

THE STATUTE FOR THE SPECIAL TRIBUNAL FOR KENYA

[FINAL DRAFT PREPARED FOLLOWING THE MEETING HELD ON TUESDAY 20TH
JANUARY 2009]

Preamble

DESIROUS that our nation achieves its full potential in social, economic and political development;

MINDFUL that during and after the 2007 General Elections, Kenya witnessed tragic violence in which serious crimes and violations of human rights were committed with impunity against our people;

RECALLING the Agreement on the Principles of Partnership of the Coalition Government made on February 28, 2008 and the Agreement for the Establishment of a Commission of Inquiry on Post - Election Violence dated March 4, 2008;

AFFIRMING that such serious crimes should not go unpunished and aware that these transgressions cannot be properly addressed by our judicial institutions due to procedural and other hindrances;

DETERMINED to bring to justice those responsible for these crimes and to put an end to impunity;

RECOGNIZING that the Government established the Commission of Inquiry into Post Election Violence with a mandate to (i) investigate the facts and surrounding circumstances related to acts of violence that followed the 2007 elections (ii) investigate the actions or omissions of state security agencies during the course of the violence and make recommendations as necessary and (ii) recommend measures of a legal, political or administrative nature, as appropriate, including measures with regard to bringing to justice those responsible for criminal acts;

CONSCIOUS that the Commission on Post Election Violence completed its work and recommended the establishment of a special tribunal to bring to account those who bear the greatest responsibility for the post election violence

RECALLING the Agreement for the Implementation of the Recommendations of the Commission of Inquiry into Post-Election Violence;

DETERMINED to restore confidence of the nation in the rule of law democracy and human rights and to build a cohesive nation going forward;

NOW THEREFORE BE IT ENACTED by the Parliament of Kenya as follows-

Citation

A Special Tribunal for the prosecution of Persons bearing responsibility for genocide, gross violations of human rights, crimes against humanity and other crimes which occurred in relation to the General Elections of 27th December, 2007, between 3rd December, 2007 and 28th February 2008 . The Tribunal shall have power to investigate prior and subsequent events, circumstances and factors relating to the crimes and to prosecute related offences arising from and connected with the same.

Definitions

Parliamentary Committee means the Parliamentary Committee on Administration of Justice and Legal Affairs.

Tribunal means the Tribunal established pursuant to the agreement between the President and the Prime Minister signed on 16th December 2008 and subsequently provided for in the Constitution and this Statute.

Panel of Eminent African Personalities means the African Union Panel of Eminent African Personalities spearheading the mediation efforts in Kenya following the post-2007 election crisis leading to the signing of the National Accord on the 28th February 2008.

Persons bearing the greatest responsibility mean person or persons who were responsible for planning, instigating, inciting, funding, ordering or providing other logistics which directly or indirectly facilitated the commission of crimes falling within the jurisdiction of the Tribunal. In determining whether a person or persons falls within this category, the Tribunal shall have regard to factors

including the leadership role or level of authority or decision making power or influence of the person(s) concerned; and the gravity, severity, seriousness or scale of the crime committed.

Article 1: Establishment and Organization of the Tribunal

1. There is established a Tribunal to be known as the Special Tribunal for Kenya. The Tribunal shall be a body corporate with perpetual succession and a common seal.

2. The Tribunal shall consist of the following organs:

- a) The Chambers, comprising a Trial Chamber and an Appeals Chamber;
- b) The Prosecutor;
- c) A registry;
- d) A Defence Office; and,
- e) Special Magistrates.

Article 2: Jurisdiction of the Tribunal

The Tribunal through its various organs shall have the power to investigate, prosecute and determine cases against persons responsible for genocide, gross violations of human rights, crimes against humanity and others crimes committed in Kenya in accordance with the provisions of this Statute.

Article 3: Personal Jurisdiction

The Tribunal shall have jurisdiction over natural persons pursuant to the provisions of this Statute.

Article 4: Exclusive Jurisdiction

1. The Tribunal shall have exclusive jurisdiction to prosecute persons for crimes under this Statute.
2. The Tribunal shall have the primacy over the courts at any stage of the proceedings. Where criminal proceedings relating to the crimes referred to in this Statute are pending before a court, the Tribunal shall formally request the courts to defer to its competence and where the Tribunal makes such request, the proceeding in the courts shall stand terminated.

3. For the avoidance of doubt, previous or on going proceedings in any court shall not be a bar to the jurisdiction of the Tribunal

Article 5: Territorial and Temporal Jurisdiction

1. The territorial jurisdiction of the Tribunal shall extend to the territory of Kenya including its land surface and airspace. The temporal jurisdiction of the Tribunal shall extend to a period beginning on 3rd December 2007 and ending on 28th February 2008.
2. The Tribunal shall have power to investigate prior and subsequent events, circumstances and factors relating to the crimes within its jurisdiction and to prosecute related offences arising from and connected with the same.

Article 6: Jurisdiction of the Chambers and Special Magistrates

1. Subject to this Statute, the Trial Chamber shall exercise jurisdiction over persons bearing the greatest responsibility for crimes falling within the jurisdiction of the Tribunal.
2. Subject to this Statute, the Special Magistrates shall exercise jurisdiction in respect of -
 - (i) crimes defined in Article 7-9 of this Statute with regard to persons other than persons bearing the greatest responsibility.
 - (ii) in respect of crimes defined in the Penal Code or any other written law committed in the period between 3rd December 2007 and 28th February 2008.
3. The Appeals Chambers shall exercise appeals jurisdiction over matters determined by the Trial Chamber and the Special Magistrates as provided for in this Statute.
4. In the interest of expediency, Special Magistrates may preside over such area or areas or be responsible for such cases or group of cases as may be specified in their appointment or by notice in the Gazette

Article 7: Genocide

1. The Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this Article;
2. For the purpose of this Statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - a) Killing members of the group;
 - b) Causing serious bodily or mental harm to members of the group;
 - c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - d) Imposing measures intended to prevent births within the group;
 - e) Forcibly transferring children of the group to another group.
3. The following acts shall be punishable:
 - a) Genocide;
 - b) Conspiracy to commit genocide;
 - c) Direct and public incitement to commit genocide;
 - d) Attempt to commit genocide;
 - e) Complicity in genocide.

Article 8: Gross Violations of Human Rights

The Tribunal shall have power to punish persons responsible for:-

- (i) Violations of fundamental human rights as recognized in international human rights law, including but not limited to acts of torture, killing, abduction, malicious acts, destruction of property, and severe ill treatment of any person or groups of persons.
- (ii) Imprisonment or other deprivation of physical liberty.
- (iii) Rape or any other form of sexual violence.
- (iv) Enforced disappearance of persons.

- (v) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural religious or gender or other grounds universally recognized as impermissible
- (vi) Any attempt, conspiracy incitement, instigation, command or procurement to commit any of the acts referred in (i) – (v) above.

Article 9: Crimes against Humanity

The Tribunal shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, regional, political, ethnic, racial, cultural or religious grounds;

- a) Murder;
- b) Extermination;
- c) Enslavement;
- d) Deportation;
- e) Imprisonment;
- f) Torture;
- g) Rape and other forms of sexual violence;
- h) Harassment;
- i) Destruction of property;
- j) Persecutions on political, racial, ethnic, cultural, gender and religious grounds;
- k) Other inhumane acts.

For the purpose of this Article:

'Extermination' includes the intentional infliction of confessions of life; inter alia, the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

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

'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;

'Torture' means the intentional infliction of sever pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused, except that torture shall not include pain or suffering arising only from, inherent in or incidental to lawful sanctions;

'Forced Pregnancy' means the unlawful confinement of a woman made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting laws relating to pregnancy;

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

Article 10: Elements of Crime

The elements of the international crimes which are subject to the Jurisdiction of the Tribunal shall be as defined in the Elements of Crime of the International Criminal Court.

Article 11: Individual Criminal Responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Article 7 to 9 of the present Statute, shall be individually responsible for the crime.
2. A person who contributed in any other way to the commission of a crime referred to in Article 7 to 9 of this Statute by an individual or a group or persons acting with a common purpose, where such contribution is intentional and is either made with the aim of furthering the general criminal activity or purpose of the individual or group or in the knowledge of the intention of the individual or group to commit the crime, or in the circumstances of the person, the intention of the individual or group to commit the crime ought to have been in knowledge of such individual, shall be individually responsible for the crime.
3. The official position of any accused person as a responsible Government official shall not relieve such person of criminal responsibility nor mitigate punishment.
4. The fact that any of the acts referred to in Articles 7 to 9 of this Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know or ought to have known that

the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

5. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility.

Article 12: Ne Bis in Idem

1. No person shall be tried before a court for acts constituting genocide, gross violations of human rights and crimes against humanity under this statute for which he or she has already been tried by the Tribunal
2. A person who has been tried before a court for acts constituting serious violation of international human rights law may be subsequently tried by the Tribunal only if;
 - (a) The act for which he or she was tried was characterized as an ordinary crime;
 - (b) The proceedings in the court were for the purpose of shielding the person from criminal responsibility for crimes falling within the Jurisdiction of the Tribunal;
 - (c) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.
3. In considering the penalty to be imposed on a person convicted for a crime under the this Statute, the Tribunal shall take into account the extent to which any penalty imposed by court on the same person for the same act has already been served.

Article 13: Composition of the Chambers

1. The Chamber shall consist of the Trial Chamber and the Appeals Chamber.
2. The Trial Chamber shall consist of the Chair of the Chamber and two other judges. The Chair of the Chamber shall be a Kenyan and shall be appointed

by the President in concurrence with the Prime Minister. The other two judges shall be non-Kenyans and shall be appointed by the President in concurrence with the Prime Minister from a list of persons nominated by the Panel of Eminent Persons.

3. The Appeals Chamber shall consist of the Chair of the Chamber and four other judges. The Chair of the Chamber shall be a Kenyan and shall be appointed by the President in concurrence with the Prime Minister. Of the other four judges, one shall be a Kenyan and the other three non-Kenyans. The Kenyan judge shall be appointed by the President in concurrence with the Prime Minister. The two non-Kenyans judges shall be appointed by the President in concurrence with the Prime Minister from a list of persons nominated by the Panel of Eminent Persons.

Article 14: Additional Trial Chambers

1. The President in concurrence with the Prime Minister and the Panel of Eminent Persons may create additional Chambers if it is in interest of justice.
2. The structure of additional Chambers including mode of appointment of judges shall be similar to that of the Trial Chamber.
3. Additional Chambers will be created by way of proclamation in the Kenya Gazette.
4. Where additional Chambers are created, the requisite complement of staff shall be recruited to facilitate their work.

Article 15: Qualification for Appointment of Judges

The judges shall be persons of recognized professional competence, high moral character, impartiality and integrity and extensive experience in criminal law and practice. They should be persons who possess the qualifications required for in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers, due account shall be taken of gender equity and the experience of the judges in criminal law, international law including International Criminal Law and International Human Rights Law.

Article 16: Tenure and Terms of Service of Judges

1. The judges of the Chambers shall be appointed for a renewable three year term.

2. The terms of service for the judges shall be determined by the President in concurrence with the Prime minister and the Panel of Eminent Persons. The terms and conditions of judges shall not be revised to their detriment whilst they are in office.

Article 17: Removal and Replacement of Judges

1. Judges may only be removed for incompetence, misbehaviour or for any other conduct that may bring the proceedings of the Tribunal into disrepute.
2. Judges will be removed by the President in concurrence with the Prime Minister and the Panel of Eminent Persons. Representations on the removal of a judge shall be made way of petitions made to the President in writing.
3. The judge against whom a representation has been made shall have the right to respond to the allegations before a decision is made.
4. In the event of a vacancy in the Chambers, replacements shall be made in accordance with the procedure of appointment.

Article 18: Special Magistrates

There shall be such number of Special Magistrates as may be appointed by the President in concurrence with the Prime Minister from a list of candidates nominated by the Parliamentary Committee.

Article 19: Qualification for appointment as Special Magistrates

1. To be appointed as a Special Magistrate, a person shall be of high moral character, impartiality and integrity and of demonstrable experience in criminal law and practice.
2. A person shall not be qualified for appointment as a Special Magistrate unless he is or has served in the rank of principal magistrate or a higher rank, or an advocate of equivalent experience.
3. The Parliamentary Committee shall ensure that the recruitment of Special Magistrates is as competitive enough as possible to allow the most qualified persons to be appointed for the positions.

4. The provisions relation to the removal of judges shall apply with necessary modifications to the removal of Special Magistrates.

Article 20: Tenure and Terms of Service of Special Magistrates

1. The Special Magistrates shall be appointed for a renewable three year term.
2. The terms of service of the Special Magistrates shall be determined by the President in concurrence with the Prime minister and the Panel of Eminent Persons. The terms and conditions of the Special Magistrates shall not be revised to their detriment whilst they are in office.

Article 21: Rules of Procedure and Evidence

The Tribunal shall develop the rules of procedure and evidence for the conduct of proceeding before it including the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the Tribunal.

Article 22: The Prosecutor

1. There shall be a Prosecutor responsible for investigation and prosecution of persons responsible for crimes falling within the jurisdiction of the Special Tribunal.
2. The Prosecutor's Office shall consist of the Prosecution and Investigation Divisions.
3. The Prosecutor shall be appointed by the President in concurrence with the Prime Minister from a list of persons nominated by the Panel of Eminent Persons. To be appointed, one must be a non-citizen and a person of recognized professional competence, high moral character, impartiality and integrity and extensive experience in criminal law and practice. They should be persons who possess the qualifications required for in their respective countries for appointment to the highest judicial offices
4. The Prosecutor shall act independently as a separate organ of the special Tribunal. He shall not seek or receive instructions from any person or authority.

5. In the interest of proper administration of justice, he or she may decide to charge jointly persons accused of the same or different crimes committed in the course of the same transaction.
6. The Prosecutor of the Tribunal shall be assisted by a Kenyan Deputy Prosecutor appointed by the President in concurrence with Prime Minister from a list of persons nominated by the Panel of Eminent persons.
7. There shall be such other local and international staff to assist the Prosecutor as may be recruited by the Tribunal for such purpose.

Article 23: The Registrar

1. The Registrar shall be responsible for the administration and servicing of the Tribunal.
2. The Registry shall consist of a Registrar and such other staff as may be required.
3. The Registrar shall be a citizen appointed by the President in concurrence with the Prime Minister from a list of persons nominated by the Panel of Eminent persons. To be appointed, a person shall be of recognized professional competence, high moral character, impartiality and integrity and extensive experience in the practice of court registries. They should be persons who possess the qualifications for appointment as a judge of the High Court of Kenya.
4. Other Staff of the Registry shall be appointed by the Tribunal.
5. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in concurrence with the Office of the Prosecutor, measures to protect the safety, physical and psychological well-being, dignity and privacy of the victims and witnesses, and such other appropriate assistance for witnesses who appear before the Tribunal and others who are at risk on account of testimony given by such witnesses.

Article 24: The Defence Office

5. There shall be a Defence Office headed by the Chief Defence Counsel appointed by the President in concurrence with the Prime Minister and the Panel of Eminent Persons. To be appointed, a person shall be of recognized professional competence, high moral character, impartiality and integrity and extensive experience in the practice of court registries.

- They should be persons who possess the qualifications for appointment as a judge of the High Court of Kenya.
6. The Defence Office shall protect the rights of the defence, provide support and assistance to defence counsel and to persons entitled to legal assistance, including, where appropriate, legal research, collection of evidence and advice, and appearing before the judges in respect of specific issues.
 7. Legal assistance shall be provided to persons who cannot afford it in accordance with criteria prepared by the Tribunal. The Chief Defence Counsel shall draw up a list of Defence Counsel who may be deployed to assist persons entitled to legal assistance provided that legal assistance shall only be provided to persons for whom an indictment has been issued and confirmed by the Chamber. Legal Counsel enlisted for this purpose shall be paid such honorarium as may be determined by the Tribunal.
 8. The Chief Defence Counsel shall be assisted in his function by other staff appointed by the Tribunal.

Article 25: Terms and Conditions of Service of the Prosecutor, Deputy Prosecutor, Registrar, Chief Defence Counsel and Other Staff of the Tribunal

1. The Prosecutor, Deputy Prosecutor, Registrar, Chief Defence Counsel and Other Staff of the Tribunal shall be appointed on an open ended contract.
2. The Terms and Conditions of Service of the Prosecutor, Deputy Prosecutor, Registrar, Chief Defence Counsel and other Staff of the Tribunal shall be set by the President and the Prime Minister in concurrence and the Panel of Eminent Persons.
3. The Prosecutor, Deputy Prosecutor, Registrar, Chief Defence Counsel and other Staff of the Tribunal can be removed for incompetence, misbehaviour or for any other conduct that may bring the proceedings of the Tribunal into disrepute.
4. When a vacancy arises in the office of the Prosecutor, Deputy Prosecutor, Registrar, Chief Defence Counsel, it shall be filled in the same manner as the appointment process.
5. The procedure for the removal of judges shall apply in the removal of the Prosecutor, Deputy Prosecutor, Registrar, Chief Defence Counsel.

6. Other staff of the Tribunal may be terminated for incompetence, misbehaviour or for any other conduct that may bring the proceedings of the Tribunal into disrepute. The Tribunal shall make provisions in respect of discipline and removal of its other staff including other grounds that may justify removal of such staff.

Article 26: Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations on the basis of the Report of the Commission of Inquiry unto Post-Election Violence, on his own motion or on the basis of information obtained from any source.
2. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.
3. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of relevant government agencies.
4. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice
5. Upon a determination that reasonable evidence for indictment exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which he accused is charged under this Act. The indictment shall be transmitted to a judge of the Trial Chamber.
6. The names of persons under investigations shall not be made public or otherwise disclosed to persons other than those directly involved in the investigations before the indictment has been made.

Article 27: Review of the Indictment

The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a reasonable case for trial has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

Article 28: Summons to Appear and Warrant of Arrest

1. Upon confirmation of an indictment, the Judge shall issues summons to appear to the person in respect of whom the indictment relates. Such summons shall be effected on the person concerned personally or where it is not practicable, through advertisement in the local print and electronic media. The summons shall contain the full names of the person to whom it is issued, the nature of crimes and a brief description of the facts. It shall also state the date on which the person it is directed to is required to appear before the Tribunal.
2. The person upon whom summons to appear is served shall present themselves to the Judge within seven days.
3. Where after issuance of summons a person fails to present themselves to the judge within seven days or where it appears to the judge that it is necessary to effect an arrest in order to compel the person concerned to appear before the Tribunal, he shall issue a warrant of arrest against that person or persons.
4. A warrant of arrest shall be addressed to the Commissioner of Police requiring him to apprehend the person (s) whose details and particulars shall be clearly described in the warrant. The warrant shall also contain a description of the crimes for which the person to whom is addressed is required to answer to as well as the brief facts.
5. A warrant of arrest shall remain in force until otherwise revoked by the Tribunal.
6. Where a person is arrested, he shall be taken to custody and presented to Tribunal within 24 hours.

Article 29: Interim Release and Fresh Warrants

1. A person arrested and taken to custody may apply for interim release. Where the judge hearing the application is satisfied that there are urgent and exceptional circumstances to warrant interim release and that there are sufficient safeguards to ensure the subsequent appearance of the person arrested, the judge shall allow the interim release with or without conditions.
2. Where conditional release is made with conditions, any breach of the condition(s) shall entitle the judge upon application by Prosecutor to issue a fresh warrant of arrest and where fresh warrants are issued, the person against whom they are issued will not subsequently be entitled to interim release.

Article 30: Pre-Trial Proceedings

1. Pre-trial proceedings shall be conducted by a Pre-Trial Judge to determine whether there is a triable case to warrant the person accused to stand trial.
2. At the Pre-Trial Proceedings, the Prosecutor shall support every charge with evidence to establish reasonable grounds to believe that the accused person ought to stand trial.
3. At the hearings, the accused may object to the charge, challenge the evidence presented or present evidence.
4. At the end of the hearings, the Pre-trial Judge shall determine whether there is sufficient evidence to establish substantial grounds to believe that the accused person committed the offence and may :
 - (i) Commit the accused person to stand full trial if satisfied that there is sufficient evidence;
 - (ii) Decline to commit the accused person for trial in relation to those charges where there is no sufficient evidence.
5. Where the Pre-Trial Judge finds that there is no sufficient evidence, he shall order the discharge or release of the accused provided that such discharge or release shall not be a bar to the Prosecutor to bring a fresh indictment.
6. Notwithstanding any provision of this article, the Prosecutor shall have a right to amend or withdraw a charge at the Pre-Trial Proceedings provided that where an amendment is made, the ordinary process for review and confirmation of such charge and a pre-trial must be followed.
7. The decision of the Pre-trial judge under this article shall be final.

Article 31: Trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused with due regard for the protection of victims and witnesses.
2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the Tribunal, be taken into custody,

immediately informed of the charges against him or her and transferred to the custody of the Tribunal.

3. The Trial Chamber shall read the indictment, satisfy itself that the right of the accused is respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.
4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 32: Trials in Absentia

1. The Tribunal may conduct trials in the absence of the accused if :
 - (i) The accused has expressly and in writing waived his right to be present.
 - (ii) Has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his appearance before the Tribunal and to inform him of the charged confirmed by the Trial Judge.
2. Where hearings are conducted in the absence of the accused, the Tribunal shall ensure that:
 - (i) The accused has been notified or served with the indictment, or notice has otherwise been given of the indictment through the media.
 - (ii) The accused has designated a counsel or if it is provided that the accused is indigent, a counsel has been provided by the Tribunal.
 - (iii) Where the accused refuses or fails to appoint a Defence Counsel, such counsel has been assigned by the Defence Office with a view to ensuring full representation of the interests and rights of the accused.

Article 33: Appeal Proceedings

1. The Appeals Chamber shall hear appeals from orders, judgements or determinations made by the Trial Chamber.

2. Appeals under this Article shall only be made by the prosecutor, accused Person or a person against whom an order is directed.
3. Appeals may be made only on the grounds of:
 - (i) an error on question of law invalidating the decision; or
 - (ii) an error of fact that has occasioned a miscarriage of justice.
4. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.
5. Appeals shall be lodged within thirty (30) days of the delivery of the order, judgement or determination of the Trial Chamber unless leave to file the appeal beyond this period is granted where there exists compelling reasons to justify the delay.
6. The determination of the Appeals Chamber shall be final.

Article 34: Review of Proceedings

1. Where a new fact has been discovered that was not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and that could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit an application for review of judgement.
2. An application for review shall be submitted to the Appeals chamber. The appeals Chamber may reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:
 - (i) Reconvene the Trial Chamber.
 - (ii) Retain jurisdiction over the matter.

Article 35: Procedure before Special Magistrates

1. Trials before Special Magistrates shall be conducted in a similar manner as criminal trials before ordinary criminal courts. That is, the basic rules relating to charge sheets, pleas, bail, evidence, trial, judgement and sentencing shall apply provided that the death sentence shall not be applied.

2. Subject to article (1) above, in exercising their jurisdiction, Special Magistrates shall apply:
 - (i) The Criminal Procedure Code, the Evidence Act and other written law that makes provisions on procedure in respect of crimes falling under the jurisdiction of Special Magistrates,
 - (ii) Where appropriate, the principles and norms of International Criminal Law and procedure as applied by the Tribunal established by this Statute or other tribunals of comparable nature and character.
3. Where the principles and norms of international criminal law and procedure as applied are at variance with the Criminal Procedure Code, the Evidence Act and other written law, the principles and norms of international criminal law and procedure shall take precedent.
4. Notwithstanding anything to the contrary, the Tribunal may prescribe rules of procedure for application by the Special Magistrates.

Article 36: Investigations and Prosecutions before the Special Magistrates

The Prosecutor of the Tribunal or such other staff authorized by the Prosecutor shall conduct investigations and prosecutions in respect of cases falling within the jurisdiction of the Special Magistrates.

Article 37: Administration and Support Services to Special Magistrates

1. The Office of the Registrar of the Tribunal shall, subject to this Statute, provide registry services to the Special magistrates and be responsible for the overall administration and coordination of the work of the Special Magistrates.
2. The Defence Office functions shall be carried out by the Chief Defence Counsel or such staff provided by him.
3. In carrying out the responsibilities provided for under article (1) and (2) above, the Office of the Registrar and the Defence Office shall work in consultation with the Chair of the Appeals Tribunal.

4. The Chair of the Appeals Chamber shall exercise overall policy control over the Special Magistrates.

Article 38: Appeals from Special Magistrates

1. Appeals from determinations of the Special Magistrates shall fall to the Appeals Chamber.
2. The decision of the Appeal Chamber shall be final.
3. Appeals under this Article shall only be made by the prosecutor, accused Person or a person against whom an order is directed
4. The Tribunal shall make rules to govern appeals from Special Magistrates.

Article 39: Official Language of the Tribunal

1. The official language of the Tribunal is English.
2. Court interpretation services shall be provided for those who do not understand English.

Article 40: Rights of a Suspect

1. A suspect who is questioned by the Prosecutor shall not be compelled to incriminate himself or to confess guilt. He shall have the following rights of which he shall be informed by the Prosecutor prior to questioning, in a language he speaks and understands:
 - (a) The right to be informed that there are grounds to believe that he has committed a crime within the jurisdiction of the Tribunal;
 - (b) The right to remain silent, without such silence being considered in the determination of guilt or innocence, and to be cautioned that any statement he makes shall be recorded and may be used in evidence;
 - (c) The right to have legal assistance of his own choosing, including the right to have legal assistance provided by the Defence Office

where the interests of justice so require and where the suspect does not have sufficient means to pay for it;

- (d) The right to have the free assistance of an interpreter if he cannot understand or speak the language used for questioning;
- (e) The right to be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

Article 41: Rights of the Accused

1. All accused shall be equal before the Tribunal.
2. The accused shall be entitled to a fair public hearing, subject to measures ordered by the Tribunal for the protection of victims and witnesses.
3. The accused shall be presumed innocent until proved guilty according to the provision of this Statute.
4. The onus is on the Prosecutor to prove the guilt of the accused.
5. In order to convict the accused, the relevant chamber must be convinced of the guilt of the accused beyond reasonable doubt.
6. An accused person shall be informed promptly and in detail in a language which he understands of the nature of the offence with which he is charged.
7. An accused person shall have adequate time and facilities for the preparation of his defence and to communicate without hindrance with counsel of his choice.
8. The accused should be tried without undue delay.
9. Subject to this Statute, the accused shall be tried in their presence and shall be entitled to defend themselves in person or through counsel of their choice, and to be provided with legal assistance if they require one and cannot afford the services of counsel.
10. The accused shall be entitled to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
11. The accused shall have the right to examine all evidence to be used against him during the trial in accordance with the Rules of Procedure and Evidence of the Special Tribunal.
12. The accused shall be entitled to have the free assistance of an interpreter if he cannot understand or speak the language of the Tribunal.

13. The accused shall not be compelled to testify against himself or co confess to guilt.
14. The accused may make statements in court at any stage of the proceedings, provided such statements are relevant to the case at issue. The Chambers shall decide on the probative value, if any, of such statements. The Tribunal shall make rules on the making of personal statements in respect of proceedings before it.

Article 42: Rights of Victims

Where the personal interests of the victims are affected, the Tribunal shall permit their views and concerns to be presented and considered at any stage of the proceedings determined to be appropriate by the Pre-Trial Judge or the Trial or Appeal Chambers and in a manner that is not prejudicial to or inconsistent with the rights of the accused and the principles of a fair and impartial trial. Such views and concerns shall be presented by the victims in person or through their legal representatives. The Tribunal shall make rules to define personal interest for purposes of this Article.

Article 43: Foreign Counsel to have right to Appear

Notwithstanding the provisions of any other law, qualified legal counsel from common law jurisdictions shall have the right to appear in proceedings before the Tribunal provided they are qualified to appear before a court equivalent to the High Court of Kenya in their jurisdictions.

Article 44: Judgement

The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which any separate or dissenting judgement shall be appended.

Article 45: Penalties

1. The Trial Chamber shall impose upon a convicted person, imprisonment for life or for a specified number of years. In determining the terms of imprisonment for the crimes provided for in the Statute, the trial Chamber shall, as appropriate, have recourse to international practice regarding prison sentences.

2. In addition to imprisonment, the Tribunal may impose a fine on a convicted person not exceeding ten million Shillings.
3. In imposing penalties, the Trial Chamber shall take into account such factors are the level of responsibility of the accused, the gravity of the offence and the individual circumstances' of the convicted person.
4. Persons convicted of crimes by the Tribunal shall in addition to the prison terms be barred from holding any public or elective office in Kenya.
5. The Trial Chamber, the Appeal Chamber or the Special Magistrates may hear presentations from victims before pronouncing sentence.

Article 46: Forfeiture and Preservation of Property

1. The Tribunal may order forfeiture of property, proceeds or assets used in furtherance or derived directly or indirectly from crimes under its jurisdiction, to the rightful owners or to the State.
2. The Tribunal may make an order prohibiting the transfer or disposal of or other dealing with property on evidence that the property was acquired as a result of or was applied in furtherance of crimes under its jurisdiction.
3. An order under this Article may be made against a person who was involved in the crime or against a person who subsequently acquired the property.
4. A person against whom an order is made under this Article may challenge it within fourteen (14) days. Where an application to challenge such an order is made, the Tribunal shall upon hearing all the parties, discharge or vary the order or decline the application.
5. A person who is served with an order under this Article and who contravenes it is guilty of an offence and is liable on conviction to a fine not exceeding two million shillings or twice the value of the property in question, whichever is higher, or to imprisonment for a term not exceeding ten years or to both fine and imprisonment.
6. The Tribunal may before determining matters under this Article hear representations from the victims.

Article 47: Compensation of Victims

1. The Tribunal may identify the victims who have suffered as a result of the commission of crimes by an accused convicted by the Tribunal.
2. The assessment of compensation shall be undertaken by a special Magistrate identified for that purpose by the Tribunal.
3. For purposes of a claim for compensation, the judgement of the Tribunal shall be final and binding as to the criminal responsibility of the convicted person.
4. The Special Magistrate may hear representations from victims before assessing the compensation due to them.
5. No appeal shall lie from the decision of a Special Magistrate on a claim for compensation.
6. The Tribunal shall make rules for the assessment of compensation as provided for under this Article.

Article 48: Enforcement of Sentences

Imprisonment shall be served in the prisons as established under the Prisons Act (Cap 90).

Article 49: Miscellaneous Provisions relating to Special Magistrates

1. The rights of suspects, accused persons and victims provided for in this Statute shall also be applicable to persons who are the subject of jurisdiction of the Special Magistrates.
2. The Special Magistrates shall have the same powers as the Trial Chamber to review their judgments.
3. The Special Magistrates shall have the same power with regard to forfeiture and preservation of property and compensation of victims as the Trial Chamber.
4. Judgement of Special Magistrates shall be enforced like the judgments' of the Trial Chamber.

Article 50: Funds of the Special Tribunal

1. The funds of the Tribunal shall be derived from such sums as may, from time to time, be appropriated by Parliament for that purpose.
2. The Tribunal may receive grants and donations from any source:

Provided that such grants and donations shall not be made or received for purposes of influencing the decision or ability of the Tribunal in any way and shall be disclosed in the annual report of the Tribunal.
3. There shall be established a Fund to be known as the Special Tribunal Fund which shall be operated by the Registrar on behalf of the Tribunal.
4. The sources of the Fund shall consist of—
 - (a) Such monies as may be appropriated out of the Consolidated Fund for purposes of this Act;
 - (b) Any gifts, grants, donations and bequests received by the Tribunal.
5. All expenses of the Tribunal shall be paid out of the Fund.

Article 51: Annual Estimates

1. At least three months before the commencement of every financial year, The Tribunal shall cause to be prepared estimates of its revenue and expenditure for that year.
2. The estimates shall provide for all expenditure of the Tribunal.
3. The Minister responsible for matters relating to justice, shall in consultation with the Tribunal approve the annual estimates before the commencement of the financial year to which they relate.
4. The Tribunal shall not incur expenditure except as provided for in the Estimates.

Article 52: Accounts and Audit

1. The Tribunal shall keep proper books of account.
2. The accounts of the Tribunal shall be audited in accordance with the Public Audit Act

Article 53: Annual Report and other reports of the Tribunal

The Tribunal shall at the end of every year prepare and publish a detailed report of its operations. The report shall be tabled in Parliament by the Minister responsible for matters relating to justice within 14 days of its publication.

Article 54: Records of the Tribunal

1. The Tribunal shall cause to be kept comprehensive records of its proceedings and work.
2. For purposes of paragraph (1) above, the Tribunal shall have regard to international best practice in record management.

Article 55: Dissolution of Tribunal

1. Upon completion of its work, the Tribunal shall prepare and submit to the President and the Prime Minister a comprehensive report of its work.
2. The Tribunal shall terminate three months after the submission of its final report to the President.
3. Without prejudice to paragraph 1 above and having due regard to economy in the use of public resources, the Commission may wind up some of its organs which may not need to wait until the presentation of its final report to the President.
4. The Tribunal shall ensure that in the winding up process, public funds and assets are properly accounted for.
5. The Tribunal shall ensure all its records and information are properly archived giving special consideration to the need to protect confidential information and materials or information that may be made available to the public either immediately or when conditions or resources allow.