

# NATIONS INTERNATIONAL CRIMINAL TRIBUNAL

Markup Working Draft 200823 – Open for Amendments by Principal Parties

Prepared by the \_\_\_\_\_

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## PREAMBLE

### **The Nation and State Parties to this Charter,**

**Understanding** that all peoples share a common inheritance from Mother Earth,

**Recognizing** that for centuries the Nations of the world have suffered horrific acts in which millions of children, women, and men and whole peoples have been victims of horrific atrocities of invasions, religious oppression, colonization, trauma, ethnic cleaning, economic destruction, forced removal of children, sexual violence against women, starvation and food insecurity, occupations and forced settlements, forced denial of sexual orientation, forced assimilation, uprooting, mass murders, forced demographic change, expulsions, exploitation, apartheid, slavery, torture, and physical, ecological, and cultural genocide, denial of sovereignty, denial of self-determination of nations,

**Accepting** that the international agreements and treaties between States' governments and other legal instruments adopted to protect against and punish crimes carried out against peoples have failed to provide the Nations of the world with due process, redress, or remedy for criminal acts either by denying Nations' access to justice, denial of due process by granting immunity to officials and citizens of States or by politicizing judicial systems,

**Guaranteeing** that the international legal order recognizes that the Nations of the world and customary laws are fully entitled to the full recognition and dignity, political equality with States, basic rights, freedom from inhuman and degrading treatment,

**Thoughtful** that such grave crimes undermine sustainability and survival and peaceful relations, security, and health between nations and states,

**Concerned** that since \_\_\_\_\_; and since 1945 more than 160 alleged crimes of genocide as understood under international state-based law have been committed against Nations in North America, Central America, South America, Asia, Melanesia, Oceania, Africa and Europe —acts committed by States, organizations, militias, or Nations remain unheard by judges or resolved by an objective judicial forum-- Justice was not achieved for the victims, and impunity for the perpetrators of these crimes was entrenched,

**Ensuring** comity between Nations and States and the rights of Nations to self-determination and self-government and controlling their natural resources not only to protect their people from abhorrent crimes and atrocities but also to prevent criminal offenses and punish those who commit criminal offenses against Nations in accordance with the punishments set out in the Universal Declaration of Mother Earth and in this Charter,

**Granting** that every Nation or State may exercise international jurisdiction to try to repair through restorative justice any harms resulting from the commission of a crime under this Charter wherever located, (As set forth in ANNEX E)

**Affirming** that it is the duty of all Nations and States to exercise lawful jurisdiction over States or Nations, persons, business organizations, government and non-government organizations, intergovernmental organizations, armed groups, and other entities responsible for internationally recognized crimes,

**Confirming** each Nation and State’s commitment to uphold the purpose and principles of this Charter and the International Covenant on the Rights of Indigenous Nations (as set forth in ANNEX D of the Charter),

**Resolute** in the commitment to achieve these ends for all people, we do establish the Nations’ International Criminal Tribunal with jurisdiction over all crimes of concern to all peoples,

**Affirming** that the Nations’ International Criminal Tribunal established by this Charter shall be complementary to Nation and State criminal jurisdiction in accord with their sovereign and territorial integrity and consistent with the sovereignty of the \_\_\_\_\_ and the sovereignty of the \_\_\_\_\_ as set forth in \_\_\_\_\_ of this Charter),

**Resolved** to guarantee lasting respect for and the enforcement of international accountability and justice.

## **SECTION 1. ESTABLISHMENT OF THE TRIBUNAL**

### **Article 1 – Purpose**

The purpose of this Charter is to establish the Nations’ International Criminal Tribunal.

### **Article 2 – Definitions**

“Aggression” the action of a state or nation in violating by force the rights of another state or nation, particularly its territorial rights, an unprovoked offensive, attack, or invasion.

“Apartheid” means inhuman acts including racial classification and segregation committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

"Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

“Colonization” includes invasion, settlement, apartheid, military, or administrative occupation, taking of lands and territories and resources, or national policies of assimilation by a dominant power, and includes the imposition of propaganda or others forms of public pronouncements designating a population in terms of separating 'us'—the colonizer—and 'them' – the colonized as a threat, as primitive or backward; applying names and other symbols to classify the colonized such as 'savages', or 'backward' or to mark members of a group to stigmatize and humiliate; impose laws, customs and political power to deny human rights of a group; acts or public and private pronouncements dehumanizing members of a group by denying their humanity as 'the other' or similar expressions.

“Culturecide” or cultural genocide are willful acts and measures undertaken to destroy a nation’s or ethnic group’s culture through spiritual, national, social, and cultural destruction including destruction of cultural artifacts such as books, artworks, and structures, forced reeducation of members of a group, forced male and or female sterilization, institution of laws to remove children from a target group and place in foreign homes.

"Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.

“Disappearance” means the arrest, detention, or abduction of persons by, or with the authorization, support, or acquiescence of, a State or a political organization or private group, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

“Ecocide” is the willful destruction of the balance of ecological relationships and environment including destruction of foods and medicines on which a people depends.

"Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.

"Extermination" includes the intentional infliction of diverse obstacles to survival, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.

"Forced pregnancy" means the unlawful forcing, the rape of women and girls for the purpose of forcing a woman to become pregnant and bear a child, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

“Gendercide” is the killing of specific groups of people identified by their gender—usually girls and women—by way of feticide (sex-selective abortion), infanticide and gender-based violence.

“Indigenous” self-identifying peoples described as the historically original inhabitants of a territory or sea area, exercising treaty-making powers, described as possessing inherent rights as well as rights granted by states and international intergovernmental bodies.

“Maiming” means harsh deforming, removal of limbs, or any kind of permanent bodily damage.

“Nation” is defined by a common culture, common language, institution, spiritual beliefs and/or history, exercising treaty-making powers, exercising sovereignty or limited sovereignty, or under colonial occupation where sovereignty is denied by the occupying power, claiming and/or using an ancestral territory or sea, and possessing inherent rights, or peoples not connected to a specific territory because of traditional nomadic culture and traditions.

“Nation-based law” is the customary and statutory law authorized and approved by the governing body of individual nations. Similarly, nation-based international law is the customary or authorized law established in agreements, covenants, treaties and compacts between nations and between nations and states.

“Nation-State” is a sovereign state ruled by a nation or confederation of nations sharing common or similar histories, languages, ethnicities, and culture with sovereignty and territory and ancestral territories.

“Peoples” are internationally recognized polities or societies making up a distinct group with a common culture, common language, shared institutions, common history and occupying lands or sea areas and possessing inherent rights.

"Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.

“Slavery” See "Enslavement" above.

“State” is an internationally recognized state that:

- claims authority over a defined territory with internationally recognized boundaries,
- has a population and instituted laws governing foreign and domestic trade,
- has the ability to issue legal tender recognized across boundaries,

- has an internationally recognized government that delivers public services and exercises police powers,
- asserts the authority to make treaties, wage war and take legal, political, and economic actions on behalf of its population and
- asserts sovereignty over its claimed territory.

“State-based law” is the customary and statutory law authorized and approved by the governing body of individual states. State-based international law is the customary or authorized law established in agreements, covenants, treaties, and compacts between states and between nations and states.

"Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused.

For the purpose of this Charter, it is understood that the term “gender” refers to a person’s sexual identity.

### **Article 3 – Principles**

1. In accord with universal jurisdiction, a Nation or State exercises jurisdiction within its *asserted* territory. Such jurisdiction includes the power to make law, interpret or apply law, and to take action to enforce the law.
2. While enforcement jurisdiction is generally limited to national territory, international law recognizes that in certain circumstances a Nation or State may legislate for, or adjudicate on, events occurring outside its territory.
3. The non-applicability of statutory limitations applies to crimes against humanity, war crimes and crimes against nature and human culture.
4. No one may be convicted or punished for an act or omission that did not constitute a criminal offense, under nation-based or state-based domestic or international law, at the time it was committed. It further provides that no heavier penalty may be imposed than applicable at the time the criminal offense was committed.
5. No person should be tried or punished more than once for the same offense.
6. Individuals, organization, political polities may be held criminally responsible not only for committing war crimes, crimes against humanity and genocide, but also for attempting, assisting in, facilitating, or aiding and abetting the commission of such crimes. Individuals, organizations, or political polities may also be held criminally responsible for planning, instigating, or ordering the commission of such crimes.
7. Violations of nation-based and state-based international criminal law can also result from a failure to act. Armed forces or groups are generally placed under a command that is responsible for the conduct of its subordinates. As a result, to make the system effective, hierarchical superiors may be held to account when they fail to take proper measures to prevent their subordinates from committing serious violations of international humanitarian law.
8. This Charter specifically excludes the availability of functional immunities in cases of international crimes (Article 7(2) International Criminal Tribunal for the former Yugoslavia Charter; Article 6(2) ICTR Charter; Article 27(1) International Criminal Court Charter) and requires Chartering Nations and States to remove immunities



regarding the perpetration of international crimes by enacting appropriate legislation in their national law, and requests non-chartering Nations and States to waive immunities.

9. The nationality or active personality principle (acts committed by persons having the nationality of the Tribunal host Nation or State);
10. The passive personality principle (acts committed against nationals of the host Nation or State); or the protective principle (acts affecting the security of the State).

#### **Article 4. The Tribunal**

The Nations' International Criminal Tribunal is hereby established as an institution that shall have the power to exercise its jurisdiction over persons, organizations, and governments for the gravest offenses of concern to all peoples, as referred to in this Charter, and its jurisdiction shall be complementary to criminal jurisdictions of Nations and States. The functions and jurisdiction of the Tribunal shall be governed by the provisions of this Charter.

#### **Article 5. Jurisdictional Relationships**

The Tribunal shall be brought into relationship with other nation-based or state-based international bodies as appropriate through agreements approved by the International Commission of Parties formalized in this Charter and finally concluded by the Judicial President of the Tribunal on its behalf.

#### **Article 6. Seat of the Tribunal**

1. The seat of the Tribunal shall be established in the city of \_\_\_\_\_, within the borders of \_\_\_\_\_, unless otherwise determined.
2. A change of the seat's location may be determined:
  - (a) before the entry into force of the NICT Charter, by a simple majority of the existing ratifying parties, on the basis of valid legal, political, organizational and/or technical reasons, with the purpose of effectively facilitating the establishment, administration and functioning of the Court;
  - (b) after the establishment of the International Commission of Parties, each of the parties may address the matter to the Principal Justice of the Court, specifying the reasons for such a request. The Principal Justice shall decide the matter within two weeks from the date on which the request is received.
3. Pursuant to paragraph 2(b) of this Article:
  - (a) if the request is accepted, this decision shall be notified, within one week, to the International Commission of Parties, which shall choose the new seat by a simple majority within one month from the date of receipt of such a notification;
  - (b) if the request is rejected, this decision shall likewise be notified within one week to the International Commission of Parties; nevertheless, if the concrete circumstances put in serious difficulty the fair and effective conduct of any legal proceeding in that location, the International Commission of Parties, by a simple majority, shall indicate the new seat within one month from the date of receipt of the rejection decision's notification.

## **Article 7. Legal Status and Powers of the Tribunal**

The Court shall have international legal personality exercising its functions and powers as provided in this Charter on the territory of any State or Nation Party by formalized agreement on the territory of any other State or Nation. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

## **SECTION 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW**

### **Article 8. Crimes within the Jurisdiction of the Tribunal**

1. The Tribunal shall recognize ten stages of genocide that are committed intentionally within its jurisdiction as follows:
  - a. Social, economic, cultural, or political classification of a group distinguishing the dominating group from the dominated group as “us and them”,
  - b. Symbolization using names, or symbols to classify a group or a people,
  - c. Discrimination where a dominant group uses state or community law, custom or political power to deny the rights of a group or a people,
  - d. Dehumanization employed to deny the humanity of the group or people as “the other”,
  - e. Organization of mobs, militias, or other agents by the state, organization, or community to provide deniability of harms to a group or people,
  - f. Polarization used as a distinct social method intended to separate people supported by hate groups and broadcast propaganda,
  - g. Preparation of social, economic, cultural, or political plans intended to facilitate group killings, sexual predation including rape and forced removal of a group or people,
  - h. Persecution of individuals or groups as victims identified and separated because of their ethnic, cultural, national, or religious identity,
  - i. Extermination by means of mass killing of a group or people not considered to be fully human, and
  - j. Denial as the final stage of genocide where perpetrators deny committing any crimes and blame victims, intentionally block investigations, and continue to dominate the group or people until forced from power.
2. The jurisdiction of the Tribunal shall be limited to the most serious crimes of concern to Indigenous communities, nations, peoples and states and the international community.
3. The Tribunal has jurisdiction in accord with this Charter with respect to the following crimes:
  - a. The crime of colonization
  - b. The crime of aggression
  - c. The crime of genocide
  - d. Crimes against humanity
  - e. War crimes including intentional targeting of civilians and civil infrastructure
  - f. Crimes against nature including ecocide and culturicide
  - g. Crimes of terrorism

- h. Gender-based violence and femicide
- i. Violence against and forced removal of children
- j. Apartheid
- k. Military occupation

### **Article 9. Crime of Aggression**

The planning, preparation, initiation or execution, by a person or perpetrating agents in a position effectively to exercise control over or to direct the political or military action of a Nation or State, or the use of armed force or invasion, military occupation, and annexation by the use of force, blockade by the ports or coasts by a Nation or State against the sovereignty, territorial integrity or political independence of a Nation or State shall constitute the act of aggression which, by its character, gravity and scale, constitutes a manifest violation of international law under this Charter.

### **Article 10. Genocide**

For the purpose of this Charter, "genocide" means the act of colonization or forced occupation of peoples leading to any of the following acts committed with intent to dominate, replace, destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

- a) Culturecide
- b) Ecocide including destruction of foods and medicines on which a people depends.
- c) Gendercide
- d) Slavery
- e) Killing members of the group;
- f) Crimes against humanity
- g) Causing serious bodily or mental harm to members of the group;
- h) Deliberately inflicting on the group conditions of life including destruction of traditional foods and medicines calculated to bring about its physical destruction in whole or in part;
- i) Imposing measures intended to prevent births within the group;
- j) Forcibly transferring children of the group to another group or people.
- k) Refusing to properly recognize, in whole or in part, inherent self-determination powers, and so leading to a genocide by omission or denial.

### **Article 11. Crimes against Humanity**

1. For the purpose of this Charter, "crime against humanity" means genocide and any of the following acts when committed as part of a widespread or systematic attack or series of atrocities directed against any civilian population, with knowledge of the attack:
  - (a) Murder
  - (b) Maiming
  - (c) Extermination
  - (d) Enslavement
  - (e) Deportation or forcible transfer of population

- (f) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
- (g) Torture, infliction of intense pain as in burning, crushing, or wounding to punish, coerce, or afford sadistic pleasure.
- (h) Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, human trafficking, or any other form of sexual violence of comparable gravity.
- (i) Forcibly transferring children of the group to another group
- (j) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in Article 2, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this Paragraph or any crime within the jurisdiction of the Tribunal.
- (k) Forced disappearance of persons
- (l) Apartheid, the exercise of a policy of ethnic or racial superiority
- (m) Colonization
- (n) Other inhumane acts of a similar nature, including dehumanization, deprivation, destruction of group or individual dignity and causing spiritual, mental, and physical trauma or anguish, such as harsh deforming, removal of limbs or bodily disfigurement.

## **Article 12. War Crimes**

1. The Tribunal 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, other serious violations of the laws and customs applicable in international armed conflict.
2. For the purpose of this Charter, "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:

### **Armed Conflict**

- 1.a.i. Willful killing;
- 1.a.ii. Torture or inhuman treatment, including biological experiments;
- 1.a.iii. Willfully causing great suffering, or serious injury to body or health;
- 1.a.iv. Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- 1.a.v. Compelling a prisoner of war or other protected person to serve in the forces of a hostile power;
- 1.a.vi. Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- 1.a.vii. Unlawful deportation or transfer or unlawful confinement; or
- 1.a.viii. Taking of hostages.
2. 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:

- 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 civilian objects, that is, objects which are not military objectives;
- c. 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;
- d. 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;
- e. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended, and which are not military objectives;
- f. Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion;
- g. 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;
- h. 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;
- i. 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;
- j. 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 individual's interest, and which cause death to or seriously endanger the health of such person or persons;
- k. Killing or wounding treacherously individuals belonging to the hostile nation or army;
- l. Declaring that no quarter will be given;
- m. Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- n. Declaring abolished, suspended or inadmissible in a Tribunal of law the rights and actions of the nationals of the hostile party;
- o. 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 belligerents' service before the commencement of the war;

- p. Pillaging a town or place, even when taken by assault;
  - q. Employing poison or poisoned weapons;
  - r. Employing asphyxiating, poisonous or other gasses, and all analogous liquids, materials or devices;
  - s. 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;
  - t. 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 Charter, by an amendment in accordance with the relevant provisions set forth in Articles 121 and 123;
  - u. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - v. 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;
  - w. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
  - x. 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;
  - y. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions;
  - z. 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 out of action or disabled by sickness, wounds, detention, or any other cause:
- (1.a.i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (1.a.ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (1.a.iii) Taking of hostages;
  - (1.a.iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted Tribunal,

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:
  - (1.a.i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (1.a.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;
  - (1.a.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;
  - (1.a.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;
  - (1.a.v) Pillaging a town or place, even when taken by assault;
  - (1.a.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;
  - (1.a.vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
  - (1.a.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;
  - (1.a.ix) Killing or wounding treacherously a combatant adversary;
  - (1.a.x) Declaring that no quarter will be given;
  - (1.a.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 the person's interest, and which cause death to or seriously endanger the health of such person or persons;
  - (1.a.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.

3. Nothing in Paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

### **Article 13. Elements of Crimes**

1. Elements of Crimes shall assist the Tribunal in the interpretation and application of Articles 8, 9, 10, 11, and 12. They shall be adopted by three-fifths majority of the members of the International Commission of Parties.
2. Amendments to the Elements of Crimes may be proposed by:
  - a. Any Nation or State party
  - b. The judges acting by an absolute majority
  - c. The Principal

Such amendments shall be adopted by a two-thirds majority of the members of the International Commission of Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Charter.

### **Article 14. Limitations on Rules of International Law**

Nothing in this Section shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Charter.

### **Article 15. Jurisdictional (*ratione temporis*) Obligations over Time**

In the absence of expressed provisions in treaties between nations and between nations and states the Tribunal will decide the issue by reference to customary state-based or nation-based international law.

### **Article 16. Preconditions to the Exercise of Jurisdiction**

1. A State or Nation which becomes a Party to this Charter thereby accepts the jurisdiction of the Court with respect to the crimes referred to in Article 7.
2. In the case of Article 17, Paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States or Nations are Parties to this Charter or have accepted the jurisdiction of the Court in accordance with Paragraph 3:
  - a. The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
  - b. The State of which the person accused of the crime is a national.
3. If the acceptance of a State or Nation which is not a Party to this Charter is required under Paragraph 2, that State or Nation may, by declaration lodged with the Registry, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State or Nation shall cooperate with the Court without any delay or exception in accordance with Section 9.



## **Article 17. Exercise of Jurisdiction**

The Tribunal may exercise its jurisdiction with respect to a crime referred to in Article 7 in accordance with the provisions of this Charter if:

1. A situation in which one or more of such crimes appears to have been committed is referred to the Principal by a State and or Nation Party in accord with Article 18;
2. A situation in which one or more of such crimes appears to have been committed is referred to the Principal by the Tribunal Commission; or
3. The Principal has initiated an investigation in respect of such a crime in accordance with Article 15.

## **Article 18. Referral of a situation by a Nation or State Party**

1. A State or Nation party may refer to the Principal a situation in which one or more crimes within the jurisdiction of the Tribunal appear to have been committed, requesting the Principal to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.
2. As far as possible, a referral request specifies the relevant circumstances and shall be accompanied by supporting documents upon referral.

## **Article 19. Principal**

1. The Principal may initiate investigations upon personal initiative on the basis of information of crimes within the jurisdiction of the Tribunal where admissibility shall be determined by the Prosecution Review Commission which shall also have the power to monitor and approve the actions of the Principal.

## **Article 20. Deferral of Investigation or Prosecution**

The Principal may defer investigation or prosecution upon due consultation with the Prosecution Review Commission.

## **Article 21. Issues of Admissibility**

1. Having regard to Paragraph 10 of the Preamble and Article 1, the Tribunal shall determine that a case is inadmissible:
  - a. The case is being investigated or prosecuted by a State or Nation which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
  - b. The case has been investigated by a State or Nation which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
  - c. The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
  - d. The case is not of sufficient gravity to justify further action by the Court.

2. To determine unwillingness in a particular case, the Tribunal shall consider, having regard to the principles of due process recognized by Nation and State international laws, whether one or more of the following exist, as applicable:
  - a. The acts were or are being undertaken or the State or Nation decision was made for the purpose of shielding the defendant concerned from criminal responsibility for crimes within the jurisdiction of the Tribunal referred to in Article 7;
  - b. There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person (defendant) concerned to justice;
  - c. The conduct of the party in the circumstances is inconsistent with an intent to bring the person concerned to justice.

### **Article 22. Preliminary Rulings regarding Admissibility**

Upon motion by any party or the court, the Tribunal shall make preliminary rulings on its personal and subject matter jurisdiction.

### **Article 23. Double Jeopardy**

No legal action may be undertaken twice for the same offense.

### **Article 24. Challenges to the Jurisdiction or Admissibility of Evidence**

The defendant in a proceeding may challenge the jurisdiction of the Tribunal or admissibility of evidence subject to the determination of the presiding Judge.

### **Article 25. Applicable Law**

1. The Tribunal shall apply:
  - a. In the first place, this Charter, Elements of Crimes and its Rules of Procedure and Evidence;
  - b. In the second place, where appropriate, applicable treaties and the principles and rules of nation or state international law, including the established principles of nation and state international law for armed conflicts;
  - c. Failing that, general principles of law derived by the Tribunal from nation or state legal systems of the world including, as appropriate, the domestic laws of Nations, customary laws, or laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Charter and with nation or state international law and internationally recognized norms and standards.
2. The Tribunal may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this Article must be consistent with evolving nation or state internationally recognized human rights and must stand without any adverse distinction founded on grounds such as gender as defined in Article 2, Article 7 (2)h, age, race, color, language, religion, or belief, political or other opinion, national, ethnic, or social origin, wealth, birth, or other status.

## **SECTION 3. COMPOSITION AND ADMINISTRATION OF THE TRIBUNAL**

### **Article 26. Organs of the Tribunal**

The Tribunal shall be composed of the following organs:

- A. International Commission of Parties
- B. Prosecution Review Commission
- C. The Judicial Principal
- D. Local jury system in plaintiff nation or state jurisdiction (as set forth in Annex C to the Charter)
- E. An Appeals Division, a Trial Division, and a Pre-Trial Division
- F. The Office of the Principal
- G. The Registry

### **Article 27. International Commission of Parties**

1. The International Commission of Parties is a formal body of the Tribunal composed of representatives designated by State and Nation ratifying governments that serves as the authorizing body appointing Chamber Justices, Principals and the Registrar and the authorizing body for the Tribunal Budget.
2. Membership in the International Commission of Parties shall rotate 1/3 members every three years to permit newly ratifying parties to be seated at a rate of ten new members every three years.
3. Decisions of the International Commission of Parties shall be determined by consensus and where consensus is not achieved by a vote of 50% plus 1 member or more favoring an outcome.

### **Article 28. Prosecution Review Commission**

The Prosecution Review Commission is a lay advisory body that reviews a Principal's exercise of discretion in decisions not to prosecute.

1. Commissions may begin the investigation process by either of two methods.
  - a. First, a person "who has been injured by a crime," or who is authorized as a proxy may apply for a commission hearing.
    - 1.a.i. The commission must investigate these requests.
  - b. Second, a commission may, upon a majority vote, carry out an investigation on its own initiative.
2. A commission investigates the claim, summoning witnesses for examination, questioning the Principal, and asking for expert advice.
3. The commission may then submit one of two recommendations: non-indictment is proper, or indictment is proper.
4. For the final decision, a majority vote is necessary.
5. The commission delivers a written recommendation to the Principal.

### **Article 29. Justices**

Qualifications, Nomination, and Election of Judges

- a. Judicial Vacancies
- b. The Judicial Presidency
- c. Chambers
- d. Independence of Judges
- e. Excusing and Disqualification of Judges

### **Article 30. Service, qualifications, nomination, and selection of judges**

1. Subject to the provisions of paragraph 2, there shall be 15 judges of the Court.
2. (a) The Principal, 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 and Nations Parties members of the International Commission of Parties.  
 (b) Any such proposal shall then be considered at a meeting of the Assembly of International Commission of Parties to be convened in accordance with Section 11, paragraphs 2 and 3. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the International Commission of Parties and shall enter into force at such time as decided by the International Commission of 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 the International Commission of Parties in accord with paragraphs 3 to 8, and Article 37, 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 or Nations 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 or Nation Party to this Charter, and shall be made either:
  - (i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State or Nation in question; or

(ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Charter 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 or Nation Party may put forward one candidate for any given election who need not necessarily be a national of that State or Nation Party but shall in any case be a national of a State or Nation Party.

(c) The International Commission of 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 International Commission of 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 International Commission of Parties convened for that purpose. 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 State and Nation 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 more than two judges may be nationals of the same State or Nation. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State or Nation shall be deemed to be a national of the State or Nation in which that person ordinarily exercises civil and political rights.

8. (a) The State and Nation 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) State and Nation Parties shall also consider 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 31, 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 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

### **Article 31. Judicial Seat Vacancies**

1. In the event of a judicial vacancy, a selection shall be held in accordance with Article 30 to fill the vacancy.
2. A judge selected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for selection for a full term under Article 30.

### **Article 32. Principal Justice**

1. The Principal and the First and Second Vice-Principals shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.
2. The First Vice-Principal shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the Principal and the First Vice-President are unavailable or disqualified.
3. The Principal, together with the First and Second Vice-Principals, shall be responsible for:
  - (a) The proper administration of the Court, with the exception of the Office of the Principal; and
  - (b) The other functions conferred upon it in accordance with this Charter.

### **Article 33. Chambers**

1. Within a reasonable time after the official selection of judges, the Court shall organize itself into the divisions set out in Article 26. The Appeals Division shall be organized to include the Principal and two other judges, the Trial Division shall include six judges and the Pre-Trial Division shall include no less than six judges. Judges shall be assigned to the divisions on the basis of their qualifications and experience to achieve a balance expertise in state-based and nation-based criminal law and procedures, and international law.
2. (a) The judicial functions of the Court shall be carried out in each division by Chambers.
  - (b) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;
  - (ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;
  - (iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Charter and the Rules of Procedure and Evidence;
  - (c) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.
3. (a) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.
  - (b) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.

4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

### **Article 34. Judicial Independence**

The Judges shall perform their functions independent of other justices.

### **Article 35. Excusing or disqualification of judges**

1. The Principal Justice shall, at the request of a judge, excuse that judge from the exercise of a function under this Charter in accord with the Rules and Procedure of Evidence.
2. Judges shall not engage in any activity which may potentially interfere with their judicial functions or to negatively affect confidence in their independence.
3. Judge may not engage in any other occupation of a professional nature while serving under this Charter.
4. The Principal with an absolute majority of the judges shall decide the application of paragraphs 2 and 3 where matters concerning an individual judge, and the judge concerned shall not participate in the decision.
5. a. No judge shall participate in any case where the judge may reasonably be held in doubt on any ground.
  - b. A person being investigated or prosecuted by the Principal may request the disqualification of a judge under this clause.
  - c. An absolute majority of the judges shall decide where a judge is disqualified pursuant to clause 5. b. The judge under challenge may not take part in the decision of disqualification but may respond.

### **Article 36. Office of the Principal**

1. The Office of the Principal shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.
2. The Office shall be headed by the Principal. The Principal shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Principal shall be assisted by one or more Deputy Principals, who shall be entitled to carry out any of the acts required of the Principal under this Charter. The Principal and the Deputy Principals shall be of different nationalities. They shall serve on a full-time basis.
3. The Principal and the Deputy Principals shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The Principal shall be elected by secret ballot by an absolute majority of the members of the Assembly of International Commission of Parties. The Deputy Principals shall be elected in the same way from a list of candidates provided by the Principal. The Principal shall nominate three candidates for each position of Deputy Principal to be filled. Unless a shorter term is decided upon at the time of their election, the Principal and the Deputy Principals shall hold office for a term of nine years and shall not be eligible for reelection.
5. Neither the Principal nor a Deputy Principal shall engage in any activity which is likely to interfere with the Principal functions or to affect confidence in their independence. They shall not engage in any other occupation of a professional nature.
6. The Principal may excuse the Principal or a Deputy Principal, at their request, from acting in a particular case.
7. Neither the Principal nor a Deputy Principal shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, inter alia, they have 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.
8. Any question as to the disqualification of the Principal or a Deputy Principal shall be decided by the Appeals Chamber.
  - (a) The person, state, business organization, private militia being investigated or prosecuted may at any time request the disqualification of the Principal or a Deputy Principal on the grounds set out in this article;
  - (b) The Principal or the Deputy Principal, as appropriate, shall be entitled to present their comments on the matter.
9. The Principal shall appoint advisers with state-based or nation-based legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

### **Article 37. Registry**

1. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Principal in accordance with article 36.
2. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise operational functions under the authority of the Principal of the Court.
3. The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
4. The judges shall elect the Registrar by an absolute majority by secret ballot, considering any recommendation by the International Commission of Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.
5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall hold office for a term of five years, or such shorter term as may be decided upon by an absolute majority of the judges and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.



6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Principal, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

6. The Registrar shall designate a Head of Security who shall be responsible for establishing a security team with authority to protect Tribunal facilities, Judges and Chambers, Principal Office and the Registry and investigative capabilities to survey and analyze terror, or other violent threats to the tribunal

### **Article 38. Tribunal Staff**

1. The Principal and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Principal, this shall include the appointment of investigators.

2. In the employment of staff, the Principal and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, *mutatis mutandis*, to the criteria set forth in article 30, paragraph 8.

3. The Registrar, with the agreement of the Presidency and the Principal, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated, and dismissed. The Staff Regulations shall be approved by the International Commission of Parties.

4. The Court may, in exceptional circumstances, employ the expertise without cost personnel offered by State or Nation Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Principal may accept any such offer on behalf of the Office of the Principal. Such no cost personnel shall be employed in accordance with guidelines to be established by the International Commission of Parties.

### **Article 39. Solemn Undertaking**

Before taking up their respective duties under this Charter, the Judges, the Principal, the Deputy Principals, the Registrar, and the Deputy Registrar shall each make a solemn undertaking in open Tribunal to exercise each of their respective functions impartially and conscientiously.

### **Article 40. Removal from Office**

1. A judge, the Principal, a Deputy Principal, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with Paragraph 2, in cases where that person:
  - a. Is found to have committed serious misconduct or a serious breach of each person's duties under this Charter, as provided for in the Rules of Procedure and Evidence; or
  - b. Is unable to exercise the functions required by this Charter.
2. A decision as to the removal from office of a judge, the Principal or a Deputy Principal under Paragraph 1 shall be made by the International Commission of Parties, by secret ballot:
3. In the case of a judge, by a two-thirds majority of the International Commission of Parties upon a recommendation adopted by a two-thirds majority of the other judges;

4. In the case of the Principal, by an absolute majority of the State and Nation Parties;
5. In the case of a Deputy Principal, by an absolute majority of the International Commission of Parties upon the recommendation of the Principal.
6. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.
7. A judge, Principal, Deputy Principal, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Charter is challenged under this Article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

#### **Article 41. Disciplinary Measures**

A judge, Principal, Deputy Principal, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in Article 46, Paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

#### **Article 42. Privileges and Immunities**

1. The Court shall enjoy in the territory of each State or Nation Party such privileges and immunities as are necessary for the fulfilment of its purposes.
2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.
3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accord with the agreement on the privileges and immunities of the Court.
4. Counsel, experts, witnesses, or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accord with the agreement on the privileges and immunities of the Court.
5. The privileges and immunities of:
  - (a) A judge or the Prosecutor may be waived by an absolute majority of the judges;
  - (b) The Registrar may be waived by the Presidency;
  - (c) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;
  - (d) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

#### **Article 43. Official and Working Languages**

The official and working languages of the Assembly shall be English, Spanish, French, Arabic, and the national language, in the original or translated form, of the languages of the members of the Assembly and, if applicable, the languages of non-member States, nations, or peoples regarding any matter involving said non-member presented by State and Nations.

#### **Article 44. Rules of Procedure and Evidence**

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.
2. The judges, the Principal, the Deputy Principals and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.
3. The Deputy Registrar, the staff of the Office of the Principal and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.
4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.
5. The privileges and immunities of:
  - (a) A judge or the Principal may be waived by an absolute majority of the judges;
  - (b) The Registrar may be waived by the Presidency;
  - (c) The Deputy Principals and staff of the Office of the Principal may be waived by the Principal;
  - (d) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

## **SECTION 4: GENERAL PRINCIPLES OF CRIMINAL LAW**

### **Article 45. No Crime without Law**

1. No person shall be held criminally responsible under this Charter unless the conduct in question constitutes a crime under the provisions of the Charter, and such crime falls within the jurisdiction of the Court.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition of the crime shall be interpreted in a manner consistent with customary law of the nation and in accordance with internationally recognized human rights.
3. This Article shall not prejudice the characterization of any conduct as criminal under international law independently of this Charter. The Court shall interpret and apply the provisions of this Charter in a manner consistent with the principles and rules of international law, including the agreed international law between nations.

### **Article 46: No Penalties without Law**

1. The principle of 'no penalty without law' shall apply to all criminal proceedings under this Charter. A person convicted by the Court may be punished only in accordance with the provisions of this Charter and any penalties prescribed by the Court shall be proportionate to the gravity of the crime as recognized by each involved nation.
2. Any entity or natural person who commits a crime within the jurisdiction of the Court, as defined in this Charter, shall be individually responsible and liable for punishment in accordance with the provisions of this Charter.

3. In accordance with this Charter, an entity or natural person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that entity or natural person directly or through another person or entity:
  - (a) Committed such a crime, whether acting alone, jointly with others or through another person or entity, regardless of whether that other person is criminally responsible;
  - (b) Ordered, solicited, or induced the commission of such a crime, which in fact occurs or is attempted;
  - (c) Aided, abetted, or otherwise assisted in the commission or attempted commission of such a crime, including providing the means for its commission;
  - (d) Otherwise contributed intentionally to the commission or attempted commission of such a crime by a group or persons or entities acting with a common purpose;
  - (e) In respect of the crime of genocide, directly and publicly incited others to commit genocide;
  - (f) Attempted to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's or entity's intentions. However, an individual or entity who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Charter for the attempt to commit that crime if the individual or entity completely and voluntarily gave up the criminal purpose.
4. In accordance with this Charter, the provisions of this Article shall apply to any entity or natural person who is in a position effectively to exercise control over or to direct the political or military action of a State or a Nation with respect to the crime of aggression.
5. No provision in this Charter relating to individual criminal responsibility shall prejudice or affect the responsibility of States or Nations under international law.

#### **Article 47. Non-retroactivity by reason of Official Position**

The principle of non-retroactivity *ratione personae* shall apply to all criminal proceedings under this charter. No person or entity shall be held criminally responsible for conduct that was not considered criminal at the time it was committed.

#### **Article 48 Criminal Responsibility**

1. Adult criminal responsibility
  - a. The fact that a person or entity acted pursuant to order of the State or Nation or of a superior does not relieve the person or entity from responsibility under the Charter.
2. Minors
  - a. The Court shall consider the special circumstances of any person under the age of 18 in determining the culpability and responsibility of that person for the crime.

## **Article 49. Irrelevance of Official Capacity**

1. Official capacity of a person, such as a Head of State or Government, member of a Government or parliament, an elected representative, or a government official, shall not provide immunity or exemption from criminal responsibility under this Charter. All persons are subject to the provisions of this Charter, without any distinction based on official capacity, and holding an official position shall not constitute a basis for reduction of sentence.
2. The official capacity of a person shall not serve as a bar to the Court's jurisdiction over such a person, despite any immunities or special procedural rules that may apply under national or international law.

## **Article 50. Responsibility of Commanders and Superiors**

In accordance with this Charter, an armed force or a person effectively acting as a commander of an armed force shall be held criminally responsible for crimes within the jurisdiction of the Court committed by forces under the armed force or person's effective command and control, or effective authority and control, because of the failure to properly exercise control over such forces. This shall apply in addition to other grounds of criminal responsibility for such crimes within the jurisdiction of the Court.

## **Article 51. Non-applicability of Charter of Limitations**

The crimes committed under this Charter shall not be subject to any charter of limitations.

## **Article 52. Mental Element**

1. Unless otherwise provided, a person shall bear criminal responsibility and be subject to punishment for a crime within the jurisdiction of the Court only if the crimes are committed with material elements of specific intent and knowledge.
2. For the purposes of this Article, a person shall be considered to have intent if:
  - a. The person intends to engage in the conduct in question;
  - b. The person intends to cause the result in question or is aware that it may occur in the ordinary course of events.
  - c. Negligence or gross negligence by a state or nation.
3. For the purposes of this Article, "knowledge" means being aware that a circumstance exists or that a consequence may occur in the ordinary course of events. The terms "know" and "knowingly" shall be interpreted accordingly.

## **Article 53. Mitigation of Criminal Responsibility**

1. Pursuant to this Charter, the criminal responsibility of a person may be mitigated on the following grounds in addition to other such grounds:
  - (a) If at the time of the conduct, the person suffers from a mental disease or defect that results in the destruction of their ability to appreciate the unlawful or wrongful nature of their conduct or to control their conduct to comply with the law's requirements;
  - (b) If the person is in a state of intoxication that results in the destruction of their ability to appreciate the unlawful or wrongful nature of their conduct or to control

their conduct to comply with the law's requirements, except in situations where the person voluntarily consumed alcohol or drugs and knowingly disregarded the risks of engaging in criminal conduct;

(c) If the person acted reasonably in self-defense, defense of others, defense of essential property or military mission, against an unlawful use of force, in a manner that is proportionate to the degree of danger faced, provided that the person's involvement in a defensive operation conducted by the military does not automatically absolve them of criminal responsibility;

(d) If the conduct constituting a crime within the Court's jurisdiction is caused by duress that results from an imminent threat of death or serious bodily harm against the person or another person, and the person acts necessarily and reasonably to avoid the threat, provided that they do not intend to cause a greater harm than the one they seek to avoid. Such a threat may arise from other persons or other uncontrollable circumstances.

(e) Mistake of fact or mistake of law: A mistake of fact shall only be considered as a ground for mitigating criminal responsibility if it negates the mental element required by the crime. A mistake of law regarding whether a particular type of conduct constitutes a crime within the jurisdiction of the Court shall not be considered as a ground for mitigating criminal responsibility. However, a mistake of law may be considered as a ground for mitigating criminal responsibility if it negates the mental element required by such a crime, or as provided for in Article 36.

2. It is the responsibility of the Court to determine the applicability of the grounds for mitigating criminal responsibility provided for in this Charter to each case.

#### **Article 54. Superior Orders and Prescription of Domestic Law**

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a government or of a superior, whether military or civilian, or under domestic law, shall not relieve that person of criminal responsibility. It may be taken into consideration as a mitigating factor at the time of sentencing.
2. For the purposes of this Article, orders to commit genocide or crimes against humanity are manifestly unlawful.

#### **Article 55. Rules of the Court**

1. Subject to Article 28 (Prosecution Review Commission), an investigation shall be initiated by the Principal after the evaluation of all available information if a reasonable basis to proceed is found according to the rules established in the present Charter. Nation-based customary rules can be used as supplementary if not in conflict with the norms and principles defined in the Charter.
2. The Principal shall decide to proceed if:
  - A. Available information indicates a reasonable basis to believe that a crime within the Court's jurisdiction has been or is being committed;
  - B. Conditions stated in Article 21 are respected;

- C. In consideration of the alleged crime and its victim(s), an investigation is deemed necessary in order to fulfill the objectives outlined in the Charter.
3. Whether the Principal determines that a reasonable basis to proceed does not exist, he or she shall inform the Pre-Trial Division.

If, upon investigation, the Principal concludes that there is not a sufficient basis for a prosecution because of:

- 1) lacking and/or insufficient legal or factual elements;
- 2) inadmissibility according to Article 21;
- 3) a prosecution does not move in the direction of fulfilling the Charter's objectives, considering the crime, the victim(s) and the alleged perpetrator(s).

The Principal shall inform the Pre-Trial Division, the Tribunal Commission under Article 17 Paragraph (b), or the Party making a referral under Article 18 about the petitioner's conclusions and related reasons for not proceeding.

4. The Pre-Trial Division may review a decision of the Principal not to proceed and may request the petitioner to reassess the case upon request of the Tribunal Commission under Article 17 Paragraph (b) or the party making a referral under Article 18.
5. At its own discretion, the Pre-Trial Division may review a decision of the Principal not to proceed if it is based exclusively on Paragraph 2 (c) or 3 (c). Consequently, the effectiveness of the Principal's decision shall depend on the Pre-Trial Division's confirmation.
6. When presented with new facts or information, the Principal may reconsider the decision to proceed with an investigation or prosecution. A time limit for reconsideration may exist if expected depending on the nature of the case, particularly whether systems of restorative justice apply. (As set forth in ANNEX E)

## **SECTION 5. LEGAL CODE, INVESTIGATION AND PROSECUTION**

### **Article 56. Investigative Duties and Powers of the Principal**

1. The Principal shall investigate all relevant facts and evidence to assess if there is criminal responsibility under this Charter.
2. Investigations shall be initiated ex-officio or based on information received by petitioners.
3. The Principal shall have the power to question suspects, victims and witnesses, to collect evidence, and carry out field investigations in accordance with general principles of human rights law and customary laws of the peoples involved, with the assistance of State or local authorities.
4. While ensuring the effective investigation and prosecution of crimes, the Principal shall take into account both the personal interests and conditions of victims and witnesses, and

the collective rights and interests of petitioners, fully respecting the rights of all persons according to this Charter.

5. The Principal may conduct investigations pursuant to the provisions of Section 9 or upon authorization of the Pre-Trial Division, collecting and examining evidence. The Principal may request the presence of and question persons under investigation, victims, and witnesses.
6. He or she may seek the cooperation of any State, Nation, community, group, or organization, entering into agreements or arrangements to facilitate the named cooperation, provided that those instruments are consistent with this Charter.
7. The Principal may agree not to disclose, at any stage of the proceedings, confidential information obtained for investigative purposes without the provider's consent, taking all necessary measures to ensure the confidentiality of information and the preservation of evidence.

### **Article 57. Rights during an Investigation**

1. In relation to an investigation under this Charter:
  - a. The Court shall determine the credibility of the witness and testimony consistent with international and customary law;
  - b. A person shall be presumed innocent until proven guilty according to the provisions of the present Charter;
  - c. A person shall have the free assistance of a competent interpreter if questioned in a language other than a language the person fully understands and speaks;
  - d. A person shall not be subjected to arbitrary arrest or detention and shall not be deprived of freedom except in accordance with the procedures established in the Charter.
2. If there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Principal or by other authorities pursuant to Section 9, before questioning the accused shall be informed of the nature of the charges against the defendant whose rights include the right:
  - a. to remain silent, without such silence influencing the determination of guilt or innocence;
  - b. to defend in person or through legal assistance of the person's choosing;
  - c. to free legal assistance if the accused cannot afford legal assistance;
  - d. to have adequate time and facilities for the preparation of the defense;
  - e. to be tried without undue delay;
  - f. to be questioned in the presence of counsel unless the person has voluntarily waived the right to counsel;
  - g. to be informed of the maximum penalties of the offense;
  - h. to present witnesses, to confront and cross-examine witnesses;



- i. to be publicly tried by judge, jury or through mechanisms of alternative dispute resolution, by means of mediation, arbitration or negotiation depending on the charge, context, persons involved and customary laws in place as determined by the court (As set forth in ANNEX C concerning the Jury).

## **SECTION 6. TRIAL**

### **Article 58. Place of Trial**

1. The place of the trial shall be the seat of the Court, except as provided in paragraph 2 of this Article.
2. In order to effectively facilitate and guarantee the conduct of court proceedings, non-local nodes and ancillary offices shall be created based on collaboration agreements between specific Nations and/or States, taking into account all relevant circumstances, upon approval of a simple majority of the ratifying parties. Remote legal proceedings shall always include a central coordination system.

### **Article 59. Trial in the Presence of the Accused**

Whenever the accused is present at the trial, and in the event of disruptions from the accused's part with the purpose of preventing the correct performance of the proceeding, the Trial Division may remove the accused and make arrangements for the defendant's participation from outside the courtroom, if other alternatives have resulted not to be feasible. Such arrangements shall be made only for a strictly required duration and in conformity with international legal standards and customary laws of the nation or state involved if such laws are not in conflict with the named legal standards.

### **Article 60. Functions and Powers of the Trial Division**

1. The Trial Division shall guarantee a fair and speedy trial, fully respecting the rights of the accused and ensuring the protection of victims and witnesses. Prior to or during the trial, the Trial Division may perform any functions of the Pre-Trial Division.
2. The Trial Division dealing with the case shall:
  - a. consult with the parties and adopt all necessary means to guarantee a fair and speedy proceeding;
  - b. determine the language(s) to be used;
  - c. provide for information disclosure, if not previously disclosed, sufficiently in advance to facilitate adequate preparation for the trial.
3. The Trial Division may refer preliminary issues to the Pre-Trial Division and, if suitable, it may decide to combine the trials into a single trial or to separate the trials in

consideration of the charges against more than one accused, providing due notice to the parties.

4. In performing its functions, the Trial Division shall;
  - a. require the attendance and testimony of witnesses and production of documents and other evidence, and order the production of further evidence;
  - b. ensure the protection of confidential information;
  - c. provide for the protection of the accused, witnesses, and victims, taking into account the traditions, values and principles of the community, group or nation involved.
5. The trial shall be public, and the Court shall recognize the plaintiff's jury (as set forth in ANNEX C), unless otherwise decided depending on the case and in application of local customary laws, if not in conflict with the principles defined in human rights legal instruments and international customary law. In addition, the Trial Division may decide that certain proceedings be conducted in closed session for special reasons, including the protection of confidential or sensitive information.
6. At the beginning of the trial:
  - a. The Trial Division shall read to the accused the charges as previously confirmed by the Pre-Trial Division, making sure that the accused understands the nature of the charges. It shall afford the defendant(s) the opportunity to admit the guilt or to plead not guilty.
  - b. The presiding judge may give indications for the conduct of the proceeding, also to ensure its fairness and impartiality.
7. The Trial Division shall have the power to:
  - a. rule on the admissibility of evidence;
  - b. take all necessary measures to maintain order during the trial.
8. A complete record of the trial is made and maintained by the Registrar.

### **Article 61. Admissions of Guilt**

1. In cases where the accused makes an admission of guilt in accordance with Article 6, Paragraph (a) of this Charter, the Trial Division shall conduct a review to determine the following:
  - a. Whether the accused fully understands the nature and consequences of the admission of guilt;
  - b. Whether the admission of guilt was made voluntarily by the accused after adequate consultation with defense counsel or, if applicable, with an appropriate decision-making body.
  - c. Whether the admission of guilt is supported by the facts of the case as set out in the charges brought by the Principal and admitted by the accused, any supplementary materials presented by the Principal that the accused accepts, and any other evidence submitted by either party.

2. Where the Trial-Division is satisfied that the matters referred to in Paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates and may convict the accused of that crime.
3. Where the Trial Division is not satisfied that the matters referred to in Paragraph 1 are established, it shall consider the admission of guilt as not having been made, ordering that the trial be continued under the ordinary trial procedures provided by this Charter. In this case, the presiding judge may refer to the Principal to organize a consultation with an appropriate decision-making body, such as a nation's community decision-making body, to clarify and verify all relevant aspects in consideration of the charge, context, persons involved and customary law in place.
4. Where the Trial Division believes that a more complete presentation of the facts of the case is required, the Trial Division may:
  5. request the Principal to present additional evidence, including the testimony of witnesses and, if applicable, relevant opinions of elders, clan, family, and community members about the need to proceed considering the best interests of the Nations or States involved.
  6. order that the trial be continued under the trial procedures provided by this Charter, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Division. ( in ANNEX E)
7. The agreements between the Principal and the defense regarding the modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court. In addition, the Court may consult with a Nation's or a State's appropriate decision-making body dealing with criminal legal issues to better form its own belief about the case.

## **Article 62. Presumption of Innocence**

1. The accused shall be presumed innocent until proven guilty before the Court, the Jury or through any mechanism of alternative dispute resolution.
2. In order to obtain a conviction, guilt must be proved by the Principal beyond a reasonable doubt.

## **Article 63. Rights of the Accused**

1. In the determination of any charge, the accused shall be entitled to a public, fair, and impartial hearing, and to all guarantees as outlined in Article 57 and applicable during the trial.
2. Additionally, the accused shall have the right to make an unsworn oral or written statement in their defense and shall not have any reversal of the burden of proof imposed on them.
3. The Principal shall disclose to the defense any evidence in the Principal's possession or control which, in their belief, may demonstrate the innocence of the accused, mitigate

their guilt, or affect the credibility of the prosecution's evidence. In case of doubt, the Court shall decide.

4. Any additional rights may be recognized based on customary law or special circumstances, provided they are not in conflict with recognized human rights law and internationally recognized norms of criminal procedure.

#### **Article 64. Protection of Victims and Witnesses**

1. The Court shall ensure the safety, physical and psychological well-being, dignity, and privacy of victims and witnesses, taking into account the rights, interests, well-being, and traditional values of the community involved. The Court shall consider all relevant factors to determine appropriate measures for protection.
2. The Principal shall take measures to protect victims and witnesses, particularly during investigation and prosecution. These measures shall not infringe upon the rights of the accused to a fair and impartial trial.
3. The Court may conduct closed proceedings or adopt special measures to protect the safety and well-being of victims, witnesses, or accused persons. In addition, the Court may avoid a public hearing if such a hearing would be inconsistent with traditional practices in place, or if it would be contrary to the interests of justice.
4. The Court shall allow the views and concerns of victims to be presented and considered at appropriate stages of the proceedings. Legal representatives of victims may present such views and concerns. The Court may also take into account the views and concerns of prominent representatives of the community involved, in accordance with customary law.
5. Protection of evidence and information in cases of grave endangerment:
  - a. Pursuant to this Charter, where the disclosure of evidence or information may lead to the grave endangerment of the security of a witness, their family, or the community, the Principal may withhold such evidence or information.
  - b. In such cases, the Principal shall instead submit a summary of the evidence or information, subject to the approval of the Court, and indicate that the full evidence or information is available for the exclusive use of the Court, the defense, or any other authorized persons or entities as determined by the Court.
  - c. The decision to withhold evidence or information and submit a summary shall be made by the Principal in accordance with the procedures established by the Court and with due consideration to the rights of the accused to a fair and impartial trial.
  - d. The Court may order the disclosure of the withheld evidence or information where it is satisfied that the interests of justice so require and that adequate measures are in place to ensure the safety and security of the witness, their family, or the community.

## **Article 65. Evidence**

1. Prior to providing testimony, each witness shall provide a declaration regarding the accuracy of the testimony to be provided.
2. Testimony from a witness during the trial shall be given in person, unless the Court determines that special circumstances require otherwise, in which case the witness may provide testimony through other appropriate means.
3. The parties may submit evidence relevant to the case, and the Court shall have the power to request the submission of any evidence deemed necessary to ascertain the truth.
4. The Court may decide on the relevance or admissibility of any evidence, considering the credibility of the evidence and any potential for bias or prejudice.
5. The Court shall acknowledge and adhere to confidentiality privileges, and it may take judicial notice of commonly accepted facts without requiring further substantiation.
6. Evidence obtained in violation of this Charter, internationally recognized human rights, or domestic norms of the affected community shall be deemed inadmissible, if:
  - A. such violation raises substantial doubt about the reliability of the evidence; or if
  - B. the admission of the evidence would seriously undermine the integrity of the proceedings.

The Court shall have the authority to exclude any evidence that meets the criteria set forth in Paragraph 1, either on its own initiative or at the request of a party.

## **Article 66. Offenses against the Administration of Justice**

1. The Court shall have jurisdiction over the following offenses against its administration of justice when committed intentionally:
  - a. giving false testimony;
  - b. presenting evidence that the party knows is false or forged;
  - c. corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
  - d. impeding, intimidating or corruptly influencing an official of the Court in order to force or persuade such individuals not to perform, or to perform improperly, appropriate duties;
  - e. retaliating against an official of the Court on account of duties performed by that or another official;
  - f. soliciting or accepting a bribe as an official of the Court in connection with official duties.
2. In the event of conviction, the Court may impose a term of imprisonment not exceeding ten years, or a fine in accordance with the legal codes or customary laws of the State Party or Nation Party involved.

## **Article 67. Sanctions for Misconduct before the Court**

1. The Court shall have the authority to impose administrative measures, other than imprisonment, on individuals who engage in misconduct during its proceedings or who deliberately refuse to comply with its directions. Such measures may include, but not be limited to, temporary or permanent removal from the courtroom, imposition of a fine, or any other similar measures deemed appropriate by the Court.
2. The procedures for imposing such measures shall be consistent with relevant legal norms and may take into consideration the traditional practices of the State or Nation involved.

## **Article 68. Requirements for a Decision**

1. All members of the Trial Division shall be present during every stage of the trial and its deliberations. In case of absence, the President of Judicial Divisions may appoint one or more alternate judges to substitute a Trial Division member.
2. The Trial Division's decision shall be based on the assessment of the whole proceedings. The decision shall be confined to the facts and circumstances mentioned in the charges, and the Court shall adjudicate only on the evidence submitted and examined during the trial.
3. The Judges shall strive to achieve a unanimous decision. If not possible, the decision shall be made by a majority of the judges.
4. The judicial deliberations shall be confidential, except if otherwise decided considering the specific context and the overall interests of the affected Nation or community.
5. The decision shall be in writing and shall comprise a comprehensive and well-founded statement of the Trial Division's conclusions and findings on the evidence. If unanimity is not reached, the decision shall contain the views of the majority and the minority. The final decision shall be announced publicly unless a particular situation requires otherwise.

## **Article 69. Reparations**

1. The Court shall establish principles relating to reparations to victims, including restitution, compensation, and rehabilitation, in accordance with the principles set out in this Charter and relevant international legal instruments. In determining such principles, the Court may take into consideration specific traditional values and alternative dispute resolution's determinations for the same or similar matters in the Nation, State or community involved.
2. Based on these principles, the Court may determine the scope and extent of any damage, loss, and injury to victims in its decision, either upon request or on its own motion in exceptional circumstances. The Court shall act in accordance with internationally recognized legal instruments, as well as both international and national customary law.

3. The Court may order directly against a convicted person to provide appropriate reparations to victims, including restitution, compensation, and rehabilitation, in accordance with the principles established under this Article.
4. This Article shall not prejudice the rights of victims under State-based, Nation-based, and international law.

### **Article 70. Sentencing**

1. In the event of a conviction, the Trial Division shall consider the appropriate sentence to be imposed, taking into account the evidence presented, submissions and recommendations of the victims made during the trial that are relevant to the sentence.
2. Prior to the completion of the trial, except where Article 62 applies, the Trial Division may on its own motion, and shall upon request of the Principal or the accused hold a further hearing to hear any additional evidence or submissions relevant to the sentence.
3. The judgment shall be delivered in public and, to the extent possible, in the presence of the accused.
4. The judgment shall be in conformity with internationally recognized legal principles and rules. Furthermore, in determining the content of the judgment, Nation-based norms shall prevail over any other conflicting law provided that they are consistent with the international legal framework on human rights.

### **Article 71. Protection of State or Nation Security**

For the protection of a State or Nation's security, the Court may apply State-based or Nation-based laws if not in conflict with international law and internationally recognized legal principles.

## **SECTION 7. PENALTIES**

### **Article 72. Applicable Penalties**

1. The Court may impose one of the following penalties on a person convicted of a crime referred to in Article 8 of this Charter. The penalties shall be determined in accordance with the provisions of this Charter and the Rules of Procedure and Evidence of the Court:
  - (a) imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
  - (b) life imprisonment when justified by the extreme gravity of the crime, taken into account all the circumstances.
2. In addition to imprisonment, the Court may order:
  - (a) a fine;
  - (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;
  - (c) any other penalty or measure according to the customary law of the State or Nation involved, including but not limited to reparations to the victims and other restorative justice measures, as supplementary penalties or measures. In ordering that, the Court may

take into consideration the opinions of traditional leaders, clan, family and community circles and any other relevant decision-making bodies. (As set forth in ANNEX E)

### **Article 73. Sentencing**

1. In determining the sentence, the Court shall take into account such factors as the gravity of the crime, the individual circumstances of the convicted person, the specific context and the collective interests of the Nation or community affected.
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 also deduct any time otherwise spent in detention in connection with a conduct underlying the crime.
3. When a defendant 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. Such 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 72, Paragraph 1 (b).
4. The Court shall also consider the use of alternative measures to imprisonment, such as rehabilitation, community service, restorative justice, and reparations to victims, where appropriate and consistent with the interests of justice (As set forth in ANNEX E).
  5. The Court shall, where appropriate, consider alternative measures to imprisonment, such as community service, probation, or other measures that are consistent with the principles of restorative justice, and which promote the rehabilitation and reintegration of the convicted person into society.
6. The Court shall provide reasons for its sentencing decision in writing, setting out the factors taken into account and the rationale for the sentence imposed.

### **Article 74. Trust Fund**

1. A Trust Fund for Victims shall be established by the International Commission of Parties for the purpose of providing financial support to victims of crimes and their families pursuant to this Charter.
2. The Trust Fund shall be funded by voluntary contributions from States, organizations, and individuals, as well as any money and property collected through fines or forfeiture ordered by the Court. The Commission shall determine the criteria for accepting contributions and managing the Fund, taking into account best practices and principles of transparency and accountability.
3. The Trust Fund shall prioritize providing assistance to victims who have suffered the most serious harm, including physical or psychological harm, economic loss, and violation of



their rights. Assistance may include medical and psychological care, legal aid, and other forms of support necessary for the victim's recovery and rehabilitation.

4. The Trust Fund shall be accessible to all victims of crimes under this Charter, regardless of their nationality, gender, race, or any other characteristic. The Commission shall establish procedures for applying for and receiving assistance from the Fund, which shall be simple, accessible, and non-discriminatory.

5. The Fund management shall report on the management and use of the Trust Fund to the International Commission of Parties and to the public on an annual basis, providing information on the sources and amounts of contributions, the number and types of victims assisted, and the impact of the assistance provided.

#### **Article 75. Non-prejudice to the application of penalties under State-based and Nation-based laws**

1. Nothing in this Part shall affect the application of penalties prescribed under State-based or Nation-based laws.

### **SECTION 8. APPEAL AND REVISION**

#### **Article 76. Appeal against Acquittal or Conviction or Sentence**

1. The Appeals Division may affirm, reverse, or revise the decisions taken by the Trial Division.
2. A decision under Article 70 may be appealed as follows:
  - (a) the Prosecutor may make an appeal on any of the following grounds: procedural error, error of fact, or 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: procedural error, error of fact, error of law, or any other ground that affects the fairness or reliability of the proceedings, decision, or sentence;
  - (c) victims of the offense may make an appeal on any ground that affects the fairness of the proceedings, decision, or sentence;
  - (d) in case of an acquittal, the accused shall be released immediately. However, under exceptional circumstances, and having regard to the concrete risk of flight, the seriousness of the offense charged, and the probability of success on appeal, the Trial Division, at the request of the principal, may maintain the detention of the defendant pending appeal. The Trial Division shall provide the reasons for its decision in writing and ensure that the accused is able to challenge the decision promptly and effectively.

(e) If a convicted defendant is released pending appeal, the Court may impose conditions, including reporting obligations, travel restrictions, and electronic monitoring, as necessary to ensure the person's appearance at trial, protect the public, or prevent further offenses. Any such conditions must be proportionate to the risk posed by the person's release and respect their human rights.

3. The Court shall take measures to ensure that the suspension of the execution of a decision or sentence during the period allowed for appeal and the duration of the appeal proceedings does not result in undue delay or prejudice to the rights of victims or their families.

4. The decision on the application for revision shall be final and not subject to further appeal, except as provided for in the Rules of Procedure and Evidence.

5. The execution of the decision or sentence may be suspended during the period allowed for appeal and, if so determined by the Court, for the duration of the appeal proceedings. Such suspension may be revoked by the Court considering the concrete needs and interests of the victims, their families and community, and to facilitate the restoration of harmony within the community involved.

### **Article 77. Appeals against other Decisions**

1. Either party may appeal any of the following decisions:
  - a. a decision with respect to jurisdiction or admissibility;
  - b. a decision granting or denying release of the person being investigated or prosecuted;
  - c. a decision of the Pre-Trial Division to act on its own initiative;
  - d. a decision that involves a matter that would significantly affect the fair conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Division may significantly facilitate the proceedings.
2. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order for reparations may appeal against it.

### **Article 78. Proceedings on Appeal**

1. For the purposes of proceedings under Article 76 and this Article, the Appeals Division shall have all the powers of the Trial Division.
2. If the Appeals Division 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 Division.

For these purposes, the Appeals Division may remand a factual issue to the original Trial Division so as to determine it 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 Principal on that person's behalf, it cannot be amended to the person's detriment.

3. If in an appeal against sentence the Appeals Division finds that the sentence is disproportionate to the crime, it may vary the sentence. In doing so, it may take into account the opinions of customary leaders, circles, clans and other decision-making bodies of the Nation involved.
4. The Appeals Division may correct at any time a sentence that is found to be illegal or imposed in an illegal manner before the sentence has been satisfied.
5. The judgment of the Appeals Division shall be taken by a majority of the judges and shall be delivered in open court, unless otherwise specified due to special circumstances. The judgment shall indicate the reasons on which it is based and, if unanimity is not reached, the judgment of the Appeals Division shall contain the views of the majority and the minority.

### **Article 79. Revision of Conviction or Sentence**

1. The convicted person or, after death, a family member, or any person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Division to revise the final judgment of conviction or sentence on the grounds that:
  - a. new evidence has been discovered that:
    - 1.a.i. was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and
    - 1.a.ii. if proved at trial, would have been likely to have resulted in a different verdict;
  - b. it has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;
  - c. one or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office.
2. The Appeals Division shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may reconvene the original Trial Division, constitute a new Trial Division, or retain jurisdiction and so decide if the judgment should be revised.

### **Article 80. Unlawful Detention**

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Family and community members may be compensated as well.

2. When a person has been convicted of a criminal offense by a final decision, and when subsequently the person's conviction has been reversed on the ground that a new or newly discovered fact shows conclusively that there has been a unlawful arrest or detention, 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 or her.
3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.
4. The total amount of the compensation shall be determined by law, taking into account both international customary law and State-based and Nation-based internal rules and practices.

## **SECTION 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE**

### **Article 81. Commitment to Cooperation of Parties**

1. Parties to the Charter pledge to cooperate with the Court as it conducts investigations and prosecutions of crimes within its jurisdiction consistent with provisions in the Charter.

2. For the purposes of this Article, "cooperation" shall mean any necessary assistance and support that the Court may require, including but not limited to:

- a) Providing access to relevant documents, records, and evidence;
- b) Facilitating the appearance of witnesses and their protection;
- c) Executing requests for arrest or surrender of suspects;
- d) Providing for the enforcement of sentences and orders of the Court; and
- e) Providing other forms of assistance as may be required by the Court.

2.a.i.3. Cooperation with the Court shall be carried out in accordance with the domestic legal system of the party concerned and shall respect the rights of suspects and accused persons.

2.a.i.4. Parties to the Charter shall take all necessary measures to ensure that their national laws provide for cooperation with the Court in accordance with this Article.

### **Article 82. Requests for Cooperation**

1. The Tribunal under the Charter has authority to request State and Nation Parties to cooperate. Such requests shall be sent through accepted diplomatic mechanisms designated

by State or Nation parties at the time of ratification, acceptance, approval or accession to this Charter. Any changes to the designation shall be made by each Nation or State Party pursuant to the Rules of Procedure and Evidence. In special circumstances, requests may also be sent through other means established by the Parties according to domestic laws.

2. The requested State or Nation shall keep confidential a request for cooperation and any documents supporting the request, except if the disclosure is necessary to execute the request. In addition, a disclosure may be required in application of domestic customary law depending on the particular context, crime, persons and communities involved.

3. The Tribunal may take all necessary measures to protect information and to ensure the safety or physical and psychological well-being of any victims, potential witnesses and their families, as well as the community affected.

4. The Tribunal may invite any State or Nation or other party to this Charter to provide assistance under this Section as deemed appropriate under the circumstances or necessary records, documents, or other information. The Tribunal may also ask for other forms of cooperation and assistance depending on the context and circumstances. If a State or Nation that is not a Party to this Charter fails to cooperate as requested, the Tribunal shall inform the Party referring the matter and the International Commission of Parties.

5. The Tribunal may ask any State, Nation or other legal entity to provide information or documents. The Tribunal may also ask for other forms of cooperation and assistance depending on the context and circumstances.

6. Where a State or Nation Party fails to comply with a request to cooperate by the Tribunal contrary to the provisions of this Charter, the Tribunal shall refer the matter to the Party referring the matter and the International Commission of Parties.

7. The Tribunal shall ensure that requests for cooperation are proportionate to the nature and gravity of the crime being investigated or prosecuted, and do not unduly interfere with the sovereignty of the State or Nation Party.

8. In the event of non-compliance by a State or Nation Party, the Tribunal shall first engage in a dialogue with the State or Nation Party concerned to seek a resolution of the issue. If the matter is not resolved, the Tribunal shall consider whether to take further measures, including making a referral to the International Commission of Parties or another appropriate body. The Tribunal shall also consider the use of incentives to encourage cooperation, such as offering reduced sentences or other forms of leniency to individuals who provide substantial cooperation.

9. The Tribunal shall make every effort to ensure that its requests for cooperation do not compromise the safety or well-being of individuals, communities, or national security interests of the State or Nation Party concerned. The Tribunal shall consult with the State or Nation Party concerned on the appropriate measures to be taken to ensure such protection.

### **Article 83. Procedures under Domestic Law**

1. Each State and Nation Party shall ensure that it has in place adequate and effective procedures, in accordance with its domestic laws, to facilitate all forms of cooperation under this Charter.
2. Such procedures shall include, but not be limited to:

- a. Designation of competent authorities responsible for receiving and processing requests for cooperation under this Charter;
  - b. Procedures for the execution of requests for cooperation, including any necessary legal and administrative measures;
  - c. Mechanisms for the protection of victims, witnesses, and other persons who cooperate with the Court, including measures to safeguard their physical and psychological well-being;
  - d. Procedures for the collection, preservation, and transmission of evidence, including provisions for the admissibility of evidence obtained through cooperation with the Court;
  - e. Procedures for the enforcement of orders or requests issued by the Court under this Charter;
  - f. Procedures for the handling of confidential or sensitive information provided to the Court in connection with requests for cooperation.
3. Each State and Nation Party shall periodically review its domestic laws and procedures to ensure that they remain adequate and effective for the purposes of this Charter.
  4. Each State and Nation Party shall provide the Court with information on the procedures it has in place for cooperation under this Charter, including any changes thereto, and shall inform the Court of any difficulties it experiences in implementing such procedures.
  5. If a State or Nation Party lacks adequate domestic laws or procedures to facilitate cooperation under this Charter, it shall make every effort to establish such laws and procedures as soon as possible, in consultation with the Court and other relevant parties.
  6. The Court shall provide technical assistance and support to States and Nations in establishing or improving their domestic laws and procedures to facilitate cooperation under this Charter, in accordance with its mandate and available resources.
  7. The Court shall take into account the particular circumstances and needs of victims, witnesses, and other persons who cooperate with the Court when making requests for cooperation under this Charter. The Court shall also take into account any risks or negative consequences that such cooperation may pose to these people and shall ensure that appropriate measures are taken to protect their interests and well-being.
  8. The Court shall engage in regular dialogue and consultation with States and Nations on issues related to cooperation under this Charter, including the adequacy and effectiveness of domestic laws and procedures, and the provision of technical assistance and support. The Court shall also establish and maintain effective channels of communication with competent authorities designated by States and Nations for the purposes of this Charter.
  9. The Court shall prioritize the use of cooperative measures that are most effective, efficient, and respectful of the sovereignty and interests of States and Nations while ensuring that the rights of suspects and accused persons are protected in accordance with the Charter.
  10. The Court shall take into account the financial and other resources that may be required for cooperation under this Charter and shall seek to ensure that such cooperation is carried out in a cost-effective and sustainable manner. The Court shall also explore opportunities for sharing costs and resources among States and Nations for the purposes of this Charter.

## Article 84. Surrender of Defendants

1. The Tribunal may request the arrest and surrender of an individual, transmitting the documents and information in support of such a request, to any State or Nation on the territory of which that individual may be found. The Tribunal may request the cooperation of such State/s or Nation/s in the arrest or surrender. State or Nation Parties shall comply with such requests in accordance with this Section and their domestic laws.
2. If the individual sought for arrest or surrender invokes the principle of *ne bis in idem* before a domestic court or through a mechanism of alternative dispute resolution, the requested State or Nation shall immediately consult with the Tribunal in regard to the admissibility ruling. If the case is admissible, the requested State or Nation shall proceed with the execution of the request, unless otherwise decided in conformity with domestic customary laws. If an admissibility ruling is pending, the execution of the request for arrest or surrender of an individual may be postponed until a ruling on admissibility is made.
3. If requested, a State or Nation Party shall authorize transit through its territory of an individual being arrested or surrendered to the Tribunal by another State or Nation, handling the transit in the most appropriate way considering the circumstances and with the purpose of facilitating it.
4. A request for transit made by the Tribunal shall contain: a description of the person being transported, a brief statement of the facts of the case, including their legal relevance, and the warrant for arrest and surrender.
5. If the individual sought is being proceeded against or is serving a sentence in the requested State or Nation for a crime different from that for which surrender to the Tribunal is sought, the requested State or Nation shall consult with the Tribunal to decide on such a request depending on the crime for which the surrender is sought. For the purpose of the named decision, domestic customary laws may prevail if not in conflict with the principles established in this Charter, international customary law and internationally recognized legal standards.
6. The court should ensure that the countries to which they are requesting the surrender of an accused person have appropriate safeguards in place to protect the human rights of the accused. The court should also ensure that any conditions for surrender are fair and reasonable and that the accused is treated humanely during the surrender process.
7. The Court shall ensure that the legal and procedural rights of the accused are respected throughout the surrender process and that the accused is provided with adequate opportunities to contest the request for surrender.
8. In cases where there is a conflict between the provisions of the court and the domestic legal systems of the requested state or nation, the court should take the necessary steps to resolve the conflict in a manner that upholds the rights of the accused while ensuring the effectiveness of the court's mandate.
9. The court shall take measures to ensure that the arrest and surrender process is free from political interference and that the cooperation of States or Nations is not withheld for political reasons. Such measures may include monitoring the execution of requests and

engaging in dialogue with States or Nations to address any concerns or issues that may arise.

10. The court shall ensure that the surrender process is fair, just, and effective in bringing to justice those who have committed international crimes. To this end, the court may provide guidance and assistance to States or Nations in relation to the execution of arrest and surrender requests and may take steps to address any obstacles or challenges that may arise.
11. In cases where a State Party refuses to cooperate with the Court in the surrender process, the Court may take appropriate measures to address the situation, including making a finding of non-cooperation and referring the matter to the Assembly of States Parties as appropriate.

### **Article 85. Competing Requests**

1. A State or Nation Party which receives a request from the Tribunal for the surrender of a person under this Section, if it also receives a request from any other State or Nation for the extradition of the same person for the same conduct which forms the basis of the crime for which the Tribunal seeks the person's surrender, shall notify the Tribunal and the requesting State or Nation of that fact.
2. In cases where a State or Nation Party receives competing requests from the Tribunal and another State or Nation for the same person for the same conduct, the requested State or Nation shall give priority to the request from the Tribunal if the Tribunal has already made a ruling on the admissibility of the case, or the Tribunal shall decide based on the requested State or Nation's notification.
3. If the Tribunal has not made a ruling on admissibility yet, the requested State or Nation may proceed to handle the request for extradition, but it shall not extradite the person until the Tribunal has decided that the case is admissible.
4. If the requesting State or Nation is not Party to this Charter, the requested State or Nation shall give priority to the request for surrender from the Tribunal, if the Tribunal has ruled that the case is admissible and there is not any international obligation for the requested State or Nation to extradite the person to the requesting State or Nation.
5. If a case has not been determined to be admissible by the Tribunal, the requested State or Nation may proceed to handle the request for extradition from the requesting State or Nation.
6. If the requesting State or Nation is not a Party to this Charter and the requested State or Nation is under an existing international obligation to extradite the person to the requesting State or Nation not Party, the requested State or Nation shall decide whether to surrender the person to the Tribunal or extradite him or her to the requesting State. In making its decision, the requested State or Nation shall consider all the factors deemed relevant, including the respective dates of requests, the interests of the requesting State or Nation, and the possibility of subsequent surrender between the Tribunal and the requesting State or Nation.
7. If a State or Nation Party receives a request from the Tribunal for the surrender of a person and it also receives a request from a State or Nation for the extradition of the same



person for a conduct constituting a different crime in respect with the crime for which the Tribunal seeks the surrender, the requested State or Nation shall, if it is not under an existing international obligation to extradite the person to the requesting State or Nation, give priority to the request from the Tribunal. Otherwise, if there is an international obligation to extradite the person to the requesting State or Nation, the requested State or Nation shall determine whether to surrender him or her to the Tribunal or to extradite him or her to the requesting State or Nation. In order to decide, the requested State or Nation shall consider all the factors deemed relevant, including those indicated in Paragraph 6, taking into particular account the gravity of the crime and the consequences on the community affected.

8. If the Tribunal has ruled that a case is not admissible, and the extradition of a person to the requesting State or Nation is not allowed, the requested State or Nation shall notify its decision to the Tribunal.
9. The requested State or Nation to extradite the person shall maintain open and transparent communication with both the Tribunal and the requesting State or Nation throughout the process of competing requests to ensure transparency and prevent misunderstandings or miscommunications.
10. The requested State or Nation to extradite the person is obligated to prioritize the interests of justice above all else when deciding which request to honor. In making its decision, the State or Nation shall carefully consider all factors deemed relevant, including but not limited to, the gravity of the crime, the consequences on the community affected, and any existing international obligations.
11. If the requested State or Nation to extradite the person is unable to determine which request to prioritize, it may seek guidance from international legal bodies or other experts to ensure a fair and just decision is reached in line with international law and principles of justice.

## **Article 86. Requests for Arrest and Surrender**

1. A request for arrest and surrender shall be made in writing, unless otherwise decided depending on domestic customary laws or special circumstances. If the named request is not written, the possibility to obtain a record of that must be granted.
2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Division, the request shall contain: Information aimed at identifying the person sought, a copy of the warrant of arrest, and all documents and information necessary to the surrender process in the requested State or Nation, in the spirit of facilitating and expediting that process.
3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain: a copy of any warrant of arrest for that person, a copy of the judgment of conviction, information demonstrating that the person sought is the same as indicated in the judgment of conviction and, if the person sought has been sentenced, a copy of the sentence imposed, including the indication of the eventual time already spent in prison in the case of a sentence for imprisonment.

4. Additional State-based or Nation-based domestic customary laws may be applied to this Article if so decided on the basis of an appropriate consultation between the State or Nation involved and the Tribunal.

### **Article 87. Provisional Arrest**

1. In urgent cases, pending submission of the request for surrender, the Tribunal may request the provisional arrest of the person sought. The request for provisional arrest shall be made by any appropriate means capable of providing a written record and it shall contain: information sufficient to identify the person sought and possibly the person's location, a statement regarding the alleged crimes for which the person is sought, a statement of the existence of a warrant of arrest or a judgment of conviction against the person sought, and a statement about the pending request for surrender.
2. The request for surrender following a provisional arrest shall be delivered to the requested State or Nation within the time limit specified by the Tribunal, taking into account all the circumstances. This time limit may also be specified in accordance with the domestic laws of the requested State or Nation, if appropriate given the circumstances.
3. The court shall ensure that the request for provisional arrest is made only in urgent cases and shall not be used as a substitute for a proper request for surrender.
4. The court shall provide the requested State or Nation with all necessary information on the reasons and circumstances of the provisional arrest, including a detailed explanation of the urgency of the situation.
5. The Tribunal shall provide the requested State or Nation with all necessary information regarding the person sought, including any medical conditions or special needs that may require attention during the provisional arrest.
6. The requested State or Nation shall ensure that the provisional arrest of the person is in compliance with international human rights law and its domestic laws.
7. The requested State or Nation shall have the right to review the reasons and circumstances of the provisional arrest, and to challenge the request if it does not meet the required legal standards or if it violates the human rights of the person sought.
8. The person arrested shall be informed without delay of the reasons for their arrest and shall be granted prompt access to legal counsel and a doctor or medical assistance and shall have the right to challenge the legality of the arrest, as well as to communicate with the consular authorities of their home State or Nation.
9. The requested State or Nation shall ensure that the provisional arrest does not result in prolonged detention or pretrial detention, without lawful justification. The provisional arrest shall not be used to circumvent the guarantees of fair trial, due process of law, or the right to liberty and security of person, as enshrined in international human rights law.

10. The requested State or Nation shall promptly communicate to the Tribunal the result of the provisional arrest and any measures taken in response to the request for provisional arrest.
11. The provisional arrest shall be subject to regular review by the Tribunal, which shall decide whether to continue or terminate it based on the information and evidence provided by the parties.
12. The requested State or Nation shall have the obligation to release the person sought if the request for surrender is not submitted within a reasonable time or if the provisional arrest is found to be unlawful.

## **Article 88. Other Forms of Cooperation**

1. State and Nation Parties shall comply with the requests from the Tribunal to provide assistance in relation to investigations or prosecutions. This assistance shall be provided in accordance with the provisions of this Section, internationally recognized legal standards and domestic customary laws, and it shall include but shall not be limited to the:
  - a. identification and location of persons or items;
  - b. taking, production and preservation of evidence;
  - c. questioning of any person being investigated or prosecuted;
  - d. provision of documents, records and information;
  - e. protection of victims and witnesses;
  - f. facilitation of the voluntary appearance of witnesses and experts before the Tribunal;
  - g. temporary transfer of persons in custody for purposes of identification, testimony or other assistance;
  - h. examination of places, and the execution of searches and seizures;
  - i. any other kind of assistance which is allowed by the laws of the requested State or Nation, in accordance with internationally recognized legal standards.
2. If the execution of a particular measure of assistance is prohibited in the requested State or Nation, a consultation with the Tribunal shall take place to decide if the assistance can be provided differently but, if after the consultation the matter is not solved, the requested State or Nation shall provide the named assistance unless it is in conflict with any fundamental principles recognized by its domestic laws. If the existence of such a conflict is proved, the Tribunal shall modify the request to make it acceptable by the requested State or Nation.
3. A State or Nation Party may deny a request for assistance only if it can demonstrate that the requested assistance would create a serious risk of harm to its national security, including the safety of its citizens or members. In case of refusal, the State or Nation Party shall follow the following procedures:
  - a. Promptly inform the Tribunal in writing of its decision to deny the request for assistance and provide an explanation of the reasons for the denial.

- b. Provide evidence of the security risk that would result from the requested assistance to the extent that such evidence is reasonably available.
  - c. Take all reasonable measures to mitigate any harm that might result from the denial of the request for assistance.
4. The denial of a request for assistance shall not preclude the Tribunal from seeking such assistance from other sources.
5. Depending on the circumstances, the requested State or Nation may consult with the Tribunal or the Principal in order to provide the named assistance in other ways or at a later date.
6. The Tribunal shall ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request. In addition, the requested State or Nation may, when necessary, transmit documents or information to the Principal on a confidential basis.
7. Apart from requests for surrender or extradition, in the event of competing requests of other kind from the Tribunal or from another State or Nation pursuant to an international obligation, the requested State or Nation Party shall seek to meet such requests, otherwise the matter shall be solved in accordance with Article 85.
8. The Tribunal may provide voluntary assistance to any State or Nation in all criminal investigations and prosecutions relating to both the crimes indicated in the Charter and all serious crimes according to State-based or Nation-based domestic laws. The named assistance shall be provided in accordance with this Section.

## **SECTION 10. ENFORCEMENT**

### **Article 89. Role of the State or Nation in the enforcement of sentences of imprisonment**

1. Sentences of imprisonment shall ordinarily be served in the facilities established in accordance with this Charter.
2. Notwithstanding paragraph 1, in exceptional circumstances and depending on factors such as the nature of the crime, the context, the persons and community involved, the domestic customary laws of the Nation or State affected by the crime, and its intention to handle sentenced persons in accordance with this Charter, alternative places of imprisonment may be used, provided that such places do not violate the rights of the sentenced persons or the obligations of the State or Nation to comply with international human rights standards.
3. A voluntary request of the State or Nation to handle such sentenced persons may be accepted if duly motivated and if the alternative places of imprisonment are in compliance with the applicable international legal standards for the treatment of prisoners, and this state or nation is committed to enabling civil society organizations, including those working on human rights and prisoners' rights, to work in monitoring and reporting on the implementation of the Charter's provisions on the enforcement of sentences.
4. The Tribunal shall indicate the conditions for accepting such a request based on all relevant circumstances and in conformity with this Charter. Additional conditions may be

proposed by the State or Nation requesting enforcement, and consultations may be put in place to find an agreement.

5. If the sentence of imprisonment is not served in the facilities pursuant to this Charter, the final decision about the place of imprisonment shall be delivered by the court in the fastest possible way, taking into account the principles established in this Charter, applicable international legal standards, and the interests of the community involved. The decision should be based on a thorough assessment of the suitability of the alternative places of imprisonment to ensure that the rights and well-being of the sentenced persons are protected and ensure that the transfer of the sentenced person to a different facility does not result in undue hardship or suffering.

6. In case of impossibility to handle the imprisonment in the facilities established according to this Charter or any alternative places of imprisonment, the imprisonment shall take place in the territory of the State or Nation where the crime was committed or, if not possible, in the territory of the State or Nation whose offender is a national or community member, provided that this State or Nation can guarantee proper handling of the enforcement and its effectiveness in accordance with applicable international legal standards. In addition, the Tribunal shall closely monitor the treatment of the sentenced person and may revoke the transfer if it determines that the person is not being treated in accordance with these standards.

7. In the absence of adequate guarantees or the impossibility for the named State or Nation to handle the enforcement of the sentence, the Tribunal shall designate another State or Nation, taking into account its connection and proximity to the community affected by the crime, the opinions of the sentenced person, and all relevant circumstances. In case of no feasibility, the State or Nation in question shall be chosen by lot, respecting the principle of equitable distribution.

8. In deciding on the designation of a State or Nation to enforce the sentence, the Tribunal shall also consider the State or Nation's application of internationally recognized legal standards for the treatment of prisoners and shall monitor compliance with those standards. The Tribunal shall not designate a State or Nation that does not meet these standards, even if that State or Nation is otherwise willing and able to enforce the sentence.

9. Alternatives to imprisonment may be applied according to domestic customary law if such measures are previously recognized and accepted by the court. The nature of such alternatives to imprisonment can be custodial or non-custodial. The application of these alternatives should not violate the rights of the sentenced persons or the obligations of the State or Nation to comply with applicable international legal standards, and the Tribunal shall monitor compliance with those measures and standards and prevent the inappropriate use of alternative measures that do not serve the best interests of the sentenced person, the community, and the administration of justice.

## **Article 90. Transfer after Sentencing**

1. During the enforcement of the sentence, the Tribunal may decide to transfer a sentenced person from the prison of a State or Nation to the prison of another State or Nation, provided that the sentenced person has given their consent to the transfer, and provided that the

receiving State or Nation is able to ensure the safety and proper handling of the sentenced person.

2. When a sentenced person wishes to apply for a transfer from the State or Nation of enforcement to another State or Nation, they shall submit their request to the Tribunal. The Tribunal shall consider all the elements and circumstances indicated in Article 89, as well as the following guidelines:

a. The transfer shall be granted if it is in the best interests of the sentenced person, taking into account factors such as their physical and mental health, family ties, and ability to access rehabilitation programs.

b. The transfer shall not be granted if it would pose a risk to public safety or if it would be contrary to the interests of justice.

c. The transfer shall be granted if it would facilitate the reintegration of the sentenced person into society upon their release.

d. The transfer shall not be granted if it would impose an unreasonable financial burden on the State or Nation of enforcement or the State or Nation of receiving.

3. The State or Nation of enforcement shall cooperate with the Tribunal in arranging the transfer, including providing all necessary information and documentation and facilitating the transportation of the person to the receiving State or Nation.

4. The costs of the transfer shall be borne by the State or Nation of enforcement unless otherwise agreed upon by the Tribunal and the receiving State or Nation. If the State or Nation of enforcement is unable to bear the costs of the transfer, the Tribunal may request financial assistance from other States or Nations.

5. The receiving State or Nation shall be responsible for the enforcement of the sentence and shall ensure that the sentenced person is treated in accordance with internationally recognized legal standards for the treatment of prisoners.

6. The Tribunal shall monitor the enforcement of the sentence in the receiving State or Nation and may, at any time, request information and reports on the condition and treatment of the sentenced person.

7. The Tribunal may suspend or revoke the transfer if it determines that the receiving State or Nation is not fulfilling its obligations under this Charter or if it determines that the transfer would create a serious risk to the security or well-being of the sentenced person or others.

## **Article 91. Enforcement and Supervision**

1. The sentence of imprisonment, or an equivalent decision, shall be binding on the States and Nations Parties, and any modification shall be invalid. The Tribunal alone shall have the right to decide any application for appeal and revision, and the State or Nation of enforcement shall not hinder the submission of such applications by a sentenced person.

2. The sentence of imprisonment, or an equivalent decision, shall be binding on the States and Nations Parties, and any modification shall be invalid. The Tribunal alone shall have the right to decide any application for appeal and revision, and the State or Nation of enforcement shall not hinder the submission of such applications by a sentenced person. The

Tribunal shall establish clear guidelines and criteria for the consideration of appeals and revisions to ensure consistency and fairness in decision-making.

3. The State or Nation of enforcement shall provide regular reports to the Tribunal regarding the treatment and conditions of the sentenced person, including any changes in their circumstances or health status.

4. The enforcement of a sentence of imprisonment, or of any equivalent decision, shall be subject to the supervision of the Tribunal and shall be consistent with internationally recognized legal standards relating to the treatment of prisoners. The Tribunal shall establish specific guidelines and criteria for the enforcement of sentences and regularly monitor compliance with these standards. The same standards shall be applied no matter the place of enforcement.

5. The State or Nation of enforcement ensure that the Communications between a sentenced person and the Tribunal shall be guaranteed and kept confidential, and the Tribunal shall have the authority to investigate any allegations of mistreatment or abuse of the sentenced person during their imprisonment. Any interference with or retaliation against a sentenced person for communicating with the Tribunal shall be considered a violation of their rights and subject to appropriate sanctions.

6. The State or Nation of enforcement shall ensure that the sentenced person has access to legal representation, including the right to communicate with their legal representative and to receive legal advice and assistance in appealing or revising their sentence.

7. The Tribunal shall periodically review the conditions of enforcement of sentences of imprisonment, or of any equivalent decision, to ensure that they continue to meet internationally recognized legal standards and to address any concerns or complaints raised by sentenced persons or their representatives.

## **Article 92. Enforcement of fines and forfeiture measures**

1. States and Nation Parties shall give effect to fines or forfeitures ordered by the Court, without prejudice to the rights of bona fide third parties, in accordance with internationally recognized legal standards and the procedures established by State-based and Nation-based domestic laws.
2. If a State or Nation Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.
3. If property or the proceeds of the sale of property are obtained by a Nation or State Party following the enforcement of a Court decision, they shall be transferred to and held by the Court pending disposition.
4. In applying this article, State-based and Nation-based customary laws are taken in special account to better ensure the restoration of the harmony in the community involved.

## **Article 93. Review by the Court concerning reduction of sentence.**

1. The Court alone shall have the right to decide any reduction of sentence and shall rule on the matter after having heard the sentenced person, the victims or any other person affected by the crime.
2. The Court may reduce the sentence if one or more of the following factors emerge:

- (a) the concrete willingness of the sentenced person to cooperate with the Court;
- (b) the voluntary assistance of the named person in enabling the enforcement of Court decisions in other cases;
- (c) other reasons justifying a reduction of the sentence, considering all relevant circumstances relating to the community involved and specific context.

#### **Article 94. Escape**

If a sentenced person escapes from custody and flees, the Court shall take all necessary measures, in accordance with internationally recognized legal standards, to ensure capture and return. Depending on the place where the escaped person is located, State-based or Nation-based domestic procedures may be applied if able to facilitate the procedure and not in conflict with the named standards.

#### **Article 95. Special assistance and collaboration agreements**

1. If a State or Nation Party to the Charter is unable to cooperate and/or enforce Court decisions pursuant to Sections 9 and 10 of this Charter for objective reasons depending on the lack of sufficient means and suitable organization, it may request special assistance to the Court. Upon acceptance, the Court shall order the State or Nation Party in which the Nation affected by the crime or the victims are located or, if that State or Nation is involved in the crime, a neighboring State or Nation Party, to provide the required assistance in all possible ways according to internationally recognized legal standards and domestic laws not in conflict with the named standards.
2. In case of impossibility to obtain the aid of a neighboring State or Nation Party, the Court shall request the assistance of another State or Nation Party. The choice shall be based on different criteria, including its proximity, political and legal system, policing and military organization, adequacy of infrastructural facilities, and voluntary willingness to provide the required assistance.
3. For the purpose of facilitating cooperation and enforcement, *ad hoc* prior agreements of collaboration, both bilateral and multilateral, may be made between Parties to this Charter to provide mutual emergency assistance. Such agreements shall be concluded in accordance with this Charter, internationally recognized legal standards and the domestic laws of the States or Nations involved.

### **SECTION 11. INTERNATIONAL COMMISSION OF PARTIES**

1. An International Commission of Parties to this Charter is hereby established. Each State and Nation Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States and Nations which have signed this Charter may be observers in the Assembly. The Assembly may be convened both in presence and remotely.
2. The International Commission of Parties' Assembly shall:
  - (a) consider and adopt, as appropriate, recommendations of the Preparatory Commission;
  - (b) provide management oversight to the different organs of the Court regarding its administration.
  - (c) decide the budget for the Court;
  - (d) decide whether to change the number of judges;



- (e) consider any question relating to non-cooperation;
  - (f) perform any other function consistent with this Charter or the Rules of Procedure and Evidence.
3. The International Commission shall appoint Lead Officials, a President, two Vice-Presidents (a State representative and a Nation representative) and twelve members elected by the Assembly for two-year terms constituting the Executive Commission. The Executive Commission shall meet as often as necessary, but at least once a year, and 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. Further subsidiary bodies may be established upon request of a State or Nation Party, on a temporary basis, if needed depending on particular issues and contexts.
  5. The President of the Court, the Principal and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Executive Commission. Depending on the topic, and with the purpose of better implementing the contents and principles of this Charter, additional individuals may be admitted participating in the named meetings on the basis of their relevance and roles, under domestic laws, in their respective States and Nations.
  6. The Assembly of the International Commission of Parties shall convene annually at the Court's seat or at facilities provided by the Foreign Ministry of \_\_\_\_\_, or by the Foreign Ministry of another government designated to host the Court, and each State or Nation Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Executive Commission. If consensus cannot be reached, decisions on matters of substance must be approved by a three-fifths majority of those present and voting provided that an absolute majority of International Commission of Parties constitutes the quorum for voting; decisions on matters of procedure shall be taken by a simple majority of International Commission of Parties present and voting.
  7. A State or Nation Party which is in arrears in the payment of its financial contributions or other material contributions towards the costs of the Court shall have no vote in the Assembly 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 or Nation Party to vote in the Assembly if it is satisfied that the failure to pay is due to conditions beyond the control of the State or Nation Party.
  8. The Assembly shall adopt its own rules of procedure.
  9. The official and working languages of the Assembly shall be English, Spanish, French, Arabic, \_\_\_\_\_, and other translated languages presented by States and Nations.

## **SECTION 12. FINANCIAL SUPPORT**

### **Article 96. Financial Regulations**

1. Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the International Commission of Parties, including its Bureau and subsidiary bodies, shall be governed by this Charter and the Financial Regulations and Rules adopted by the Assembly of International Commission of Parties.

## **Article 97. Payment of Expenses**

Expenses of the Court and the Assembly of the International Commission of Parties, including its Bureau and subsidiary bodies, shall be paid from the funds and materials of the Court.

## **Article 98. Funding**

The expenses of the Court and the Assembly of International Commission of Parties, including its Executive Commission and subsidiary bodies, as provided for in the budget decided by the Assembly of International Commission of Parties, shall be provided by the following sources:

- 1) Assessed contributions made by States and Nations Parties and nonfinancial material supports;
- 2) Funds or material support provided by other international bodies, subject to the approval of the appropriate governing mechanisms.

## **Article 99. Voluntary Contributions**

Without prejudice to Article 92, the Court may receive and use, as additional funds, and material support, voluntary contributions from Governments, international organizations, individuals, corporations, and other entities, in accordance with relevant criteria adopted by the Assembly of the International Commission of Parties.

## **Article 100. Assessment of Contributions**

The contributions of International Commission of Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the International Commission of Parties for its regular budget and adjusted in accordance with the principles on which that scale is based.

## **Article 101. Audits**

The records, books, and accounts of the Court, including its annual financial statements, shall be audited annually by an independent auditor.

## **SECTION 13. CLOSING CLAUSES**

### **Article 102. Settlement of Disputes**

1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.
2. Any other dispute between two or more International Commission of Parties' members relating to the interpretation or application of this Charter which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of International Commission of Parties.
3. The Assembly of the International Commission of Parties may take the initiative to resolve the dispute directly or provide recommendations for additional methods of dispute settlement. This could include referring the matter to a Joint Court of the respective States and/or Nations involved, in conformity with the Charter of that Court.

### **Article 103. Reservations**

No reservations may be made to this Charter.

### **Article 104. Amendments**

1. After six months from the entry into force of this Charter, any State or Nation Party may propose amendments thereto. The text of any proposed amendment shall be submitted to all International Commission of Parties.

2. Within three months from the date of notification, the Assembly of International Commission of Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.

3. The adoption of an amendment at a meeting of the Assembly of International Commission of Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of International Commission of Parties.

4. Except as provided in Paragraph 5, an amendment shall enter into force for all International Commission of Parties one month after instruments of ratification or acceptance have been deposited by seven-eighths of them.

5. Any amendment to Articles 5, 6, 7 and 8 of this Charter shall enter into force for those International Commission of Parties which have accepted the amendment six months after the deposit of their instruments of ratification or acceptance. In respect of a State or Nation Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State or Nation Party's nationals or on its territory.

6. If an amendment has been accepted by seven-eighths of State or Nation Parties in accordance with Paragraph 4, any State or Nation Party which has not accepted the amendment may withdraw from this Charter with immediate effect by giving notice no later than one year after the entry into force of such amendment.

7. The President of the International Commission of Parties shall circulate to all International Commission of Parties any amendment adopted at a meeting of the International Commission of Parties or at a Review Conference.

### **Article 105. Amendments to provisions of an institutional nature**

1. Amendments to provisions of this Charter which are of an exclusively institutional nature, namely, Article 26, Article 27, and Articles 6 and 58, may be proposed at any time by any State or Nation Party. The text of any proposed amendment shall be submitted to such person designated by the International Commission of Parties Assembly who shall promptly circulate it to all States and Nation Parties and to others participating in the International Commission of Parties' Assembly.

2. Amendments under this Article on which consensus cannot be reached shall be adopted by the Assembly of the International Commission of Parties or by a Review Conference,

by a two-thirds majority of International Commission of Parties. Such amendments shall enter into force for all International Commission of Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

### **Article 106. Review of the Charter**

1. Seven years after the entry into force of this Charter the Principal shall convene a Review Conference of the International Commission of Parties to consider any amendments to this Charter. Such review may include, but is not limited to, the list of crimes contained in Article 8. The Conference shall be open to those participating in the Assembly of the International Commission of Parties and on the same conditions.
2. At any time thereafter, at the request of a State Party and for the purposes set out in Paragraph 1, shall upon approval by a majority of the Assembly of the International Commission of Parties, convene a Review Conference.

### **Article 107. Transitional Provision**

1. Notwithstanding Article 12, Paragraphs 1 and 2, a State or Nation, on becoming a party to this Charter, may declare that, for a period of five years after the entry into force of this Charter for the State or Nation concerned, it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in Article 8 when a crime is alleged to have been committed by its nationals or on its territory. A declaration under this Article may be withdrawn at any time.
2. The provisions of this Article shall be reviewed at the Review Conference convened in accordance provisions for the International Commission of Parties.

### **Article 108. Signature, ratification, acceptance, approval, or accession**

1. This Charter shall be open for signature by all States and Nations presented as a physical declaration or transmitted as an official digital declaration at the Foreign Ministry of the designated host government until 30 May 2024. After that date, the Charter shall remain open for signature at the named Foreign Ministry until 31 May 2025.
2. This Charter is subject to ratification, acceptance, or approval by signatory States and Nations. Instruments of ratification, acceptance or approval shall be deposited with the Foreign Minister of the host government.
3. This Charter shall be open to accession by all States and Nations. Instruments of accession shall be deposited with the Foreign Minister of the host government.

### **Article 109. Entry into Force**

1. This Charter shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 4<sup>th</sup> State and 250<sup>th</sup> Nation instrument of ratification, acceptance, approval, or accession with the Foreign Minister of the host government.
2. For each State or Nation ratifying, accepting, approving, or acceding to this Charter subsequent to its initial entry into force, the Charter shall enter into force after the 60th

day following the deposit by such State or Nation of its instrument of ratification, acceptance, approval or accession.

### **Article 110. Withdrawal**

1. A State or Nation Party may, by written notification addressed to the Foreign Minister of the host government, withdraw from this Charter. The withdrawal shall take effect one year after the date of receipt of the notification unless the notification specifies a later date.
2. A State or Nation shall not be discharged, by reason of its withdrawal, from the obligations arising from this Charter while it was a Party to the Charter, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State or Nation had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

### **Article 111. Official Texts**

The original of this Charter written in English, of which the English, \_\_\_\_\_, Arabic, \_\_\_\_\_, French, and Spanish texts are equally authentic, shall be deposited with the Foreign Minister of the host government, who shall send certified copies thereof to all ratifying States and Nations.

## **AUTHORIZED RATIFICATION**

**IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Charter.**

DONE at \_\_\_\_\_, \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_.

## ANNEX A: TREATY OF SÈVRES, (AUGUST 10, 1920) PER ARMENIA

*Sections of the treaty relevant to Armenia and the Armenian Genocide are presented. The full text of the treaty is available at Brigham Young University's [World War I Document Archive](#).*

THE TREATY OF PEACE BETWEEN THE ALLIED AND ASSOCIATED POWERS  
AND TURKEY SIGNED AT SEVRES  
AUGUST 10, 1920

THE BRITISH EMPIRE, FRANCE, ITALY AND JAPAN,

These Powers being described in the present Treaty as the Principal Allied Powers;

ARMENIA, BELGIUM, GREECE, THE HEDJAZ, POLAND, PORTUGAL, ROUMANIA,  
THE SERB-CROAT-SLOVENE STATE AND CZECHO-SLOVAKIA,

These Powers constituting, with the Principal Powers mentioned above, the Allied Powers, of the one part;

AND TURKEY,

of the other part;

Whereas on the request of the Imperial Ottoman Government an Armistice was granted to Turkey on October 30, 1918, by the Principal Allied Powers in order that a Treaty of Peace might be concluded, and

Whereas the Allied Powers are equally desirous that the war in which certain among them were successively involved, directly or indirectly, against Turkey, and which originated in the declaration of war against Serbia on July 28, 1914, by the former Imperial and Royal Austro-Hungarian Government, and in the hostilities opened by Turkey against the Allied Powers on October 29, 1914, and conducted by Germany in alliance with Turkey, should be replaced by a firm, just and durable Peace,

For this purpose the HIGH CONTRACTING PARTIES have appointed as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA:

Sir George Dixon GRAHAME, K. C. V. O., Minister Plenipotentiary of His Britannic Majesty at Paris;

for the DOMINION of CANADA:

The Honourable Sir George Halsey PERLEY, K.C. M. G High Commissioner for Canada in the United Kingdom;

for the COMMONWEALTH of AUSTRALIA:

The Right Honourable Andrew FISHER, High Commissioner for Australia in the United Kingdom;

for the DOMINION of NEW ZEALAND:

Sir George Dixon GRAHAME, K. C. V. O., Minister Plenipotentiary of His Britannic Majesty at Paris;

for the UNION of SOUTH AFRICA:

Mr. Reginald Andrew BLANKENBERG, O. B. E., Acting High Commissioner for the Union of South Africa in the United Kingdom;

for INDIA:

Sir Arthur HIRTZEL, K. C. B., Assistant Under Secretary of State for India;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr. Alexandre MILLERAND, President of the Council, Minister for Foreign Affairs;

Mr. Frederic FRANÇOIS-MARSAL, Minister of Finance;

Mr. Auguste Paul-Louis ISAAC, Minister of Commerce and Industry;

Mr. Jules CAMBON, Ambassador of France;

Mr. Georges Maurice PALÉOLOGUE, Ambassador of France, Secretary-General of the Ministry of Foreign Affairs;

HIS MAJESTY THE KING OF ITALY:

Count LELIO BONIN LONGARE, Senator of the Kingdom, Ambassador Extraordinary and Plenipotentiary of H. M. the King of Italy at Paris;

General Giovanni MARIETTI, Italian Military Representative on the Supreme War Council;

HIS MAJESTY THE EMPEROR OF JAPAN:

Viscount CHINDA, Ambassador Extraordinary and Plenipotentiary of H. M. the Emperor of Japan at London;

Mr. K. MATSUI, Ambassador Extraordinary and Plenipotentiary of H. M. the Emperor of Japan at Paris;

ARMENIA:

Mr. Avetis AHARONIAN, President of the Delegation of the Armenian Republic;

HIS MAJESTY THE KING OF THE BELGIANS:

Mr. Jules VAN DEN HEUVEL, Envoy Extraordinary and Minister Plenipotentiary, Minister of State;

Mr. ROLIN JAEQUEMYNS, Member of the Institute of Private International Law, Secretary-General of the Belgian Delegation;

HIS MAJESTY THE KING OF THE HELLENES:

Mr. Eleftherios K. VENIZELOS, President of the Council of Ministers;

Mr. Athos ROMANOS, Envoy Extraordinary and Minister Plenipotentiary of H. M. the King of the Hellenes at Paris;

HIS MAJESTY THE KING OF THE HEDJAZ:

THE PRESIDENT OF THE POLISH REPUBLIC:

Count Maurice ZAMOYSKI, Envoy Extraordinary and Minister Plenipotentiary of the Polish Republic at Paris;

Mr. Erasme PILTZ;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

Dr. Affonso da COSTA, formerly President of the Council of Ministers;

His MAJESTY THE KING OF ROUMANIA:

Mr. Nicolae TITULESCU, Minister of Finance;

Prince DIMITRIE GHIKA, Envoy Extraordinary and Minister Plenipotentiary of H. M. the King of Roumania at Paris;

His MAJESTY THE KING OF THE SERBS, THE CROATS AND THE SLOVENES:

Mr. Nicolas P. PACHITCH, formerly President of the Council of Ministers;

Mr. Ante TRUMBIC, Minister for Foreign Affairs;

THE PRESIDENT OF THE CZECHO-SLOVAK REPUBLIC:

Mr. Edward BENES, Minister for Foreign Affairs;

Mr. Stephen OSUSKY, Envoy Extraordinary and Minister Plenipotentiary of the Czecho-Slovak Republic at London;

TURKEY:

General HAADI Pasha, Senator;

RIZA TEVFIK Bey, Senator;

RÉCHAD HALISS Bey, Envoy Extraordinary and Minister Plenipotentiary of Turkey at Berne;

WHO, having communicated their full powers, found in good and due form, have AGREED AS FOLLOWS:

From the coming into force of the present Treaty the state of war will terminate.

From that moment and subject to the provisions of the present Treaty, official relations will exist between the Allied Powers and Turkey.

[Articles 1-87 omitted]

ARMENIA.



ARTICLE 88.

Turkey, in accordance with the action already taken by the Allied Powers, hereby recognises Armenia as a free and independent State.

ARTICLE 89.

Turkey and Armenia as well as the other High Contracting Parties agree to submit to the arbitration of the President of the United States of America the question of the frontier to be fixed between Turkey and Armenia in the vilayets of Erzerum, Trebizond, Van and Bitlis, and to accept his decision thereupon, as well as any stipulations he may prescribe as to access for Armenia to the sea, and as to the demilitarisation of any portion of Turkish territory adjacent to the said frontier.

ARTICLE 90. In the event of the determination of the frontier under Article 89 involving the transfer of the whole or any part of the territory of the said Vilayets to Armenia, Turkey hereby renounces as from the date of such decision all rights and title over the territory so transferred. The provisions of the present Treaty applicable to territory detached from Turkey shall thereupon become applicable to the said territory.

The proportion and nature of the financial obligations of Turkey which Armenia will have to assume, or of the rights which will pass to her, on account of the transfer of the said territory will be determined in accordance with Articles 241 to 244, Part VIII (Financial Clauses) of the present Treaty.

Subsequent agreements will, if necessary, decide all questions which are not decided by the present Treaty and which may arise in consequence of the transfer of the said territory.

ARTICLE 91.

In the event of any portion of the territory referred to in Article 89 being transferred to Armenia, a Boundary Commission, whose composition will be determined subsequently, will be constituted within three months from the delivery of the decision referred to in the said Article to trace on the spot the frontier between Armenia and Turkey as established by such decision.

ARTICLE 92.

The frontiers between Armenia and Azerbaijan and Georgia respectively will be determined by direct agreement between the States concerned.

If in either case the States concerned have failed to determine the frontier by agreement at the date of the decision referred to in Article 89, the frontier line in question will be determined by the Principal Allied Powers, who will also provide for its being traced on the spot.

ARTICLE 93.

Armenia accepts and agrees to embody in a Treaty with the Principal Allied Powers such provisions as may be deemed necessary by these Powers to protect the interests of inhabitants of that State who differ from the majority of the population in race, language, or religion.

Armenia further accepts and agrees to embody in a Treaty with the Principal Allied Powers such provisions as these Powers may deem necessary to protect freedom of transit and equitable treatment for the commerce of other nations.

[Articles 94-139 omitted]

## PROTECTION OF MINORITIES.

### ARTICLE 140.

Turkey undertakes that the stipulations contained in Articles 141, 145 and 147 shall be recognised as fundamental laws, and that no civil or military law or regulation, no Imperial Iradeh nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, Imperial Iradeh nor official action prevail over them.

### ARTICLE 141.

Turkey undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion. All inhabitants of Turkey shall be entitled to the free exercise, whether public or private, of any creed, religion or belief.

The penalties for any interference with the free exercise of the right referred to in the preceding Paragraph shall be the same whatever may be the creed concerned.

### ARTICLE 142.

Whereas, in view of the terrorist regime which has existed in Turkey since November 1, 1914, conversions to Islam could not take place under normal conditions, no conversions since that date are recognised and all persons who were non-Moslems before November 1, 1914, will be considered as still remaining such, unless, after regaining their liberty, they voluntarily perform the necessary formalities for embracing the Islamic faith.

In order to repair so far as possible the wrongs inflicted on individuals in the course of the massacres perpetrated in Turkey during the war, the Turkish Government undertakes to afford all the assistance in its power or in that of the Turkish authorities in the search for and deliverance of all persons, of whatever race or religion, who have disappeared, been carried off, interned or placed in captivity since November 1, 1914.

The Turkish Government undertakes to facilitate the operations of mixed commissions appointed

by the Council of the League of Nations to receive the complaints of the victims themselves, their families or their relations, to make the necessary enquiries, and to order the liberation of the persons in question.

The Turkish Government undertakes to ensure the execution of the decisions of these commissions, and to assure the security and the liberty of the persons thus restored to the full enjoyment of their rights.

#### ARTICLE 143

Turkey undertakes to recognise such provisions as the Allied Powers may consider opportune with respect to the reciprocal and voluntary emigration of persons belonging to racial minorities.

Turkey renounces any right to avail herself of the provisions of Article 16 of the Convention between Greece and Bulgaria relating to reciprocal emigration, signed at Neuilly-sur-Seine on November 27, 1919. Within six months from the coming into force of the present Treaty, Greece and Turkey will enter into a special arrangement relating to the reciprocal and voluntary emigration of the populations of Turkish and Greek race in the territories transferred to Greece and remaining Turkish respectively.

In case agreement cannot be reached as to such arrangement, Greece and Turkey will be entitled to apply to the Council of the League of Nations, which will fix the terms of such arrangement.

#### ARTICLE 144.

The Turkish Government recognises the injustice of the law of 1915 relating to Abandoned Properties (Emval-i-Metroukeh), and of the supplementary provisions thereof, and declares them to be null and void, in the past as in the future.

The Turkish Government solemnly undertakes to facilitate to the greatest possible extent the return to their homes and re-establishment in their businesses of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure since January 1, 1914. It recognises that any immovable or movable property of the said Turkish subjects or of the communities to which they belong, which can be recovered, must be restored to them as soon as possible, in whatever hands it may be found. Such property shall be restored free of all charges or servitudes with which it may have been burdened and without compensation of any kind to the present owners or occupiers, subject to any action which they may be able to bring against the persons from whom they derived title.

The Turkish Government agrees that arbitral commissions shall be appointed by the Council of the League of Nations wherever found necessary. These commissions shall each be composed of one representative of the Turkish Government, one representative of the community which claims that it or one of its members has been injured, and a chairman appointed by the Council of the League of Nations. These arbitral commissions shall hear all claims covered by this Article and decide them by summary procedure.

The arbitral commissions will have power to order:

- (1) The provision by the Turkish Government of labour for any work of reconstruction or restoration deemed necessary. This labour shall be recruited from the races inhabiting the territory where the arbitral commission considers the execution of the said works to be necessary;
- (2) The removal of any person who, after enquiry, shall be recognised as having taken an active part in massacres or deportations or as having provoked them; the measures to be taken with regard to such person's possessions will be indicated by the commission;
- (3) The disposal of property belonging to members of a community who have died or disappeared since January 1, 1914, without leaving heirs; such property may be handed over to the community instead of to the State;
- (4) The cancellation of all acts of sale or any acts creating rights over immovable property concluded after January 1, 1914. The indemnification of the holders will be a charge upon the Turkish Government, but must not serve as a pretext for delaying the restitution. The arbitral commission will, however have the power to impose equitable arrangements between the interested parties, if any sum has been paid by the present holder of such property.

The Turkish Government undertakes to facilitate in the fullest possible measure the work of the commissions and to ensure the execution of their decisions, which will be final. No decision of the Turkish judicial or administrative authorities shall prevail over such decisions.

#### ARTICLE 145.

All Turkish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Difference of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.

Within a period of two years from the coming into force of the present Treaty the Turkish Government will submit to the Allied Powers a scheme for the organisation of an electoral system based on the principle of proportional representation of racial minorities.

No restriction shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press or in publications of any kind, or at public meetings. Adequate facilities shall be given to Turkish nationals of non-Turkish speech for the use of their language, either orally or in writing, before the courts.

#### ARTICLE 146.

The Turkish Government undertakes to recognize the validity of diplomas granted by recognised foreign universities and schools, and to admit the holders thereof to the free exercise of the professions and industries for which such diplomas qualify.

This provision will apply equally to nationals of Allied powers who are resident in Turkey.

#### ARTICLE 147.

Turkish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular they shall have an equal right to establish, manage and control at their own expense, and independently of and without interference by the Turkish authorities, any charitable, religious and social institutions, schools for primary, secondary and higher instruction and other educational establishments, with the right to use their own language and to exercise their own religion freely therein.

#### ARTICLE 148.

In towns and districts where there is a considerable proportion of Turkish nationals belonging to racial, linguistic or religious minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational or charitable purposes.

The sums in question shall be paid to the qualified representatives of the communities concerned.

#### ARTICLE 149.

The Turkish Government undertakes to recognise and respect the ecclesiastical and scholastic autonomy of all racial minorities in Turkey. For this purpose, and subject to any provisions to the contrary in the present Treaty, the Turkish Government confirms and will uphold in their entirety the prerogatives and immunities of an ecclesiastical, scholastic or judicial nature granted by the Sultans to non-Moslem races in virtue of special orders or imperial decrees (firmans, hattis, berats, etc.) as well as by ministerial orders or orders of the Grand Vizier.

All laws, decrees, regulations and circulars issued by the Turkish Government and containing abrogations, restrictions or amendments of such prerogatives and immunities shall be considered to such extent null and void.

Any modification of the Turkish judicial system which may be introduced in accordance with the provisions of the present Treaty shall be held to override this Article, in so far as such modification may affect individuals belonging to racial minorities.

#### ARTICLE 150.

In towns and districts where there is resident a considerable proportion of Turkish nationals of

the Christian or Jewish religions the Turkish Government undertakes that such Turkish nationals shall not be compelled to perform any act which constitutes a violation of their faith or religious observances, and shall not be placed under any disability by reason of their refusal to attend courts of law or to perform any legal business on their weekly day of rest. This provision, however, shall not exempt such Turkish nationals (Christians or Jews) from such obligations as shall be imposed upon all other Turkish nationals for the preservation of public order.

#### ARTICLE 151.

The Principal Allied Powers, in consultation with the Council of the League of Nations, will decide what measures are necessary to guarantee the execution of the provisions of this PArticle The Turkish Government hereby accepts all decisions which may be taken on this subject.

[Articles 152-225 omitted]

#### PENALTIES.

#### ARTICLE 226.

The Turkish Government recognises the right of the Allied Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Turkey or in the territory of her allies.

The Turkish Government shall hand over to the Allied Powers or to such one of them as shall so request all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the Turkish authorities.

#### ARTICLE 227.

Persons guilty of criminal acts against the nationals of one of the Allied Powers shall be brought before the military tribunals of that Power.

Persons guilty of criminal acts against the nationals of more than one of the Allied Powers shall be brought before military tribunals composed of members of the military tribunals of the Powers concerned.

In every case the accused shall be entitled to name his own counsel.

#### ARTICLE 228.

The Turkish Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the

incriminating acts, the prosecution of offenders and the just appreciation of responsibility.

#### ARTICLE 229.

The provisions of Articles 226 to 228 apply similarly to the Governments of the States to which territory belonging to the former Turkish Empire has been or may be assigned, in so far as concerns persons accused of having committed acts contrary to the laws and customs of war who are in the territory or at the disposal of such States.

If the persons in question have acquired the nationality of one of the said States, the Government of such State undertakes to take, at the request of the Power concerned and in agreement with it, or upon the joint request of all the Allied Powers, all the measures necessary to ensure the prosecution and punishment of such persons.

#### ARTICLE 230.

The Turkish Government undertakes to hand over to the Allied Powers the persons whose surrender may be required by the latter as being responsible for the massacres committed during the continuance of the state of war on territory which formed part of the Turkish Empire on August 1, 1914.

The Allied Powers reserve to themselves the right to designate the tribunal which shall try the persons so accused, and the Turkish Government undertakes to recognise such a tribunal.

In the event of the League of Nations having created in sufficient time a tribunal competent to deal with the said massacres, the Allied Powers reserve to themselves the right to bring the accused persons mentioned above before such tribunal, and the Turkish Government undertakes equally to recognise such tribunal.

The provisions of Article 228 apply to the cases dealt with in this Article.

[Articles 231-433 omitted]

The present Treaty, in French, in English, and in Italian, shall be ratified. In case of divergence the French text shall prevail, except in Parts I (Covenant of the League of Nations) and XII (Labour), where the French and English texts shall be of equal force. The deposit of ratifications shall be made at Paris as soon as possible.

Powers of which the seat of the Government is outside Europe will be entitled merely to inform the Government of the French Republic through their diplomatic representative at Paris that their ratification has been given; in that case they must transmit the instrument of ratification as soon as possible.

A first procès-verbal of the deposit of ratifications will be drawn up as soon as the Treaty has been ratified by Turkey on the one hand, and by three of the Principal Allied Powers on the other

hand.

From the date of this first procès-verbal the Treaty will come into force between the High Contracting Parties who have ratified it.

For the determination of all periods of time provided for in the present Treaty this date will be the date of the coming into force of the Treaty.

In all other respects the Treaty will enter into force for each Power at the date of the deposit of its ratification.

The French Government will transmit to all the signatory Powers a certified copy of the procès-verbaux of the deposit of ratifications.

IN FAITH WHEREOF the above-named Plenipotentiaries have signed the present Treaty.

Done at Sèvres, the tenth day of August one thousand nine hundred and twenty, in a single copy which will remain deposited in the archives of the French Republic, and of which authenticated copies will be transmitted to each of the Signatory Powers.

(L. S.) GEORGE GRAHAME.  
(L. S.) GEORGE H. PERLEY.  
(L. S.) ANDREW FISHER.  
(L. S.) GEORGE GRAHAME.  
(L. S.) R. A. BLANKENBERG.  
(L. S.) ARTHUR HIRTZEL.  
(L. S.) A. MILLERAND.  
(L. S.) F. FRANÇOIS-MARSAL.  
(L. S.) JULES CAMBON. (L. S.) PALÉOLOGUE.  
(L. S.) BONIN.  
(L. S.) MARIETTI.  
(L. S.) K.: MATSUI.  
(L. S.) A. AHARONIAN.  
(L. S.) J. VAN DEN HEUVEL.  
(L. S.) ROLIN JAEQUEMYNS.  
(L. S.) E. K. VENIZELOS.  
(L. S.) A. ROMANOS.  
(L. S.) MAURICE ZAMOYSKI.  
(L. S.) ERASME PILTZ.  
(L. S.) AFFONSO COSTA.  
(L. S.) D. J. GUIKA.  
(L. S.) STEFAN OSUSKY.  
(L. S.) HADI.  
(L. S.) DR. RIZA TEWFIK.  
(L. S.) RÉCHAD HALISS.





## **ANNEX B: ESTABLISHMENT OF THE PROVISIONAL GOVERNMENT OF EZIDIKHAN**

### **PREAMBLE**

The Land of Ezidikhan is the homeland of the Yezidi people. Here our spiritual, religious, and political identity was shaped. The catastrophe that recently befell the Yezidi people – the massacre and abduction of thousands of Yezidis – calls for resolute action for our security and prosperity. Accordingly, we take this action to proclaim the inherent power of self-governance in Ezidikhan the Yezidi Nation.

Yezidi survivors of the Daesh holocaust across the Eastern Mediterranean region, as well as Yezidis from other parts of the world, will never cease to assert their right to a life of dignity, freedom and honest toil in their national homeland. This right is the natural right of the Yezidi people to be masters of their own fate, like all other nations.

### **PROCLAIM**

#### **Article I**

On behalf of the Yezidi people, we the Supreme Spiritual Leaders do hereby affirm in this proclamation the desires of the Yezidis and confederated peoples to freely choose our social, economic, political and economic future without external interference consistent with the internationally recognized principle of self-determination. We further affirm the free right of Yezidis and confederate peoples to govern themselves internally and in relations with other peoples in accord with customary and popularly approved laws and international norms. We believe that these desires correspond with the peoples' desire for freedom, equality, liberty, security, prosperity and peaceful relations with all peoples. Accordingly, we hereby proclaim and fully affirm the self-governing and autonomous nation of Ezidikhan.

#### **Article II**

In furtherance of this affirmed reality, we do solemnly declare by this proclamation the formal establishment of the Ezidikhan Provisional Government empowered to serve and represent the peoples of the autonomous nation until such time as the peoples of Ezidikhan conduct a nationwide plebiscite to authorize the formation of a permanent Ezidikhan Regional Government established in accordance with the aforementioned principles and the principles of democratic confederation.

a) : Accordingly the Ezidikhan Provisional Government is established with three branches of governance including the Supreme Spiritual Council as the Judiciary, Executive Ministry, and Governing Council serving as the Ezidikhan Provisional Government Parliament.

b) : The Yezidis and allied nations endorse and approve formation of a democratic confederation as the basis for establishing the Ezidikhan Provisional Government and a future permanent

government approved by the Yezidis as a result of a plebiscite organized by the Provisional Government in a timely fashion.

### **Article III**

The Yezidi leadership proclaims:

Free and open elections under the principle of one person one vote for all adult Yezidis, with women, men and third sex being eligible to vote and seek office through popular elections as equals; and

Laws and a system of justice based on equality, freedom of assembly, freedom of information and universal human rights.

a) Accordingly, we and representatives of the Yezidi Community of Ezidikhan, by virtue of our natural and historic right of self-government, hereby declare and affirm the reality of the Yezidi nation in Ezidikhan, to be known as the Nation of Ezidikhan.

b) We declare that effective from the instance of 25 July 2017 at 12:00pm until the establishment of the elected, permanent governing authorities in accordance with the Constitution of Ezidikhan which will be adopted by the Governing Council not later than 25 July 2020, the Supreme Leadership Council shall act as a Provisional Governing Council of Ezidikhan, and its executive organ, the Executive Administration, shall be the Provisional Government of Ezidikhan.

### **Article IV**

The structure of the Ezidikhan Provisional Government shall include, but not be limited to the founding Supreme Leadership Council that shall have juridical power, the Supreme Spiritual Council, a parliament that shall be known as the Governing Council representing each popular Yezidi community, an Executive Administration that shall exercise ministerial powers to implement and enforce customary and popular laws. The Mirs and Baba caste shall hold rights and responsibilities to be decided by popular vote.

### **Article V**

The Autonomous Nation of Ezidikhan will:

- Actively promote Yezidi immigration and the return of the Yezidi Diaspora;
- Foster the economic, social and political prosperity and stability of the country for the benefit of all its inhabitants;
- Implement a charter and Constitution protecting individual and community freedom, justice and peace as envisaged in the traditions of Ezidikhan;
- Advance and establish customary and judicial laws to ensure equality of social, economic and political rights to all its inhabitants irrespective of religion, creed, ethnic identity or sex or political affiliations;
- Guarantee to the citizens of Ezidikhan freedom of press, religion, conscience, language, education, legal rights and culture;

- Affirm that Treaties concluded by the Executive Administration and approved by the Governing Council shall be the law of the land;
- Safeguard any nation that wishes to come under the protection of Ezidikhan in a manner consistent with an agreed bi-lateral treaty;
- Safeguard the Holy Places and sacred objects of all religions; and
- Be faithful to the principles of the Charter of the United Nations and international law.

We extend our hand to all bordering nations and states and their peoples in an offer of peace and good neighborliness, and appeal to them to establish bonds of cooperation and mutual help with the sovereign Yezidi Nation. The Autonomous Nation of Ezidikhan is prepared to do its share in a common effort to achieve freedom and stability for the advancement of the entire Middle East.

## **Article VI**

We appeal to the Yezidi people throughout the world to rally round the Yezidis of Ezidikhan in the tasks of immigration and economic and prosperity by and between nations and peoples throughout the Eastern Mediterranean region.

We appeal to the Yezidi people throughout the world to join the Yezidis of Ezidikhan in the tasks of restoring our nation and to stand by all Yezidis in the great struggle for the realization of a renewed future rooted in the age-old dream of Ezidikhan.

Placing our trust in the Almighty, we affix our signatures to this proclamation at this session of the provisional National Council, on the soil of the Homeland, in the Sacred Village of Lalish, on this third day of Gelawej of the year 6767 by the Yezidi calendar (the twenty fifth of July of the year 2017 by the Gregorian calendar).

Baba Sheikh, Kurto Hajji Ismail  
 Baba Sheikh, Hadji Saado  
 Hajoyan Khdir  
 Baba Salem Daound  
 Hadji Aziz Anmar

## **ANNEX C: TRIAL BY JURY**

### **TRIAL BY INDIGENOUS NATION JURY**

#### **TITLE I**

##### **GENERAL RULES**

ARTICLE 1: OBJECT. The purpose of this law is to establish the trial by a jury located in the jurisdiction or territory of the plaintiff, in compliance with this Charter.

ARTICLE 2: CRIMES. The following crimes must be tried by the juries, even in their tried form and together with the related crimes that they concur with:

- (a) The crime of colonization
- (b) The crime of aggression
- (c) The crime of genocide
- (d) Crimes against humanity
- (e) War crimes – including intentional targeting of civilians and civil infrastructure.
- (f) Crimes against nature including ecocide and culturcide.
- (g) Crimes of terrorism
- (h) Gender-based violence and femicide
- (i) Violence against and forced removal of children.
- (j) Apartheid
- (k) Military occupation

ARTICLE 3: THE JURY COMPOSITION. The jury shall be made up of twelve (12) regular members and, at least, two (2) substitutes and shall be directed by a single criminal judge. The judge may order that there be more substitutes according to the seriousness and/or complexity of the case. The panel of regular and substitute jurors must always be made up of women and men in equal parts.

ARTICLE 4: THE JURY COMPOSITION WITH INDIGENOUS PEOPLES. When an act is tried where the defendant or the victim belong to the indigenous people, the panel of twelve regular and substitute jurors will be made up of half men and women from the same community they belong to.

ARTICLE 5: EXTENSION OF JURISDICTION. Trials by indigenous jury will be held in the judicial district in which the act was committed. When an event has shocked a community in such a way that an impartial jury cannot reasonably be obtained, the judge may order, only at the request of the defendant or victim and by means of a well-founded order, that the trial take place in another judicial jurisdiction. The determination of the constituency will be defined by public lottery.

ARTICLE 6: FUNCTION OF THE JURY AND THE JUDGE. The Jury deliberates on the evidence and determines the guilt or not guilt of the defendant in relation to the fact or facts and to the crime or degree thereof for which the defendant must answer. In order for the jury to perform and carry out this function, the members of the jury must be compulsorily instructed on

the applicable substantive law by the magistrate presiding over the process regarding the main crime charged and the minor crimes included in it.

**ARTICLE 7: VERDICT AND ROLE OF THE INSTRUCTIONS OF THE JUDGE.** The jury renders its verdict to the best of its knowledge and belief, based solely on the evidence produced in the trial and without expression of the reasons for the decision. The judge's instructions to the jury, the requirement for trial and the full and mandatory record of the trial in shorthand, audio and/or video constitute full and sufficient basis for broad control of the jury's decision.

**ARTICLE 8: PRESUMPTION OF INNOCENCE AND REASONABLE DOUBT.** The judge will compulsorily instruct the jury that, in all criminal proceedings, the defendant will be presumed innocent until proven otherwise, and if there is reasonable doubt about the guilt, the defendant will be acquitted. If the doubt is between degrees of a crime or between crimes of different severity, the defendant can only be sentenced for the lower degree or less serious crime.

**ARTICLE 9: FREEDOM OF CONSCIENCE OF THE JURY. NO RETALIATION.** The jury is independent, sovereign, and indisputably responsible for its verdict, free from any threat from the judge, the parties or any Power due to its decisions. The rule of secrecy of the deliberations and the unmotivated form of their verdict ensures the jurors the widest freedom of discussion and decision, without being subject to any penalty, unless it appears that they did so against their conscience, or who were corrupted by way of bribery. The textual content of this Article will form a mandatory part of the judge's instructions to the jury.

## **TITLE II**

### **THE CONDITIONS TO BE A JURY**

**ARTICLE 10: RIGHT. PUBLIC CHARGE.** The function of jury constitutes a right and a public charge of the peoples in conditions to provide it. The requirements to be so and the cases in which they may be excluded will only be those established exhaustively in this law.

**ARTICLE 11: REQUIREMENTS.** To be a juror it is required:

- a) Be a member of the state and/or indigenous nation and be at least 20 years of age.
- b) Have the full exercise of political rights.

**ARTICLE 12: LIST OF POTENTIAL JURORS.** The government will prepare the lists of peoples who meet the requirements established in this law. It will also raffle the lists of people, separated by sex and by their belonging to the indigenous communities, respectively.

**ARTICLE 13: CONTROLLER.** For the purposes of controlling the draw, invitations will be sent to the entire community to witness it, particularly to the bar associations of the different judicial districts, to the local government and to other entities linked to legal work and authorities of the indigenous nation.

**ARTICLE 14: LIST FOR EACH TRIAL. INTEGRATION.** The list of jurors for the trial will be integrated, in equal parts of women and men, with the first fourteen (14) that emerge from the

draw, assuming the first twelve (12) as starters and the last two (2) as substitutes. The rest of the drawn jurors will remain affected by the process until the stage of excuses and challenges with cause ends. When any of the main jurors summoned is removed due to excuse or challenge, the rest of the list will be designated successively, according to the order of the draw.

**ARTICLE 15: OATH OF THE JURY.** The main jurors and substitutes will take a solemn oath before the judge, under penalty of nullity. The jurors will stand up and the secretary will pronounce the following formula: "Do you promise, in your capacity as a jury, on behalf of the People, to examine and judge the case impartially and with the utmost attention, giving the verdict according to your best knowledge and belief, in accordance with the evidence produced and observing the Constitution of the Nation and the NICT Charter?", to which the answer will be "Yes, I promise."

Once the promise has been made, the trial will be declared open. Substitute jurors must be present throughout the development of the debate, until the time when the main juror leaves for the deliberations. When any of the main jurors is removed due to subsequent excuse, the alternate juror or jurors that follow in numerical order of the draw will replace them.

**ARTICLE 16: INITIAL INSTRUCTIONS.** Immediately after the oath of law, the judge will give the jury initial instructions, describing how a trial is conducted, what is evidence and what is not, how testimonial evidence is valued, for which crimes the defendant is tried and the principles fundamental constitutional provisions that they must observe, especially the scope of the evidentiary standard of beyond a reasonable doubt. The judge will also warn them that, at the end of the debate, the judge will give them final instructions with the precise explanation of the crimes and the legal issues to be resolved.

**ARTICLE 17: CONTENT OF THE FINAL INSTRUCTIONS.** The judge will have the jury enter the courtroom to verbally give instructions. The judge will first explain to the jury the rules governing deliberation, give them a written copy of the rules along with the instructions, explain how the proposed verdict form(s) is made, and inform them that they must attempt to render a unanimous verdict in secret and continuous session. The judge will also tell them that, at some point in their deliberations, they will have to choose a spokesperson.

**ARTICLE 18: RENDERING OF THE VERDICT.** The jury, under the direction of its spokesperson, will agree on the best way to order the deliberations and carry out the voting. If they decide to vote with individual ballots, they will be destroyed immediately once the verdict is obtained, taking care that people outside the jury do not become aware of it. After the jury has agreed on the verdict, the final form(s) delivered by the judge will be completed, signed and dated by the spokesperson in the presence of the entire jury. Then the full jury will return to the session room under the custody of the official for its announcement.

**ANNEX D: INTERNATIONAL COVENANT ON THE RIGHTS OF INDIGENOUS NATIONS**

International Covenant on the Rights of Indigenous Nations

***Authorized Ratified Version***

Initialed July 28, 1994  
Geneva, Switzerland

**PREAMBLE**

**AFFIRMING** that Indigenous Nations are peoples equal in dignity and rights to all other peoples, while recognizing the right of all individuals and peoples to be different, to consider themselves different, and to be respected as such,

**CONSIDERING** that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

**REAFFIRMING** that all doctrines, policies and practices based on or advocating superiority of peoples, groups or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, culturally repugnant, legally invalid, morally condemnable and socially unjust,

**REAFFIRMING ALSO** that Indigenous Nations, in the exercise of their rights, must be free from discrimination of any kind,

**CONCERNED** that many Indigenous Nations have been deprived of their human rights and fundamental freedoms, resulting, *inter alia*, in the dispossession of their lands, territories and resources, thus obstructing the free exercise, in particular, of the right to development in accordance with each Nation's own needs and interests,

**RECOGNIZING** the urgent need to respect and promote the inherent rights and characteristics of Indigenous Nations, especially the right to lands, territories and resources, which derive from each Nation's culture; aspects of which include spiritual traditions, histories and philosophies, as well as political, economic and social customs and structures,



**WELCOMING** the fact that Indigenous Nations are organizing themselves in order to bring an end to all forms of discrimination and oppression wherever they occur,

**CONVINCED** that perfecting the control of Indigenous Nations over development decisions affecting them and their lands, territories and resources will enable each Nation to continue to strengthen its institutions, cultures and traditions, as well as to promote self-sustaining development in accordance with its aspirations and needs,

**RECOGNIZING ALSO** that respect for Indigenous Nations' cultures, knowledge and practices contributes to the sustainability of the natural environment and continuity of biological and cultural diversity,

**EMPHASIZING** the need for demilitarization of the lands and territories of Indigenous Nations, which will contribute to peace, economic and social balance, understanding and friendly relations among Nations and between Nations and States of the world,

**REAFFIRMING** that it is vital for indigenous families and communities to retain shared responsibility for the welfare, upbringing, training and education of their children,

**RECOGNIZING** that Nations have the right to determine their own affairs and freely determine their relations with other Nations and States in a spirit of coexistence, mutual benefit and full respect,

**CONSIDERING** that treaties, agreements, and other constructive arrangements between Nations and between Nations and States are matters of international concern and responsibility; and the peaceful resolution of conflicts and disputes between Nations and between Nations and States is essential to balanced and coexisting relations between peoples,

**NOTING** that the Charter of the United Nations, International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and resolutions and declarations of the World Council of Indigenous Peoples, the Inuit Circumpolar Conference, the International Indian Treaty Council and other international bodies related to these organs affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

**BEARING IN MIND** that nothing in this Convention may be used as a pretext to deny any peoples their right of self-determination,

**ENCOURAGING** Nations to comply and seek the compliance of States with the effective implementation of all international instruments, including this Convention, as they apply to Indigenous Nations, in consultation and cooperation with the peoples concerned,

**BELIEVING** that this Convention is an important development in the recognition, promotion and protection of the rights and freedoms of Indigenous Nations, the establishment of coexistence between Nations and between Nations and States, and in the development of relevant activities of the international institutions in this field,

SOLEMNLY AFFIRM AND RATIFY IN ACCORDANCE WITH EACH SIGNATORY NATION'S CUSTOMARY PROCESSES the following Principles and Covenants:

## **ARTICLE I**

### **DECLARATION OF PURPOSE**

Nations signatory to this Covenant, exercising their inherent sovereign powers, declare their mutual respect and these covenants to promote peaceful cooperation to preserve, protect and guarantee the rights and responsibilities of nations and the inherent dignity and the equal and inalienable rights of individuals, and to promote freedom, justice and international peace.

## **ARTICLE II: PRINCIPLES OF THE CONDUCT OF NATIONS AND RELATIONS WITH STATES**

### **PART I: SELF-DETERMINATION OF NATIONS**

**Para. 1** Indigenous Nations are peoples which have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations and in international human rights law;

**Para. 2** Indigenous Nations are free and equal to all other human beings and peoples in dignity and rights, and have the right to be free from discrimination of any kind based on their origin or identity;

**Para. 3** Indigenous Nations have the right of self-determination, in accordance with international law, and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development without external interference;

**Para. 4** Indigenous Nations may freely choose to participate fully in the political, economic, social and cultural life of a State while maintaining their distinct political, economic, social and cultural characteristics, and not relinquishing the inherent right of sovereignty;

### **PART II: PEACE, SECURITY AND PROTECTION FROM GENOCIDE**

**Para. 5** Each Indigenous Nation possesses the collective right to exist in peace and security as a distinct people and to be protected against any type of genocide.

In addition, the individuals of each Nation have rights to life, physical and mental integrity, liberty and security of person;

**Para. 6** Each Indigenous Nation has the right to be protected against ethnocide and cultural genocide, including the prevention of and redress for:

- (a) Removal of children from their families and communities under any pretext;
- (b) Any action which has the aim or effect of depriving them of their integrity as distinct societies, or of their cultural or ethnic characteristics or identities;
- (c) Any form of forced assimilation or integration by imposition of other cultures or ways of life by way of communications media, religious or educational institutions, governmental legislation, administration or other measures or means;
- (d) Dispossession of their lands, territories or resources;
- (e) Any propaganda directed against them;

**Para. 7** Each Indigenous Nation has the inherent collective and individual right to maintain and develop its distinct characteristics and identities, including the right to identify or define itself;

**Para. 8** The right of a person to belong to an Indigenous Nation or community is a matter individual choice and the free right of an Indigenous Nation or community to define its membership, and no disadvantage of any kind may arise from the exercise of such a choice;

**Para. 9** Indigenous Nations shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the peoples concerned and not until after agreement on just and fair compensation and, where possible, with the option of return;

**Para. 10** Indigenous Nations have the right to special protection and security in periods of armed conflict. Nations and States shall be encouraged to observe international standards for the protection of civilian populations (with special attention to the enforcement of relevant provisions of either Protocol I or Protocol II of the Geneva Conventions of 1949) in circumstances of emergency and armed conflict, and shall not:

- (a) Recruit individual members of Indigenous Nations against their will into the armed forces of, and in particular for use against, other Indigenous Nations;
- (b) Recruit children into the armed forces under any circumstances;

- (c) Force Indigenous Nations to abandon their lands and territories and means of subsistence and relocate them in special centres for military purposes;

### **PART III: THE CULTURAL RIGHTS OF NATIONS**

**Para. 11** Indigenous Nations have the right to practice their cultural traditions and evolve culture in relation to lands and territory without interference. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archeological and historical sites and structures, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, religious and spiritual property taken without their free and informed consent or in violation of their laws;

**Para. 12** Indigenous peoples have the right to manifest, practice and teach spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains. Nations and States shall be encouraged to take effective measures to preserve, respect and protect the sacred places and cemeteries of each Indigenous Nation;

**Para. 13** Indigenous Nations have the right to instill, use, develop and transmit to future generations their languages, oral traditions, writing systems and literature, and to designate and maintain their own names for communities, places and persons. Nations and States shall be encouraged to take effective measures to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means;

### **PART IV: THE RIGHT TO KNOWLEDGE AND INFORMATION**

**Para. 14** Indigenous Nations have the right to all levels and forms of education, including access to education in their own languages, and the right to establish and control their educational systems and institutions according to their own customs and traditions;

**Para. 15** Indigenous Nations have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations reflected in all forms of education and public information. Nations and States shall be encouraged to take effective measures, in consultation with each Indigenous Nation, to eliminate prejudice and to promote tolerance, understanding and good relations;

**Para. 16** Indigenous Nations have the right to establish their own media in their own language and to exercise the right to equal access to all forms of communications media; Nations and States shall be encouraged to take effective measures to ensure that public media duly reflect the cultural diversity of affected Nations.

#### **PART V: THE RIGHT OF NATIONS TO DECIDE**

**Para. 17** Indigenous Nations have the right to participate fully at all levels of decision-making in matters which may affect their rights, lives or destinies by direct popular participation or through representatives chosen by themselves in accordance with their own customs;

**Para. 18** Indigenous Nations have the right to participate fully, through procedures determined in consultation with them, in devising legislative and administrative measures that may affect them. Nations and States shall be encouraged to obtain the free and informed consent of the peoples concerned before implementing such measures;

**Para. 19** Indigenous Nations have the right to maintain and develop their economic and social systems, to be secure in the enjoyment of their own means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fishing, herding, gathering, forestry and cultivation. Indigenous peoples who have been deprived of their means of subsistence are entitled to just and fair compensation;

**Para. 20** Indigenous Nations have the right to extraordinary measures for the immediate, effective and continuing improvement of their economic and social conditions, including improvement in the areas of employment, vocational training and retraining, housing, health and social security.

Attention shall be paid to the special needs of the elders, women, youth, children and disabled of each Nation;

**Para. 21** Indigenous Nations have the right to determine and develop priorities and strategies for their well-being. In particular, indigenous peoples have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions;

**Para. 22** Indigenous Nations have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals, and minerals;

#### **PART VI: THE RIGHT TO LAND, TERRITORIES AND PLACE**

**Para. 23** Indigenous Nations have the right to recognition and respect of their distinctive and profound relationship with their lands and territories which is the essence of culture. The use of the phrase "lands, territories and Place" in this Convention means the total environment of the land space, soils, air, water, sky, sea, sea-ice, flora and fauna and other resources which indigenous peoples used historically and on which they continue to depend to sustain and evolve their culture;

**Para. 24** Each Indigenous Nation has the collective and individual right to own, control and use its lands and territories according to its wants and needs. This includes the right to the full recognition by Nations and States of their laws and customs, land-tenure systems and institutions for the management of resources, and the right to expect effective measures by Nations and States to prevent any interference with or encroachment upon these rights;

**Para. 25** Indigenous Nations have the right to restitution for lands and territories which have been confiscated, occupied, used or damaged without their free and informed consent, the return of lands and territories and, where neither is acceptable to the Nation, to just and fair compensation. Unless otherwise freely agreed within balanced negotiations by the peoples concerned, compensation shall take the form of lands and territories at least equal in quality, size and legal status;

**Para. 26** Indigenous Nations have the right to the recreation and protection of the total environment and the productive capacity of their lands and territories, as well as to assistance for this purpose from States and through international cooperation. Military activities and the storage or disposal of nuclear or toxic materials or other hazardous materials shall not be permitted in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned;

**Para. 27** Indigenous Nations have the right to special measures taken to protect, as intellectual property, their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs and visual and performing arts;

**Para. 28** Each Indigenous Nation has the right to require that States and other Nations obtain its free and informed consent prior to the approval of any projects on its land and territory, particularly in connection with natural resource development or exploitation of soils, water, mineral or other subsurface resources. Pursuant to agreement freely negotiated with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact;

## **PART VII: POLITICAL RIGHTS OF NATIONS**

**Para. 29** Indigenous Nations have the right to freely determine their own political status and to exercise self-government in accord with the principle of self-determination;

**Para. 30** Indigenous Nations have the right to freely determine the structures and to select the membership of their autonomous or self-governing institutions in accordance with their own customary laws;

**Para. 31** Indigenous Nations have the right to retain and develop their customs, laws and legal systems, in accord with universally recognized human rights and fundamental freedoms, and to have these respected by other Nations and recognized in the legal system and political institutions of the States with which each Nation may have cooperative relations;

**Para. 32** Each Indigenous Nation has the right to determine the responsibilities of individuals to its communities in a manner not incompatible with universally recognized human rights and fundamental freedoms;

**Para. 33** Indigenous Nations wholly within States' borders and those Nations divided by the imposition of States' borders have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other Indigenous Nations across recognized State borders;

## **PART VIII: TREATIES, AGREEMENTS AND DISPUTE RESOLUTION**

**Para. 34** Each Indigenous Nation has the right to the observance and enforcement of treaties, compacts, agreements and other constructive arrangements concluded with other Nations and with States or their successors, according to their original intent. Conflicts and disputes which cannot otherwise be settled through direct negotiations or other peaceful means must be submitted to competent international bodies agreed to by all parties concerned;

**Para. 35** Indigenous Nations have the right to freely access and receive prompt decisions through mutually acceptable and fair procedures for the resolution of conflicts and disputes between Nations and between Nations and States, as well as to effective remedies for all infringements of their individual and collective rights;

## **PART IX: INCORPORATION AND COMING INTO FORCE**

**Para. 36** Nations signatory to this Convention shall encourage other Nations and States to take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Convention. Where appropriate and relevant signatory Nations shall

incorporate in their own customary laws and institutions, and encourage States to promulgate legislation adopting the rights and principles contained herein;

**Para. 37** Indigenous Nations have the right to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development, and for the enjoyment of the rights and freedoms contained in this Convention;

**Para. 38** Signatory Nations and the organs and specialized agencies of the system of inter-national Indigenous Nations' organizations and non-governmental organizations shall be encouraged to contribute to the full realization of the provisions of this Convention through the mobilization, *inter alia*, of financial and technical cooperation;

**Para. 39** A Council of Nine comprised of delegates from the first nine Signatory Nations, with rotating delegate membership drawn from subsequent Signatory Nations annually, shall monitor the implementation of this Convention and serve as the repository for accurate and authorized original copies of ratified instruments, which shall be recorded by the name of the ratifying nation, ratification date, reservations and/or understandings upon receipt, and the status of ratifications shall be reported to all Signatory Nations and to relevant States' institutions annually;

**Para. 40** Upon applying the initials of duly authorized delegates, appointed by Indigenous National authorities, meeting in Geneva, Switzerland 24-29, 1994 at the Palaise de Nacion this Convention shall be provisionally accepted in principle by all initialing parties acting on behalf of the participating Nations for a term of 12 months after initialing or until formal ratification in accord with each Nation's customary laws, whichever is earlier. A decision not to ratify this Convention automatically renders it null-and-void in connection with the Nation declining to ratify;

**Para. 41** This Convention shall come into force when thirty Nations shall have formally ratified its provisions according to their customary processes. The Convention shall be open for ratification by Indigenous Nations for a period of 12 months after the date when four Nations shall have given their provisional authorization through delegates initialing on their behalf;

**Para. 42** Each Nation which ratifies this Convention may place conditions on its participation through reservations and understandings. A Statement of Reservations shall indicate specific provisions of this Agreement which shall apply or not apply to the ratifying Nation under specified conditions. Each ratifying Nation may attach explanations or clarifications expressing different meanings associated with provisions through a Statement of Understandings. These Reservations and Understandings shall become a part of the Convention and receive full respect by other ratifying Nations;



**Para. 43** This Convention may be modified or amended after coming into force by request of any ratifying party upon due consideration of all ratifying Nations at a special conference called for the purpose of modification or amendment. All amendments shall be subject to ratification by the customary processes of Signatory Nations. Unanimous Consent is required for modifications or amendments.

#### **ARTICLE IV: SAVINGS AND PROCEDURES**

**Para. 44** The Inuit Circumpolar Conference shall serve as the provisional repository of the initialed and ratified instruments until other arrangements are made by agreement of ratifying Nations;

**Para. 45** The rights contained herein constitute the minimum standards for the survival and well-being of the indigenous peoples of the world;

**Para. 46** Nothing in this Convention may be interpreted as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire.

#### **Delegate Initial**

**On Behalf of the Nation  
of: Initialing Date:**

**Ratification Date:**

**Initialing Parties in accord with Article III, para. 40:**

**Mr. Nadir Bekir,**

Political and Legal Affairs The Crimean Tatars (27-07-94)

**Mr. A-Bagi Kabeir,**

On behalf of the Numba People of Sudan (28-07-94)

**Mr. Ron Lameman,**

Confederacy of Treaty Six First Nations (28-07-94)

**Ms. Judy Sayer,**

Opethesaht First Nation (28-07-94)

**Mr. Viktor Kaisiepo,**

West Papua Peoples Front/OPM (28-07-94)

#### **Ratifying Nations as of 2023**

1. Abābdah Nation of Egypt and Sudan
2. Adnanite Anazzah Tribe of Iraq
3. Afghan Hindu Congress
4. Ahwaz Nation of Iran
5. Al-Anbar-Al-Jolan
6. Al-Dulaimi Tribal Confederation of Iraq
7. Al-Qaddafi Tribe
8. Albu-Nasral-Tikriti

9. Amazigh Tribes of Libya
10. Amazigh Confederation of North Africa
11. Amazigh Kabyle of Algeria
12. Amazigh Tribes of Egypt
13. Amazigh Tribes of Mali
14. Amazigh Tribes of Morocco
15. Amazigh Tribes of Niger
16. Amazigh Tribes of Tunisia
17. Anazzah Tribal Confederation of Iraq
18. Bani Murra Romas of Jordan
19. Bidoon tribes of Iraq and Kuwait
20. Confederation of Roma Tribes of the Middle East
21. Domari Confederation of the Middle East
22. East Kurdistan
23. Ezidikhan Armenia
24. Ezidikhan Georgia
25. Ezidikhan Iraq
26. Ezidikhan Syria
27. Anatolian Ezidikhan
28. Fallujah Tribal Confederation
29. Hizb Al-Ba'at Al-'Arabī Al-Ištīr Tribe of Iraq
30. Idlib Druze-Domari Alliance of Syria
31. Jahalin Bedouin Tribe of Palestine
32. Jews of Morocco
33. Kalash Chitral Indigenous Tribal Coalition
34. Kam Assembly of Turkey
35. Khuzestan
36. Kirkuk Bayat Tribe
37. Kurdish Republic
38. Laz Tribal Nation – 31 March 2022
39. Luristan - 20 February 2021 (CINMENA)
40. Ma'dān Nation of Iraq & Iran - 20 February 2021 (CINMENA)
41. Mandaeans of Iraq Iran & Syria - 20 February 2021 (CINMENA)
42. Marsh Arab Tribal Nation – 31 March 2022
43. Mullagori Tribes of Pakistan and Afghanistan – 19 August 2021
44. Nineveh Tribal Assembly of Iraq – 1 October 2021
45. Nubians of Upper Egypt – 24 November 2021
46. Pashtun Tribes of Afghanistan – 15 November 2021
47. Qashqai Tribes – 17 November 2020
48. Rashaida Tribe of Bedouin Arabs – 20 November 2021
49. Salahadin Tribe of Iraq - 20 November 2021
50. Shabaks of Iraq – 19 June 2021
51. Shammar Tribes of Iraq – 16 March 2021
52. Sulukule (Roma) of Turkey – 6 September 2021
53. Syrian Bedouin Confederation – 24 June 2021

54. Tafsut Amazigh of Morocco – 2 July 2021
55. Tuareg Tribes of North Africa – 29 March 2022
56. Turkmen Tribes of Afghanistan – 15 November 2021
57. Turkmen of Iran – 24 November 2020
58. Turkmen of Syria – 10 November 2020
59. Urugati Tribal Nation – 9 April 2021
60. World Amazigh Congress – 21 May 2021
61. Yarmouk Basin Nations – 27 June 2021
62. Yarsan Nation of Iraq & Iran – 20 February 2021 (CINMENA)
63. Yezidi Supreme Spiritual Council – 1 October 2021
64. Zargari Nation of Iran – 25 June 2021
65. Zagros Liberal Alliance of Iran – 1 February 2021
66. Zoroastrians of Iran, Iraq, Syria, Turkey, Afghanistan, Pakistan and India – 21 May 2021
67. Zuwayya Tribal Nation – 11 April, 2022

## **ANNEX E: ALDMEM FOR NEGOTIATED CONSENT AND RESTORATIVE JUSTICE**

ALDMEM is an international mechanism in process of formation for Indigenous nations and state' governments to formally mediate disputes and negotiate consent of parties according to a process referred to as FPIC or "free, prior and informed consent." Specifically, the process must be carried out when nations, states or any of their corporations, non-governmental organizations, or multi-lateral organizations wish to take actions that affect nations' interests: wellbeing, culture, economy, environment, or society or exercise of self-determination. When and if harm to a nation's interests is at risk of harm it is incumbent on a nation or state to seek mediated compromise and reconciliation consistent with Restorative Justice. The internationally recognized process of free, prior and informed consent embraces the concept of compromise and reconciliation to affirm peace and comity.

States' governments acted in the World Conference on Indigenous Peoples high-level plenary meeting of the General Assembly 2014 Outcome Statement stating that UN member states commit to implementing FPIC. In their commitments, UN member states voted to (para 3) "*cooperate in good faith with indigenous peoples ... through their ... representative institutions*" and to secure "*approval of any project affecting their lands or territories and other resources ... through their free, prior, and informed consent.*" These statements assert the intention of states to implement the UN Declaration on the Rights of Indigenous Peoples (2007), the ILO Convention 169 (1989), and other international instruments. In addition, Indigenous nations have adopted other international laws to implement FPIC, including the 1994 International Convention on the Rights of Indigenous Nations and the Alta Outcome Document of 2013. FPIC is a necessary concession by States' Governments and Indigenous Nations to freely negotiate the consent of indigenous nations based on the basis of "political equality." The laws agreed to by states and nations require that engagements are required to go beyond "consultations" which must be recognized as the first step in the process of FPIC and must directly involve negotiation of consent in the form of agreements between parties.

Negotiated Consent agreements may concern the introduction of state or nation-originated health programs, education institutions, economic policies, environmental policies, cultural practices, acts that violate cultural life and mass violence, and access to ancestral territories and the resources in those territories historically relied on by nations to sustain life. Important as the FPIC process is, the reality is that there is no authorized mechanism to implement the process to facilitate the identification of problems, negotiation of consent, and enforcement of agreements between contending nations or nations and states.

The United Nations and other state-based organizations cannot establish a mechanism to implement FPIC. The only means for implementing the process are "good faith measures exercised by individual states, corporations, and other entities" or internal state or corporate laws and practices defined by the state or corporation. While scores of indigenous nations have defined protocols, they wish to implement FPIC, nations, states, corporations, and other entities chose not to comply with them.

As political equals to states, Indigenous peoples must sit at the same table with states, corporations, and other entities to establish a new international mechanism to promote and carry out the FPIC process—a hybrid international body that serves as the only alternative to state-

based organizations. The international mechanism achieving the goal of mediated negotiations between nations and states is ALDMEM – Ancestral Lands decolonization, monitoring, and Enforcement Mechanism.

ALDMEM is organized under the supervision of the ALDMEM International Commission comprised of five indigenous nations, five corporations, five states and five non-governmental organizations serving as the charter ratifying entities. The ALDMEM International Commission exercises the following functions:

**Oversee operations of the organization that is carried out by the following personnel:**

- Secretary General
- Monitoring Staff: Responsible for documentation, evaluating and tracking nation, corporate, state and NGO activities in relation to the peaceful occupation and use of ancestral territories worldwide. Maintain and evaluate existing relations, and document circumstances of relations between affected parties.
- Diplomatic Staff: Engage, nation, state, corporate and NGO parties and multi0lateral parties to facilitate engagement. Facilitate Third Party Guarantors, observers and affected parties.
- Communications Staff: Develop and maintain language, cultural, environmental, and geographic information to facilitate communications between nations, nations and states, corporations, NGOs and to conduct research.
- Mediation Staff: Directly engage parties in conflict and facilitate mutual understanding, rules for negotiations and consent.
- Public Affairs Staff: Develop and produce public information about engagement between nations, state, corporations and NGOs.

**The Purpose, Mission and Goals of this preliminary plan is open for discussion and debate.**

**PURPOSE:**

Through a cooperative agreement between indigenous nations, non-governmental organizations, corporations, and states establish a mechanism funded by independent sources to facilitate monitoring, negotiations, agreements, and enforcement based on standards and procedures established in a ratified charter establishing ALDMEM.

**MISSION:**

To facilitate negotiation of agreements (compacts, treaties, etc.) between nations and parties seeking to establish policies, resolve conflicts, take actions affecting land and communities and which seek access to ancestral territories for the purpose of using or extracting resources for outside benefit.

**GOALS:**

- Register nation, state, corporate and purchaser parties seeking to socially, economically, environmentally, culturally engage in activities that affect indigenous communities and use lands or extract resources from ancestral territories.

- Monitor existing territorial occupations and respond to nation requests for mediation between the nation and other parties
- Facilitate Third Party Guarantor participation of negotiations as an active party with a mutually determined role as monitor and enforcer of the final agreements.
- Notify prospective parties of the mediation, arbitration, and Third-Party Guarantor and negotiation framework for establishing amicable relations between parties and offer venues for engagement.
- Facilitate communications about customary governance of nations, structure of corporate, state and purchaser systems.
- Facilitate communications, translation, and customary languages to maximize understanding of engagement between parties.
- Conduct Public Affairs communications in symposiums, public media releases, public conferences, and documentary releases.