (2000) – 14.08.00
6. Article 1 Special Court Agreement
7. Article 1 Special Court Statute
8. Constitution of Sierra Leone [s108, Chter VII ss120-145] (Annex 1)
9. Article 8(1) (2) Special Court Statute
10. Constitution of Sierra Leone ss17(1) 23(1) 30(1) 40(4)
11. Montevideo Convention 1933
12. International Law, A South African Perspective – John Dugard (Juta & Co) 2000; p72 (Annex 2)
13. Oppenheim's International Law – R. Jennings, A. Watts 9<sup>th</sup> ed (1992)  
Volume 1; p150

1.

**Rule 72: Preliminary Motions**

(A) Preliminary motions by either party shall be brought within 21 days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i).

(B) Preliminary motions by the accused are:

(i) Objections based on lack of jurisdiction;

(ii) Objections based on defects in the form of the indictment;

(iii) Applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Rule 82 (B);

(iv) Objections based on the denial of request for assignment of counsel; or

(v) Objections based on abuse of process.

(C) The Trial Chamber shall, except as provided by (D) and (E) below, dispose of preliminary motions before the trial, and such decisions shall not be subject to interlocutory appeal.

(D) Preliminary or other motions made in the Trial Chamber prior to the Prosecutor's

opening statement, if in the opinion of that Chamber, they raise:

(i) a substantial issue relating to jurisdiction; or

(ii) an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of a trial, and for which an immediate resolution by the

Appeals Chamber may materially advance the proceedings, may be referred to the Appeals Chamber, where they will proceed to a determination as soon as practicable.

(E) The Trial Chamber shall certify the issue for appeal, which will proceed if, within

seven days of such certification, any party files a notice of appeal. Such notice shall not

operate as a stay of the Trial proceedings unless the Trial Chamber so orders.

(F) Failure to comply with the time limits prescribed in this Rule shall constitute a waiver

of the rights. The Trial Chamber may, however, grant relief from the waiver upon showing

good cause.

(G) Objections to the form of the indictment, including an amended indictment, shall be

raised by a party in one motion only, unless otherwise allowed by a Trial Chamber.

2.  
LOME ACCORD on Sierra Leone 9.7.99

PEACE AGREEMENT BETWEEN THE GOVERNMENT OF SIERRA  
LEONE AND  
THE REVOLUTIONARY UNITED FRONT OF SIERRA LEONE

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**THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE and  
THE REVOLUTIONARY UNITED FRONT OF SIERRA LEONE (RUF/SL)**

Having met in Lome, Togo, from the 25 May 1999, to 7 July 1999 under the auspices of the Current Chairman of ECOWAS, President Gnassingbe Eyadema;

Recalling earlier initiatives undertaken by the countries of the sub-region and the International Community, aimed at bringing about a negotiated settlement of the conflict in Sierra Leone, and culminating in the Abidjan Peace Agreement of 30 November, 1996 and the ECOWAS Peace Plan of 23 October, 1997;

Moved by the imperative need to meet the desire of the people of Sierra Leone for a definitive settlement of the fratricidal war in their country and for genuine national unity and reconciliation;

Committed to promoting full respect for human rights and humanitarian law;

Committed to promoting popular participation in the governance of the country and the advancement of democracy in a socio-political framework free of inequality, nepotism and corruption;

Concerned with the socio-economic well being of all the people of Sierra Leone;

Determined to foster mutual trust and confidence between themselves;

Determined to establish sustainable peace and security; to pledge forthwith, to settle all past, present and future differences and grievances by peaceful means; and to refrain from the threat and use of armed force to bring about any change in Sierra Leone;

Reaffirming the conviction that sovereignty belongs to the people, and that Government derives all its powers, authority and legitimacy from the people;

Recognising the imperative that the children of Sierra Leone, especially those affected by armed conflict, in view of their vulnerability, are entitled to special care and the

protection of their inherent right to life, survival and development, in accordance with the provisions of the International Convention on the Rights of the Child;

Guided by the Declaration in the Final Communiqué of the Meeting in Lome of the Ministers of Foreign Affairs of ECOWAS of 25 May 1999, in which they stressed the importance of democracy as a factor of regional peace and security, and as essential to the socio-economic development of ECOWAS Member States; and in which they pledged their commitment to the consolidation of democracy and respect of human rights while reaffirming the need for all Member States to consolidate their democratic base, observe the principles of good governance and good economic management in order to ensure the emergence and development of a democratic culture which takes into account the interests of the peoples of West Africa;

Recommitting themselves to the total observance and compliance with the Cease-fire Agreement signed in Lome on 18 May 1999, and appended as Annex 1 until the signing of the present Peace Agreement;

**HEREBY AGREE AS FOLLOWS:**

## **PART ONE**

### **CESSATION OF HOSTILITIES**

#### **ARTICLE 1**

#### **CEASE-FIRE**

The armed conflict between the Government of Sierra Leone and the RUF/SL is hereby ended with immediate effect. Accordingly, the two sides shall ensure that a total and permanent cessation of hostilities is observed forthwith.

#### **ARTICLE II**

#### **CEASE-FIRE MONITORING**

1. A Cease-fire Monitoring Committee (hereinafter termed the CMC) to be chaired by the United Nations Observer Mission in Sierra Leone (hereinafter termed UNOMSIL) with representatives of the Government of Sierra Leone, RUF/SL, the Civil Defence Forces (hereinafter termed the CDF) and ECOMOG shall be established at provincial and district levels with immediate effect to monitor, verify and report all violations of the cease-fire.
2. A Joint Monitoring Commission (hereinafter termed the JMC) shall be established at the national level to be chaired by UNOMSIL with representatives of the Government of Sierra Leone, RUF/SL, CDF, and ECOMOG. The JMC shall receive, investigate and take appropriate action on reports of violations of the cease-fire from the CMC. The parties

agree to the definition of cease-fire violations as contained in Annex 2 which constitutes an integral part of the present Agreement.

3. The parties shall seek the assistance of the International Community in providing funds and other logistics to enable the JMC to carry out its mandate.

## **PART TWO**

### **GOVERNANCE**

The Government of Sierra Leone and the RUF/SL, recognizing the right of the people of Sierra Leone to live in peace, and desirous of finding a transitional mechanism to incorporate the RUF/SL into governance within the spirit and letter of the Constitution, agree to the following formulas for structuring the government for the duration of the period before the next elections, as prescribed by the Constitution, managing scarce public resources for the benefit of the development of the people of Sierra Leone and sharing the responsibility of implementing the peace. Each of these formulas (not in priority order) is contained in a separate Article of this Part of the present Agreement; and may be further detailed in protocols annexed to it.

Article III Transformation of the RUF/SL Into a Political Party

Article IV Enabling Members of the RUF/SL to Hold Public Office

Article V Enabling the RUF/SL to Join a Broad-Based Government of National Unity Through Cabinet Appointment

Article VI Commission for the Consolidation of Peace

Article VII Commission for the Management of Strategic Resources, National Reconstruction and Development

Article VIII Council of Elders and Religious Leaders.

### **ARTICLE III**

#### **TRANSFORMATION OF THE RUF/SL INTO A POLITICAL PARTY**

1. The Government of Sierra Leone shall accord every facility to the RUF/SL to transform itself into a political party and enter the mainstream of the democratic process. To that end:
2. Immediately upon the signing of the present Agreement, the RUF/SL shall commence to organize itself to function as a political movement, with the rights, privileges and duties accorded to all political parties in Sierra Leone. These include the freedom to

publish, unhindered access to the media, freedom of association, freedom of expression, freedom of assembly, and the right to mobilize and associate freely.

3. Within a period of thirty days, following the signing of the present Agreement, the necessary legal steps shall be taken by the Government of Sierra Leone to enable the RUF/SL to register as a political party.

4. The Parties shall approach the International Community with a view to mobilizing resources for the purposes of enabling the RUF/SL to function as a political party. These resources may include but shall not be limited to:

- (i) Setting up a trust fund;
- (ii) Training for RUF/SL membership in party organization and functions; and
- (iii) Providing any other assistance necessary for achieving the goals of this section.

#### **ARTICLE IV**

##### **ENABLING MEMBERS OF THE RUF/SL TO HOLD PUBLIC OFFICE**

1. The Government of Sierra Leone shall take the necessary steps to enable those RUF/SL members nominated by the RUF/SL to hold public office, within the time-frames agreed and contained in the present Agreement for the integration of the various bodies named herein.

2. Accordingly, necessary legal steps shall be taken by the Government of Sierra Leone, within a period of fourteen days following the signing of the present Agreement, to amend relevant laws and regulations that may constitute an impediment or bar to RUF/SL and AFRC personnel holding public office.

3. Within seven days of the removal of any such legal impediments, both parties shall meet to discuss and agree on the appointment of RUF/SL members to positions in parastatals, diplomacy and any other public sector.

#### **ARTICLE V**

##### **ENABLING THE RUF/SL TO JOIN A BROAD-BASED GOVERNMENT OF NATIONAL UNITY THROUGH CABINET APPOINTMENTS**

1. The Government of Sierra Leone shall accord every opportunity to the RUF/SL to join a broad-based government of national unity through cabinet appointments. To that end:

2. The Chairmanship of the Board of the Commission for the Management of Strategic Resources, National Reconstruction and Development (CMRRD) as provided for in Article VII of the present Agreement shall be offered to the leader of the RUF/SL,

Corporal Foday Sankoh. For this purpose he shall enjoy the status of Vice President and shall therefore be answerable only to the President of Sierra Leone.

3. The Government of Sierra Leone shall give ministerial positions to the RUF/SL in a moderately expanded cabinet of 18, bearing in mind that the interests of other political parties and civil society organizations should also be taken into account, as follows:

- (i) One of the senior cabinet appointments such as finance, foreign affairs and justice;
- (ii) Three other cabinet positions.

4. In addition, the Government of Sierra Leone shall, in the same spirit, make available to the RUF/SL the following senior government positions: Four posts of Deputy Minister.

5. Within a period of fourteen days following the signing of the present Agreement, the necessary steps shall be taken by the Government of Sierra Leone to remove any legal impediments that may prevent RUF/SL members from holding cabinet and other positions.

## **ARTICLE VI**

### **COMMISSION FOR THE CONSOLIDATION OF PEACE**

1. A Commission for the Consolidation of Peace (hereinafter termed the CCP), shall be established within two weeks of the signing of the present Agreement to implement a post-conflict programme that ensures reconciliation and the welfare of all parties to the conflict, especially the victims of war. The CCP shall have the overall goal and responsibility for supervising and monitoring the implementation of and compliance with the provisions of the present Agreement relative to the promotion of national reconciliation and the consolidation of peace.

2. The CCP shall ensure that all structures for national reconciliation and the consolidation of peace already in existence and those provided for in the present Agreement are operational and given the necessary resources for realizing their respective mandates. These structures shall comprise:

- (i) the Commission for the Management of Strategic Resources, National Reconstruction and Development;
- (ii) the Joint Monitoring Commission;
- (iii) the Provincial and District Cease-fire Monitoring Committees;
- (iv) the Committee for the Release of Prisoners of War and Non-Combatants;
- (v) the Committee for Humanitarian Assistance;



- (vi) the National Commission on Disarmament, Demobilization and Reintegration;
- (vii) the National Commission for Resettlement, Rehabilitation and Reconstruction;
- (viii) the Human Rights Commission; and
- (ix) the Truth and Reconciliation Commission.

3. The CCP shall have the right to inspect any activity or site connected with the implementation of the present Agreement.

4. The CCP shall have full powers to organize its work in any manner it deems appropriate and to appoint any group or sub-committee which it deems necessary in the discharge of its functions.

5. The Commission shall be composed of the following members:

- (i) Two representatives of the civil society;
- (ii) One representative each named by the Government, the RUF/SL and the Parliament.

6. The CCP shall have its own offices, adequate communication facilities and secretarial support staff.

7. Recommendations for improvements or modifications shall be made to the President of Sierra Leone for appropriate action. Likewise, failures of the structures to perform their assigned duties shall also be brought to the attention of the President.

8. Disputes arising out of the preceding paragraph shall be brought to the Council of Elders and Religious Leaders for resolution, as specified in Article VIII of the present Agreement.

9. Should Protocols be needed in furtherance of any provision in the present Agreement, the CCP shall have the responsibility for their preparation.

10. The mandate of the CCP shall terminate at the end of the next general elections.

## **ARTICLE VII**

### **COMMISSION FOR THE MANAGEMENT OF STRATEGIC RESOURCES,**

#### **NATIONAL RECONSTRUCTION AND DEVELOPMENT**

1. Given the emergency situation facing the country, the parties agree that the Government shall exercise full control over the exploitation of gold, diamonds and other resources, for the benefit of the people of Sierra Leone. Accordingly, a Commission for

the Management of Strategic Resources, National Reconstruction and Development (hereinafter termed the CMRRD) shall be established and charged with the responsibility of securing and monitoring the legitimate exploitation of Sierra Leone's gold and diamonds, and other resources that are determined to be of strategic importance for national security and welfare as well as cater for post-war rehabilitation and reconstruction, as provided for under Article XXVIII of the present Agreement.

2. The Government shall take the necessary legal action within a period not exceeding two weeks from the signing of the present Agreement to the effect that all exploitation, sale, export, or any other transaction of gold and diamonds shall be forbidden except those sanctioned by the CMRRD. All previous concessions shall be null and void.
3. The CMRRD shall authorize licensing of artisanal production of diamonds and gold, in accordance with prevailing laws and regulations. All gold and diamonds extracted or otherwise sources from any Sierra Leonean territory shall be sold to the Government.
4. The CMRRD shall ensure, through the appropriate authorities, the security of the areas covered under this Article, and shall take all necessary measures against unauthorized exploitation.
5. For the export or local resale of gold and diamonds by the Government, the CMRRD shall authorize a buying and selling agreement with one or more reputable international and specialized mineral companies. All exports of Sierra Leonean gold and diamonds shall be transacted by the Government, under these agreements.
6. The proceeds from the transactions of gold and diamonds shall be public monies which shall enter a special Treasury account to be spent exclusively on the development of the people of Sierra Leone, with appropriations for public education, public health, infrastructural development, and compensation for incapacitated war victims as well as post-war rehabilitation and reconstruction. Priority spending shall go to rural areas.
7. The Government shall, if necessary, seek the assistance and cooperation of other governments and their instruments of law enforcement to detect and facilitate the prosecution of violations of this Article.
8. The management of other natural resources shall be reviewed by the CMRRD to determine if their regulation is a matter of national security and welfare, and recommend appropriate policy to the Government.
9. The functions of the Ministry of Mines shall continued to be carried out by the current authorized ministry. However, in respect of strategic mineral resources, the CMRRD shall be an autonomous body in carrying out its duties concerning the regulation of Sierra Leone's strategic natural resources.
10. All agreements and transactions referred to in this Article shall be subject to full public disclosure and records of all correspondence, negotiations, business transactions

and any other matters related to exploitation, management, local or international marketing, and any other matter shall be public documents.

11. The Commission shall issue monthly reports, including the details of all the transactions related to gold and diamonds, and other licenses or concessions of natural resources, and its own administrative costs.

12. The Commission shall be governed by a Board whose Chairmanship shall be offered to the Leader of the RUF/SL, Corporal Foday Sankoh. The Board shall also comprise:

- (i) Two representatives of the Government appointed by the President;
- (ii) Two representatives of the political party to be formed by the RUF/SL;
- (iii) Three representatives of the civil society; and
- (iv) Two representatives of other political parties appointed by Parliament.

13. The Government shall take the required administrative actions to implement the commitments made in the present Agreement; and in the case of enabling legislation, it shall draft and submit to Parliament within thirty days of the signature of the present Agreement, the relevant bills for their enactment into law.

14. The Government commits itself to propose and support an amendment to the Constitution to make the exploitation of gold and diamonds the legitimate domain of the people of Sierra Leone, and to determine that the proceeds be used for the development of Sierra Leone, particularly public education, public health, infrastructure development, and compensation of incapacitated war victims as well as post-war reconstruction and development.

## **ARTICLE VIII**

### **COUNCIL OF ELDERS AND RELIGIOUS LEADERS**

1. The signatories agree to refer any conflicting differences of interpretation of this Article or any other Article of the present Agreement or its protocols, to a Council of Elders and Religious Leaders comprised as follows:

- (i) Two members appointed by the Inter-Religious Council;
- (ii) One member each appointed by the Government and the RUF/SL; and
- (iii) One member appointed by ECOWAS.

2. The Council shall designate its own chairperson from among its members. All of its decision shall be taken by the concurrence of at least four members, and shall be binding and public, provided that an aggrieved party may appeal to the Supreme Court.

## **PART THREE**

### **OTHER POLITICAL ISSUES**

The Part of the present Agreement Consists of the following Articles

Article IX Pardon and Amnesty

Article X Review of the Present Constitution

Article XI Elections

Article XII National Electoral Commission

### **ARTICLE IX**

#### **PARDON AND AMNESTY**

1. In order to bring lasting peace to Sierra Leone, the Government of Sierra Leone shall take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon.
2. After the signing of the present Agreement, the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement.
3. To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the present Agreement. In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality.

### **ARTICLE X**

#### **REVIEW OF THE PRESENT CONSTITUTION**

In order to ensure that the Constitution of Sierra Leone represents the needs and aspirations of the people of Sierra Leone and that no constitutional or any other legal provision prevents the implementation of the present Agreement, the Government of Sierra Leone shall take the necessary steps to establish a Constitutional Review Committee to review the provisions of the present Constitution, and where deemed appropriate, recommend revisions and amendments, in accordance with Part V, Section 108 of the Constitution of 1991.

## **ARTICLE XI**

### **DATE OF NEXT ELECTIONS**

The next national elections in Sierra Leone shall be held in accordance with the present Constitution of Sierra Leone.

## **ARTICLE XII**

### **NATIONAL ELECTORAL COMMISSION**

1. A new independent National Electoral Commission (hereinafter termed the NEC) shall be set up by the Government, not later than three months after the signing of the present Agreement.
2. In setting up the new NEC the President shall consult all political parties, including the RUF/SL, to determine the membership and terms of reference of the Commission, paying particular attention to the need for a level playing field in the nation's elections.
3. No member of the NEC shall be eligible for appointment to political office by any government formed as a result of an election he or she was mandated to conduct.
4. The NEC shall request the assistance of the International Community, including the UN, the OAU, ECOWAS and the Commonwealth of Nations, in monitoring the next presidential and parliamentary elections in Sierra Leone.

## **PART FOUR**

### **POST-CONFLICT MILITARY AND SECURITY ISSUES**

1. The Government of Sierra Leone and the RUF/SL, recognizing that the maintenance of peace and security is of paramount importance for the achievement of lasting peace in Sierra Leone and for the welfare of its people, have agreed to the following formulas for dealing with post-conflict military and security matters. Each of these formulas (not in priority order) is contained in separate Articles of this Part of the present Agreement and may be further detailed in protocols annexed to the Agreement.

Article XIII Transformation and New Mandate of ECOMOG

Article XIV New Mandate of UNOMSIL

Article XV Security Guarantees for Peace Monitors

Article XVI Encampment, Disarmament, Demobilization and Reintegration

Article XVII Restructuring and Training of the Sierra Leone Armed Forces

Article XVIII Withdrawal of Mercenaries

Article XIX Notification to Joint Monitoring Commission

Article Notification to Military Commands.

### **ARTICLE XIII**

#### **TRANSFORMATION AND NEW MANDATE OF ECOMOG**

1. Immediately upon the signing of the present Agreement, the parties shall request ECOWAS to revise the mandate of ECOMOG in Sierra Leone as follows:

(i) Peacekeeping;

(ii) Security of the State of Sierra Leone;

i. Protection of UNOMSIL.

i. Protection of Disarmament, Demobilisation and Reintegration personnel.

2. The Government shall, immediately upon the signing of the present Agreement, request ECOWAS for troop contributions from at least two additional countries. The additional contingents shall be deployed not later than 30 days from the date of signature of the present Agreement. The Security Council shall be requested to provide assistance in support of ECOMOG.

3. The Parties agree to develop a timetable for the phased withdrawal of ECOMOG, including measures for securing all of the territory of Sierra Leone by the restructured armed forces. The phased withdrawal of ECOMOG will be linked to the phased creation and deployment of the restructured armed forces.

### **ARTICLE XIV**

#### **NEW MANDATE OF UNOMSIL**

1. The UN Security Council is requested to amend the mandate of UNOMSIL to enable it to undertake the various provisions outlined in the present Agreement.

## **ARTICLE XV**

### **SECURITY GUARANTEES FOR PEACE MONITORS**

1. The Government of Sierra Leone and the RUF/SL agree to guarantee the safety, security and freedom of movement of UNOMSIL Military Observers throughout Sierra Leone. This guarantee shall be monitored by the Joint Monitoring Commission.
2. The freedom of movement includes complete and unhindered access for UNOMSIL Military Observers in the conduct of their duties throughout Sierra Leone. Before and during the process of Disarmament, Demobilization and Reintegration, officers and escorts to be provided by both Parties shall be required to facilitate this access.
3. Such freedom of movement and security shall also be accorded to non-military UNOMSIL personnel such as Human Rights Officers in the conduct of their duties. These personnel shall, in most cases, be accompanied by UNOMSIL Military Observers.
4. The provision of security to be extended shall include United Nations aircraft, vehicles and other property.

## **ARTICLE XVI**

### **ENCAMPMENT, DISARMAMENT, DEMOBILIZATION AND REINTEGRATION**

1. A neutral peace keeping force comprising UNOMSIL and ECOMOG shall disarm all combatants of the RUF/SL, CDF, SLA and paramilitary groups. The encampment, disarmament and demobilization process shall commence within six weeks of the signing of the present Agreement in line with the deployment of the neutral peace keeping force.
2. The present SLA shall be restricted to the barracks and their arms in the armoury and their ammunitions in the magazines and placed under constant surveillance by the neutral peacekeeping force during the process of disarmament and demobilization.
3. UNOMSIL shall be present in all disarmament and demobilization locations to monitor the process and provide security guarantees to all ex-combatants.
4. Upon the signing of the present Agreement, the Government of Sierra Leone shall immediately request the International Community to assist with the provision of the

necessary financial and technical resources needed for the adaptation and extension of the existing Encampment, Disarmament, Demobilization and Reintegration Programme in Sierra Leone, including payment of retirement benefits and other emoluments due to former members of the SLA.

## **ARTICLE XVII**

### **RESTRUCTURING AND TRAINING OF THE SIERRA LEONE ARMED FORCES**

1. The restructuring, composition and training of the new Sierra Leone armed forces will be carried out by the Government with a view to creating truly national armed forces, bearing loyalty solely to the State of Sierra Leone, and able and willing to perform their constitutional role.
2. Those ex-combatants of the RUF/SL, CDF and SLA who wish to be integrated into the new restructured national armed forces may do so provided they meet established criteria.
3. Recruitment into the armed forces shall reflect the geo-political structure of Sierra Leone within the established strength.

## **ARTICLE XVIII**

### **WITHDRAWAL OF MERCENARIES**

All mercenaries, in any guise, shall be withdrawn from Sierra Leone immediately upon the signing of the present Agreement. Their withdrawal shall be supervised by the Joint Monitoring Commission.

## **ARTICLE XIX**

### **NOTIFICATION TO JOINT MONITORING COMMISSION**

Immediately upon the establishment of the JMC provided for in Article II of the present Agreement, each party shall furnish to the JMC information regarding the strength and locations of all combatants as well as the positions and descriptions of all known unexploded bombs (UXBs), explosive ordnance devices (EODs), minefields, booby traps, wire entanglements, and all other physical or military hazards. The JMC shall seek all necessary technical assistance in mine clearance and the disposal or destruction of similar devices and weapons under the operational control of the neutral peacekeeping force. The parties shall keep the JMC updated on changes in this information so that it can notify the public as needed, to prevent injuries.



## **ARTICLE XX**

### **NOTIFICATION TO MILITARY COMMANDS**

Each party shall ensure that the terms of the present Agreement, and written orders requiring compliance, are immediately communicated to all of its forces.

## **PART FIVE**

### **HUMANITARIAN, HUMAN RIGHTS AND SOCIO-ECONOMIC ISSUES**

1. The Government of Sierra Leone and the RUF\SL recognizing the importance of upholding, promoting and protecting the human rights of every Sierra Leonean as well as the enforcement of humanitarian law, agree to the following formulas for the achievement of these laudable objectives. Each of these formulas (not in priority order) is contained in separate Articles of this Part of the present Agreement

Article XXI Release of Prisoners and Abductees

Article XXII Refugees and Displaced Persons

Article XXIII Guarantee of the Security of Displaced Persons and Refugees

Article XXIV Guarantee and Promotion of Human Rights

Article XXV Human Rights Commission

Article XXVI Human Rights Violations

Article XXVII Humanitarian Relief

Article XXVIII Post War Rehabilitation and Reconstruction

Article XXIX Special Fund for War Victims

Article XXX Child Combatants

Article XXXI Education and Health

**ARTICLE XXI****RELEASE OF PRISONERS AND ABDUCTEES**

All political prisoners of war as well as all non-combatants shall be released immediately and unconditionally by both parties, in accordance with the Statement of June 2, 1999, which is contained in Annex 3 and constitutes an integral part of the present Agreement.

**ARTICLE XXII****REFUGEES AND DISPLACED PERSONS**

The Parties through the National Commission for Resettlement, Rehabilitation and Reconstruction agree to seek funding from and the involvement of the UN and other agencies, including friendly countries, in order to design and implement a plan for voluntary repatriation and reintegration of Sierra Leonean refugees and internally displaced persons, including non-combatants, in conformity with international conventions, norms and practices.

**ARTICLE XXIII****GUARANTEE OF THE SECURITY OF DISPLACED  
PERSONS AND REFUGEES**

As a reaffirmation of their commitment to the observation of the conventions and principles of human rights and the status of refugees, the Parties shall take effective and appropriate measures to ensure that the right of Sierra Leoneans to asylum is fully respected and that no camps or dwellings of refugees or displaced persons are violated.

**ARTICLE XXIV****GUARANTEE AND PROMOTION OF HUMAN RIGHTS**

1. The basic civil and political liberties recognized by the Sierra Leone legal system and contained in the declarations and principles of Human Rights adopted by the UN and OAU, especially the Universal Declaration of Human Rights and the African Charter on Human and People's Rights, shall be fully protected and promoted within Sierra Leonean society.

2. These include the right to life and liberty, freedom from torture, the right to a fair trial, freedom of conscience, expression and association, and the right to take part in the governance of one's country.

## **ARTICLE XXV**

### **HUMAN RIGHTS COMMISSION**

1. The Parties pledge to strengthen the existing machinery for addressing grievances of the people in respect of alleged violations of their basic human rights by the creation, as a matter of urgency and not later than 90 days after the signing of the present Agreement, of an autonomous quasi-judicial national Human Rights Commission.
2. The Parties further pledge to promote Human Rights education throughout the various sectors of Sierra Leonean society, including the schools, the media, the police, the military and the religious community.
3. In pursuance of the above, technical and material assistance may be sought from the UN High Commissioner for Human Rights, the African Commission on Human and Peoples Rights and other relevant international organisations.
4. A consortium of local human rights and civil society groups in Sierra Leone shall be encouraged to help monitor human rights observance.

## **ARTICLE XXVI**

### **HUMAN RIGHTS VIOLATIONS**

1. A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.
2. In the spirit of national reconciliation, the Commission shall deal with the question of human rights violations since the beginning of the Sierra Leonean conflict in 1991.

This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.

3. Membership of the Commission shall be drawn from a cross-section of Sierra Leonean society with the participation and some technical support of the International Community. This Commission shall be established within 90 days after the signing of the present Agreement and shall, not later than 12 months after the commencement of its work,

submit its report to the Government for immediate implementation of its recommendations.

## **ARTICLE XXVII**

### **HUMANITARIAN RELIEF**

1. The Parties reaffirm their commitment to their Statement on the Delivery of Humanitarian Assistance in Sierra Leone of June 3, 1999 which is contained in Annex 4 and constitutes an integral part of the present Agreement. To this end, the Government shall request appropriate international humanitarian assistance for the people of Sierra Leone who are in need all over the country.
2. The Parties agree to guarantee safe and unhindered access by all humanitarian organizations throughout the country in order to facilitate delivery of humanitarian assistance, in accordance with international conventions, principles and norms which govern humanitarian operations. In this respect, the parties agree to guarantee the security of the presence and movement of humanitarian personnel.
3. The Parties also agree to guarantee the security of all properties and goods transported, stocked or distributed by humanitarian organizations, as well as the security of their projects and beneficiaries.
4. The Government shall set up at various levels throughout the country, the appropriate and effective administrative or security bodies which will monitor and facilitate the implementation of these guarantees of safety for the personnel, goods and areas of operation of the humanitarian organizations.

## **ARTICLE XXVIII**

### **POST - WAR REHABILITATION AND RECONSTRUCTION**

1. The Government, through the National Commission for Resettlement, Rehabilitation and Reconstruction and with the support of the International Community, shall provide appropriate financial and technical resources for post-war rehabilitation, reconstruction and development.
2. Given that women have been particularly victimized during the war, special attention shall be accorded to their needs and potentials in formulating and implementing national rehabilitation, reconstruction and development programmes, to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone.

**ARTICLE XXIX****SPECIAL FUND FOR WAR VICTIMS**

The Government, with the support of the International Community, shall design and implement a programme for the rehabilitation of war victims. For this purpose, a special fund shall be set up.

**ARTICLE XXX****CHILD COMBATANTS**

The Government shall accord particular attention to the issue of child soldiers. It shall, accordingly, mobilize resources, both within the country and from the International Community, and especially through the Office of the UN Special Representative for Children in Armed Conflict, UNICEF and other agencies, to address the special needs of these children in the existing disarmament, demobilization and reintegration processes.

**ARTICLE XXXI****EDUCATION AND HEALTH**

The Government shall provide free compulsory education for the first nine years of schooling (Basic Education) and shall endeavour to provide free schooling for a further three years. The Government shall also endeavour to provide affordable primary health care throughout the country.

**PART SIX****IMPLEMENTATION OF THE AGREEMENT****ARTICLE XXXII****JOINT IMPLEMENTATION COMMITTEE**

A Joint Implementation Committee consisting of members of the Commission for the Consolidation of Peace (CCP) and the Committee of Seven on Sierra Leone, as well as the Moral Guarantors, provided for in Article XXXIV of the present Agreement and other international supporters shall be established. Under the chairmanship of ECOWAS, the Joint Implementation Committee shall be responsible for reviewing and assessing the state of implementation of the Agreement, and shall meet at least once every three months. Without prejudice to the functions of the Commission for

the Consolidation of Peace as provided for in Article VI, the Joint Implementation Committee shall make recommendations deemed necessary to ensure effective implementation of the present Agreement according to the Schedule of Implementation, which appears as Annex 5.

### **ARTICLE XXXIII**

#### **REQUEST FOR INTERNATIONAL INVOLVEMENT**

The parties request that the provisions of the present Agreement affecting the United Nations shall enter into force upon the adoption by the UN Security Council of a resolution responding affirmatively to the request made in this Agreement. Likewise, the decision-making bodies of the other international organisations concerned are requested to take similar action, where appropriate.

## **PART SEVEN**

### **MORAL GUARANTORS AND INTERNATIONAL SUPPORT**

#### **ARTICLE XXXIV**

##### **MORAL GUARANTORS**

The Government of the Togolese Republic, the United Nations, the OAU, ECOWAS and the Commonwealth of Nations shall stand as Moral Guarantors that this Peace Agreement is implemented with integrity and in good faith by both parties.

#### **ARTICLE XXXV**

## INTERNATIONAL SUPPORT

Both parties call on the International Community to assist them in implementing the present Agreement with integrity and good faith. The international organisations mentioned in Article XXXIV and the Governments of Benin, Burkina Faso, Côte d'Ivoire, Ghana, Guinea, Liberia, Libyan Arab Jamahiriya, Mali, Nigeria, Togo, the United Kingdom and the United States of America are facilitating and supporting the conclusion of this Agreement. These States and organisations believe that this Agreement must protect the paramount interests of the people of Sierra Leone in peace and security.

## PART EIGHT

### FINAL PROVISIONS

#### ARTICLE XXXVI

##### REGISTRATION AND PUBLICATION

The Sierra Leone Government shall register the signed Agreement not later than 15 days from the date of the signing of this Agreement. The signed Agreement shall also be published in the Sierra Leone Gazette not later than 48 (Forty - Eight) hours after the date of registration of this Agreement. This Agreement shall be laid before the Parliament of Sierra Leone not later than 21 (Twenty-One) days after the signing of this Agreement.

#### ARTICLE XXXVII

##### ENTRY INTO FORCE

The present Agreement shall enter into force immediately upon its signing by the Parties.

**Done in Lomé this seven day of the month of July 1999 in twelve (12) original texts in English and French, each text being equally authentic.**

3.

**UN Document S2000/915 dated 4.10.2000**

**S/2000/915**

## **II. Nature and specificity of the Special Court**

9. The legal nature of the Special Court, like that of any other legal entity, is determined by its constitutive instrument. Unlike either the International Tribunals for the Former Yugoslavia and for Rwanda, which were established by resolutions of the Security Council and constituted as subsidiary organs of the United Nations, or national courts established by law, the Special Court, as foreseen, is established by an Agreement between the United Nations and the Government of Sierra Leone and is therefore a treaty-based sui generis court of mixed jurisdiction and composition. Its implementation at the national level would require that the agreement is incorporated in the national law of Sierra Leone in accordance with constitutional requirements. Its applicable law includes international as well as Sierra Leonean law, and it is composed of both international and Sierra Leonean judges,<sup>1</sup> prosecutors and administrative support staff.<sup>2</sup> As a treaty-based organ, the Special Court is not anchored in any existing system (i.e., United Nations administrative law or the national law of the State of the seat) which would be automatically applicable to its non-judicial, administrative and financial activities. In the absence of such a framework, it would be necessary to identify rules for various purposes, such as recruitment, staff administration, procurement, etc., to be applied as the need arose.<sup>3</sup>

10. The Special Court has concurrent jurisdiction with and primacy over Sierra Leonean courts. Consequently, it has the power to request at any stage of the proceedings that any national Sierra Leonean court defer to its jurisdiction (article 8, para. 2 of the Statute). The primacy of the Special Court, however, is limited to the national courts of Sierra Leone and does not extend to the courts of third States. Lacking the



power to assert its primacy over national courts in third States in connection with the crimes committed in Sierra Leone, it also lacks the power to request the surrender of an accused from any third State and to induce the compliance of its authorities with any such request. In examining measures to enhance the deterrent powers of the Special Court, the Security Council may wish to consider endowing it with Chapter VII powers for the specific purpose of requesting the surrender of an accused from outside the jurisdiction of the Court.

11. Beyond its legal and technical aspects, which in many ways resemble those of other international jurisdictions, the Special Court is Sierra Leone specific. Many of the legal choices made are intended to address the specificities of the Sierra Leonean conflict, the brutality of the crimes committed and the young age of those presumed responsible. The moral dilemma that some of these choices represent has not been lost upon those who negotiated its constitutive instruments.

### **III. Competence of the Special Court**

#### **A. Subject-matter jurisdiction**

12. The subject-matter jurisdiction of the Special Court comprises crimes under international humanitarian law and Sierra Leonean law. It covers the most egregious practices of mass killing, extrajudicial executions, widespread mutilation, in particular amputation of hands, arms, legs, lips and other parts of the body, sexual violence against girls and women, and sexual slavery, abduction of thousands of children and adults, hard labour and forced recruitment into armed groups, looting and setting fire to large urban dwellings and villages. In recognition of the principle of legality, in particular *nullum crimen sine lege*, and the prohibition on retroactive criminal legislation, the international crimes enumerated, are crimes considered to have had the character of customary international law at the time of the alleged commission of the crime.

4.

**PART III—EXERCISE OF JURISDICTION OF SPECIAL COURT**

**Jurisdiction ,procedure and evidence**

**10.** The Special Court shall exercise the jurisdiction and powers conferred upon it by the Agreement in the manner provided in the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda in force at the time of the establishment of the Special Court as adapted for the purposes of the Special Court by the judges of the Special Court as a whole.

5.

**Security Council Resolution 1315 dated 14.8.2000**

United Nations S/RES/1315 (2000)

**Security Council** Distr.: General

14 August 2000

00-60532 (E)

**Resolution 1315 (2000)**

**Adopted by the Security Council at its 4186th meeting, on  
14 August 2000**

*The Security Council:*

*Deeply concerned* at the very serious crimes committed within the territory of

Sierra Leone against the people of Sierra Leone and United Nations and associated

personnel and at the prevailing situation of impunity,

*Commending* the efforts of the Government of Sierra Leone and the Economic

Community of West African States (ECOWAS) to bring lasting peace to Sierra

Leone,

*Noting* that the Heads of State and Government of ECOWAS agreed at the 23rd Summit of the Organization in Abuja on 28 and 29 May 2000 to dispatch a

regional investigation of the resumption of hostilities,

*Noting also* the steps taken by the Government of Sierra Leone in creating a national truth and reconciliation process, as required by Article XXVI of the Lomé

Peace Agreement (S/1999/777) to contribute to the promotion of the rule of law,

*Recalling* that the Special Representative of the Secretary-General appended to

his signature of the Lomé Agreement a statement that the United Nations holds the

understanding that the amnesty provisions of the Agreement shall not apply to

international crimes of genocide, crimes against humanity, war crimes and other

serious violations of international humanitarian law,

*Reaffirming* the importance of compliance with international humanitarian law,  
and *reaffirming further* that persons who commit or authorize serious violations of international humanitarian law are individually responsible and accountable for those violations and that the international community will exert every effort to bring those responsible to justice in accordance with international standards of justice, fairness and due process of law,  
*Recognizing* that, in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

**2**

**S/RES/1315 (2000)**

*Taking note* in this regard of the letter dated 12 June 2000 from the President of Sierra Leone to the Secretary-General and the Suggested Framework attached to it (S/2000/786, annex),  
*Recognizing further* the desire of the Government of Sierra Leone for assistance from the United Nations in establishing a strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace,  
*Noting* the report of the Secretary-General of 31 July 2000 (S/2000/751) and, in particular, *taking note* with appreciation of the steps already taken by the Secretary-General in response to the request of the Government of Sierra Leone to assist it in establishing a special court,  
*Noting further* the negative impact of the security situation on the administration of justice in Sierra Leone and the pressing need for international cooperation to assist in strengthening the judicial system of Sierra Leone,  
*Acknowledging* the important contribution that can be made to this effort by qualified persons from West African States, the Commonwealth, other Member

States of the United Nations and international organizations, to expedite the process

of bringing justice and reconciliation to Sierra Leone and the region,

*Reiterating* that the situation in Sierra Leone continues to constitute a threat to

international peace and security in the region,

1. *Requests* the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court consistent with

this resolution, and *expresses* its readiness to take further steps expeditiously upon

receiving and reviewing the report of the Secretary-General referred to in paragraph 6 below;

2. *Recommends* that the subject matter jurisdiction of the special court should include notably crimes against humanity, war crimes and other serious

violations of international humanitarian law, as well as crimes under relevant Sierra

Leonean law committed within the territory of Sierra Leone;

3. *Recommends further* that the special court should have personal jurisdiction over persons who bear the greatest responsibility for the commission of

the crimes referred to in paragraph 2, including those leaders who, in committing

such crimes, have threatened the establishment of and implementation of the peace

process in Sierra Leone;

4. *Emphasizes* the importance of ensuring the impartiality, independence and credibility of the process, in particular with regard to the status of the judges

and the prosecutors;

5. *Requests*, in this connection, that the Secretary-General, if necessary, send a team of experts to Sierra Leone as may be required to prepare the report

referred to in paragraph 6 below;

6. *Requests* the Secretary-General to submit a report to the Security Council on the implementation of this resolution, in particular on his consultations and negotiations with the Government of Sierra Leone concerning the establishment of the special court, including recommendations, no later than 30 days from the date of this resolution;

3

**S/RES/1315 (2000)**

7. *Requests* the Secretary-General to address in his report the questions of the temporal jurisdiction of the special court, an appeals process including the advisability, feasibility, and appropriateness of an appeals chamber in the special court or of sharing the Appeals Chamber of the International Criminal Tribunals for the Former Yugoslavia and Rwanda or other effective options, and a possible alternative host State, should it be necessary to convene the special court outside the seat of the court in Sierra Leone, if circumstances so require;
8. *Requests* the Secretary-General to include recommendations on the following:
- (a) any additional agreements that may be required for the provision of the international assistance which will be necessary for the establishment and functioning of the special court;
  - (b) the level of participation, support and technical assistance of qualified persons from Member States of the United Nations, including in particular, member States of ECOWAS and the Commonwealth, and from the United Nations Mission in Sierra Leone that will be necessary for the efficient, independent and impartial functioning of the special court;
  - (c) the amount of voluntary contributions, as appropriate, of funds, equipment and services to the special court, including through the offer of expert personnel that may be needed from States, intergovernmental organizations and nongovernmental organizations;
  - (d) whether the special court could receive, as necessary and feasible, expertise and advice from the International Criminal Tribunals for the Former Yugoslavia and Rwanda;
9. *Decides* to remain actively seized of the matter.

6.

**Article 1 Special Court Agreement**

**Article 1: Establishment of the Special Court**

1. There is hereby established a Special Court for Sierra Leone to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

2. The Special Court shall function in accordance with the Statute of the Special Court for Sierra Leone. The Statute is annexed to this Agreement and forms an integral part thereof.

7.

**Article 1 Special Court Statute**

**Article 1: Competence of the Special Court**

1. The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

2. Any transgressions by peacekeepers and related personnel present in Sierra Leone pursuant to the Status of Mission Agreement in force between the United Nations and the Government of Sierra Leone or agreements between Sierra Leone and other Governments or regional organizations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Government of Sierra

Leone, shall be within the primary jurisdiction of the sending State.

3. In the event the sending State is unwilling or unable genuinely to carry out an

investigation or prosecution, the Court may, if authorized by the Security Council on the

proposal of any State, exercise jurisdiction over such persons.

8.

**s108 Sierra Leone Constitution (Annex 1)**

9.

**Sierra Leone Constitution Chapter VII ss 120-145 – Judiciary (Annex 1)**

10.

**Special Court Statute – Article 8 (1) (2)**

**Article 8: Concurrent jurisdiction**

1. The Special Court and the national courts of Sierra Leone shall have concurrent jurisdiction.

2. The Special Court shall have primacy over the national courts of Sierra Leone. At any stage of the procedure, the Special Court may formally request a national court to defer to

its competence in accordance with the present Statute and the Rules of Procedure and Evidence.

11.

**Constitution of Sierra Leone ss17 (1) 23 (1) 30(1) 40(4) – (see Annex 1)**



12.

**Montevideo Convention 1933****Montevideo Convention on the Rights and Duties of States****Signed at Montevideo, 26 December 1933****Entered into Force, 26 December 1934****Article 8 reaffirmed by Protocol, 23 December 1936**

Bolivia alone amongst the states represented at the Seventh International Conference of American States did not sign the Convention. The United States of America, Peru, and Brazil ratified the Convention with reservations directly attached to the document.

**CONVENTION ON RIGHTS AND DUTIES OF STATES**

The Governments represented in the Seventh International Conference of American States:

Wishing to conclude a Convention on Rights and Duties of States, have appointed the following Plenipotentiaries:

Honduras:

Miguel PAZ Baraona

Augusto C. COELLO

Luis BOGRAN

United States of America:

Cordell HULL

Alexander W. WEDDELL

J. Reuben CLARK

J. Butler WRIGHT

Spruille BRADEN

Miss Sophonisba P. BRECKINRIDGE

El Salvador:

Hector David CASTRO

Arturo Ramon AVILA

J. Cipriano CASTRO

Dominican Republic:

Tulio M. CESTERO

## Haiti:

Justin BARAU  
Francis SALGADO  
Antoine PIERRE-PAUL  
Edmond MANGONES

## Argentina:

Carlos SAAVEDRA Lamas  
Juan F. CAFFERATA  
Ramon S. CASTILLO  
Carlos BREBBIA  
Isidoro RUIZ Moreno  
Luis A. PODESTA Costa  
Raul PREBISCH  
Daniel ANTOKOLETZ

## Venezuela:

Cesar ZUMETA  
Luis CHURTON  
José Rafael MONTILLA

## Uruguay:

Alberto MANE  
Juan José AMEZAGA  
José G. ANTUNA  
Juan Carlos BLANCO  
Senora Sofia A. V. DE DEMICHELI  
Martin R. ECHEGOYEN  
Luis Alberto DE HERRERA  
Pedro MANINI Rios  
Mateo MARQUES Castro  
Rodolfo MEZZERA  
Octavio MORATA  
Luis MORQUIO  
Teofilo PINEYRO Chain  
Dardo REGULES  
José SERRATO  
José Pedro VARELA

## Paraguay:

Justo Pastor BENITEZ  
Geronimo RIART  
Horacio A. FERNANDEZ  
Senorita Maria F. GONZALEZ

## Mexico:

José Manuel PUIG Casauranc  
Alfonso REYES  
Basilio VADILLO  
Genaro V. VASQUEZ  
Romeo ORTEGA  
Manuel J. SIERRA  
Eduardo SUAREZ

Panama:

J. D. AROSEMENA  
Eduardo E. HOLGUIN  
Oscar R. MULLER  
Magin PONS

Bolivia:

Casto ROJAS  
David ALVESTEGUI  
Arturo PINTO Escalier

Guatemala:

Alfredo SKINNER Klee  
José GONZALEZ Campo  
Carlos SALAZAR  
Manuel ARROYO

Brazil:

Afranio DE MELLO Franco  
Lucillo A. DA CUNHA Bueno  
Francisco Luis DA SILVA Campos  
Gilberto AMADO  
Carlos CHAGAS  
Samuel RIBEIRO

Ecuador:

Augusto AGUIRRE Aparicio  
Humberto ALBORNOZ  
Antonio PARRA  
Carlos PUIG Vilassar  
Arturo SCARONE

Nicaragua:

Leonardo ARGUELLO  
Manuel CORDERO Reyes  
Carlos CUADRA Pasos

Colombia:

Alfonso LOPEZ  
Raimundo RIVAS  
José CAMACEO Carreno

Chile:  
Miguel CRUCHAGA Tocornal  
Octavio SENORET Silva  
Gustavo RIVERA  
José Ramon GUTIERREZ  
Felix NIETO DEL RIO  
Francisco FIGUEROA Sanchez  
Benjamin COHEN

Peru:  
Alfredo SOLE Y MURO  
Felipe BARREDA Laos  
Luis Fernan CISNEROS

Cuba:  
Angel Alberto GIRAUDY  
Herminio PORTELL Vila  
Alfredo NOGUEIRA

Who, after having exhibited their Full Powers, which were found to be in good and due order, have agreed upon the following:

### *Article 1*

The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.

13.

**John Dugard “International Law, A South African perspective – Annex 2)**

Oppenheim’s International Law p150 9<sup>th</sup> Ed., (1992)

Vol 1 by R }Jennings and A Watts }quoted

}in

Cf S. Talmon ‘Recognition of Courts in

}

International Law 1998

}Dugard

**PROSECUTOR v SAM HINGA NORMAN SCSL 2003-08-01**

**DEFENCE INDEX TO PRELIMINARY MOTION**  
**BASED ON LACK OF JURISDICTION:**  
**JUDICIAL INDEPENDENCE**

1. Security Council Resolution 1315 (2000) 14.08.2000 – **Annex 1**
2. Sec-General’s Report to the Security Council 4.10.2000 – **Annex 2**
3. Report for Security Council on UNAMSIL 16.10.2000 – **Annex 3**
4. Security Council letter to Secretary-General – 22.12.2000
5. Reply of Secretary-General to Security Council – 12.01.2001
6. Sierra Leone government agrees Special Court – 09.02.01 (docs)
7. S/Leone government ratification of Special Court – 16.01.2002
8. Excel spreadsheet – funding contribution – **Annex 4**
9. Special Court promotional brochure – **Annex 5**
10. Article 2.4 Special Court Agreement
11. International Treaties:

**Annexes 6-10**

Article 6 – European Convention for the  
Protection of Human Rights

Article 7 - African Charter on Human &  
Peoples’ Rights

Article 8 - American Convention on  
Human Rights

Article 10 – Universal Declaration of  
Human Rights

Article 14 – International Covenant on  
Civil and Political Rights

12. General Assembly 40/32 – 29.11.1985 } Basic Principles on  
} the Independence of  
General Assembly 40/146 – 13.12.1985 } the Judiciary  
} **Annex 11**
13. Prosecutor v Furundzija – ICTY - **Annex 12**
14. Prosecutor v Barayagwiza – ICTY **Annex 13**
15. Article 6(1) European Convention of Human Rights
16. B. Emmerson & A. Ashworth, Human Rights and Criminal Justice,  
pp367-73 (Sweet & Maxwell London 2001)
17. Articles 13, 32, ICTY Rules
18. Articles 13, 30, ICTR Rules
19. Article 17 UN Charter
20. Part 4, Articles 40 -41 Rome Statute International Criminal Court  
(ICC)
21. Rule 34 ICC rules of Procedure and Evidence
22. Article 36, 112, 49, Rome Statute

23. Articles 6-7 Special Court Agreement
24. Article 12(1), 13(1), 13(3), Special Court Statute
25. Article 2(2) Special Court Agreement
26. Rule 14(A), 15(A), Special Court Rules
27. Canadian Supreme Court – Reference re Remuneration of Judges  
of the Provincial Court of Prince Edward Island
28. Campbell & Fell v UK – ECHR
29. Article 14 ICCPR – UN Human Rights Committees General  
Comment 13



United Nations S/2000/1234

## Security Council

Distr.: General  
22 December 2000  
Original: English

### **Letter dated 22 December 2000 from the President of the Security Council addressed to the Secretary-General S/2000/1234**

2. *Funding.* Pursuant to resolution 1315 (2000), members of the Security Council support the creation of a Special Court for Sierra Leone funded through voluntary contributions. Such contributions shall take the form of funds, equipment and services, including the offer of expert personnel that may be needed from States, intergovernmental organizations and non-governmental organizations. It is understood that you cannot be expected to create any institution for which you do not have adequate funds in hand for at least 12 months and pledges to cover anticipated expenses for a second year of the Court's operation.

In order to assist the Court on questions of funding and administration, it is suggested that the arrangements between the Government of Sierra Leone and the United Nations provide for a management or oversight committee which could include representatives of Sierra Leone, the Secretary-General of the United Nations, the Court and interested voluntary contributors. The management committee would assist the court in obtaining adequate funding, provide advice on matters of Court administration and be available as appropriate to consult on other non-judicial matters.

5. Reply of Secretary-General to Security Council – 12.01.2001 - <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/211/71/PDF/N0121171.pdf?OpenElement>

3

## II. Funding . article 6 of the Agreement

10. In my report to the Security Council, I underscored the need for a viable and sustainable financial mechanism and noted that a financial mechanism based on voluntary contributions will not provide the assured and continuous source of funding required for the operation of the Special Court (S/2000/915, para. 70). I concluded that a Special Court based on voluntary contributions would be neither viable nor sustainable. In recognizing the risks involved in commencing the operation of the Special Court on the sole basis of prospects of voluntary contributions, members of the Council proposed that the process of establishing the Court shall not commence until the United Nations Secretariat has obtained sufficient contributions in hand to finance the establishment of the Court and 12 months of its operations, as well as pledges equal to the anticipated expenses of the second 12 months.

11. I have examined the proposal made by members of the Security Council to defer the commencement of the implementation stage until contributions for the establishment and the first year of operations are in hand and pledges for the second year are obtained. While the necessary funds for the establishment and first year of operations (US\$ 25 million, according to the rough estimates provided in my report) may be obtained, I would still caution against the establishment of the Court on the basis of availability of funds for one year and pledges for the following year. Such a financial mechanism is not likely to ensure a regular flow of funds in the subsequent years, let alone the viability of the Court throughout its life span. I am therefore obliged to reiterate what I said in my report about the risks associated with the S/2001/40 establishment of an operation of this kind with insufficient funds, or without assurances of continuous availability of funds (S/2000/915, para. 70).

12. However, in view of the position expressed in the President's letter of 22 December 2000, I am ready to negotiate the conclusion of an Agreement for the establishment of a Special Court on the basis of voluntary contributions as suggested by members of the Security Council. I am nevertheless reluctant to engage the responsibility of the United Nations at this stage by concluding an Agreement with the Government of Sierra Leone in the absence of an indication as to whether funds are likely to be made available for the start-up of the Court and its sustained operation thereafter. I would, therefore, propose that the process of establishing the Court shall not commence until the United Nations Secretariat has obtained sufficient contributions in hand to finance the establishment of the Court and 12 months of its operations, as well as pledges equal to the anticipated expenses of the following 24 months. This extension of the Council's proposal by a further 12 months would provide a basis for a functioning Court over three years, which in my view is the minimum time required for the investigation, prosecution and trial of a very limited number of accused. I suggest, therefore, that as soon as an agreement is reached in principle between members of the Security Council, the Secretary-General and the Government of Sierra Leone, I will launch an appeal to all States to indicate, within a reasonable period of time, their willingness to contribute funds, personnel and services to the Special Court for Sierra Leone and to specify the scope and extent of their contributions. Upon receipt of concrete information, I will be able to assess whether the process of establishing the Special Court may commence or whether the matter should revert to the Council to explore alternate means of financing the Court.

13. In this connection, I welcome the idea of creating a committee to support the Special Court, and in particular the budgetary process. At the time of its establishment, however, it will be necessary to lay down clearly the criteria for the

composition of the committee and its powers and responsibilities in order to ensure the efficient and cost-effective functioning of the Special Court in full independence. Pending the establishment of such a committee, and until it is otherwise decided, it is my intention to apply the United Nations Financial Regulations and Rules and Staff Regulations and Rules to the financial and administrative activities of the Special Court.

6.

Sierra Leone government agrees Special Court – 09.02.01 (Coalition for International Justice

<http://www.cij.org/index.cfm?fuseaction=faqs&tribunalID=5>

**. How was the Special Court established?**

In June 2000, Sierra Leonean President Ahmad Tejan Kabbah, wrote to UN Secretary General Kofi Annan, requesting the international body's assistance in establishing a forum to try those suspected of committing serious crimes under international humanitarian law. The UN Security Council passed Resolution 1315 on 14 August 2000, requesting that the Secretary General enter into negotiations with Kabbah's government on establishment of a Special Court for Sierra Leone. Resolution 1315 also asked Annan to report back to it on the design and reach of the Court. He reported back to the Security Council on 4 October 2000, and after further correspondence between him and the Security Council in December 2000 and January 2001, a draft agreement and draft statute for the Court emerged. The government of Sierra Leone approved the draft language on 9 February 2001, but the agreement stipulated that it would only take effect once sufficient contributions had been received by the UN to run the Court for 12 months, with pledges for another 24 months. The agreement foresaw a budget of \$114.6 million over three years, which in June 2001 was revised down to \$57 million, with \$16.8 million for the first year. In January 2002, the UN finalized an agreement with the government of Sierra Leone to begin establishment of the Special Court. In the interim, over \$40 million has been raised for the Court on the basis of voluntary contributions from UN members.

7.  
S/Leone government ratification of Special Court – Agreement  
16.01.2002 - <http://www.sierra-leone.org/specialcourtagreement.html>

**AGREEMENT BETWEEN THE UNITED NATIONS  
AND THE GOVERNMENT OF SIERRA LEONE  
ON THE ESTABLISHMENT OF A SPECIAL COURT FOR SIERRA  
LEONE**

**WHEREAS** the Security Council, in its resolution 1315 (2000) of 14 August 2000, expressed deep concern at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity;

**WHEREAS** by the said resolution, the Security Council requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court to prosecute persons who bear the greatest responsibility for the commission of serious violations of international humanitarian law and crimes committed under Sierra Leonean law;

**WHEREAS** the Secretary-General of the United Nations (hereinafter "the Secretary-General") and the Government of Sierra Leone (hereinafter "the Government") have held such negotiations for the establishment of a Special Court for Sierra Leone (hereinafter "the Special Court");

**NOW THEREFORE** the United Nations and the Government of Sierra Leone have agreed as follows:

**Article 1**  
**Establishment of the Special Court**

1. There is hereby established a Special Court for Sierra Leone to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.
2. The Special Court shall function in accordance with the Statute of the Special Court for Sierra Leone. The Statute is annexed to this Agreement and forms an integral part thereof.

**Article 2**  
**Composition of the Special Court and appointment of judges**

1. The Special Court shall be composed of a Trial Chamber and an Appeals Chamber with a second Trial Chamber to be created if, after the passage of at least six months from the commencement of the functioning of the Special Court, the Secretary-General, or the President of the Special Court so request. Up to two alternate judges shall similarly be appointed after six months if the President of the Special Court so determines.
2. The Chambers shall be composed of no fewer than eight independent judges and no more than eleven such judges who shall serve as follows:
  - (a) Three judges shall serve in the Trial Chamber where one shall be appointed by the Government of Sierra Leone and two judges appointed by the Secretary-General, upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General;
  - (b) In the event of the creation of a second Trial Chamber, that Chamber shall be likewise composed in the manner contained in subparagraph (a) above;
  - (c) Five judges shall serve in the Appeals Chamber, of whom two shall be appointed by the Government of Sierra Leone and three judges shall be appointed by the Secretary-General upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General.
3. The Government of Sierra Leone and the Secretary-General shall consult on the appointment of judges.
4. Judges shall be appointed for a three-year term and shall be eligible for re-appointment.
5. If, at the request of the President of the Special Court, an alternate judge or judges have been appointed by the Government of Sierra Leone or the Secretary-General, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

### **Article 3**

#### **Appointment of a Prosecutor and a Deputy Prosecutor**

1. The Secretary-General, after consultation with the Government of Sierra Leone, shall appoint a Prosecutor for a three-year term. The Prosecutor shall be eligible for reappointment.
2. The Government of Sierra Leone, in consultation with the Secretary-General and the Prosecutor, shall appoint a Sierra Leonean Deputy Prosecutor to assist the Prosecutor in the conduct of the investigations and prosecutions.
3. The Prosecutor and the Deputy Prosecutor shall be of high moral character and possess the highest level of professional competence and extensive experience in the

conduct of investigations and prosecutions of criminal cases. The Prosecutor and the Deputy Prosecutor shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

4. The Prosecutor shall be assisted by such Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently.

#### **Article 4** **Appointment of a Registrar**

1. The Secretary-General, in consultation with the President of the Special Court, shall appoint a Registrar who shall be responsible for the servicing of the Chambers and the Office of the Prosecutor, and for the recruitment and administration of all support staff. He or she shall also administer the financial and staff resources of the Special Court.

2. The Registrar shall be a staff member of the United Nations. He or she shall serve a three-year term and shall be eligible for re-appointment.

#### **Article 5** **Premises**

The Government shall assist in the provision of premises for the Special Court and such utilities, facilities and other services as may be necessary for its operation.

#### **Article 6** **Expenses of the Special Court**

The expenses of the Special Court shall be borne by voluntary contributions from the international community. It is understood that the Secretary-General will commence the process of establishing the Court when he has sufficient contributions in hand to finance the establishment of the Court and 12 months of its operations plus pledges equal to the anticipated expenses of the following 24 months of the Court's operation. It is further understood that the Secretary-General will continue to seek contributions equal to the anticipated expenses of the Court beyond its first three years of operation. Should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Special Court.

#### **Article 7** **Management Committee**

It is the understanding of the Parties that interested States will establish a management committee to assist the Secretary-General in obtaining adequate funding, and provide advice and policy direction on all non-judicial aspects of the operation of the Court, including questions of efficiency, and to perform other functions as agreed by interested States. The management committee shall consist of important contributors to the Special Court. The Government of Sierra Leone and the Secretary-General will also participate in the management committee.

### **Article 8**

#### **Inviolability of premises, archives and all other documents**

1. The premises of the Special Court shall be inviolable. The competent authorities shall take appropriate action that may be necessary to ensure that the Special Court shall not be dispossessed of all or any part of the premises of the Court without its express consent.
2. The property, funds and assets of the Special Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
3. The archives of the Court, and in general all documents and materials made available, belonging to or used by it, wherever located and by whomsoever held, shall be inviolable.

### **Article 9**

#### **Funds, assets and other property**

1. The Special Court, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Court has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.
2. Without being restricted by financial controls, regulations or moratoriums of any kind, the Special Court:
  - (a) May hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;
  - (b) Shall be free to transfer its funds, gold or currency from one country to another, or within Sierra Leone, to the United Nations or any other agency.

### **Article 10**

#### **Seat of the Special Court**

The Special Court shall have its seat in Sierra Leone. The Court may meet away from its seat if it considers it necessary for the efficient exercise of its functions, and may be relocated outside Sierra Leone, if circumstances so require, and subject to the conclusion of a Headquarters Agreement between the Secretary-General of the United Nations and the Government of Sierra Leone, on the one hand, and the Government of the alternative seat, on the other.

### **Article 11**

#### **Juridical capacity**



The Special Court shall possess the juridical capacity necessary to:

- (a) Contract;
- (b) Acquire and dispose of movable and immovable property;
- (c) Institute legal proceedings;
- (d) Enter into agreements with States as may be necessary for the exercise of its functions and for the operation of the Court.

#### Article 12

#### Privileges and immunities of the judges, the Prosecutor and the Registrar

1. The judges, the Prosecutor and the Registrar, together with their families forming part of their household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They shall, in particular, enjoy:

- (a) Personal inviolability, including immunity from arrest or detention;
- (b) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;
- (c) Inviolability for all papers and documents;
- (d) Exemption, as appropriate, from immigration restrictions and other alien registrations;
- (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents by the Vienna Convention;
- (f) Exemption from taxation in Sierra Leone on their salaries, emoluments and allowances.

2. Privileges and immunities are accorded to the judges, the Prosecutor and the Registrar in the interest of the Special Court and not for the personal benefit of the individuals themselves. The right and the duty to waive the immunity, in any case where it can be waived without prejudice to the purpose for which it is accorded, shall lie with the Secretary-General, in consultation with the President.

#### Article 13

#### Privileges and immunities of international and Sierra Leonean personnel

1. Sierra Leonean and international personnel of the Special Court shall be accorded:

- (a) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Special Court;

- (b) Immunity from taxation on salaries, allowances and emoluments paid to them.
2. International personnel shall, in addition thereto, be accorded:
- (a) Immunity from immigration restriction;
- (b) The right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Sierra Leone.
3. The privileges and immunities are granted to the officials of the Special Court in the interest of the Court and not for their personal benefit. The right and the duty to waive the immunity in any particular case where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Registrar of the Court.

**Article 14**  
**Counsel**

1. The Government shall ensure that the counsel of a suspect or an accused who has been admitted as such by the Special Court shall not be subjected to any measure which may affect the free and independent exercise of his or her functions.
2. In particular, the counsel shall be accorded:
- (a) Immunity from personal arrest or detention and from seizure of personal baggage;
- (b) Inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;
- (c) Immunity from criminal or civil jurisdiction in respect of words spoken or written and acts performed in his or her capacity as counsel. Such immunity shall continue to be accorded after termination of his or her functions as a counsel of a suspect or accused.
- (d) Immunity from any immigration restrictions during his or her stay as well as during his or her journey to the Court and back.

**Article 15**  
**Witnesses and experts**

Witnesses and experts appearing from outside Sierra Leone on a summons or a request of the judges or the Prosecutor shall not be prosecuted, detained or subjected to any restriction on their liberty by the Sierra Leonean authorities. They shall not be subjected to any measure which may affect the free and independent exercise of their functions. The provisions of article 14, paragraph 2(a) and (d), shall apply to them.

**Article 16**  
**Security, safety and protection of persons referred to in this Agreement**

Recognizing the responsibility of the Government under international law to ensure the security, safety and protection of persons referred to in this Agreement and its present incapacity to do so pending the restructuring and rebuilding of its security forces, it is agreed that the United Nations Mission in Sierra Leone shall provide the necessary security to premises and personnel of the Special Court, subject to an appropriate mandate by the Security Council and within its capabilities.

**Article 17**  
**Cooperation with the Special Court**

1. The Government shall cooperate with all organs of the Special Court at all stages of the proceedings. It shall, in particular, facilitate access to the Prosecutor to sites, persons and relevant documents required for the investigation.

2. The Government shall comply without undue delay with any request for assistance by the Special Court or an order issued by the Chambers, including, but not limited to:

- (a) Identification and location of persons;
- (b) Service of documents;
- (c) Arrest or detention of persons;
- (d) Transfer of an indictee to the Court.

**Article 18**  
**Working language**

The official working language of the Special Court shall be English.

**Article 19**  
**Practical arrangements**

1. With a view to achieving efficiency and cost-effectiveness in the operation of the Special Court, a phased-in approach shall be adopted for its establishment in accordance with the chronological order of the legal process.

2. In the first phase of the operation of the Special Court, judges, the Prosecutor and the Registrar will be appointed along with investigative and prosecutorial staff. The process of investigations and prosecutions of those already in custody shall be initiated.

3. In the initial phase, judges of the Trial Chamber and the Appeals Chamber shall be convened on an ad hoc basis for dealing with organizational matters, and serving when required to perform their duties.

4. Judges of the Trial Chamber shall take permanent office shortly before the investigation process has been completed. Judges of the Appeals Chamber shall take permanent office when the first trial process has been completed.

**Article 20**  
**Settlement of Disputes**

Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiation, or by any other mutually agreed-upon mode of settlement.

**Article 21**  
**Entry into force**

The present Agreement shall enter into force on the day after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

**Article 22**  
**Amendment**

This Agreement may be amended by written agreement between the Parties.

**Article 23**  
**Termination**

This Agreement shall be terminated by agreement of the Parties upon completion of the judicial activities of the Special Court.

**IN WITNESS WHEREOF**, the following duly authorized representatives of the United Nations and of the Government of Sierra Leone have signed this Agreement.

Done at Freetown, on 16 January 2002 in two originals in the English language.

For the United Nations  
Hans Corell, Under-Secretary-General for Legal Affairs

For the Government of Sierra Leone  
Solomon Berewa, Attorney General and Minister of Justice

8. Excel spreadsheet – funding contribution – **Annex 4**
9. Special Court promotional brochure – **Annex 5**
10. Article 2.4 Agreement for Judges – Defence Registry

## 11. International Treaties:

**Annexes 6**

Article 6 – European Convention for the  
Protection of Human Rights -

<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

**Convention for the Protection of Human Rights and  
Fundamental Freedoms  
as amended by Protocol No. 11**

Rome, 4.XI.1950

*The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed and Protocol No. 10 (ETS No. 146) has lost its purpose.*

**Article 6 – Right to a fair trial <sup>1</sup>**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:

- a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b. to have adequate time and facilities for the preparation of his defence;
- c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 - African Charter on Human &  
Peoples' Rights -  
[http://www.hrcr.org/docs/Banjul/afrhr3.ht  
ml](http://www.hrcr.org/docs/Banjul/afrhr3.html)

## African Charter on Human and Peoples' Rights

### Article 7

1. Every individual shall have the right to have his cause heard. This comprises:
  - (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
  - (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
  - (c) the right to defence, including the right to be defended by counsel of his choice;
  - (d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender



Article 8 - American Convention on  
Human Rights -  
[http://www.hrcr.org/docs/American\\_Convention/oashr4.html](http://www.hrcr.org/docs/American_Convention/oashr4.html)

**Article 8. Right to a Fair Trial**

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

1. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

2. prior notification in detail to the accused of the charges against him;

3. adequate time and means for the preparation of his defense;

4. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

5. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

6. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

7. the right not to be compelled to be a witness against himself or to plead guilty; and

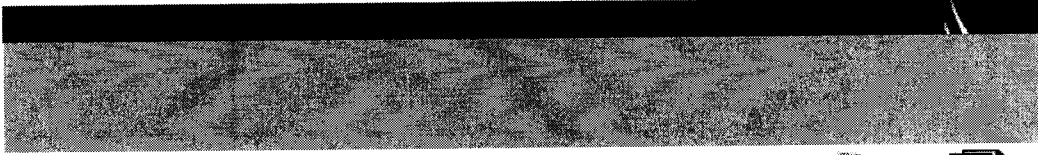
8. the right to appeal the judgment to a higher court.




3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Article 10 – Universal Declaration of  
Human Rights -  
<http://www.unhchr.ch/udhr/lang/eng.htm>



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## Universal Declaration of Human Rights

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### English Version

Source: United Nations Department of Public Information

### Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 14 – International Covenant on  
Civil and Political Rights

**The United Nations  
INTERNATIONAL COVENANT ON  
CIVIL AND POLITICAL RIGHTS**

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**Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  1. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  2. To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  3. To be tried without undue delay;
  4. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case

where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

5. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  6. To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  7. Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
  5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
  6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
  7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

12. General Assembly 40/32 – 29.11.1985 } Basic Principles on  
General Assembly 40/146 – 13.12.1985 } the Independence of  
} the Judiciary  
} **Annex 11**
13. Prosecutor v Furundzija – ICTY - **Annex 12**
14. Prosecutor v Barayagwiza – ICTY **Annex 13**

15. Article 6(1) European Convention of Human Rights -  
<http://www.hri.org/docs/ECHR50.html#C.Art6>

**COUNCIL OF EUROPE**

**The European Convention on Human Rights**

**ROME 4 November 1950**

***and its Five Protocols***

**PARIS 20 March 1952**

**STRASBOURG 6 May 1963**

**STRASBOURG 6 May 1963**

**STRASBOURG 16 September 1963**

**STRASBOURG 20 January 1966**

**ARTICLE 6**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

16. B. Emmerson & A. Ashworth, *Human Rights and Criminal Justice*, pp367-73 (Sweet & Maxwell London 2001) - **Annex 14**

17. Article 32 ICTY Statute, Article 13 bis, 13 ter ICTY -  
<http://www.un.org/icty/legaldoc/index.htm>

**Election of permanent judges**

1. Fourteen of the permanent judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters.
- (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 13 of the Statute, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a judge of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "The International Tribunal for Rwanda") in accordance with article 12 of the Statute of that Tribunal.
- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-eight and not more than forty-two candidates, taking due account of the adequate representation of the principal legal systems of the world.
- (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect fourteen permanent judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

2. In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of article 13 of the Statute, for the remainder of the term of office concerned.

3. The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

**Article 13 ter**

**Election and appointment of *ad litem* judges**

1. The *ad litem* judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for *ad litem* judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters.
- (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to four candidates meeting the qualifications set out in article 13 of the Statute, taking into account the importance of a fair representation of female and male candidates.
- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than fifty-four candidates, taking due account of the adequate representation of the principal legal systems of the world and bearing in mind the importance of equitable geographical distribution.
- (d) The President of the Security Council shall transmit the list of candidates to the President of the



General Assembly. From that list the General Assembly shall elect the twenty-seven *ad litem* judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

(e) The *ad litem* judges shall be elected for a term of four years. They shall not be eligible for re-election.

2. During their term, *ad litem* judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. When requesting the appointment of any particular *ad litem* judge, the President of the International Tribunal shall bear in mind the criteria set out in article 13 of the Statute regarding the composition of the Chambers and sections of the Trial Chambers, the considerations set out in paragraphs 1 (b) and (c) above and the number of votes the *ad litem* judge received in the General Assembly

#### **Article 32**

#### **Expenses of the International Tribunal**

The expenses of the International Tribunal shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations

18. Article 30 ICTR Statute, Article 13 ICTR  
<http://www.un.org/icttr/statute.html>

**Article 30: Expenses of the International Tribunal for Rwanda**

The expenses of the International Tribunal for Rwanda shall be expenses of the Organisation in accordance with Article 17 of the Charter of the United Nations.

**Article 13: Officers and members of the Chambers**

1. The judges of the International Tribunal for Rwanda shall elect a President.
2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.
3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

**Rule 13: *Non Bis in Idem*** - <http://www.icttr.org/ENGLISH/rules/260600/2.htm>

When the President receives reliable information to show that criminal proceedings have been instituted against a person before a court of any State for acts constituting serious violations of international humanitarian law under the Statute for which that person has already been tried by the Tribunal, a Trial Chamber shall, following *mutatis mutandis* the procedure provided in Rule 10, issue a reasoned order requesting that court permanently to discontinue its proceedings. If that court fails to do so, the President may report the matter to the Security Council.

19. Article 17 UN Charter -  
<http://www.firearmsrights.com/gubnint/uncchapter04.htm>

## ***UN Charter***

### **Index**

## **Chapter IV**

### **THE GENERAL ASSEMBLY**

#### **Article 17**

- 1. The General Assembly shall consider and approve the budget of the Organization.**
- 2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.**
- 3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.**

20. Part 4, Articles 40 -41 Rome Statute International Criminal Court (ICC) - [http://www.un.org/law/icc/statute/99\\_corr/4.htm](http://www.un.org/law/icc/statute/99_corr/4.htm)

[as corrected by the procès-verbaux of 10 November 1998 and 12 July 1999]

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 40

Independence of the judges

1. The judges shall be independent in the performance of their functions.
2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.
3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.
4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

Article 41

Excusing and disqualification of judges

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.
2. (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, inter alia, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.

(b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.

(c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

## 21. Rule 34 ICC rules of Procedure and Evidence -

<http://www1.umn.edu/humanrts/instree/iccrulesofprocedure.html>

**International Criminal Court, Rules of Procedure and Evidence, U.N.  
Doc. PCNICC/2000/1/Add.1 (2000).**

**Rule 34****Disqualification of a judge, the Prosecutor or a Deputy Prosecutor**

1. In addition to the grounds set out in article 41, paragraph 2, and article 42, paragraph 7, the grounds for disqualification of a judge, the Prosecutor or a Deputy Prosecutor shall include, *inter alia*, the following:

(a) Personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;

(b) Involvement, in his or her private capacity, in any legal proceedings initiated prior to his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted was or is an opposing party;

(c) Performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality of the person concerned;

(d) Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the person concerned.

2. Subject to the provisions set out in article 41, paragraph 2, and article 42, paragraph 8, a request for disqualification shall be made in writing as soon as there is knowledge of the grounds on which it is based. The request shall state the grounds and attach any relevant evidence, and shall be transmitted to the person concerned, who shall be entitled to present written submissions.

3. Any question relating to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by a majority of the judges of the Appeals Chamber.

22. Article 36, 112, 49, Rome Statute – [www.icrc.org](http://www.icrc.org)



## Rome Statute of the International Criminal Court, 17 July 1998

### Part 4. Composition and Administration of the Court

#### Article 36

##### Qualifications, nomination and election of judges

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.
2. (a) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.  
  
(b) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112<sup>20</sup>. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.  
  
(c) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (b), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and article 37<sup>21</sup>, paragraph 2;  
  
(ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (b) and (c) (i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (a) and (b). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.
3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.  
  
(b) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:

(i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or

(ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.

(b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.

(c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.

5. For the purposes of the election, there shall be two lists of candidates:

List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and

List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii).

A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections



shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.

6. (a) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112<sup>21</sup>. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting.

(b) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (a) until the remaining places have been filled.

7. No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

8. (a) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:

(i) The representation of the principal legal systems of the world;

(ii) Equitable geographical representation; and

(iii) A fair representation of female and male judges.

(b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

9. (a) Subject to subparagraph (b), judges shall hold office for a term of nine years and, subject to subparagraph (c) and to article 37<sup>22</sup>, paragraph 2, shall not be eligible for re-election.

(b) At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years.

(c) A judge who is selected to serve for a term of three years under subparagraph (b) shall be eligible for re-election for a full term.

10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39<sup>23</sup> shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

#### **Part 4. Composition and Administration of the Court**

## Article 49

Salaries, allowances and expenses

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

**Part 11. Assembly of States Parties**

## Article 112

Assembly of States Parties

1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.

2. The Assembly shall:

- (a) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;
- (b) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;
- (c) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;
- (d) Consider and decide the budget for the Court;
- (e) Decide whether to alter, in accordance with article 36<sup>bis</sup>, the number of judges;
- (f) Consider pursuant to article 87<sup>bis</sup>, paragraphs 5 and 7, any question relating to non-cooperation;
- (g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.

3. (a) The Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms.

(b) The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.

(c) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.

4. The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.

5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.

6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.

7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:

(a) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting;

(b) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.

8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

9. The Assembly shall adopt its own rules of procedure.

10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations

Articles 6-7 Special Court Agreement - <http://www.sierra-leone.org/specialcourtagreement.html>

**AGREEMENT BETWEEN THE UNITED NATIONS  
AND THE GOVERNMENT OF SIERRA LEONE  
ON THE ESTABLISHMENT OF A SPECIAL COURT FOR SIERRA  
LEONE**

**Article 6  
Expenses of the Special Court**

The expenses of the Special Court shall be borne by voluntary contributions from the international community. It is understood that the Secretary-General will commence the process of establishing the Court when he has sufficient contributions in hand to finance the establishment of the Court and 12 months of its operations plus pledges equal to the anticipated expenses of the following 24 months of the Court's operation. It is further understood that the Secretary-General will continue to seek contributions equal to the anticipated expenses of the Court beyond its first three years of operation. Should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Special Court.

**Article 7  
Management Committee**

It is the understanding of the Parties that interested States will establish a management committee to assist the Secretary-General in obtaining adequate funding, and provide advice and policy direction on all non-judicial aspects of the operation of the Court, including questions of efficiency, and to perform other functions as agreed by interested States. The management committee shall consist of important contributors to the Special Court. The Government of Sierra Leone and the Secretary-General will also participate in the management committee.



**Article 2****Composition of the Special Court and appointment of judges**

1. The Special Court shall be composed of a Trial Chamber and an Appeals Chamber with a second Trial Chamber to be created if, after the passage of at least six months from the commencement of the functioning of the Special Court, the Secretary-General, or the President of the Special Court so request. Up to two alternate judges shall similarly be appointed after six months if the President of the Special Court so determines.

2. The Chambers shall be composed of no fewer than eight independent judges and no more than eleven such judges who shall serve as follows:

(a) Three judges shall serve in the Trial Chamber where one shall be appointed by the Government of Sierra Leone and two judges appointed by the Secretary-General, upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General;

(b) In the event of the creation of a second Trial Chamber, that Chamber shall be likewise composed in the manner contained in subparagraph (a) above;

(c) Five judges shall serve in the Appeals Chamber, of whom two shall be appointed by the Government of Sierra Leone and three judges shall be appointed by the Secretary-General upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General.

Rule 14(A), 15(A), Special Court Rules - <http://www.sc-sl.org/rules.htm>

**SPECIAL COURT FOR SIERRA LEONE**  
 JOMOKENYATTAROAD•NEWENGLAND•FREETOWN,SIERRALEONE  
**RULES OF PROCEDURE AND EVIDENCE**

**Part III - ORGANIZATION OF THE SPECIAL COURT**

**Section 1: The Judges**

**Rule 14: Solemn Declaration**

(A) Before taking up his duties each Judge shall make the following solemn declaration:

"I solemnly declare that I will without fear or favour, affection or ill-will, serve as a Judge

of the Special Court , honestly, faithfully, impartially and conscientiously."

**Rule 15: Disqualification of Judges**

(A) A Judge may not sit at a trial or appeal in any case in which he has a personal interest or concerning which he has or has had any personal association which might affect his impartiality. Where the Judge withdraws from the Trial Chamber, the President may assign the alternate judge, in accordance with Article 12(4) of the Statute, or another Trial Chamber Judge to sit in his place. Where a Judge withdraws from the Appeals Chamber, the Presiding Judge of that Chamber may assign another Judge to sit in his place.

24. Canadian Supreme Court – Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island –  
<http://www.canlii.org/ca/cas/scc/1998/1998scc67.html>

Canada >> Supreme Court of  
 Canada

1998] 2 S.C.R. Manitoba Provincial Judges Assn. v. Manitoba  
 (Minister 443  
 of Justice)

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IN THE MATTER of a Reference from the Lieutenant Governor in Council pursuant to Section 18 of the Supreme Court Act, R.S.P.E.I. 1988, Cap. S-10, Regarding the Remuneration of Judges of the Provincial Court of Prince Edward Island and the Jurisdiction of the Legislature in Respect Thereof

and

IN THE MATTER of a Reference from the Lieutenant Governor in Council pursuant to Section 18 of the Supreme Court Act, R.S.P.E.I. 1988, Cap. S-10, Regarding the

Independence and Impartiality of Judges of the Provincial Court of  
Prince Edward  
Island Merlin McDonald, Omer Pineau and Robert Christie Appellants

v.

The Attorney General of Prince Edward Island Respondent

and

The Attorney General of Canada,  
the Attorney General of Quebec,  
the Attorney General of Manitoba,  
the Attorney General for Saskatchewan,  
the Attorney General for Alberta,  
the Canadian Association of Provincial Court Judges,  
the Conférence des juges du Québec,  
the Saskatchewan Provincial Court Judges Association,  
the Alberta Provincial Judges' Association,  
the Canadian Bar Association and  
the Federation of Law Societies of Canada Interveners

Indexed as: Reference re Remuneration of Judges of the Provincial  
Court of  
Prince Edward Island; Reference re Independence and Impartiality of  
Judges of  
the Provincial Court of Prince Edward Island

File Nos.: 24508, 24778.

Her Majesty The Queen Appellant

v.

Shawn Carl Campbell Respondent

and between

Her Majesty The Queen Appellant

v.

Ivica Ekmecic Respondent

and between

Her Majesty The Queen Appellant

v.

Percy Dwight Wickman Respondent

and

The Attorney General of Canada,  
the Attorney General of Quebec,  
the Attorney General of Manitoba,  
the Attorney General of Prince Edward Island,  
the Attorney General for Saskatchewan,  
the Canadian Association of Provincial Court Judges,





Judgments and orders -- Suspension of judgment -- Motion to extend period of suspension of judgment requested by Attorney General of Canada -- Motion granted.

MOTION to extend period of suspension, [1998] 1 S.C.R. 3, of a judgment of the Supreme Court of Canada, [1997] 3 S.C.R. 3. Motion granted.

JUDGMENT

1 On February 10, 1998, the Court granted a one-year suspension, from the date of its original decision, of the requirement for an independent, objective and effective process for setting judicial remuneration, in order to allow all governments time to comply with the constitutional requirements set out in the decision and to ensure that the orderly administration of justice was not disrupted in the interim. This transition period expires on September 18, 1998.

2 This motion before us by the Attorney General of Canada requests that the period of suspension be extended for a period of two months, or to the day Bill C-37 (An Act to Amend the Judges Act) receives Royal Assent, whichever is sooner.

3 The motion is granted.

Motion granted.

Solicitor for the appellants in the P.E.I. references: Peter C. Ghiz,  
Charlottetown.

Solicitors for the respondent Wickman: Gunn & Prithipaul,  
Edmonton.

Solicitors for the appellants the Judges of the Provincial Court of Manitoba:  
Myers Weinberg Kussin Weinstein Bryk, Winnipeg.

Solicitor for the intervener the Attorney General of Canada: The Deputy  
Attorney General of Canada, Ottawa.

Solicitor for the intervener the Attorney General of Quebec: The Department  
of Justice, Sainte-Foy.

Solicitor for the intervener the Attorney General of Manitoba:  
The Department of Justice, Winnipeg.

Solicitors for the intervener the Attorney General of Prince Edward Island:  
Stewart McKelvey Stirling Scales, Charlottetown.

Solicitor for the intervener the Attorney General for Saskatchewan: The  
Department of Justice, Regina.

Solicitor for the intervener the Attorney General for Alberta:  
The  
Department of Justice, Edmonton.

Solicitors for the intervener the Canadian Association of Provincial Court  
Judges: Myers Weinberg Kussin Weinstein Bryk, Winnipeg.

Solicitors for the intervener the Canadian Judges Conference:  
Ogilvy  
Renault, Montréal.

Solicitors for the intervener the Conférence des juges du Québec:  
Langlois  
Gaudreau, Montréal.

Solicitors for the intervener the Alberta Provincial Judges' Association:  
Bennett Jones Verchere, Calgary.

Solicitor for the Attorney General of British Columbia: The  
Ministry of the  
Attorney General, Victoria.

Solicitor for the Attorney General of Newfoundland: The  
Department of  
Justice, St-John's.

File No.: 24846.

1996: December 3, 4; 1997: September 18.<sup>1</sup>

Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory and Iacobucci JJ.

ON APPEAL FROM THE ◀PRINCE▶ ◀EDWARD▶ ◀ISLAND▶ SUPREME COURT, APPEAL DIVISION  
ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA  
ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

*Constitutional law -- Judicial independence -- Whether express provisions in Constitution exhaustive written code for protection of judicial independence -- True source of judicial independence -- Whether judicial independence extends to Provincial Court judges -- Constitution Act, 1867, preamble, ss. 96 to 100 -- Canadian Charter of Rights and Freedoms, s. 11(d).*

*Constitutional law -- Judicial independence -- Components of institutional financial security -- Constitution Act, 1867, s. 100 -- Canadian Charter of Rights and Freedoms, s. 11(d).*

*Courts -- Judicial independence -- Provincial Courts -- Changes or freezes to judicial remuneration -- Provincial governments and legislatures reducing salaries of Provincial Court judges as part of overall economic measure -- Whether reduction constitutional -- Procedure to be followed to change or freeze judicial remuneration - - Canadian Charter of Rights and Freedoms, ss. 1, 11(d) -- Provincial Court Act, R.S.P.E.I. 1988, c. P-25, s. 3(3) -- Provincial Court Judges Act, S.A. 1981, c. P-20.1, s. 17(1) -- Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94 -- Public Sector Reduced Work Week and Compensation Management Act, S.M. 1993, c. 21, s. 9(1).*

These four appeals raise a range of issues relating to the independence of provincial courts, but are united by a single issue: whether and how the guarantee of judicial independence in s. 11(d) of the *Canadian Charter of Rights and Freedoms* restricts the manner by and the extent to which provincial governments and legislatures can reduce the salaries of provincial court judges. In these appeals, it is the content of the collective or institutional dimension of financial security for judges of Provincial Courts which is at issue.

In P.E.I., the province, as part of its budget deficit reduction plan, enacted the *Public Sector Pay Reduction Act* and reduced the salaries of Provincial Court judges and others paid from the public purse in the province. Following the pay reduction, numerous accused challenged the constitutionality of their proceedings in the Provincial Court, alleging that as a result of the salary reductions, the court had lost its status as an independent and impartial tribunal under s. 11(d) of the *Charter*. The Lieutenant Governor in Council referred to the Appeal Division of the Supreme Court two constitutional questions to determine whether the Provincial Court judges still enjoyed a sufficient degree of financial security for the purposes of s. 11(d). The Appeal Division found the Provincial Court judges to be independent, concluding that the legislature has the power to reduce their salary as part of an "overall public economic measure" designed to meet a legitimate government objective. Despite this decision, accused persons continued to raise challenges based on s. 11(d) to the constitutionality of the Provincial Court. The Lieutenant Governor in Council referred a series of questions to the Appeal Division concerning all three elements of the judicial independence of the Provincial Court: financial security, security of tenure, and administrative independence. The Appeal Division answered most of the questions to the effect that the Provincial Court was independent and impartial but held that Provincial Court judges lacked a sufficient degree of security of tenure to meet the standard set by s. 11(d) of the *Charter* because s. 10 of the *Provincial Court Act* (as it read at the time) made it possible for the executive to remove a judge without probable cause and without a prior inquiry.

In Alberta, three accused in separate and unrelated criminal proceedings in Provincial Court challenged the constitutionality of their trials. They each brought a motion before the Court of Queen's Bench, arguing that, as a result of the salary reduction of the Provincial Court judges pursuant to the *Payment to Provincial Judges Amendment Regulation* and s. 17(1) of the *Provincial Court Judges Act*, the Provincial Court was not an independent and impartial tribunal for the purposes of s. 11(d). The accused also challenged the constitutionality of the Attorney General's power to designate the court's sitting days and judges' place of residence. The accused requested various remedies, including prohibition and declaratory orders. The superior court judge found that the salary reduction of the Provincial Court judges was unconstitutional because it was not part of an overall economic measure -- an exception he narrowly defined. He did not find s. 17 of the *Provincial Court Judges Act*, however, to be unconstitutional. On his own initiative, the superior court judge considered the constitutionality of the process for disciplining Provincial Court judges and the grounds for their removal and concluded that ss. 11(1)(b), 11(1)(c) and 11(2) of the *Provincial Court Judges Act* violated s. 11(d) because they failed to adequately protect security of tenure. The superior court judge also found that ss. 13(1)(a) and 13(1)(b) of that Act, which permit the Attorney General to designate the judges' place of residence and the court's sitting days, violated s. 11(d). In the end, the superior court judge declared the provincial legislation and regulations which were the source of the s. 11(d) violations to be of no force or effect, thus rendering the Provincial Court independent. As a result, although the Crown lost on the

constitutional issue, it was successful in its efforts to commence or continue the trials of the accused. The Court of Appeal dismissed the Crown's appeals, holding that it did not have jurisdiction under s. 784(1) of the *Criminal Code* to hear them because the Crown was "successful" at trial and therefore could not rely on s. 784(1), and because declaratory relief is non-prohibitory and is therefore beyond the ambit of s. 784(1).

In Manitoba, the enactment of *The Public Sector Reduced Work Week and Compensation Management Act* ("Bill 22"), as part of a plan to reduce the province's deficit, led to the reduction of the salary of Provincial Court judges and of a large number of public sector employees. The Provincial Court judges through their Association launched a constitutional challenge to the salary cut, alleging that it infringed their judicial independence as protected by s. 11(d) of the *Charter*. They also argued that the salary reduction was unconstitutional because it effectively suspended the operation of the Judicial Compensation Committee ("JCC"), a body created by *The Provincial Court Act* whose task it is to issue reports on judges' salaries to the legislature. Furthermore, they alleged that the government had interfered with judicial independence by ordering the withdrawal of court staff and personnel on unpaid days of leave, which in effect shut down the Provincial Court on those days. Finally, they claimed that the government had exerted improper pressure on the Association in the course of salary discussions to desist from launching this constitutional challenge, which also allegedly infringed their judicial independence. The trial judge held that the salary reduction was unconstitutional because it was not part of an overall economic measure which affects all citizens. The reduction was part of a plan to reduce the provincial deficit solely through a reduction in government expenditures. He found, however, that a temporary reduction in judicial salaries is permitted under s. 11(d) in case of economic emergency and since this was such a case, he read down Bill 22 so that it only provided for a temporary suspension in compensation, with retroactive payment due after the Bill expired. The Court of Appeal rejected all the constitutional challenges.

*Held* (La Forest J. dissenting): The appeal from the **←Reference→** *re Remuneration of Judges of the Provincial Court of ←Prince→ ←Edward→ ←Island→* should be allowed in part.

*Held* (La Forest J. dissenting on the appeal): The appeal and cross-appeal from the **←Reference→** *re Independence and Impartiality of Judges of the Provincial Court of ←Prince→ ←Edward→ ←Island→* should be allowed in part.

*Held*: The appeal in the Alberta cases from the Court of Appeal's judgment on jurisdiction should be allowed.

*Held* (La Forest J. dissenting in part): The appeal in the Alberta cases on the constitutional issues should be allowed in part.

*Held* (La Forest J. dissenting in part): The appeal in the Manitoba case should be allowed.

*Per* Lamer C.J. and L'Heureux-Dubé, Sopinka, Gonthier, Cory and Iacobucci JJ.: Sections 96 to 100 of the *Constitution Act, 1867*, which only protect the independence of judges of the superior, district and county courts, and s. 11(d) of the *Charter*, which protects the independence of a wide range of courts and tribunals, including provincial courts, but only when they exercise jurisdiction in relation to offences, are not an exhaustive and definitive written code for the protection of judicial independence in Canada. Judicial independence is an unwritten norm, recognized and affirmed by the preamble to the *Constitution Act, 1867* -- in particular its **←reference→** to "a Constitution similar in Principle to that of the United Kingdom" -- which is the true source of our commitment to this foundational principle. The preamble identifies the organizing principles of the *Constitution Act, 1867* and invites the courts to turn those principles into the premises of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text. The same approach applies to the protection of judicial independence. Judicial independence has now grown into a principle that extends to all courts, not just the superior courts of this country.

Since these appeals were argued on the basis of s. 11(d) of the *Charter*, they should be resolved by ←reference→ to that provision. The independence protected by s. 11(d) is the independence of the judiciary from the other branches of government, and bodies which can exercise pressure on the judiciary through power conferred on them by the state. The three core characteristics of judicial independence are security of tenure, financial security, and administrative independence. Judicial independence has also two dimensions: the individual independence of a judge and the institutional or collective independence of the court of which that judge is a member. The institutional role demanded of the judiciary under our Constitution is a role which is now expected of provincial courts. Notwithstanding that they are statutory bodies, in light of their increased role in enforcing the provisions and in protecting the values of the Constitution, provincial courts must enjoy a certain level of institutional independence.

While s. 11(d) of the *Charter* does not, as a matter of principle, automatically provide the same level of protection to provincial courts as s. 100 and the other judicature provisions of the *Constitution Act, 1867* do to superior court judges, the constitutional parameters of the power to change or freeze superior court judges' salaries under s. 100 are equally applicable to the guarantee of financial security provided by s. 11(d) to provincial court judges.

Financial security has both an individual and an institutional dimension. The institutional dimension of financial security has three components. First, as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. However, to avoid the possibility of, or the appearance of, political interference through economic manipulation, a body, such as a commission, must be interposed between the judiciary and the other branches of government. The constitutional function of this body would be to depoliticize the process of determining changes to or freezes in judicial remuneration. This objective would be achieved by setting that body the specific task of issuing a report on the salaries and benefits of judges to the executive and the legislature. Provinces are thus under a constitutional obligation to establish bodies which are independent, effective and objective. Any changes to or freezes in judicial remuneration made without prior recourse to the body are unconstitutional. Although the recommendations of the body are non-binding they should not be set aside lightly. If the executive or legislature chooses to depart from them, it has to justify its decision according to a standard of simple rationality -- if need be, in a court of law. Across-the-board measures which affect substantially every person who is paid from the public purse are *prima facie* rational, whereas a measure directed at judges alone may require a somewhat fuller explanation. Second, under no circumstances is it permissible for the judiciary -- not only collectively through representative organizations, but also as individuals -- to engage in negotiations over remuneration with the executive or representatives of the legislature. Any such negotiations would be fundamentally at odds with judicial independence. That does not preclude chief justices or judges, or bodies representing judges, however, from expressing concerns or making representations to governments regarding judicial remuneration. Third, any reductions to judicial remuneration cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge. Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation. In order to guard against the possibility that government inaction could be used as a means of economic manipulation, by allowing judges' real salaries to fall because of inflation, and in order to protect against the possibility that judicial salaries will fall below the adequate minimum guaranteed by judicial independence, the body must convene if a fixed period of time has elapsed since its last report, in order to consider the adequacy of judges' salaries in light of the cost of living and other relevant factors. The components of the institutional dimension of financial security need not be adhered to in cases of dire and exceptional financial emergency precipitated by unusual circumstances

25. Campbell & Fell v UK – ECHR -  
<http://www.robin.no/~dadwatch/echr/fell.html>

In the case of Campbell and Fell,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court (\*), as a Chamber composed of the following judges:

(\*) Note by the registry: In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date. \_\_\_\_\_

Mr. G. Wiarda, President,  
 Mr. J. Cremona,  
 Mr. Thór Vilhjálmsson,  
 Mr. F. Gölcüklü,  
 Sir Vincent Evans,  
 Mr. R. Macdonald,  
 Mr. C. Russo,

and also Mr. M.-A. Eissen, Registrar, and Mr. H. Petzold, Deputy Registrar,

Having deliberated in private on 23 September and 8 and 9 December 1983 and on 2 and 3 May 1984,

Delivers the following judgment, which was adopted on the last-mentioned date:

76. Article 6 para. 1 (art. 6-1) of the Convention reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

It was not disputed in the present case that a Board of Visitors, when carrying out its adjudicatory tasks, is a "tribunal established by law". It is, in fact, clear that the relevant English legislation confers on Boards a power of binding decision in the area in question and the dicta in the St. Germain case show that this is a judicial function (see paragraphs 38 and 39 above). Again, the word "tribunal" in Article 6 para. 1 (art. 6-1) is not necessarily to be understood as signifying a court of law of the classic kind, integrated within the standard judicial machinery of the country (see, mutatis

mutandis, the X v. the United Kingdom judgment of 5 November 1981, Series A no. 46, p. 23, para. 53).

(a) "Independent" tribunal

77. Mr. Campbell alleged that the Board of Visitors which heard his case was not an "independent" tribunal, within the meaning of Article 6 para. 1 (art. 6-1). He contended that Boards were mere "cyphers", were not seen by prisoners to be independent and were, in practice, an arm of the executive: as regards many of their functions, they were under the control of the prison authorities and had to accept the Home Secretary's directions. In particular, it was submitted that they were not independent in exercising their adjudicatory role.

The Commission, whilst recognising that Boards were under a legal obligation to act independently and impartially, stated that this was not of itself sufficient: to be truly "independent" the body concerned must be independent of the executive in its functions and as an institution, such independence ensuring, notably, that justice is seen to be done. In the Commission's view, a Board did not possess the necessary institutional independence: firstly, its members were appointed for limited periods by the Home Secretary and did not appear to be irremovable; secondly, although a Board was not part of the administration, its other functions were such as to bring it into day to day contact with the officials of the prison in such a way as to identify it with the management of the prison.

This conclusion was contested by the Government. They maintained, inter alia, that a Board was not part of the management structure of the prison: it was independent of the prison administration locally and nationally and, in discharging its administrative role, did not act on behalf of the executive.

78. In determining whether a body can be considered to be "independent" - notably of the executive and of the parties to the case (see, inter alia, the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 24, para. 55) -, the Court has had regard to the manner of appointment of its members and the duration of their term of office (ibid., pp. 24-25, para. 57), the existence of guarantees against outside pressures (see the Piersack judgment of 1 October 1982, Series A no. 53, p. 13, para. 27) and the question whether the body presents an appearance of independence (see the Delcourt judgment of 17 January 1970, Series A no. 11, p. 17, para. 31).

The factors which were relied on in the present case as indicative of the Board's lack of "independence" will be considered in turn.

79. Members of Boards are appointed by the Home Secretary, who is himself responsible for the administration of prisons in England and Wales (see paragraphs 26 and 32 above).

The Court does not consider that this establishes that the members are not independent of the executive: to hold otherwise would mean that judges appointed by or on the advice of a Minister having responsibilities in the field of the administration of the courts were also not "independent". Moreover, although it is true that the Home



Office may issue Boards with guidelines as to the performance of their functions (see paragraph 35 above), they are not subject to its instructions in their adjudicatory role.

80. Members of Boards hold office for a term of three years or such less period as the Home Secretary may appoint (see paragraph 32 above).

The term of office is admittedly relatively short but the Court notes that there is a very understandable reason: the members are unpaid (*ibid.*) and it might well prove difficult to find individuals willing and suitable to undertake the onerous and important tasks involved if the period were longer.

The Court notes that the Rules contain neither any regulation governing the removal of members of a Board nor any guarantee for their irremovability.

Although it appears that the Home Secretary could require the resignation of a member, this would be done only in the most exceptional circumstances and the existence of this possibility cannot be regarded as threatening in any respect the independence of the members of a Board in the performance of their judicial function.

It is true that the irremovability of judges by the executive during their term of office must in general be considered as a corollary of their independence and thus included in the guarantees of Article 6 para. 1 (art. 6-1). However, the absence of a formal recognition of this irremovability in the law does not in itself imply lack of independence provided that it is recognised in fact and that the other necessary guarantees are present (see the above-mentioned *Engel and Others* judgment, Series A no. 22, pp. 27-28, para. 68).

81. There remains the question of the Board's independence having regard to the fact that it has both adjudicatory and supervisory roles (see paragraph 33 above).

In that latter role, a Board is, as the Government pointed out, intended to exercise an independent oversight of the administration of the prison. In the nature of things, supervision must involve a Board in frequent contacts with the prison officials and just as much with the inmates themselves; yet this in no way alters the fact that its function, even when discharging its administrative duties, is to "hold the ring" between the parties concerned, independently of both of them. The impression which prisoners may have that Boards are closely associated with the executive and the prison administration is a factor of greater weight, particularly bearing in mind the importance in the context of Article 6 (art. 6) of the maxim "justice must not only be done: it must also be seen to be done". However, the existence of such sentiments on the part of inmates, which is probably unavoidable in a custodial setting, is not sufficient to establish a lack of "independence". This requirement of Article 6 (art. 6) would not be satisfied if prisoners were reasonably entitled, on account of the frequent contacts between a Board and the authorities, to think that the former was dependent on the latter (see, *mutatis mutandis*, the above-mentioned *Piersack* judgment, Series A no. 53, p. 15, para. 30 *in fine*); however, the Court does not consider that the mere fact of these contacts, which exist also with the prisoners themselves, could justify such an impression.

82. In the light of the foregoing, the Court sees no reason to conclude that the Board in question was not "independent", within the meaning of Article 6 (art. 6).

(b) "Impartial" tribunal

83. Mr. Campbell further contended that the Board of Visitors which heard his case was not an "impartial" tribunal.

The Government contested this allegation. The Commission expressed no specific opinion thereon, although it took care to point out that the conclusions in its report were not to be taken as implying a finding of bias or anything similar on the part of the Board.

84. The personal impartiality of members of a body covered by Article 6 (art. 6) is to be presumed until there is proof to the contrary (see the above-mentioned *Le Compte, Van Leuven and De Meyere* judgment, Series A no. 43, p. 25, para. 58). In the present case, the applicant has adduced no evidence to give the Court any cause for doubt on this score.

85. However, it is not possible to confine oneself to a purely subjective test: in this area, appearances may be of a certain importance and account must be taken of questions of internal organisation (see the above-mentioned *Piersack* judgment, Series A no. 53, pp. 14-15, para. 30).

Prior to 6 October 1976, the Albany Prison Board of Visitors played no role whatsoever in the disciplinary proceedings against the applicant; when it sat on that date, it came fresh to his case (see paragraphs 12-14 above). The Court, therefore, perceives nothing in the actual organisation of the adjudication that would reflect adversely on the Board's objective "impartiality".

There remains the fact that Mr. Campbell might not have seen the Board as being totally free from bias. However, for reasons similar to those given in paragraph 81 above, the Court does not consider that, in the particular context, this suffices to establish that this requirement of Article 6 (art. 6) was not satisfied.

26. Article 14 ICCPR – UN Human Rights Committees General  
Comment 13 -

<http://austlii.law.uts.edu.au/au/other/media.OLD/8251.html>

**ICCPR - ARTICLE 14 [noteup]**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who

has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

**1.2.6 General Comment 13 (1984) -**

**[http://www.atsic.gov.au/issues/indigenous\\_rights/international/cerd/cerd\\_report/1\\_2.asp](http://www.atsic.gov.au/issues/indigenous_rights/international/cerd/cerd_report/1_2.asp)**

Article 14 of the ICCPR sets out rights in respect of the administration of justice. In its General Comment 13, the Human Rights Committee noted that each aspect of the article requires specific comment including detail on legislative and other measures adopted to implement it. Article 14(1) entrenches the rights to equality before the courts and to a fair and public hearing by an impartial tribunal. Article 14(2) provides that all suspects have the right to be presumed innocent until proven guilty.

*General Comment 13* notes the failure of many States parties to recognise that elements of article 14 apply to civil as well as criminal hearings. It calls for detailed information on "the steps taken to ensure that equality before the courts, including equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary are established by law and guaranteed in practice."

Article 14(3) sets out a list of minimum guarantees required in criminal trials. The Committee's observations on those most directly relevant to the present report follow:

- Paragraph 3(a) provides that an accused must be informed promptly of the nature of the charge against him or her in a language s/he understands. The Committee's General Comment interprets promptly as "as soon as the charge is first made by a competent authority".
- Paragraph 3(b) provides that the accused must have adequate time and facilities for the preparation of his or her defence, including the opportunity to communicate with a lawyer of his or her choice. The Committee's General Comment notes that an accused must be able to communicate with her or his lawyer confidentially.
- Paragraph 3(c) provides that the accused must be tried without undue delay. This raises issues similar to those addressed in General Comment 8 above. Delays must be avoided both at first instance and on appeal.
- Paragraph 3(d) enshrines the right of the accused to be present at the trial and to put on a defence: "The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair."
- Paragraph 3(f) provides that any accused who does not speak the language of the court must be provided with an interpreter free of charge: "It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence."

- Paragraph 3(g) provides that the accused must not be compelled to testify against him or herself or to confess guilt. The Committee's General Comment notes that this safeguard should be read in conjunction with the prohibition on torture (article 7) and the right to humane and dignified treatment in custody (article 10). If unlawful methods are used to compel an accused to confession, such evidence should be inadmissible.

Article 14 (4) provides that criminal procedure in juvenile matters must take account of the defendant's age and promote his or her rehabilitation. The Committee's General Comment calls for greater detail in State reports on the ages of criminal responsibility and majority specialist children's courts and rehabilitation initiatives.

Article 14 (5) enshrines the right to appeal conviction and sentence to a higher court. Article 14 (6) provides for lawful compensation for a miscarriage of justice: "It seems from many State reports that this right is often not observed or insufficiently guaranteed by domestic legislation." Finally, Article 14 (7) enshrines the principle of double jeopardy, that no one may be tried twice for the same offence.

PROSECUTOR v SAM HINGA NORMAN SCSL 2003-08-01

DEFENCE INDEX TO PRELIMINARY MOTION  
BASED ON LACK OF JURISDICTION:  
CHILD RECRUITMENT

1. Statute of Special Court of Sierra Leone, Article 4(c)
2. Rule 72 Rules of Procedure and Evidence
3. Secretary-General's Report on ICTY Statute – UN Document  
S/25704 - **Annex 1**
4. Prosecutor v Delalic et al, Trial Judgement, paras 402-5
5. Article 4(3)(c ) Protocol II Additional to the Geneva Convention  
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6. Article 38 Convention Rights of the Child – **Annex 3**
7. Optional Protocol to the Convention on the Rights of the Child or  
the Involvement of Children in Armed Conflict - **Annex 4**
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**PROSECUTOR v SAM HINGA NORMAN SCSL 2003-08-01**

**DEFENCE INDEX TO PRELIMINARY MOTION**  
**BASED ON LACK OF JURISDICTION:**  
**CHILD RECRUITMENT**

1. Statute of Special Court of Sierra Leone, Article 4(c)

**SPECIAL COURT FOR SIERRA LEONE**  
**JOMOKENYATTA-NEW ENGLAND-FREETOWN, SIERRALEONE**  
**STATUTE OF THE SPECIAL COURT FOR SIERRA LEONE**

**Article 4: Other serious violations of international humanitarian law**

The Special Court shall have the power to prosecute persons who committed the following

serious violations of international humanitarian law:

- a. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- b. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- c. Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.



## 2. Rule 72

### **Rule 72: Preliminary Motions**

(A) Preliminary motions by either party shall be brought within 21 days following

disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i).

(B) Preliminary motions by the accused are:

(i) Objections based on lack of jurisdiction;

(ii) Objections based on defects in the form of the indictment;

(iii) Applications for severance of crimes joined in one indictment under Rule 49,

or for separate trials under Rule 82 (B);

(iv) Objections based on the denial of request for assignment of counsel; or

(v) Objections based on abuse of process.

(C) The Trial Chamber shall, except as provided by (D) and (E) below, dispose of

preliminary motions before the trial, and such decisions shall not be subject to interlocutory

appeal.

(D) Preliminary or other motions made in the Trial Chamber prior to the Prosecutor's

opening statement, if in the opinion of that Chamber, they raise:

(i) a substantial issue relating to jurisdiction; or

(ii) an issue that would significantly affect the fair and expeditious conduct of the

proceedings or the outcome of a trial, and for which an immediate resolution by the

Appeals Chamber may materially advance the proceedings,

may be referred to the Appeals Chamber, where they will proceed to a determination as soon as practicable.

(E) The Trial Chamber shall certify the issue for appeal, which will proceed if, within

seven days of such certification, any party files a notice of appeal. Such notice shall not

operate as a stay of the Trial proceedings unless the Trial Chamber so orders.

(F) Failure to comply with the time limits prescribed in this Rule shall constitute a waiver

of the rights. The Trial Chamber may, however, grant relief from the waiver upon showing

good cause.

(G) Objections to the form of the indictment, including an amended indictment, shall be

raised by a party in one motion only, unless otherwise allowed by a Trial Chamber.

4. Prosecutor v Delalic et al, Trial Judgement, paras 402-5 –

(to follow)

**3. Secretary-General's Report on ICTY Statute – UN Document**

**S/25704 - Annex 1**

5. Article 4(3)(c ) Protocol II Additional to the Geneva Convention  
1977 – Annex 2

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**Protocol Additional to the Geneva Conventions of 12 August 1949,  
and Relating to the Protection of Victims of Non-International  
Armed Conflicts (Protocol II)**

**Adopted on 8 June 1977 by the Diplomatic Conference on the  
Reaffirmation and Development of  
International Humanitarian Law applicable in Armed Conflicts**

**entry into force 7 December 1978, in accordance with Article 23**

***Preamble***

The High Contracting Parties,

Recalling that the humanitarian principles enshrined in Article 3  
common to the Geneva Conventions of 12 August 1949 constitute the  
foundation of respect for the human person in cases of armed conflict  
not of an international character,

Recalling furthermore that international instruments relating to human  
rights offer a basic protection to the human person,

Emphasizing the need to ensure a better protection for the victims of  
those armed conflicts,

Recalling that, in cases not covered by the law in force, the human  
person remains under the protection of the principles of humanity and  
the dictates of the public conscience,

Have agreed on the following:

***PART II***

**HUMANE TREATMENT**

***Article 4.-Fundamental guarantees***

1. All persons who do not take a direct part or who have ceased to take  
part in hostilities, whether or not their liberty has been restricted, are  
entitled to respect for their person, honour and convictions and  
religious practices. They shall in all circumstances be treated

humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Slavery and the slave trade in all their forms;

(g) Pillage;

(h) Threats to commit any of the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:

(a) They shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

(b) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) The special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured;

(e) Measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are

accompanied by persons responsible for their safety and well-being.

**6. Article 38 Convention Rights of the Child – Annex 3**



7. Optional Protocol to the Convention on the Rights of the Child or  
the Involvement of Children in Armed Conflict - **Annex 4**

8. Rome Statute on International Criminal Court – Article 8(b)(xxvi),  
Article 8(e)(vii)

(U.N. Doc. A/CONF.183/9\*)

[Entire Statute \(html\)](#)

	<a href="#">Preamble</a>
Part 1	<a href="#">Establishment of the Court</a>
Part 2	<a href="#">Jurisdiction, Admissibility and Applicable Law</a>
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Part 11	<a href="#">Assembly of States Parties</a>
Part 12	<a href="#">Financing</a>
Part 13	<a href="#">Final Clauses</a>

[Article 8](#)  
[War crimes](#)

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, "war crimes" means:
  - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
    - (i) Wilful killing;
    - (ii) Torture or inhuman treatment, including biological experiments;
    - (iii) Wilfully causing great suffering, or serious injury to body or health;

- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
  - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - (vii) Unlawful deportation or transfer or unlawful confinement;
  - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
  - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
  - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
  - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to

this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments

of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.