

**Regulamin Konkursu**  
**organizowanego w ramach EJTN Exchange Programme for Judicial Authorities**  
**w dniu 17 października 2013 r. w Krakowie**

1. Przedmiotem konkursu organizowanego w ramach EJTN Exchange Programme for Judicial Authorities w dniu 17 października 2013 r. w Krakowie, zwanego dalej „konkuresem” jest symulacja rozprawy apelacyjnej przed Międzynarodowym Trybunałem Karnym w Hadze (ICC), właściwym ds. naruszeń praw człowieka.
2. Uczestnikami symulacji w roli składu orzekającego są dwaj sędziowie Sądu Apelacyjnego w Arnheim oraz jeden sędzia wskazany przez Dyrektora Krajowej Szkoły Sądownictwa i Prokuratury (zwanej dalej „KSSiP”), delegowany do pełnienia czynności w tej jednostce. Po stronach obrony i oskarżenia występują biorący udział w konkursie aplikanci KSSiP.
3. Konkurs organizuje KSSiP we współpracy z Sądem Apelacyjnym w Krakowie, który odpowiada za zapewnienie odpowiednich warunków technicznych. Za merytoryczne przygotowanie symulacji odpowiada KSSiP - Ośrodek Szkolenia Wstępnego, Dział Programów.
4. Jury konkursu stanowią członkowie składu orzekającego w ramach symulowanej rozprawy.
5. Przebiegiem prac Jury kieruje przewodniczący wybrany przez jego członków.
6. Jury podejmuje decyzję większością głosów.
7. Osoby biorące udział w symulacji, celem przygotowania swych ról, z odpowiednim wyprzedzeniem przed rozpoczęciem konkursu otrzymają materiały szkoleniowe sporządzone w języku angielskim, stanowiące załącznik do niniejszego Regulaminu.
8. Szczegółowy opis przebiegu konkursu, zawarty jest w materiałach szkoleniowych, o których mowa w pkt 7.
9. Konkurs ma charakter drużynowy, a jego uczestnicy pracują w dwóch trzyosobowych grupach.

10. Każda z grup przygotowując dla potrzeb symulacji swe wystąpienia współpracuje z patronem - wykładowcą KSSiP, sporządza konspekt wystąpienia i przekazuje go do Ośrodka Szkolenia Wstępnego KSSiP w terminie do dnia 13 października 2013 r..
11. Przy ocenie uczestników konkursu nie jest istotne, czy argumentowane przez ich grupę stanowisko w sprawie zgodne jest z rzeczywistym wyrokiem wydanym przez sąd w sprawie będącej tematem konkursu.
12. Wystąpienia poszczególnych uczestników konkursu będą oceniane przez Jury według następujących kryteriów:
  - 1) właściwa struktura wypowiedzi,
  - 2) zrozumiałość użytej argumentacji,
  - 3) szybkość reakcji na argumenty strony przeciwnej,
  - 4) trafność odpowiedzi udzielanych na pytania sędziów,
  - 5) poprawne posługiwanie się językiem,
  - 6) zwięzłość i stanowczość wypowiedzianych kwestii.
13. Wystąpienia powinny być wygłaszane z pamięci, lecz dopuszczalne jest posługiwanie się notatkami. Czytanie wystąpienia jest niedopuszczalne i może skutkować obniżeniem oceny.
14. Zwycięzcą konkursu zostanie drużyna, która uzyska wyższą ocenę Jury, stanowiącą sumę ocen poszczególnych uczestników ocenianej grupy.
15. Wszyscy członkowie grupy, która uzyska ostateczną przewagę, otrzymają po 600 zł nagrody ufundowanej przez Dyrektora KSSiP. Pozostali uczestnicy konkursu, za wkład pracy w realizację symulacji, otrzymają po 400 zł.

**Załącznik do Regulaminu Konkursu  
organizowanego w ramach EJTN Exchange Programme for Judicial Authorities  
w dniu 17 października 2013 r. w Krakowie**

**Materiały szkoleniowe  
opracowane na podstawie  
The International Criminal Court  
A Moot Court Exercise for Students**

Prepared by:

The International Bar Association

**FELIPE TORRES  
v  
THE PROSECUTOR**

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## REGULATIONS

### Introduction

This exercise is intended to introduce you to the work of the International Criminal Court (ICC).

In this exercise, you are given an ICC judgement involving events which happened during a civil war in a fictional country, Malenga. During the war, a large number of war crimes were committed which were so serious that the International Criminal Court in The Hague wants to put people on trial for them. The ICC has responsibility for dealing with the very serious crimes of genocide, crimes against humanity and war crimes; you can find descriptions of these crimes below (Extracts from the Rome Statute, articles 5 and 8).

The young man whose trial concerns you in this exercise is called Felipe Torres. He was the defendant (person accused of crimes) in a trial at the ICC in the first part of 2007. The accusations against him were made by the Prosecutor and his team of lawyers. The trial was conducted by a Trial Chamber of 5 judges. At the end of his trial, the Trial Chamber convicted him (found him to be guilty) of a number of war crimes.

He now wishes to appeal to the Court of Appeal. This is a court of five judges which has the power to decide that the Trial Chamber was wrong in its decision. Felipe Torres is asking them to overturn the decision of the Trial Chamber.

You will be conducting a part of his appeal. You will act the following roles:

- Mr Torres's defence lawyers – a team of three;
- the Prosecutor and his lawyers – a team of three.

The defence lawyers and the prosecution lawyers will each need to choose one of themselves as their leader.

The leader of the judges is the Presiding Judge. He has control of the court, and takes the main speaking role for the judges.

The leader of the prosecution lawyers is the Prosecutor. The leader of the defence lawyers is Lead Counsel for the Defence. These two leaders must be in charge of their teams, must answer questions from the judges when they are asked and must decide which lawyers on their teams will present each argument.

The prosecution and defence teams each work together to prepare the arguments for the hearing. It is best to have only one member of each team speaking at each stage. The other members of the team help prepare the arguments before the hearing, as well as following the argument and making suggestions to answer questions in the hearing.

### **Preparation in Teams**

When all the roles have been decided, the teams of lawyers for the defence and prosecution will each need to decide their tactics. They should discuss what they are trying to achieve, what arguments will be the most effective, and decide who should present each argument. There are three different roles which need to be played: opening and closing statements; presenting arguments on issue 1; and presenting arguments on issue 2.

### **The Court Hearing**

The Judges will sit at the front of your courtroom. The defence lawyers will sit on their right, and the prosecution lawyers on their left.

The hearing will take place as follows:

The Presiding Judge will declare the proceedings open in the appeal of Felipe Torres against the Prosecutor. He will ask the Prosecutor to introduce his team of lawyers. The prosecutor will name himself and the lawyers on his team. The Presiding Judge will then ask Lead Counsel for the Defence to introduce his team of lawyers.

The lawyers in the court will all call the judges “Your Honour” or “Your Honours” at all times. They must remember that all the things they say must be addressed to the judges, and not to each other or to the lawyers on the other side.

The Presiding Judge is responsible for maintaining order in the court. He should make sure that only one person is speaking at a time, and that the person speaking is not interrupted by the other side. He should also make sure that the lawyers do not speak for too long, or repeat the same arguments, thereby wasting time.

The order of the hearing will be like follow:

1. Defence: Opening statement (up to 6 minutes)
2. Prosecution: Opening statement (up to 6 minutes)
3. Defence: Arguments on Issue 1 (up to 12 minutes)
4. Prosecution: Arguments on Issue 1 (up to 12 minutes)
5. Defence: Arguments on Issue 2 (up to 12 minutes)
6. Prosecution: Arguments on Issue 2 (up to 12 minutes)
7. Defence: Closing arguments (up to 6 minutes plus saved time)
8. Prosecution: closing arguments (up to 6 minutes plus saved time)

During and after each argument the Judges will ask questions.

After the arguments have been heard, the Presiding Judge will tell the court that the session is closed and the judges will now retire to consider their judgement.

### **The Judges' Decision**

The judges will then discuss among themselves what decision they will reach on Arguments 1 and 2. They must decide with regard to each argument whether they think that the defence should win or not.

#### Argument 1

- If they decide the defence should win, they will find the defendant NOT GUILTY of war crimes on Counts 1 and 2.
- If they decide that the defendant should not win, they should confirm the decision of the Trial Chamber in finding him GUILTY of counts 1 and 2.

## Argument 2

- if they decide the defence should win, they should reduce the sentence of 25 years. They must decide on an appropriate lower sentence.
- if they decide the defence should not win and the sentence of the Trial Chamber was correct, they should confirm the decision of the Trial Chamber in sentencing the defendant to 25 years' imprisonment.

Please note that the arguments are independent of each other: the defendant can lose Argument 1 and win Argument 2, or vice versa.

If the judges cannot agree they should take a vote. The decision of the majority should prevail.

The judges will then return to court and read out their judgement. If any judge disagrees with the judgement of the majority, he may briefly tell the court why.

The Presiding Judge then closes the session.

## **The Competition**

The Moot Court is a competition. The judges will be also the assessors of the competition. They will have to decided which team wins. This is not based upon who wins the argument with the judges.

The assessors will be looking for:

Good structure to submissions

Clarity in argument

Quick thinking in response to arguments from the opposition

Clear understanding of the issues when answering questions from judges

Good use of language

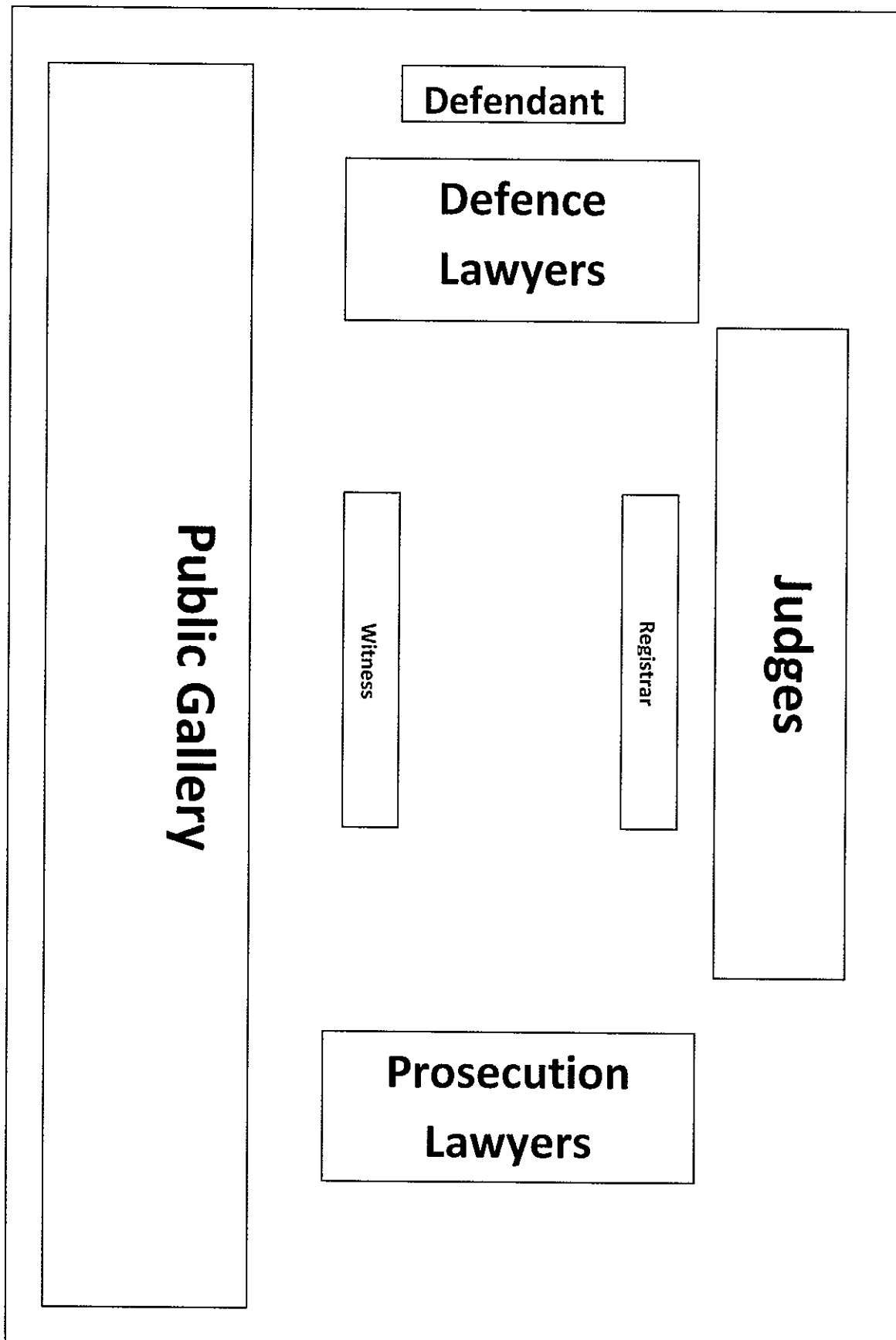
Clear and confident speech

The participants have to recite their speeches from memory, however using of notes is acceptable.

Reading a speech is not allowed and may result in giving the participant a lower mark .

Remember, a team may lose the judges decision on the facts and law, but win the competition.

At the end of the Moot Court the assessors will summarise what they liked and didn't like about each teams performance. They will then announce the winner.





## The International Criminal Court – Qs and As

### **What is the International Criminal Court?**

The ICC is a criminal court which tries people from countries all over the world who are accused of committing very serious crimes.

### **When was an International Criminal Court first suggested?**

An international criminal court was first suggested at the end of the 19<sup>th</sup> century, but it was not possible for the countries of the world to reach agreement about what its powers would be. During the last decade of the 20<sup>th</sup> century pressure for such a court grew. This led to a conference in Rome in July 1998, at which all the countries of the world were represented.

### **How was the ICC established?**

The International Criminal Court (ICC) was established by a treaty called the Rome Statute. This was signed by 120 countries in July 1998.

### **When did the ICC start to operate?**

Under the provisions of the Rome Statute, in order for it to come into force, at least 60 countries had to ratify (confirm their signatures) to join the treaty. This is a process that can take some time as different countries have different rules as to what is required for a new treaty to be ratified. By early 2002 the necessary 60 countries had joined, and the Rome Statute therefore came into force on 1 July 2002.

### **Where is the ICC based?**

It was agreed in the Rome Statute that the ICC would be based in The Hague, where many other international courts are based.

### **How does the ICC differ from other international courts in The Hague, like the ICJ and ICTY?**

The ICC differs from the International Court of Justice (ICJ) in that it tries people, not states. The International Criminal Tribunal for the Former Yugoslavia (ICTY) only deals with crimes committed in the countries which used to make up Yugoslavia; Bosnia Herzegovina, Croatia, Macedonia, Serbia.

### **What crimes are tried by the ICC?**

The ICC tries people accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. Crimes against humanity and war crimes include a large number of different crimes such as extermination, murder, rape, deportation.

### **Can anyone in the world be tried by the ICC?**

Usually, no. The ICC can usually only try people who are nationals of states which have joined, or who have committed crimes on the territory of states which have joined. The only other situation when people can be tried by the ICC is following the intervention of the United Nations Security Council, where there is a threat to international peace and security.

### **Are there any other limits to who can be tried?**

Yes. Only people who are charged with committing crimes after 1 July 2002 when the Statute came into force (or later, if a country joined later) can be tried by the ICC. And such people can only be tried by the ICC if for some reason it is not possible for them to be tried in their home courts, or the courts of the country where the crime was committed. This might be because the country in question did not have the resources to have a big trial of this kind. Or it might be because their home country refuses to try them because it is trying to shield them from prosecution for their crimes.

### **Can children be tried for crimes by the ICC?**

No. The ICC can only try people over the age of 18.

### **Why weren't Slobodan Milosevic and Saddam Hussein tried by the ICC?**

Milosevic was not tried by the ICC as his alleged crimes were committed before 1 July 2002, when the ICC Statute came into force. The same applied to Saddam Hussein, and in addition Iraq has not joined the ICC.

### **Who are the judges of the ICC?**

There are currently 18 judges from different countries. These judges are elected by the representatives of the countries which have joined. They will decide whether a person being tried before the court is guilty or not guilty of the crimes with which they are charged. Unlike in many countries, juries are not used to make this decision.

**How many judges are there in a trial?**

The judges are divided into Trial Chambers. Each Trial Chamber has three judges. These three judges decide whether a person is guilty or innocent.

**What if the judges can't agree?**

If the judges can't agree, the decision of the majority prevails.

**Who prosecutes cases at the ICC?**

There is a Prosecutor, who is elected by the representatives of the countries which have joined. He is the head of the Office of the Prosecutor, which decides who will be charged with crimes under the Rome Statute.

**Do the people accused of crimes have lawyers?**

People who are charged with crimes (defendants) have lawyers to help them and to defend them in their trials. They are able to choose these lawyers from a list of lawyers from all over the world who have experience in defending serious criminal cases.

**How do the judges decide whether someone is guilty or not guilty of a crime?**

The judges listen to the evidence. The evidence is presented by the prosecution. They bring witnesses to the court to tell the judges what happened. These witnesses are often the victims of crimes. They also show the court any documents or other evidence which they think will help the court to decide whether the defendant has committed a crime.

**Can the defendant bring his own witnesses and evidence to court?**

Yes. After the prosecution has presented all its evidence (which can take many months in serious cases) the defense gets a chance to bring its own witnesses to give evidence.

**What happens if the judges decide after all the evidence that a defendant is guilty of a crime?**

If the Trial Chamber finds the defendant is proved to be guilty it will convict him (declare him to be guilty). If not, it will acquit him (declare him to be innocent). A defendant is often charged with a number of crimes, and the Trial Chamber can convict him of some crimes and acquit him of others.

**What happens next?**

If a defendant is acquitted of all charges he will be free to go, and may be entitled to compensation if he has served time in prison waiting for his trial. If a defendant is convicted of any charges he will be sentenced by the Trial Chamber.

**What sentences can the Trial Chamber give to defendants?**

The Trial Chamber has the power to sentence defendants to up to 30 years imprisonment, or in particularly serious cases to life imprisonment. It can also fine defendants or require them to pay compensation to their victims.

**Can defendants be sentenced to death?**

No. There is no death penalty at the ICC.

**What if the defendant doesn't agree with the Trial Chamber's decision?**

The defendant or the prosecutor has a chance to appeal to the Appeals Chamber if they think that the Trial Chamber was wrong in its decision.

**What is the Appeals Chamber?**

The Appeals Chamber is a court of five judges which has the power to decide whether a Trial Chamber came to the correct decision. It has the power to change any decision made by a Trial Chamber. Like the Trial Chamber, if the Appeals Chamber can't agree, the majority prevails.

**If the defendant loses his appeal, what then?**

There is no higher court than the Appeals Chamber. If the defendant loses his appeal, he must serve his sentence. But he can come back to the Appeals Chamber at any time if he has new evidence which he could not reasonably have brought to the court before – for example if new witnesses have come forward.

**Where does the defendant serve his prison sentence?**

Several of the countries which have joined the ICC have agreed to allow their prisons to be used for prisoners who have been convicted by the court.

## People and Places

**Malenga** – country in which the fighting took place

**Lusota** – the capital of Malenga

**Bikindi** – a neighbouring country which is friendly to Malenga

**President Palumbo** – the President of Malenga

**PDF** – the Peoples Democratic Forces, the official army of Malenga

**URF** – the United Resistance Front, a rebel militia army which controlled much of the south of Malenga until December 2005

**Colonel Katoma** – the leader of the URF

**Lieutenant Colonne** – a lieutenant in the URF serving under Colonel Katoma

**Felipe Torres** – a member of the URF militia, who is nicknamed the “Archangel”

**Angels of Mercy** – a grouping in the URF militia under the command of Felipe Torres

**Ferdinand Namunga** – a soldier in the PDF who was captured and imprisoned by the URF in Garuda

**Goncalves Torres** – the brother of Felipe Torres

## Timeline

<b>YEAR</b>	<b>DATE</b>	<b>EVENT</b>
<b>1986</b>	<b>16 October</b>	Felipe Torres born
<b>1991</b>		Palumbo is installed as President of Malenga following a coup
<b>1995</b>		Civil war begins between government forces and URF which are sympathetic to the former regime
<b>1998</b>		Felipe Torres joins the URF
<b>2002</b>	<b>1 July</b>	Malenga becomes a member of the International Criminal Court
<b>2004</b>	<b>16 October</b>	Felipe Torres is 18
<b>2005</b>	<b>Early December</b>	PDF launches attack on URF strongholds in the south of Malenga
	<b>December</b>	President Palumbo refers the situation in Malenga to the Prosecutor of the ICC
	<b>Thursday 1 December</b>	PDF attacks town of Garuda; captured soldiers imprisoned in buildings of diamond mine
	<b>Sunday 25 December</b>	Felipe Torres claims that he travelled to his home town of Otara, 25 miles from Garuda, in the evening
	<b>Monday 26 December</b>	Namunga and 9 other prisoners tortured in the Red House; all but Namunga killed
	<b>Tuesday 27 December</b>	Garuda is liberated by PDF forces

	<b>Wednesday 28 December</b>	Felipe Torres claims that he travelled from his home town of Otara to Garuda, in the morning
<b>2006</b>	<b>Early January</b>	Civil war ends, as south of Malenga is liberated by PDF Forces; URF leaders are captured or flee to neighbouring countries. Lieutenant Colonne is captured. Felipe Torres flees to Bikindi
	<b>20 January</b>	Felipe Torres arrested and imprisoned in Bikindi
	<b>3 April</b>	International Criminal Court issues a warrant of arrest for Felipe Torres
	<b>July</b>	Felipe Torres is extradited from Bikindi to the custody of the International Criminal Court in The Hague
	<b>8 December</b>	Pre-Trial Chamber confirms the charges against Felipe Torres, and refers his case to a Trial Chamber for trial
<b>2007</b>	<b>Monday 8 January</b>	Trial of Felipe Torres begins
	<b>February</b>	Lieutenant Colonne escapes from prison in Lusota
	<b>March</b>	Lieutenant Colonne captured in Bikindi
	<b>Wednesday 11 April</b>	Trial of Felipe Torres ends
	<b>21 April</b>	Lieutenant Colonne arrives in The Hague
	<b>Monday 21 May</b>	Judgement given in case of Prosecutor v Felipe Torres

**ANNEX 1**

**The Judgement of the Trial Chamber**  
**in the case of**  
**Prosecutor against Filipe Torres**





International Criminal Court

Original: English

Case No:ICC/07-001/22

Date: 21 May 2007

**SITUATION IN MALENGA**

**The Prosecutor vs. Felipe Torres**

**TRIAL CHAMBER**

Judges:

Registrar:

**JUDGEMENT OF THE TRIAL CHAMBER**

Prosecutor:

Defence:

**BACKGROUND**

1. Malenga, under the leadership of President Palumbo, was one of the first 60 countries to sign and ratify the Rome Statute for the International Criminal Court. It has therefore been a member of the ICC since its inception on 1<sup>st</sup> July 2002.
2. In December 2005 President Palumbo referred the situation in Malenga to the Prosecutor of the ICC.

3. The ICC has issued warrants of arrest for a number of leaders of the URF for crimes against humanity and war crimes committed since 1<sup>st</sup> July 2002. It has also issued warrants for 3 members of the PDF. As a result President Palumbo has now refused to co-operate with the ICC, or to hand over any accused persons from either side.

#### Felipe Torres

4. Felipe Torres was born in Malenga on 16 October 1986 and is now 20 years old.
5. He was recruited as a member of the United Resistance Front (URF) in 1998, when he was 12 years old.
6. By July 2002 he was the leader of a small militia group known as the “Angels of Mercy”. He himself went under the nickname of “Archangel”. His group numbered between 150 and 200 soldiers. At the age of 16, he was one of the oldest of the group.
7. On 16 October 2004 Torres turned 18. Thereafter his actions were not excluded from the jurisdiction of the ICC due to his age.

#### Arrest of Felipe Torres

8. On 3 April 2006 the Prosecutor of the ICC applied for a warrant of arrest to be issued against Felipe Torres in respect of events which occurred in Garuda during December 2005.
9. After the liberation of the south of Malenga, Felipe Torres and a small group of his militia fled to neighbouring country of Bikindi, where they hoped to find asylum. Here they were arrested and imprisoned. Bikindi was sympathetic to the government of President Palumbo. It offered to extradite the imprisoned soldiers back to Lusota.
10. Subsequently, Torres was conveyed to The Hague in the summer of 2006 to be tried by the ICC.
11. The defendant has been in ICC custody since his arrest.

#### Charges

12. In December 2006 the Pre-Trial Chamber confirmed the following charges against Felipe Torres:

### **Count 1**

War Crimes under section 8(2)(a) of the Rome Statute

In respect of the nine men killed on the night of 26<sup>th</sup> December 2005: Wilful killing under Section 8(2)(a)(i)

### **Count 2**

War Crimes under section 8(2)(a) of the Rome Statute

In respect of those nine men and Ferdinand Namunga: Torture under Section 8(2)(a)(ii)

### Trial

13. Filipe Torres denied both counts.
14. His trial began in January 2007 and has lasted 3 months.
15. At the conclusion of the trial, the case was adjourned for 2 months for the Judgement to be prepared.

### Prosecution Evidence

16. During the trial, evidence was given by Ferdinand Namunga, as well as three other survivors of the camp. One of Torres' own militia, aged 14, also gave evidence against him. His identity was protected and he gave the evidence under the pseudonym "Witness A".
17. The Trial Chamber heard evidence about the events at the diamond mine from Ferdinand Namunga. Mr Namunga gave evidence over the course of two days. He was aged 21 at the time of the events he related. He said that he had been serving in the PDF forces for a year when he was involved in fighting in the town of Garuda in early December. The PDF forces were outnumbered by URF militia, and he was captured with a number of other soldiers. They were transported to a disused diamond mine

about 2 km from the town in buses, and were detained in small huts roofed with corrugated iron.

18. There were about 20 men in his hut, which was about 3 by 6 meters. There was no room for anyone to lie down, and the heat in the daytime was intolerable. They were taken out of the huts once a day to a larger building where they were given food. This consisted of small amounts of bread and watery soup. There was water to drink but it was dirty and foul smelling. During the 3 weeks he was imprisoned in this way several men in his hut fell ill. Those who lost consciousness were taken from the hut by guards and he believed that they died: he had not seen any of them since.
19. Many different militia guarded the camp. Most of them seemed to be little more than children, but all were armed with AK 47s and machetes. They killed people at random. Once when he was eating his lunch he heard a shot and a prisoner standing 3 feet away from him, whose name he did not know, fell down dead. He saw some of the guards laughing, but he did not see who had fired the shot.
20. At night, guards would come into the huts and call names. Those who answered were taken out for questioning. Sometimes they returned with horrific injuries. Sometimes they did not return at all. No one spoke of what happened to them – it was clear to Mr Namunga that they were being tortured by the militia.
21. Mr Namunga stated that he often saw the man they referred to as the Archangel. He was at the camp nearly every day when we were taken for meals. He seemed very young. The boy soldiers seemed scared of him. If he gave an order it was followed immediately. The boy soldiers often laughed and joked among themselves, but no one laughed when the Archangel was around.
22. Mr Namunga stated that he was called out for interrogation on the night of 26<sup>th</sup> December. He remembers the date because the previous day the guards had been saying that it was Christmas, and laughing that the prisoners were having a happy Christmas. Four or five others were called out of his hut, and there were also some from other huts. They were all taken to a building he knew as the Red House. Everyone knew that the Red House was where interrogations happened.
23. In the Red House he was tied to a bedstead. He recalls that the soles of his feet were beaten, and that he felt “incredible pain”. His memory of events after that was not clear, but he remembered seeing the man he knew as the Archangel in the house. He saw him quite clearly; although the night was dark there were lamps alight on tables in the Red House. Mr Namunga had a clear view of the Archangel’s face in the light of

the lamp as he bent over the bedstead to look at Mr Namunga. At one point he asked Mr Namunga whether he had been “killing innocent children”. His voice was clearly recognisable. He seemed to be in charge. He was not giving orders but he was overseeing what the other soldiers were doing. There was no-one else there who was in authority.

24. At some stage during the night Mr Namunga stated that he must have lost consciousness. His next clear memory is of being in a makeshift hospital where army medical staff were in attendance. He had significant injuries to his head and body, and has still not recovered the use of his right leg as a result of the beatings. He still suffers from dizzy fits and periods of memory loss.
25. When he was questioned by investigators for the ICC he was shown a set of 14 photographs. He immediately picked out the photograph of the defendant as being the man he knew as the Archangel. The evidence of the investigators supports this account (see paragraphs 287-9 below).
26. In cross examination Mr Namunga admitted that he had regularly taken drugs while he was serving as a soldier. He had not had any drugs while he was in the camp, but he denied that he felt any symptoms of withdrawal. He admitted that his recollection of the events of 26<sup>th</sup> December was “hazy and a bit muddled” due to the pain that he suffered, and that he was unconscious for the latter part of the night. He has no memory of the camp being liberated by the PDF. However, he stressed that he was sure that the man he knew as the “Archangel” was present in the Red House when he was tortured. He stated “I can never forget that voice or that face. The memory will stay with me until the day I die”.
27. During the night the camp was patrolled by Torres and his guards. PDF soldiers would be routinely taken out from the cells for “interrogations” in a building known as the Red House during which they were beaten and tortured. On the night of December 26<sup>th</sup> ten PDF soldiers were called out from their shed and taken to the Red House. There they were tied to bedframes and beaten on the soles of their feet by child soldiers under the command of Torres. They were then tortured and killed with machetes and knives. On this occasion Torres himself was clearly identified by the one survivor of the night, Ferdinand Namunga. Namunga was left for dead and piled with the other corpses on a truck to be taken to the mine shaft. However, on finding in the morning that he was still alive, a guard returned him to the shed with the other surviving prisoners. Later that day there was a surprise attack by PDF troops, and the

camp was liberated. Namunga was taken to a hospital camp, where he miraculously recovered from his horrific injuries.

### Defendant's Evidence

28. Felipe Torres gave evidence and admitted that he was known as the Archangel. He did not know why people called him that. No one else was known by that name to his knowledge.
29. Felipe Torres stated that he was rarely present at the diamond mine and had no knowledge of or control over what happened there. He said the militia were under the direct orders of Colonel Katoma. His subordinate, Lieutenant Colonne, was in fact in charge of the diamond mine camp, and of all the militia in the Garuda area.
30. Torres said he himself had duties as a traffic control officer at a road junction 5 miles from the mine. He came to the mine to eat and sleep but took no part in the custody of the prisoners.
31. On the night of 26<sup>th</sup> December, he had leave from Lieutenant Colonne himself to go and visit his family in the town of Otara 30 miles away. His mother had been very sick and he was desperate to visit her. He travelled there in an open cart on the evening of 25<sup>th</sup> December, and didn't return until the early morning of 28<sup>th</sup> December. By this time the camp had been liberated by the PDF. Many people had been killed, and he could only find a small number of his militia. Taking advantage of the chaos he fled with his soldiers to the neighbouring country of Bikindi.
32. Lieutenant Colonne could give evidence that Torres was not present at the camp on the night of 26<sup>th</sup> December and so could Felipe's younger brother Goncalves, who lives with their mother and was there during Felipe's visit. However, there is a warrant out for the arrest of Lieutenant Colonne, and he is therefore not likely to be willing to attend court. His brother is willing to attend, but he has not been able to secure his attendance due to difficulties in obtaining the appropriate permission from the Malengan authorities, who are hostile to the work of the court.
33. Therefore, the only evidence given on behalf of Torres at his trial was his own: he was able to call no witnesses.

## FACTUAL FINDINGS

34. The country of Malenga has been riven by civil war since 1995. The country is led by President Palumbo and his People's Democratic Party (PDP). He keeps control with the assistance of the government's army, the People's Democratic Force (PDF).
35. The south of the country is effectively run by a rebel group known as the United Resistance Front (URF). The URF is led by a maverick ex-PDF Colonel called Colonel Katoma. Colonel Katoma has control of a strong militia force made up of disaffected members of the PDF and other locally recruited and trained soldiers.
36. Many of the locally recruited and trained soldiers are under the age of 18. Some are as young as 10.
37. The PDF has made repeated attempts to gain control of the south of the country.
38. In December 2005 the PDF launched a prolonged attack on URF strongholds in the south. After several weeks of fighting the URF was effectively defeated. Many of its leaders, including Colonel Katoma, were captured and are under arrest in the capital of Malenga, Lusota. Some members of the militia fled to neighbouring countries where they sought asylum.

### Events of December 2005

39. During December 2005 Torres and his child militia army were stationed in the town of Garuda in the south of Malenga. Garuda was a URF stronghold, and several URF militia forces were stationed there.
40. When the PDF attacked Garuda on 1<sup>st</sup> December they met with strong resistance. Hundreds of combatants on both sides were killed in the fighting. About 85 PDF soldiers were taken into the custody of the URF. The remainder fled.
41. The "prisoners of war" were kept in the buildings surrounding a deserted diamond mine. The prosecution claim that Torres and his militia, along with other militia groups, were charged with controlling them. It is thought that the URF planned to use them as hostages in negotiations with the Malengan government.
42. The prosecution state that the prisoners were kept in inhumane conditions. They were given little food and water, and were locked into crowded sheds in the blazing heat of the Malengan summer. They were let out only once a day to eat and drink. In the 4

weeks during which they were held, at least half of them died as a direct result of the heat, dehydration, and disease.

43. Based on the evidence of Mr Namunga and other witnesses we find it proved that about 10 men, including Mr Namunga, were taken to the Red House on the night of 26<sup>th</sup> December.
44. They were tortured and beaten, and Mr Namunga was the only survivor.
45. Based on the evidence of Mr Namunga alone we find it proved that the Defendant was present in the Red House on the night of 26<sup>th</sup> December and was responsible for the tortures and killings which occurred there. We accept that no other witness saw the defendant on that night. However, most of the potential witnesses to the events of the night were killed during the course of it. We find the evidence of Mr Namunga wholly reliable in this respect. He had the opportunity to see the witness clearly, and also to hear his voice.
46. The Defendant stated in evidence that he was visiting his mother several miles away from Garuda on the night of 26<sup>th</sup> December. However, he has provided no other evidence to support this statement, and we do not find that it is sufficient to cast doubt on the clear evidence given by Mr Namunga.
47. Felipe Torres is unanimously convicted on all counts.

## **SENTENCE**

48. Having found the defendant guilty of two counts of war crimes, we now proceed to consider the matter of sentence.
49. The crimes of which the defendant has been convicted are extremely serious. He has used his power as a militia leader to imprison, torture and murder defenceless victims. While he has expressed regret for his actions, he has continued to deny that he committed any crimes. This shows that he has no genuine regret.
50. The court takes into account the age and background of the defendant. We take into account his relative youth and his lack of education. We consider that his enlistment as a soldier when he was 12 years old provides little mitigation for crimes committed as an adult. We consider that his extensive use of cocaine and other drugs provides no mitigation for the commission of these crimes.
51. Under Article 77 of the Rome Statute the court has the power to impose the following penalties:



(a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

52. The court does not in this instance consider that a term of life imprisonment is justified either by the gravity of the crime or by the individual circumstances of the defendant.

53. However, we consider that a lengthy determinate sentence is required in a case where crimes of this magnitude have been committed.

54. Having taken into account all relevant factors, we consider that the correct sentence in respect of all the crimes of which the accused has been convicted is one of 25 years' imprisonment.

Signed:

Judge .....

Judge .....

Judge .....

Dated: 21<sup>st</sup> May 2007

**ANNEX 4**

**Statement Of Goncalves Torres**



## International Criminal Court

Original: English made in Malengan

Case No:ICC/07-001/45

### **Statement of Goncalves Torres**

My name is Goncalves Torres. I was born on 19 November 1989. I am 17 years old.

I live in the town of Otara. I have lived there all my life with my mother. I have an older brother and a younger sister who is 13. My father died when I was 4.

We work on the fields and have very little money. When I was 9 my brother went away to be a soldier. My mother was sad to see him go, but the soldiers he went with gave her some money to help our family.

In December 2005 my mother became very ill. She could no longer work and spent all day lying in her bed. My sister and I looked after her. She was eating nothing and we were very worried.

She spoke a lot about Felipe. We had not seen him since he left to be a soldier all those years ago. She cried a lot and said she wanted to see him before she died.

We had heard that there had been a lot of fighting in the country, but there had been no fighting in our village. An old man in the village said that the army was not far away, and that he knew someone who could help find my brother. I asked him to get the message to my brother that my mother was ill and wanted to see him.

I did not hear anything more for 2 weeks, and then one day my brother arrived in the village. It was the day after Christmas day. I know that as there is a church in the town which is run by a missionary priest. My family and I go there every Sunday. I know that the day my brother came back was the day after Christmas day as I had been to church on Christmas day. My mother was too ill to come but I went with my sister.

My brother arrived in the middle of the day. He looked very different but I recognised him immediately. He had grown a beard. He was much older and thinner than I remembered. I felt a bit scared of him.

He spent all that day with us, and most of the next day. My mother was overjoyed to see him. She kept crying and she wouldn't let go of his hand. In the evening of the next day he said he had to go back to the army. He promised that the war would be over soon, and then he would come back and live with us. He gave us some money – I can't remember how much.

After he left my mother seemed to get better. She said now that she knew Felipe was coming back she had something to live for.

In the following weeks we heard that the war was over. We kept waiting for my brother to return, but he didn't. The one day a man came to the village. He said that people were making accusations against my brother, and that he needed my help. He said I had to travel with him to see my brother and tell people that the things they were saying were not true. I said I would do anything I could to help him.

Several months later the men came back. They said I had to go with them now. I was brought here by an aeroplane. I am sure that my brother was with me and my family on 26<sup>th</sup> December 2005. It was a very important day for us and you do not easily forget such a thing.

All I want now is for my brother to come home.

Signed: Goncalves Torres

Dated:

**ANNEX 5**

**Statement Of Lieutenant Colonne**



International Criminal Court

Original: English made in Malengan

Case No:ICC/07-001/45

**Statement of Lieutenant Colonne**

My name is Pierre Colonne. I was born in Lusota, Malenga and I am 28 years old.

Until recently I was a lieutenant in the URF. I worked under Colonel Katoma. He was our hero and we did everything that he said.

After the defeat of the URF in December 2005 I was arrested by URF forces and imprisoned in Lusota. I escaped in February 2007 and made my way to Bikindi, where I was captured in March 2007. I was extradited to The Hague in April 2007 as I have been charged with war crimes by the ICC. I am currently awaiting my trial here for war crimes. I am in prison with Felipe Torres and I often see him. We do not talk about our trials. I have not talked to him about what he has been charged with.

In this statement I will talk only about what happened in Garuda with Felipe Torres. I will not talk about the other crimes which I am accused of.

When Garuda was attacked by PDF forces in December 2005 I was the commanding officer in charge of all militia troops in the area. I ordered the captured soldiers to be taken to the diamond mine. They were well treated. No one was beaten or tortured. I was there every day and I would have known if they had been. Many of the soldiers died, but that was due to an outbreak of cholera. Some of my forces died as well.

Felipe Torres was often at the diamond mine camp. All troops stationed in the area came to the diamond mine complex to eat and sleep. I do not remember what his duties were at the time. It was possible that he was sometimes in charge of one of the checkpoints in a five mile radius of the camp. It is likely that he would have had duties of guarding the prisoners at times as well, but it was a long time ago and I can't remember. There were books containing duty rosters which were kept at the time. I don't know where they are now.

I do recall that he came to me one day and asked permission to go and visit his mother. I remember it well as it was an unusual request. Most militia members have little contact with their families. In normal circumstances I would have refused, but in fact there was no fighting in the area at the time and there were few prisoners left to guard, so I had many more soldiers than I needed. I said that he could go but he must be back in 48 hours.

I do not remember the date on which this happened, but it was towards the end of December. I think it may have been around the time when the PDF forces came and attacked the camp and freed the prisoners. It was then that I was captured and taken to prison. Certainly I recall that Felipe Torres was not there when the camp was attacked, because I had to take charge of his men myself. I think that must have been the time when he had gone to see his mother, but I cannot be sure.

In any case I know for certain that no crimes were committed at the camp at any time. We are all the victims of the political interference of so-called developed countries. They should leave us to sort out our own problems, and should not meddle in things they don't understand.

Signed: Pierre Colonne

Dated:

ANNEX 6

Relevant Extracts From  
The Rome Statute





International Criminal Court

**Relevant Extracts from the Rome Statute**

**Article 5**

**Crimes within the jurisdiction of the Court**

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute

with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

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

## **Article 76**

### **Sentencing**

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.
2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.
3. Where paragraph 2 applies, any representations under article 75 shall be heard during the

further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.

4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

### **Article 77**

#### **Applicable penalties**

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:

(a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

2. In addition to imprisonment, the Court may order:

(a) A fine under the criteria provided for in the Rules of Procedure and Evidence;

(b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

### **Article 78**

#### **Determination of the sentence**

1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.

3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This

period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (b).

## **Article 81**

### **Appeal against decision of acquittal or conviction or against sentence**

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:

(a) The Prosecutor may make an appeal on any of the following grounds:

- (i) Procedural error,
- (ii) Error of fact, or
- (iii) Error of law;

(b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:

- (i) Procedural error,
- (ii) Error of fact,
- (iii) Error of law, or
- (iv) Any other ground that affects the fairness or reliability of the proceedings or decision.

2. (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;

(b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted

person to submit grounds under article 81, paragraph 1 (a) or (b), and may render a decision on

conviction in accordance with article 83;

(c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (a).

### **Article 83**

#### **Proceedings on appeal**

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.

2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from

was materially affected by error of fact or law or procedural error, it may:

(a) Reverse or amend the decision or sentence; or

(b) Order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person

convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.

4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there

is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.

5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

ANNEX 7

**Relevant Extracts From**  
**The Rules Of Procedure And Evidence**



International Criminal Court

**Relevant Extracts from the Rules of Procedure and Evidence**

**Rule 145**

**Determination of sentence**

1. In its determination of the sentence pursuant to article 78, paragraph 1, the Court shall:

(a) Bear in mind that the totality of any sentence of imprisonment and fine, as the case may be, imposed under article 77 must reflect the culpability of the convicted person;

(b) Balance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime;

(c) In addition to the factors mentioned in article 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.

2. In addition to the factors mentioned above, the Court shall take into account, as appropriate:

(a) Mitigating circumstances such as:

(i) The circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;



(ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court;

(b) As aggravating circumstances:

(i) Any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;

(ii) Abuse of power or official capacity;

(iii) Commission of the crime where the victim is particularly defenceless;

(iv) Commission of the crime with particular cruelty or where there were multiple victims;

(v) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3;

(vi) Other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.

3. Life imprisonment may be imposed when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, as evidenced by the existence of one or more aggravating circumstances.