



المحكمة الخاصة بلبنان  
SPECIAL TRIBUNAL FOR LEBANON  
TRIBUNAL SPÉCIAL POUR LE LIBAN

# THE PROCEDURE OF THE SPECIAL TRIBUNAL FOR LEBANON

## A SNAPSHOT

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## *Foreword*

This guide provides an overview of the procedure at the Tribunal, highlighting its specific features. It is intended as an educative tool for those wishing to understand the main rules governing the structure and functioning of the Tribunal and their *raison d'être*. It may be of assistance to legal practitioners appearing before the Tribunal and should increase awareness in civil society of the main procedural challenges facing the Tribunal.

In order for the reader to have a clearer picture of the underlying principles of the procedure, it is recommended that the “Explanatory Memorandum” by the Tribunal’s President be read in conjunction with this guide.

This guide does not have any official, legal or interpretative status.

The references in brackets and italics in the headings refer to the relevant provisions of the Agreement on the establishment of the Tribunal, its Statute and Rules of Procedure and Evidence.

The Rules, the “Explanatory Memorandum”, and the directives referred to in this guide can be found on the Tribunal’s website at:  
[www.stl-tsl.org](http://www.stl-tsl.org)



## *Glossary of abbreviations and acronyms*

Agreement	Agreement between the UN and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon
<i>Hariri case</i>	The case involving the attack carried out against former Prime Minister Rafiq Hariri and others
Trial Chamber	The Trial Chamber of the Tribunal
Head of Defence	The Head of Defence Office at the Tribunal
Investigation Commission	The UN International Independent Investigation Commission
Security Council	The UN Security Council
ICC	International Criminal Court
Registrar	Registrar of the Tribunal
Judge(s)	Judge(s) at the Tribunal
Pre-Trial Judge	Pre-Trial Judge of the Tribunal
UN	United Nations
Parties	Prosecutor and Defence
President	President of the Tribunal
Prosecutor	Prosecutor of the Tribunal
RPE	Rules of Procedure and Evidence
Secretary-General	Secretary-General of the UN
Statute	Statute of the Tribunal
Tribunal	Special Tribunal for Lebanon

*ad hoc* tribunals

International Criminal Tribunals for the  
former Yugoslavia and Rwanda and the  
Special Court for Sierra Leone

## **Background**

1. Following the attacks against former Prime Minister Rafiq Hariri and other prominent Lebanese public figures, on 13 December 2005 the Government of Lebanon requested the UN to establish a “tribunal of an international character”. As a result of that request, on 29 March 2006 the Security Council mandated the Secretary-General to conduct negotiations with the Government of Lebanon to establish such a tribunal (resolution 1664 (2006)). This negotiating process culminated in the signing of the Agreement for the establishment of the Tribunal, to which the Statute is attached, by the Government of Lebanon and the UN on 23 January and 6 February 2007 respectively. However, due to institutional impediments, the Lebanese authorities were unable to ratify the Agreement.

2. In the light of this impasse, and on the basis of the coercive powers conferred upon it under Chapter VII of the Charter of the UN, on 30 May 2007 the Security Council adopted resolution 1757 (2007), bringing into force the provisions of the Agreement and the Statute, and calling upon the Secretary-General, in concert with the Lebanese authorities, to establish the Tribunal.

3. In accordance with resolution 1757, between June 2008 and February 2009, the Secretary-General took the necessary measures for the establishment of the Tribunal and, in particular, selected and appointed, where applicable in consultation with the Lebanese authorities, the Judges, the Prosecutor, the Head of Defence, and the Registrar.

4. On 1 March 2009, the Tribunal, based in The Hague (the Netherlands), was officially opened. Three weeks later, on 20 March 2009, the Judges adopted the RPE, the Rules of Detention, and the Directive on the Assignment of Defence Counsel.

5. The RPE contain 196 provisions, divided into nine chapters, entitled: General Provisions; Cooperation with the Tribunal; Organization of the Tribunal; Investigations and Rights of Suspects and Accused; Confirmation of Charges and Pre-Trial Proceedings;

Proceedings before the Trial Chamber; Appellate Proceedings; Review Proceedings; and Pardon and Commutation of Sentence.

6. This nine-part guide to the RPE is intended to be clear and concise and at the same time as comprehensive as possible. It starts by setting out the underlying principles of the Tribunal's procedure **(I)** and the rules governing its jurisdiction **(II)**. It then describes the roles of the participants in the proceedings **(III)**, and goes on to give a brief description of the stages of the proceedings, from the start of the investigation to the appeal or review ruling **(IV)**. The guide also considers the issues of victim participation **(V)**, the administration of evidence **(VI)**, and international cooperation **(VII)**. It concludes with an analysis of two questions specific to the Tribunal: trials in the absence of the accused or his counsel **(VIII)**, and the protection of confidential and sensitive information **(IX)**.

## **I. – Guiding principles**

7. Five guiding principles were fundamental to the drafting of the RPE. They had to be at once in conformity with the founding principles of the Statute and the Agreement (1); to take account of the most stringent requirements for the protection of human rights (2); to reflect, as far as possible, the main legal traditions of both common and civil law, whilst taking particular account of that of Lebanon (3); to draw on procedures developed at the *ad hoc* tribunals and the International Criminal Court (ICC) (4); and be adapted to the needs of prosecuting and trying acts of terrorism (5).

### **1. – Founding texts**

8. The RPE must first and foremost comply with the provisions of the Statute and the Agreement, which contain numerous procedural rules, for example:

- i) the powers to conduct investigations and prosecutions are vested in the Prosecutor. In principle therefore, it is not the responsibility of the Judges to perform those roles (*Art. 11 of the Statute*);
- ii) a Defence Office ensures that the interests of the accused are protected and provides any assistance that the accused might require (*Art. 13 of the Statute*);
- iii) suspects and accused shall have fundamental rights during investigations and trials (*Art. 15 & 16 of the Statute*);
- iv) victims are authorised, under certain conditions, to express their “views and concerns” during the proceedings when their “personal interests” are affected (*Art. 17 of the Statute*);
- v) victims cannot claim compensation from the Tribunal for any harm they may have suffered. However, they can avail themselves of a guilty verdict from the Tribunal in order to seek compensation for damages from the competent national authorities (*Art. 17 & 25 of the Statute*);
- vi) as he does not rule on the substance of the case, the Pre-Trial Judge can exercise all the necessary powers for the efficient preparation of trials, and the Trial and Appeal Judges can take

- a proactive role in questioning the witnesses and running the case in court (*Art. 18 & 20 of the Statute*);
- vii) where the interests of justice require, written evidence shall be admissible (*Art. 21 of the Statute*); and
  - viii) the Tribunal can, under certain circumstances, pronounce convictions and sentences *in absentia* (*Art. 22 of the Statute*).

9. With regard to the Agreement, it provides, for example, that Lebanon is required to cooperate with the Tribunal (*Art. 15 of the Agreement*). This obligation does not apply to the other Member States unless they have given such an undertaking by means of a cooperation agreement, or are bound by virtue of some other legal instrument or arrangement.

## **2. – Basic human rights**

10. The RPE must reflect the most stringent requirements for the protection of human rights as enshrined primarily in the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights.

11. Even though Lebanon is not formally party to the European Convention or the American Convention, they do represent points of reference for the RPE to the extent that they, like the Covenant, reflect the fundamental internationally recognised requirements of a fair trial.

12. Case law from the European Court of Human Rights and the Inter-American Court of Human Rights is instructive for the same reasons as that of the United Nations Human Rights Committee. These jurisdictions have indeed been called upon to define the extent of the rights guaranteed by the Conventions, taking into account the existence of a denominator common to the legal systems, be they civil or common law, of the States party to those instruments. Moreover, the principles which flow from them in this respect are of particular importance to the RPE, as they reflect customary international law.

### **3. – Hybrid nature of the proceedings**

13. As an international instrument adopted by Judges representing the main legal traditions of both common and civil law, the RPE should aim to achieve an optimal balance between these traditions.

14. However, in accordance with the Statute, the RPE should derive first and foremost from Lebanese criminal procedure, in which, *inter alia*, the following principles are enshrined: judges have a predominant role in the investigations and trial proceedings; victims can participate in the proceedings; the accused can be questioned by a Judge; the use of written evidence is favoured; and trials *in absentia* are allowed under certain circumstances.

### **4. – Achievements of the *ad hoc* tribunals and the ICC**

15. The RPE have to take account of the rules of procedure and evidence of the *ad hoc* tribunals and of the ICC, which are an important source of inspiration. Indeed, they represent the first detailed codes of international criminal procedure in history. The other international criminal tribunals which preceded the *ad hoc* tribunals and the ICC, namely those at Nuremberg and Tokyo, both had rudimentary rules, and the Judges there ruled on procedural matters on a case-by-case basis as they arose.

16. The RPE cannot ignore the interpretation given by the *ad hoc* tribunals and the ICC to their rules and the profound changes that they brought about. Indeed, as the work of these institutions progressed, numerous provisions were added, amended or revoked to reflect the demands of prosecuting and trying the international crimes in their jurisdictions.

### **5. – Specific nature of acts of terrorism**

17. Finally, the RPE have to be adapted to the specific constraints generated by the prosecution and judgement of acts of terrorism, whilst of course ensuring that the fundamental rights of suspects and accused are fully respected.

18. Against this backdrop, the RPE provide, for example, the mechanisms necessary to enable States to cooperate with the Tribunal whilst preserving their national security interests. States can, for instance, provide information to the Prosecution or the defence on a strictly confidential basis, without the latter being obliged to disclose that material where it is otherwise bound to do so.

## **II. – Rules of jurisdiction**

19. The Tribunal's jurisdiction is predicated on two general principles: concurrency and primacy (1). It can be applied to three categories of crime: the attack of 14 February 2005 against Rafiq Hariri and others (2); other attacks which occurred between 1 October 2004 and 12 December 2005 (3); and attacks which occurred on any later date (4).

### **1. – General principles** (*Art. 4, para. 1 of the Statute & Rule 17 of the RPE*)

20. The Tribunal and the Lebanese courts shall exercise concurrent jurisdiction. However, the former has primacy over the latter. In accordance with these principles, the Tribunal shall request that the Lebanese authorities defer to its competence:

- (i) in respect of the *Hariri* case, this must be within two months of the assumption of office of the Prosecutor; and
- (ii) in respect of other cases, each time that, in the light of investigations or proceedings instituted before the Lebanese courts, "*acts or conduct are within the jurisdiction of the Tribunal*".

### **2. – The attack carried out against Rafiq Hariri and others on 14 February 2005** (*Art. 4, para. 2 of the Statute & Rule 17, paras. (A) to (D) of the RPE*)

21. The first category of crime – namely the attack against Rafiq Hariri – automatically falls under the Tribunal's jurisdiction. Indeed, within two months of the Prosecutor taking office, the Tribunal shall request the Lebanese court seized with the *Hariri* case to:

- i) defer to its competence;
- ii) hand over all the records relating to it; and
- iii) submit a list of persons detained in connection with the case.

22. On the basis of the records and the submissions of the Prosecutor, the Pre-Trial Judge must then decide whether those detained persons should be transferred to the Tribunal or released.

**3. – Attacks carried out between 1 October 2004 and 12 December 2005** (*Art. 1, para. 1 of the Statute & Rule 11 of the RPE*)

23. The second category of crime only falls within the jurisdiction of the Tribunal if two conditions are satisfied. Those crimes must be:

- i) connected with the attack carried out against Rafiq Hariri; and
- ii) of a nature and gravity similar to that attack.

24. The RPE envisage the following procedure to determine whether those conditions have been met:

- i) the Prosecutor shall, at any time during the investigation and, at the latest, when the indictment is confirmed, file a motion to the Pre-Trial Judge;
- ii) the Pre-Trial Judge shall rule on the motion; and
- iii) the Prosecutor may appeal the Pre-Trial Judge's decision and the Defence may submit a request for the decision to be reviewed.

25. This procedure enables the Pre-Trial Judge to exercise jurisdictional control over the existence or otherwise of a connection between the *Hariri* case and the other above-mentioned attacks, whilst leaving the Prosecutor, depending on the progress of the investigations, to choose the appropriate time to bring this matter to the attention of the Judge.

**4. – Attacks carried out after 12 December 2005** (*Art.1 of the Statute & Rule 12 of the RPE*)

26. The third category of crime shall only fall within the jurisdiction of the Tribunal if:

- i) the two conditions set out in paragraph 23, above, are met; and

ii) the UN and Lebanon have accepted the jurisdiction of the Tribunal, with the consent of the Security Council.

27. The RPE shall apply the following procedure to determine whether those conditions have been met:

i) the Prosecutor shall inform the President that, in his opinion, the Tribunal should exercise jurisdiction in respect of the above-mentioned crimes, setting out his reasons; and

ii) at the request of the President, the Registrar shall transmit the reasoned conclusions of the Prosecutor to the Secretary-General, so that the UN and Lebanon, with the consent of the Security Council, may determine whether or not to extend the jurisdiction of the Tribunal to those crimes.

28. This procedure enables the Prosecutor – through the President and the Registrar – to inform the competent authorities of the UN and the Government of Lebanon that the Tribunal should exercise its jurisdiction over this third category of crime. It also allows those authorities to decide, with complete autonomy, whether those crimes should indeed be placed under the jurisdiction of the Tribunal.



### **III. – Main actors in the proceedings**

Drawing on the experience of the *ad hoc* tribunals and the ICC, and taking account in particular of Lebanese criminal procedure, the RPE confer significant powers and responsibilities upon the main actors, namely the Judge (1); the Prosecutor (2); the Head of Defence (3); the Registrar (4); the accused (5); and the victims (6), enabling them to play an effective role in the proceedings.

#### **1. – The Judge**

29. The Judges must act not only in their capacity as arbiters, whose role is to assess the evidence submitted for their consideration by the Parties, but also as actors responsible for preparing the trials and actively ensuring that they are conducted efficiently and fairly, with the ultimate aim of establishing the truth.

30. On this basis, the main powers of the President, the Vice-President, the Pre-Trial Judge, and the Trial and Appeal Judges, are as follows:

- i) **The President** (*Art. 10 of the Statute & Rule 32 of the RPE*): in addition to his duties as President of the Appeals Chamber, he is “*responsible for the effective functioning of the Tribunal and the good administration of justice.*” In that context, he coordinates the work of the Chambers, oversees the activities of the Registry, and chairs the Senior Management Board (comprising the Prosecutor, the Head of Defence, the Registrar and the President), responsible for ensuring the coordination of the Tribunal’s activities. He also supervises the conditions of detention in accordance with the rules of detention for persons awaiting trial or appeal. The President also represents the Tribunal in its external relations and, to that end, acts as an interface between the Tribunal on the one hand and Lebanon, third States, the Secretary-General, and the Security Council on the other. Finally, he regularly reports on the administrative and financial situation of the Tribunal to the principal donor States. They are responsible in particular for approving the Tribunal’s budget.

**Note:** Forty-nine per cent of the Tribunal's costs are borne by Lebanon and fifty-one per cent comes from voluntary contributions from States.

- ii) The Vice-President (*Rules 33 & 34 of the RPE*): in the absence of the President, the Vice-President shall exercise the functions of the President, as well as any other function delegated to him by the President.
- iii) The Pre-Trial Judge (*Art. 18 of the Statute, Rules 68 to 93, 117, 118 & 119 of the RPE*): as a Judge who does not sit at the trial, he has wide-ranging powers enabling him to prepare the proceedings efficiently. Amongst other things he has the power to: a) authorise victims to participate in the proceedings; b) issue summonses to appear, arrest warrants, search warrants, and any other orders that may be necessary; c) place a suspect or accused in detention, or order his provisional release; d) rule on the disclosure of information involving national security or information provided on a confidential basis; e) in exceptional circumstances, gather evidence which, without his intervention, could not be obtained; f) under certain circumstances, question anonymous witnesses; and g) prepare the cases for trial.
- iv) The Trial and Appeal Judges (*Art. 20, para. 2 & Art. 21 of the Statute & Rule 145 of the RPE*): the Trial and Appeal Judges have wide-ranging powers enabling them to conduct the proceedings expeditiously and fairly. To that end, they can, for example: a) interview witnesses themselves before the Parties have done so; b) shorten the duration of examinations and cross-examinations; and c) summon to court witnesses and experts who have not been called to give evidence by the Parties.

**Notes:**

- a) The Pre-Trial Judge is an international Judge. The Trial Chamber is composed of two international Judges and a Lebanese Judge. Two alternate Judges, one international, the other Lebanese, also sit on the Trial Chamber. The

Appeals Chamber is composed of three international and two Lebanese Judges (*Art. 2 of the Agreement*).

- b) In order to ensure greater efficiency in the administration of justice, the Trial and Appeal Chambers can designate a Judge Rapporteur to draft specific parts of a judgement or decision on their behalf (*Rule 36 of the RPE*).

**2. – The Prosecutor** (*Art. 11 of the Statute & Rule 55 of the RPE*)

31. The Prosecutor carries out his functions not solely in his capacity as a Party to the proceedings, but also as a judicial organ and guarantor of the public interest that he represents. He acts entirely independently, without seeking or receiving instructions from any quarter.

32. In that spirit, the Prosecutor combines the investigative and prosecution functions, the ultimate aim being to assist the Tribunal in establishing the truth. As a guarantor of the public interest, he must also ensure the protection of victims' and witnesses' interests and the basic rights of suspects and accused.

33. **Note:** The Prosecutor is international. He is assisted by a Lebanese Deputy Prosecutor. (*Art. 3 of the Agreement and Rule 56 of the RPE*)

**3. – The Head of Defence** (*Art. 13 of the Statute & Rules 15, 22 & 57 to 59 of the RPE*)

34. To achieve the best possible balance between the Prosecutor (who is involved in all cases before the Tribunal) and defence counsel (who act in isolation on each case), a Defence Office has been established in order primarily to represent the interests of counsel and help them discharge their duties. It comes under the direction of the Head of Defence, who has wide-ranging powers, notably in respect of:

- i) the recruitment and appointment of highly competent and experienced lawyers for indigent suspects or accused;

- ii) providing material and judicial assistance to defence counsel: notably experts, investigators, or legal assistants;
- iii) preparing and negotiating cooperation agreements with States and international organisations on behalf of defence counsel; and
- iv) monitoring the service provided by defence counsel and carrying out quality control of their work.

35. However, in order to preserve his independence and neutrality towards all suspects, accused and their counsel, and to avoid any conflict of interest, the Head of Defence cannot represent any suspect or accused himself.

**4. – The Registrar** (*Art. 12 of the Statute & Rules 48 to 54 of the RPE*)

36. Under the authority of the President, the Registrar is responsible for the administration and servicing of the Tribunal. He is not only in charge of the Registry in the strict sense of the term, but also of the Victims and Witnesses Unit, the Victims' Participation Unit, and Security. The Registrar can be authorised by the President to conclude cooperation agreements with States and to enter into relationships with international entities. He maintains a record book for the Tribunal, containing the documents relating to each case.

**5. – The Accused** (*Rules 98 & 144 of the RPE*)

37. The accused is expected to play an active part in his trial. As such, he is allowed to take part in the court proceedings on his own initiative. Thus, in addition to giving evidence as a witness (which requires him to take the oath and undergo cross-examination by the Prosecutor), the accused can:

- i) plead guilty or not guilty at the start of the proceedings;
- ii) make statements at any stage of the proceedings; and
- iii) answer questions put to him by the Judges, *proprio motu* or at the request of the Parties or representatives of the victims, notwithstanding the fact that he may exercise his right to remain silent.

## 6. – The Victim (*Rules 86, 87 & 171 of the RPE*)

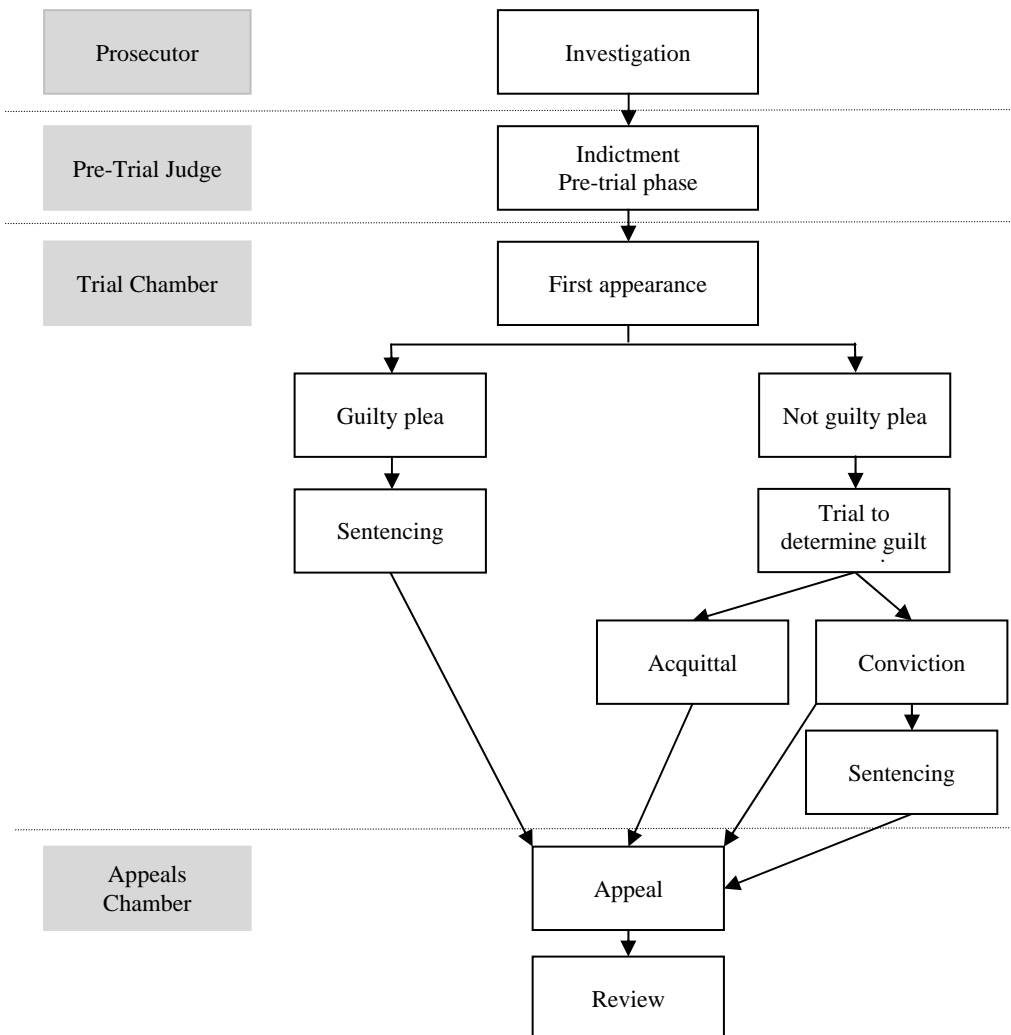
38. As with proceedings before the ICC, a victim can present his “*views and concerns*” at any stage in the proceedings – from the confirmation of the indictment until sentencing – when his “*personal interests*” are affected. However, the victim cannot be compared to a *partie civile* (party claiming damages) in the strict sense of the term. Indeed, a victim can neither institute criminal proceedings nor claim damages before the Tribunal. Furthermore, victims can only participate in the proceedings after being authorised to do so.

39. As laid down in the RPE, a victim can, in particular, subject to the authorisation of the Trial or Appeals Chamber: i) call witnesses to give evidence; ii) tender evidence; iii) examine and cross-examine witnesses; and iv) file motions and briefs.



## IV. – The various stages of the proceedings

40. The proceedings can be divided into seven stages: the investigation (1); confirmation of the indictment (2); first appearance and plea (3); pre-trial phase (4); trial (5); sentencing (6); and appeal and review (7). This representation does not include *in absentia* proceedings, which will be dealt with at point VIII.



## 1. – Investigation (Rules 61 to 67 of the RPE)

### Features

41. The role of the Prosecutor encompasses both investigation and prosecution.

42. The Prosecutor investigates solely from the perspective of the prosecution. However, with the exception of certain highly confidential information, he is required to inform defence counsel of evidence exculpatory to the defence that may come into his actual knowledge or possession during the course of his investigation.

43. As a general rule, the investigation is conducted in secret and is *ex parte*.

44. During the investigation, the rights of the suspect are fully protected. He can, for example, remain silent during questioning, or be assisted by counsel of his choosing and, if necessary, by an interpreter.

45. **Note:** The Prosecutor is required to make available evidence (for the prosecution and the defence) in his possession (witness statements, depositions and other documents) in accordance with the time-limits and under the conditions contained in the RPE (*Rules 110 to 113 & 120 of the RPE*). If he fails to comply with these disclosure requirements, the Prosecutor may be sanctioned by the Pre-Trial Judge or the Trial Judge (*Rule 114 of the RPE*). However, he is not required to disclose certain highly confidential information (*Rules 115 to 119 of the RPE*) (*cf. paragraphs 114 to 119 below*) or information provided to him by the International Committee of the Red Cross, whose representatives cannot be compelled to give evidence before the Tribunal (*Rule 164 of the RPE*).

### Proceedings

46. Following the inquiries initiated in June 2005 by the Investigation Commission, the Prosecutor has, since March 2009, been in charge of the Tribunal's investigation. He takes all measures necessary for that purpose, including: (i) summoning and questioning

suspects (where necessary, after having requested that they be transferred to the seat of the Tribunal) and; (ii) if applicable, with the authorisation of the Pre-Trial Judge, carrying out searches, seizing evidence, or issuing safe-conducts.

47. During the investigations, the Prosecutor shall ensure that all the documents the Prosecutor considers necessary for the exercise of the functions of the Pre-Trial Judge are forwarded to him, and shall meet with him in principle once a month (*Rule 88 of the RPE*).

48. In order to carry out his investigations, the Prosecutor is assisted by investigators and experts. Where necessary, he can seek the assistance of the Lebanese authorities or other States, subject to the cooperation arrangements signed with them (*cf. paragraph 108 below*).

49. Defence counsel conduct their own investigations: after having been informed of the charges against their clients, they gather evidence and take statements from witnesses whom they wish to call at trial.

50. In order to conduct their own investigations, counsel are also assisted by investigators and experts. They are entitled to the assistance of the Defence Office, primarily for legal and logistical matters.

51. As is the case with the Prosecutor, where necessary, defence counsel can seek the assistance of the Lebanese authorities or other States, subject to the cooperation arrangements signed with them (*cf. paragraph 108 below*).

52. **Notes:**

i) If they are indigent, accused are entitled to the services of a duty counsel appointed by the Defence Office. These counsel must meet the criteria in respect of competence and experience set out in the RPE and have been selected by an admission panel following an interview (*Rule 59 of the RPE*).

ii) An accused can elect to conduct his own defence. However, in the interests of justice and a fair and expeditious trial, the Pre-

Trial Judge or the Trial Judge can impose counsel to represent or assist an accused as appropriate. In practice, it will be difficult, or even impossible, for an accused person to conduct his own defence given the complexity of the cases falling under the jurisdiction of the Tribunal and the procedures applicable there (*Rule 59 (F) of the RPE*).

## **2. – Confirmation of the indictment** (*Rules 68 to 76 of the RPE*)

### Features

53. The proceedings for the confirmation of the indictment generally take place *in camera* and *ex parte*. However, before the start of the trial, defence counsel can challenge the validity of the confirmed indictment or that of the ruling made in respect of connected cases.

### Proceedings

54. At the end of the investigation, if he considers that he has sufficient evidence against a suspect, the Prosecutor drafts an indictment and sends it to the Pre-Trial Judge for confirmation. He attaches to it any supporting documents that he deems appropriate.

55. When this procedure relates to a case in the second or third categories (*cf.* paragraphs 23 to 28 above), the Prosecutor, at the latest at the time of the request for confirmation, must submit the evidence establishing that that case is linked to the *Hariri* case.

56. On the basis of the submissions by the Prosecutor and the supporting documents, the Pre-Trial Judge shall confirm or decline to confirm the charges contained in the indictment and, if applicable, rule on the existence of a connection.

57. If he confirms the indictment and, if applicable, the existence of a connection, the Pre-Trial Judge shall issue an arrest warrant or summons to appear. In the event that the arrest warrant is not executed, he can issue an international arrest warrant.

58. Once it has been confirmed, the indictment is made public, unless, under exceptional circumstances and when the interests of justice require, at the request of the Prosecutor, the Pre-Trial Judge decides to place it under seal.

### 3. – Initial appearance and plea (*Rules 98 to 105 of the RPE*)

#### Features

59. After the execution of an arrest warrant or issuance of a summons to appear, or following his transfer to the seat of the Tribunal, the accused shall appear before the Trial Chamber without delay.

60. The initial appearance is public, and takes place in the presence of the accused's counsel.

#### Proceedings

61. At his initial appearance, the accused is officially informed of the charges against him. He is then invited to plead guilty or not guilty within seven days of this appearance.

62. If he admits his guilt in respect of all or some of the charges of which he is accused, the proceedings will only deal with sentencing the accused. The Trial Chamber must nevertheless have first satisfied itself of the sincerity and validity of the plea. If the accused pleads not guilty, the trial will take place in accordance with the usual procedure: the Parties will present their evidence and, if applicable, address the Tribunal in respect of the sentence.

63. **Note:** In order fully to respect the principle of the presumption of innocence, the Pre-Trial Judge or the Trial Chamber Judge shall not place the accused in provisional detention unless the Prosecutor can show that such detention is absolutely necessary in order to:

- i) ensure his presence at the trial;
- ii) guarantee that he will not hinder the course of the investigation or the proceedings, for example by intimidating witnesses; or

- iii) prevent the commission of an act similar to the one for which he is being prosecuted.

#### **4. – Pre-trial phase (Rules 88 to 97 of the RPE)**

##### **Features**

64. The pre-trial proceedings shall, in principle, be held in public and be *inter partes*. However, certain coercive measures, such as the issuing of arrest warrants, search warrants or subpoenas, may be ordered under the seal of confidentiality.

##### **Proceedings**

65. Immediately following confirmation of the indictment and until the start of the trial, the Pre-Trial Judge, in close consultation with the Parties, is responsible for case management.

66. Having powers in particular to coordinate exchanges of evidence, to take all necessary measures to ensure that the proceedings are not unduly delayed, and to seek agreement between the Parties on certain matters, the Pre-Trial Judge prepares the case and, in so doing, ensures that it is tried fairly and expeditiously.

67. The Pre-Trial Judge is also responsible for producing a file containing in particular the list of witnesses called upon to appear; summaries of their evidence; the time anticipated for their evidence to be heard; a summary of the rulings and orders issued; and the points of agreement and disagreement between the Parties. At the start of the trial, this file is sent to the Trial Chamber so that the Chamber may take the necessary measures for the smooth-running of the proceedings.

#### **5. – Trial (Rules 141 to 148 & 167 to 170)**

##### **Features**

68. In order to guarantee the transparency of the proceedings, the trial shall be held in public. However, to ensure the protection of witnesses, or the national security interests of States, proceedings can,

under exceptional circumstances, be held *in camera* and, if applicable, *ex parte*.

69. The proceedings are, in principle, oral, and witnesses and experts give evidence in the presence of the Judges. However, where the interests of justice demand, the Chamber can accept written evidence.

70. The proceedings are, as a general rule, adversarial, and the Parties have equality of arms. However, trials in the absence of the accused can be allowed under certain circumstances (*cf.* paragraphs 110 to 113 below).

71. **Note:** Witnesses and experts appearing before the Trial Chamber do so in the interests of justice, and not for the Party on whose behalf they are giving evidence. They are required to take the oath before giving evidence (*Rule 150 of the RPE*) and, if they do not tell the truth, they shall be liable to prosecution for false testimony (*Rule 152 of the RPE*).

#### Proceedings

72. The Trial Judges play an active part in ensuring the progress of the trial on the basis of the file provided to them by the Pre-Trial Judge and his recommendations. In that context, at the beginning of the trial, they can decide on the number of prosecution and defence witnesses to be called to give evidence, set the time necessary for the Parties to present their cases, and curtail examinations and cross-examinations.

73. The Prosecutor will firstly call his witnesses and experts, who will be questioned in turn by the Judges, the Prosecutor, defence counsel, and the victims or their representatives (if they have been authorised to do so). If they consider that they cannot do this because, for example, the file provided by the Pre-Trial Judge does not give them sufficient information to proceed with the examinations, the Judges can nevertheless allow the Prosecutor to start the examinations in accordance with the procedure traditionally followed by the *ad hoc* tribunals.

74. **Note:** After the evidence has been presented by the Prosecutor, the Trial Chamber may, after having heard the Parties, acquit the accused of one or more charges if it decides that there is insufficient evidence against him.

75. Defence counsel then present their case. They call their witnesses and experts, who are questioned in turn by the Judges, counsel, the Prosecutor, and the victims or their representatives (if they have been authorised to do so). However, the Judges can allow defence counsel to start the examination in accordance with the procedure traditionally followed by the *ad hoc* tribunals.

76. The Judges can call witnesses and experts who were not called by the Parties. The victims or their representatives can also summon witnesses and experts, after having been authorised to do so.

77. At the conclusion of the hearing, a not guilty or guilty verdict is pronounced by a majority of the Judges. Individual or dissenting opinions can be appended. The verdict is pronounced in public session.

## **6. – Sentencing** (*Art. 24 of the Statute & Rule 171 of the RPE*)

### Features

78. Drawing on common law tradition, the proceedings for determining the sentence are distinct from those to establish criminal responsibility.

79. As a general rule, sentencing takes place in public, is *inter partes*, and oral.

### Proceedings

80. If the accused has pleaded guilty or if, at the end of the trial, he is found guilty, his sentence is determined in a separate set of proceedings. During the course of these proceedings, the Parties present so-called “*character*” witnesses, who give evidence as to the character of the accused and the impact of his crimes on the lives of the victims.

81. In passing sentence, the Judges shall follow the general tariff for sentencing applied by international and Lebanese courts and impose upon a convicted person imprisonment for life or for a specified number of years. They can either pronounce separate sentences for each charge or just one sentence punishing the totality of the criminal conduct of the accused.

82. At the conclusion of the proceedings, the sentence is pronounced in open court.

83. **Note:** The convicted person shall serve his sentence in a State designated by the President which is on the list of States that have agreed to accept convicted persons on their territory (*Art. 29 of the Statute*).

#### **7. – Appeal and review (Rules 176 to 193 of the RPE)**

##### **Features**

84. Appeals generally have a suspensive effect: as soon as an appeal is lodged, the sentence that is being challenged can no longer be executed until such time as the appeal ruling has been made.

85. The appeals procedure is, as a general rule, public, *inter partes*, with written briefs and an oral hearing.

##### **Proceedings**

86. Each Party can lodge an appeal against guilty or not guilty verdicts pronounced by the Tribunal.

87. The appeals procedure takes place through an exchange of briefs between the Parties within time-limits laid down in the RPE. This is followed by an oral hearing. The Appeals Chamber can also authorise the Parties to present additional evidence if this was not available during the trial with the application of due diligence.

88. The Judges do not re-try the case *de novo*, but simply rule on: (a) an error on a point of law invalidating the decision; and (b) an error of fact that has occasioned a miscarriage of justice.

89. At the conclusion of the appeal proceedings, the decision is given in open court. The Judges can confirm, set aside, or review the decision and/or the sentence pronounced. In the interests of justice, they can send the accused back to the Trial Chamber for re-trial.

90. In the event of crucial new evidence which was not known during the trial coming to light within the time-limits laid down in the RPE, the Parties can seek a review of the conviction, of the acquittal, or of the sentence passed.

## **V. – Participation of victims**

91. The RPE define the concepts of “*victim*” and “*victim participating in the proceedings*” (1). They specify the modes of participation for victims (2) and entrust a special section with the responsibility to provide any assistance that victims might require (3).

### **1. – Concepts of “victim” and “victim participating in the proceedings” (Rules 2 & 86 of the RPE)**

92. The RPE distinguish between the concepts of “*victim*” and “*victim participating in the proceedings*”.

93. A “*victim*” is deemed to be a natural person who has suffered material or mental harm as a direct result of an attack within the Tribunal’s jurisdiction. Legal persons and those who have suffered indirect harm do not therefore enjoy the status of a victim.

94. In order to preserve the rights of the accused and to ensure the efficiency of the proceedings, not all victims can necessarily participate in the trial. They must have been authorised in advance by the Pre-Trial Judge or the Trial Chamber. With this in mind, the Judges have to take a number of criteria into account, notably: (i) whether the applicant has provided *prima facie* evidence that he is a victim of one of the crimes falling within the jurisdiction of the Tribunal; (ii) whether the applicant’s personal interests are affected; (iii) whether the applicant’s proposed participation is intended to express his views and concerns; and (iv) whether the applicant’s proposed participation would be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial and would impact negatively on the security of the proceedings or of any person involved.

### **2. – Modes of participation in the proceedings (Rules 86 & 87 of the RPE)**

95. In order to ensure the integrity, fairness and efficiency of the proceedings, the RPE regulate the modes of victim participation in the proceedings in four ways:

- i) victims cannot participate in the proceedings until after confirmation of the indictment. They are not therefore authorised to participate during the investigation phase;
- ii) the Pre-Trial Judge can limit the number of victims called to participate in the proceedings and require them to be represented by a single common legal representative;
- iii) not being, strictly speaking, a party to the proceedings, a victim cannot call witnesses to give evidence, tender evidence, examine and cross-examine witnesses, or file motions and briefs unless authorised by a Chamber; and
- iv) when the sentence is determined, in order to safeguard the rights of the accused, victims can only put forward views in respect of the impact of the crimes upon them. They cannot therefore recommend the imposition of a specific sentence.

96. Moreover, the victims authorised to participate in the proceedings may consult all the documents that the Parties exchange among themselves as well as the file prepared by the Pre-Trial Judge, excluding any confidential and *ex parte* documents, however.

### **3. – Victims Participation Section (Rule 51 of the RPE)**

97. There is a section within Registry specialising in matters relating to the participation of victims. It has four main functions:

- i) to ensure that: the victim or his legal representative is kept informed of his rights and of developments in the proceedings;
- ii) to ensure that any documents relating to the victim are communicated to him;
- iii) to provide the victim or his legal representative with any material and legal assistance required; and
- iv) to ensure that the legal representatives provide a good service.

## **VI. – Administration of evidence**

98. The administration of evidence is governed by four overriding principles (1). Additionally, in order to safeguard the rights of the accused, evidence must, as a general rule, be discussed orally in court (2). However, drawing upon Lebanese procedure, in order to facilitate the discovery of the truth, the RPE also allow for written evidence to be adduced (3).

### **1. – General principles** (*Art. 16, para. 2 of the Statute, Rules 148, 149 & 162 of the RPE*)

99. The administration of evidence is governed by the following four principles:

- i) the presumption of innocence: the accused is presumed innocent until such time as his guilt has been established beyond all reasonable doubt;
- ii) the legality of the evidence: evidence must have been gathered by lawful means: a) which do not violate the rights of suspects and accused, and b) which do not materially call into question the reliability or integrity of that evidence;
- iii) the right to admit evidence: the Judges can, in principle, admit any relevant item of evidence that they consider of probative value (subject to the principle of legality referred to at point ii) above). They can take the measures necessary to verify the authenticity of the evidence submitted; and
- iv) freedom to assess evidence: the Judges can freely assess the value of evidence that they consider essential to establish their conviction. Indeed, unlike common law systems, the RPE do not contain any detailed rules governing the admissibility and examination of evidence.

### **2. – Oral evidence** (*Rule 145 of the RPE*)

100. Generally speaking, witnesses and experts appear in person before the Judges. The Parties, and, if they are authorised, victims (or their representatives) can examine and cross-examine them within the

parameters set out in the RPE. This means that, as a general rule, evidence must be discussed *inter partes* and in public.

101. Given the specific nature of terrorist cases, the RPE allow exceptionally for a witness (be it, for example, an intelligence officer or an individual whose life, or that of his close family, is in danger) to give evidence, at any stage in the proceedings, anonymously, i.e. without his identity being revealed to the Parties or even to the Trial Chamber. His deposition is then recorded by the Pre-Trial Judge, who is the only person to have knowledge of his identity and who can ask him any questions he considers necessary, including those sent to him in writing by the Parties or the legal representatives of the victims. He should then send a record of the witness's deposition (if appropriate, in redacted form so as not to reveal the identity of the witness), giving an assessment as to the credibility of the deposition. The Trial Judges cannot, under any circumstances, convict solely on the basis of the evidence of an anonymous witness (*Rules 93 and 159 of the RPE*).

### **3. – Written evidence (*Rules 154 to 158 of the RPE*)**

102. The Tribunal does not have a jury. In keeping with the *ad hoc* tribunals, it is comprised solely of professional judges. With their wealth of professional experience, these Judges are permitted, subject to certain safeguards, to base their opinion on written evidence without the evidence being given orally by a witness in court. The principles governing the admissibility of such evidence and the weight that can be given to it varies according to its nature. Thus:

- i) *documents*, other than written witness statements, are, in principle, admissible;
- ii) *written statements made by a witness not present in court and the transcripts of his depositions* are only admissible if they relate to an issue other than the actions and conduct of the accused;
- iii) *written statements by a witness present in court* are only admissible if that witness: a) attests that they accurately reflect his declaration and what he would say if examined; and b) he agrees to be cross-examined if the other Party requests; and
- iv) *the written statements of an unavailable witness and the transcripts of his depositions* are only admissible if the Judges

are satisfied that: a) the witness is genuinely unavailable; and  
b) his statements or the transcripts thereof are reliable.



## **VII. – International cooperation**

103. Only Lebanon (1) and States that have undertaken to provide assistance to the Tribunal (2) are required to cooperate with it. Third States are not, in principle, under any obligation to the Tribunal (3). However, in order to overcome this obstacle, and to strengthen international cooperation, the RPE provide for various mechanisms (4).

### **1. – Lebanon** (*Art. 15 of the Agreement & Rule 17 of the RPE*)

104. According to the terms of the Agreement, Lebanon is required to cooperate with the Tribunal. It therefore has to respond to any requests for information, cooperation or deferral that the Parties or the Judges may submit.

105. In the event of non-cooperation within the prescribed time-limits, the Pre-Trial Judge or the Trial Chamber may make a judicial finding and the President may enter into consultations with the authorities concerned and, if applicable, inform the Security Council.

### **2. – States required to cooperate** (*Art. 15 of the Agreement & Rule 21 of the RPE*)

106. Certain States can be required to cooperate with the Tribunal if, for example, they have undertaken to do so by means of an agreement or any other instrument. In that case, they are required to respond to requests for information, cooperation or deferral in accordance with the provisions of the Agreement.

107. In the event of non-cooperation within the prescribed time-limit, the procedures for resolving disputes contained in the Agreement or any other instrument shall apply.

### **3. – Third States** (*Rules 14, 15, 18, 19 & 21 of the RPE*)

108. Third States are not, in principle, under any obligation to cooperate with the Tribunal.

109. In the event that these States do not respond to requests for information, cooperation or deferral, the President can nevertheless enter into consultations with the relevant authorities of those States.

**4. – Mechanisms facilitating international cooperation**  
*(Rules 14, 15, 16, 78, 81, 102 to 105, 124 & 125 of the RPE)*

110. In order to strengthen international cooperation, which can be difficult due to the fact, for example, that the constitution of certain States prohibits the extradition of their nationals, the RPE provide that:

- i) the President may conclude judicial cooperation agreements with States;
- ii) the Prosecutor or the Head of Defence may make arrangements to facilitate their activities; and
- iii) measures alternative to detention of the accused can be taken in order to enable the accused to take part in their trial without being physically present at the seat of the Tribunal as it takes place.

## **VIII. – Proceedings in the absence of the accused**

111. As third States are not required in principle to cooperate with the Tribunal, the Tribunal could find itself in an impasse if accused residing in their own country are not transferred. In order to overcome this difficulty, two types of procedure are provided for: measures alternative to detention (1), and proceedings *in absentia* (2).

### **1. – Measures alternative to detention (Rules 103 to 105 of the RPE)**

112. In order to encourage the accused and, indirectly, the State in which he is residing, to cooperate with the Tribunal, the RPE provide for various measures alternative to detention to enable the accused to:

- i) take part in his trial, either by video-conference or through his counsel, from his place of residence without being present at the Tribunal; and
- ii) to travel to the Netherlands under a safe-conduct in order, for example, to appear before the Trial Chamber or to be examined there, without being detained during that visit.

### **2. – Proceedings *in absentia* (Art. 22 of the Statute and Rules 106 to 109 of the RPE)**

113. In accordance with Lebanese law and that of other States with a civil law tradition, the Statute and the RPE allow for proceedings *in absentia*. According to the Statute, proceedings *in absentia* may be instituted under three sets of circumstances, namely, when the accused:

- i) has expressly and in writing waived his right to be present;
- ii) has not been handed over to the Tribunal by the State authorities concerned; or
- iii) has absconded or cannot be found.

114. Moreover, the RPE explicitly exclude proceedings from being considered *in absentia* in situations where the accused is not physically present at the trial, but:

- i) initially appears in person and, although subsequently absent, is represented by counsel present at the proceedings; or
- ii) initially appears in person, by video-conference or through his counsel, and does not expressly waive his right to be present at trial.

115. Furthermore, when proceedings *in absentia* are in progress or have been concluded, the RPE set out the various scenarios that can result from the subsequent appearance of an accused:

- i) *during trial*: the Trial Chamber shall terminate the proceedings and resume *ex novo*, unless the accused explicitly declares that he does not seek a new trial;
- ii) *after sentence has been passed by the Trial Chamber*: generally speaking, the accused can: a) accept the conviction and/or the sentence; or b) seek a re-trial; or c) appeal the conviction and/or the sentence; and
- iii) *following a conviction on appeal*: generally speaking, the accused can: a) accept the conviction and/or the sentence; or b) seek a re-trial; or c) accept the Trial Chamber's acquittal and request a new hearing on appeal.

## **IX. – Protection of confidential and sensitive information**

116. The prosecution and judgement of acts of terrorism require that the Tribunal be able to take all necessary measures to ensure the protection of victims and witnesses called to appear before it (1) and also to ensure the legitimate interests of States and international organisations that provide sensitive information to it (2). Any such measures taken must, of course, take account of the rights of the accused.

### **1. – Security of victims and witnesses (Rules 50, 93, 115, 116 and 124 of the RPE)**

117. According to the RPE, the Pre-Trial Judge and the Trial and Appeal Chambers can take measures to ensure the protection of a victim or witness before, during and after his testimony before the Tribunal.

118. Those measures include, in particular:

- i) the non-disclosure of the identity of a witness or victim until such time as he is placed under the authority of the Tribunal;
- ii) giving evidence via video-conference;
- iii) holding proceedings *in camera*;
- iv) image and voice distortion during testimony;
- v) relocation of a witness or victim to a third State; or
- vi) giving evidence anonymously (*cf. paragraph 99 above*).

119. A Victims and Witnesses Section within Registry fulfils two main functions:

- i) to develop strategies relating to victim and witness protection; and
- to provide victims and witnesses with any administrative, logistical, psychological and medical assistance necessary.

## 2. – National security (Rules 117, 118 and 119 of the RPE)

120. The Pre-Trial Judge can take measures to ensure the protection of the legitimate interests of a State or international entity. In so doing, he must however ensure that those measures do not infringe the rights of the accused. The RPE provide for two sets of circumstances, for each of which they recommend measures aimed at maintaining that delicate balance:

i) *Where information in the possession of a Party may affect the security of a State or international entity and has been obtained under or otherwise subject to ii) below:*

a) the Party that possesses the information can ask the Pre-Trial Judge for it not to be disclosed to the opposing party; and

b) the Pre-Trial Judge can then decide:

- that that information should not be disclosed;
- to order so-called “counterbalancing” measures, i.e. for example, by passing that information in redacted or summarised form, or by referring to other information of a similar nature; or
- where those measures do not suffice to meet the requirements of a fair trial, to ask the Prosecutor to amend or withdraw the charges related to that information.

ii) *Where information in the possession of a Party is provided to him on a confidential basis and affects the security of a State or international entity, he shall not disclose the information or its origin without the consent of the person or entity providing this information. Two hypotheses should be distinguished:*

- a) if the State or the international entity concerned agrees to that information being communicated to the other side:
- the party receiving it may then disclose it and produce it as evidence; and
  - if that information is presented as evidence at trial, neither the Pre-Trial Judge nor the Trial Chamber may: order the disclosure of additional evidence by the State or the international entity concerned; and, in order to obtain

that additional evidence, summons as a witness a representative of that State or that international entity, or order that they appear.

- b) If the State or international entity concerned refuses to consent to the disclosure of that information to the other side:
  - the party that receives it must inform the Pre-Trial Judge in confidence: of the existence of that information, without however revealing its content or origin; of the measures taken to attempt to obtain the consent of the State or the international entity concerned; of the reasons justifying the disclosure of that information to the other side; and of the appropriate “counterbalancing” measures to be taken; and
  - the Pre-Trial Judge can order so-called “counterbalancing” measures, including the withdrawal of one or more of the charges based on that information.

121. **Notes:**

- (i) Under certain circumstances, the Pre-Trial Judge may be assisted in that task by a special counsel appointed by the President from a confidential list of counsel approved by the State or international entity concerned.
- (ii) The decisions of the Pre-Trial Judge are subject to appeal. The Appeal Chamber must make its ruling without having access to the information concerned or knowledge as to its origin.