Denver Journal of International Law & Policy

Volume 44
Number 2 *Winter*

Article 3

January 2016

Contempt of Court a Digest of the Case Law of Contempt of Court at International Criminal Tribunals and the International Criminal Court

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Keywords

Contempt, Contempt of Court, International Criminal Court, Bankruptcy Law, Due Process

CONTEMPT OF COURT
A DIGEST OF THE CASE LAW OF CONTEMPT OF COURT AT INTERNATIONAL CRIMINAL TRIBUNALS AND THE INTERNATIONAL CRIMINAL COURT

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INTRODUCTION

In 2006, Human Rights Watch ("HRW") published on its website a book entitled *Genocide, War Crimes and Crimes Against Humanity, A Topical Digest of the Case Law of the International Tribunal for the Former Yugoslavia* ("ICTY Digest").[1] The 861-page HRW ICTY Digest contained the digests of every trial and appeal judgment of the Yugoslavia Tribunal from its inception in 1993 up through December 31, 2005.[2] It was an indispensible work because none of the commercial entities that comprehensively digested domestic judgments into "headnotes" did the same for the international tribunal decisions. Around 2003, the author personally contacted West Publishing[3] to ask them to consider "headnoting" the Yugoslavia Tribunal judgments. The representative the author spoke to politely declined, explaining that the audience that might use such a product was too limited to justify the expense of such an endeavor.[4]

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1. *See generally* HUMAN RIGHTS WATCH, GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: A TOPICAL DIGEST OF THE CASE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (2006), https://www.hrw.org/reports/2006/icty0706/ICTYweb.pdf.
2. *Id.* at ii.
3. West Publishing is now known as West, a business unit of Thomson Reuters.
4. Interview citation

Attorneys in the United States take for granted the fact that our domestic trial and appellate decisions will be automatically and quickly digested by several sources, organized into topical indexes and incorporated into sophisticated electronic research tools.[5] Those of us practicing at the international tribunals did not have that luxury prior to the ICTY Digest. What was available to us was the full text of the judgments, along with a smattering of our own internal memoranda and articles in the various legal journals scattered around the world.[6] The tribunal judgments are extremely lengthy, typically five hundred pages or more, and scanning these judgments for the kernels of law contained within them was inefficient to say the least. Memoranda and journal articles—while very useful and insightful—analyzed only specific areas of law.

The ICTY Digest represented the first and a very successful attempt at a comprehensive digesting of tribunal law. It was pithy, clear and well-organized. Human Rights Watch followed up the ICTY Digest in 2010 with a 500-page book that digested all of the trial and appeal judgments of the Rwanda Tribunal ("ICTR Digest").[7] For the undersigned author, the two HRW digests are still the first resource to be consulted when conducting research on the law of the tribunals. [8] The one exception to this rule is the law of contempt. While the two Digests dealt with the judgments in the substantive trials, they did not deal with the tribunal judgments in the ancillary contempt of court trials.

All courts are imbued with the power to hold in contempt of court those who interfere with its administration of justice.[9] Interference may range from a spontaneous courtroom disruption to a well-orchestrated plan to intimidate a witness outside of the courtroom. From their inception, the international tribunals have had to prosecute individuals under their contempt powers in order to protect the integrity of their proceedings.[10] To date, nearly seventy judgments have been

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5. *See, e.g.*, THOMSON REUTERS WESTLAW, http://legalsolutions.thomsonreuters.com/law-products/westlaw-legal-research/ (last visited Apr. 9, 2016); LEXISNEXIS, http://www.lexisnexis.com/en-us/gateway.page (last visited Apr. 9, 2016).

6. *See, e.g.*, *All Cases*, INTERNATIONAL CRIMINAL COURT, https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/cases/Pages/cases%20index.aspx (last visited Apr. 9, 2016).

7. *See generally* HUMAN RIGHTS WATCH, GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: A DIGEST OF THE CASE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (2010), https://www.hrw.org/sites/default/files/reports/ictr0110webwcover.pdf.

8. Unfortunately, neither the ICTY nor the ICTY digests have been updated since their release.

9. *See, e.g.*, 18 U.S.C. § 401 (2015) (stating "[a] court of the United States shall have the power to punish by fine or impriosnment . . . such contempt of its authority . . ."); *see also* Silvia D'Ascoli, *Sentencing Contempt of Court in International Criminal Justice*, 5 J. INT'; CRIM. JUST. 735, 739 n.14 (2007) (stating "[i]n common law systems, the power exists independently of legal codification, as [the power to hold in contempt of court] is considered an inherent power").

10. *See* RULES OF PROCEDURE AND EVIDENCE, INT'L TRIB. CRIM.FOR RWANDA, at Rule 77, U.N. Doc. ITR/3/REV.1 (1995), https://www1.umn.edu/humanrts/africa/RWANDA1.htm; RULES OF PROCEDURE AND EVIDENCE, Int'l Crim. Trib. for the former Yugoslavia, at Rule 77, U.N. Doc. IT/32/Rev.43 (1996),

issued against contemnors at international tribunals.

This article is a comprehensive set of digests of the contempt trial and appeal judgments of the international tribunals. In homage the HRW Digests, we follow the format of those books as closely as possible. The article organizes topically the digested judgments[11] from the following tribunals: the ICTY, ICTR, The Special Court for Sierra Leone, The Extraordinary Chambers in the Courts of Cambodia, and The Special Tribunal for Lebanon.[12] It is intended to be a reference tool to assist practitioners and researchers as they familiarize themselves with the law of contempt of court at the international tribunals.

The digest includes judgments publicly available through July 1, 2015. A full list of the judgments included is listed on pages 101-105.

The digest is not intended to be and should not be used as a substitute for the reading of the actual decisions at the tribunals. The full text of the judgments can be found on the respective tribunal websites.

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http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032_Rev43_en.pdf; RULES OF PROCEDURE AND EVIDENCE, Special Court for Sierra Leone, at Rule 77, https://www1.umn.edu/humanrts/instree/SCSL/Rules-of-proced-SCSL.pdf; INTERNAL RULES (REV. 2), Extraordinary Chambers in the Courts of Cambodia, at Rule 35 (2008), http://www.cambodiatribunal.org/wp-content/uploads/2013/08/history_ECCCLaw-Procedure_Internal-Rules.pdf; RULES OF PROCEDURE AND EVIDENCE, Special Tribunal for Lebanon, at Rule 60*bis*, STL/BD/2009/Rev.4 (2009), https://www.stl-tsl.org/images/RPE/20140403_STL-BD-2009-01-Rev-6-Corr-1_EN.pdf. *See generally* INTERNATIONAL CRIMINAL PROCEDURE: RULES AND PRINCIPLES 743-50 (Goran Sluiter et al., eds., 2013).

11. Like the ICTY and ICTR Digests, we digested trial and appellate judgments. Motion practice is not analyzed with one exception. At the Special Tribunal for Lebanon, contempt proceedings were initiated In The Case Against Al Jadeed [CO.] S.A.L./New T.V. S.A.L. (N.T.V.) and Karma Mohamad Tahsin Al Khayat, STL-14-05/T/CJ. Trial proceedings concluded as of June 19, 2015, but to date Chambers have not issued its judgment in the matter. Certain decisions on pre-trial motions were included from this case because of their novelty and importance, and because of the pending nature of the judgment.

12. Referred to collectively as the "tribunals."

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SUMMARY OF JUDGEMENTS AGAINST THE ACCUSED

Al Jadeed [CO.] S.A.L. / New T.V. S.A.L. (N.T.V.), was a television station operating in Lebanon and charged as a legal person by the Special Tribunal for Lebanon on two charges of contempt of court in *Prosecutor v. Ayyash et al.* Al Jadeed was found not guilty on both counts. The first count pertained to a series of broadcast episodes that interfered with the administration of justice by disclosing information about purported confidential witness hence undermining public confidence in the tribunal. The second count pertained to the alleged failure to remove the aforementioned episodes from Al Jadeed's website and official YouTube channel in violation of a court order.

Anto Nobilo, was counsel for the Defense in the *Prosecutor v. Tihomir Blaškić*, and found guilty of contempt for revealing the identity of a protected witness in the *Prosecutor v. Aleksovski* and fined approximately €4,000 euros. The Appeals Chamber overturned the Trial Chamber's decision due to errors of law and fact including the failure to prove willful blindness or actual knowledge, the omission of specific charges in the indictment, and no discussion of what constitutes a knowing violation.

Margaret Fomba Brima, Neneh Binta Bah Jallow, Anifa Kamara and **Ester Kamara**, wives and relatives of the three defendants in *Prosecutor against Alex Tamba Brima, Brima Bazzy Kamara and Santigie Kanu*, pled guilty to contempt for knowingly and willfully threatening and intimidating a witness while she was leaving the court. Each was sentenced to one-year probation subject to certain conditions including good behavior.

Ibrahim Bazzy Kamara and **Santigie Borbor Kanu**, while serving sentences for convictions by the SCSL, were charged with contempt along with **Hassan Papa Bangura** and **Samuel Kargbo** whom they enlisted to induce Prosecution witnesses to recant their testimony in the cases against them. The Trial Chamber found Bangura and Kanu guilty of knowing and willfully interfering with the administration of justice by offering a bribe and otherwise interfering with a witness who testified before the Chamber. Kamara was found guilty for knowing and willfully interfering with the administration of justice by otherwise interfering with a witness and disclosing the identity of a protected witness in knowing violation of a Chamber order. Kargbo pled guilty to knowingly and willfully interfering with the administration of justice by otherwise interfering with a witness. Bangura was sentenced to eighteen months imprisonment with credit for time served. Kargbo was sentenced to eighteen months imprisonment with the entire sentence suspended. Kamara was sentenced to eighteen months, but received credit for two weeks served, leaving a total sentence of one year and 50 days. Kanu was sentenced to one year and 50 days for each count to be served concurrently.

GAA, a witness designated by that pseudonym in *Prosecutor v. Jean de Dieu Kamuhanda*, pled guilty to knowingly and willfully giving false testimony during evidentiary hearings before the Appeals Chamber in Jean de Dieu Kamuhanda's appeal of his conviction. GAA falsely recanted testimony that he was present at Gikomero Parish and witnessed the actions of Jean de Dieu Kamuhanda at the time of a massacre. He stated that he was induced to recant his testimony by Leonidas Nshogoza who offered him a bribe to give false testimony. The Trial Chamber sentenced GAA to nine months imprisonment with time served.

Beqa Beqaj, was a building worker from Kosovo who was charged with contempt, attempted contempt, and incitement of contempt, for threatening, intimidating, and interfering with witnesses B1 and B2 in the *Prosecutor v. Limaj et al.* case by trying to convince them to change their testimony. The Trial Chamber found Beqaj guilty for knowingly and wilfully interfering with potential witness B1 but found the information regarding threats and intimidation of B1 and B2, interference with B2, and attempted and incitement of contempt to be inconclusive. Beqaj was sentenced to four months imprisonment with credit for pre-trial and trial detention.

Courtenay Griffiths, lead defense counsel in the *Prosecutor v. Charles Ghankay Taylor* case, was charged with contempt for knowingly and willfully disclosing the identities of seven protected prosecution witnesses in the Defense's final trial brief. The Trial Chamber found Griffiths not guilty, finding that the alleged disclosure, in a Defense Trial Brief to be filed with the Trial Chamber that was already aware of the identifying information and the names of protected witnesses, did not support a finding of willful intent.

Astrit Haraqija, the Minister of Culture, Youth and Sport, and **Bajrush Morina**, a political advisor to the deputy minister of the Ministry of Culture, Youth and Sport, were found guilty of contempt for interfering with a protected witness, Witness 2, in the *Haradinaj et al.* case. The Trial Chamber imposed terms of imprisonment of three months for Morina and five months for Haraqija. The Appeals Chamber reversed Haraqija's conviction finding that the Trial Chamber erred by placing decisive weight on untested evidence emanating from Morina.

Florence Hartmann, a former spokesperson for the Prosecutor and journalist at the time of the indictment was found guilty of contempt for disclosing the contents and purported effect of Appeals Chamber decisions in a book and article, in violation of a court order. The Trial Chamber fined Hartmann €7,000 euros.

Baton Haxhiu, a journalist from Kosovo, was found guilty of contempt for disclosing the identity of a protected witness in *Prosecutor v. Haradinaj et al.* in an article he both wrote and published. The Trial Chamber found the disclosure to be a knowing violation of a court order as a result of statements in the article that

referred to the witness as a protected witness. The Trial Chamber fined Haxhiu €7,000 euros.

Dragan Jokić, while serving a nine-year sentence for aiding and abetting the extermination, murder, and persecution of Bosnian Muslim men in Srebrenica, was found guilty of contempt for refusing to testify in the case of *Popović et al.* and sentenced to four months imprisonment to be to be served consecutively to any other sentence of imprisonment imposed on Jokic.

Josip Jović, served as the editor-in-chief of *Slobodna Dalmacija*, a Croatian newspaper. He was found guilty of contempt for disclosing confidential information concerning a protected witness in *Prosecutor v. Blaskić* in articles published on his website. The Trial Chamber fined Jović €20,000 euros.

Shefqet Kabashi, a former member of the Kosovo Liberation Army (KLA) and key prosecution witness in the trial of *Haradinaj et al.*, pled guilty to contempt for refusing to testify and failing to appear upon summons by the Trial Chamber. He was sentenced to two months imprisonment with credit for time served.

Karma Khayat, served as Deputy Head of News and Political Programs and was a shareholder of Al Jadeed TV. Khayat was charged by the Special Tribunal for Lebanon on two charges of contempt of court in *Prosecutor v. Ayyash et al.* The first count pertained to a series of broadcast episodes that interfered with the administration of justice by disclosing information about purported confidential witness hence undermining public confidence in the tribunal. The second count pertained to the alleged failure to remove the aforementioned episodes from internet websites after receiving a court order to do so. She was found not guilty on count one and guilty on count two.

Milka Maglov, was counsel for the defense in *Prosecutor v. Radoslav Brdjanin* when she was charged for contempt for allegedly intimidating a witness and disclosing a witness's identity to a third party in violation of a court order. The Trial Chamber dismissed the motion for acquittal and directed an order for the registrar to investigate the allegations. Ultimately, the Trial Chamber terminated the contempt proceedings against Maglov and all charges were withdrawn.

Domagoj Margetić, a Croation journalist, was found guilty of contempt for publishing a confidential witness list from the *Prosecutor v. Tihomir Blaškić* case on his website. The witness list had been provided to him in a previous indictment for contempt that had been withdrawn by the Prosecutor prior to the case being heard. The Trial Chamber found Margetić guilty for disclosure in violation of a court order and interfering with a witness. The Trial Chamber sentenced Margetić to three months imprisonment in addition to a fine of €10,000 euros.

Ivica Marijačić, was editor in chief of *Hrvatski List*, a Croatian newspaper, in which he authored and published an article that revealed the identity of a protected witness in the *Prosecutor v. Tihomir Blaškić* case. The article was published adjacent to an interview with Markica Rebić, former head of the Security Information Service, an intelligence branch of the Croatian government. The article revealed that Rebić provided the name of the witness as well copies and transcripts of the witness's closed session testimony. The Trial Chamber found Marijačić guilty for deliberately and knowingly publishing protected information and Rebić guilty for knowingly disclosing a copy of a witness statement from closed session testimony. The Trial Chamber issued fines of €15,000 euros each.

Kosta Bulatović, a defense witness in the *Prosecutor v. Slobodan Milošević* case was found guilty of contempt for maintaining his refusal to answer questions on cross examination by the Prosecutor after being advised of the consequences of doing so. The Trial Chamber sentenced Bulatović to four months imprisonment suspended for a period of two years.

Léonidas Nshogoza, was an investigator for the defense in the case of *Prosecutor v. Jean de Dieu Kamuhanda*. He was charged with contempt for repeatedly meeting with prosecution witness GAA and potential witness A7/GEX, and for attempting to procure false testimony. The Trial Chamber found Nshogoza guilty on Counts 1 and 2 for knowingly and willfully violating protective orders and sentenced him to ten months imprisonment. The Trial Chamber refused to investigate Nshogoza's allegations of contempt by members of the prosecution.

Dragomir Pećanac, former Security and Intelligence Officer of the Main Staff of the Army of the Republika Srpska, was found guilty of contempt for failing to comply with a subpoena ordering him to appear before the Chamber in *Prosecutor v. Zdravko Tolimir* and to show good cause for his non-compliance. He was sentenced to three months imprisonment with credit for time served.

Ljubiša Petković, former head of the war staff of Vojislav Šešelj's Serb Radical Party, was found guilty of contempt for refusing to comply with a subpoena ordering him to appear as a prosecution witness in the case of *Prosecutor v. Vojislav Šešelj*. In his defense, Petković argued that it was unclear whether the subpoena was addressed to him and that poor health prevented his compliance. The Trial Chamber was unconvinced and sentenced Petković to four months imprisonment with credit for time served.

Jelena Rašić, former case manager on the defense team for Milan Lukić, pled guilty to five counts of contempt for bribing Zuhdija Tabaković in order to provide false testimony, inciting Tabaković and others to offer bribes to potential witnesses, and procuring false statements for two witnesses. The Trial Chamber sentenced Rašić to twelve months imprisonment with eight months suspended and

credit for time served.

Brima Samura, an investigator for the defense team for Tamba Brima, was charged with contempt for allegedly disclosing the name and identity of protected witness, TF1-023, in the case of *Prosecutor against Alex Tamba Brima, Brima Bazzy Kamara and Santigie Kanu*, to the defendants' wives, Margaret Fomba Brima and Neneh Binta Bah Jallow, in knowing violation of a court order. The Trial Chamber found Samura not guilty of contempt, finding that the Independent Counsel failed to prove beyond a reasonable doubt the element of actual knowledge; i.e. that the disclosure was knowingly and willfully done in violation of a Chamber order.

Eric Koi Senessie, former member of the Revolutionary United Front, was found guilty of contempt for offering a bribe to Witness Kabbah, TF1-585, TF1-516, and TF1-274, interfering with TF1-585, influencing Aruna Gbonda, and attempting to influence TF1-274 in order to recant their testimony in *Prosecutor v. Charles Ghankay Taylor.*

Vojislav Šešelj, former head of the war staff of Šešelj's Serb Radical Party, was the first person to be charged with contempt while on trial for crimes against humanity and violations of the laws of war. Šešelj was found guilty for knowingly disclosing the identities of three witness in knowing violation of court orders in a book he authored and published on his website. The Trial Chamber ordered Šešelj to withdraw the book from his website. After failing to comply with the court order, Šešelj was found guilty of contempt two additional times and sentenced to terms of imprisonment of eighteen months and two years, respectively.

Milan Simić and **Branislav Avramović**, were charged with contempt for alleged harassing and bribing a potential defense witness, Witness Agnes, to testify on behalf of Milan Simić. The Trial Chamber found that Witness Agnes's testimony was uncorroborated and could not be proven beyond a reasonable doubt.

Milan Vujin, as lead counsel for Tadić, was charged with knowingly and wilfully interfering with the administration of justice by instructing witnesses to make false statements, interfering with witness testimony, and bribery in the case of *Prosecutor v. Tadić*. Vujin was found guilty of contempt for putting forward a case with statements he knew were false, and seeking to manipulate witnesses by preventing them from naming names. He was found not guilty for attempting to influence witness testimony through head signals and bribes. The Trial Chamber imposed a fine of Dfl15,000 and directed the Registrar to consider striking him from the list of assigned counsel.

Zuhdija Tabaković, pled guilty to knowingly and willfully interfering with

the administration of justice by signing false statements provided to him by Jelena Rasić, former case manager of the Milan Lukić defense team, for use in the *Lukić* case, and by contacting two men identified by the pseudonyms 'X' and 'Y' who agreed to sign false statements and introduce them to Rasić. The Trial Chamber sentenced Tabaković to three months imprisonment with credit for time served.

Prince Taylor, son of Charles Gankay Taylor, was found guilty of knowingly and willfully interfering with witnesses. Those witnesses were Mohammed Kabba TFI-274, TFI-585, Aruna Gbonda, and Eric Senessie, who provided testimony in the case of *Prosecutor v. Taylor*, to recant their previous testimony in that trial through instructions to Eric Senessie. The Single Judge sentenced Taylor to two and half years of imprisonment. The Appeals Chamber reversed the judgment on the ground that a reasonable trier of fact could not have placed decisive weight on Senessie's evidence.

Milan Tupajić, former chief of the crisis staff and President of the Serb municipality of Sokolac, was charged with contempt for failing to comply, or show good cause not to comply, with two subpoenas ordering him to testify as a witness in the case of *Prosecutor v. Radovan Karadžić*. The Trial Chamber sentenced Tupajić to two months imprisonment with credit for time served.

LISTING OF CASES INCLUDED

In The Case Against Al Jadeed [CO.] S.A.L./New T.V. S.A.L. (N.T.V.) and Karma Mohamad Tahsin Al Khayat, STL-14-05/T/CJ, (Contempt Judge), September 18, 2015.

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-AR77, (Appeals Chamber), May 30, 2001.

Prosecutor v. Salim Jamil Ayyash et al., Case No. STL-11-01/PT/CJ/R60bis.1 (Contempt Judge), April 29, 2013.

In the Case Against Akhbar Beirut S.A.L. and Karma Mohammed Tahsin al Khayat, STL-14-05/T/CJ, January 31, 2014.

In the Case Against Akhbar Beirut S.A.L. and Karma Mohammed Tahsin al Khayat, STL-14-05/T/CJ, September 18, 2015.

Prosecutor v. Hassan Papa Bangura et al, Case No. SCSL-11-02-T, (Trial Chamber), September 25, 2012.

Prosecutor v. Beqa Beqaj, Case No. IT-03-66-T-R77, (Trial Chamber), May 27, 2005.

Prosecutor v. Radoslav Brdjanin, Case No. IT-99-36-R77, (Trial Chamber), March 19, 2004.

Prosecutor v. Margaret Fomba Brima et al., Case No. SCSL-05-02/03, (Trial Chamber), September 21, 2005.

Prosecutor v. Alex Tamba Brima et al., Case No. SCSL-04-16-ES (Trial Chamber), March 18, 2011.

Prosecutor v. Nuon Chea et al., Case 002/19-09-2007-ECCC/OCIJ (Pre-Trial Chamber), July 9, 2010.

Prosecutor v. Nuon Chea et al., Case No. 002/07-07-2010-ECCC/PTC10, (Pre-Trial Chamber), September 9, 2010.

Prosecutor v. Nuon Chea, Case No. 002/19-09-2007/ECCC/TC (Trial Chamber), September 9, 2011.

Prosecutor v. Nuon Chea et al., Case No. 002/19-2007/ECCC/TC, (Trial Chamber), May 11, 2012.

Nuon Chea v. Prosecutor, Case No. 002/19-09-2007-ECCC-TC/SC(15) (Supreme Court Chamber), September 14, 2012.

Nuon Chea v. Prosecutor, Case No. 002/19-D9-200-ECCC-TC/SC(08) (Supreme

Court Chamber), April 27, 2012.

Prosecutor v. Astrit Haraqija and Bajrush Morina, Case No. IT-04-844-R77.4, (Trial Chamber), December 17, 2008.

Prosecutor v. Astrit Haraqija and Bajrush Morina, Case No. IT-04-844-R77.4-A, (Appeals Chamber), July 23, 2009.

In the Case Against Florence Hartmann, Case No. IT-02-54-R77.5, (Specially Appointed Chamber), September 14, 2009.

In the Case Against Florence Hartmann, Case No. IT-02-54-R77.5-A, (Appeals Chamber), July 19, 2011.

Prosecutor v. Baton Haxhiu, Case No. IT-04-85-R77.5, (Trial Chamber), July 24, 2008.

Prosecutor v. Dragan Jokić, Case No. IT-05-88-R77.1, (Trial Chamber), March 27, 2009.

Prosecutor v. Dragan Jokić, Case No. IT-05-88-R77.1-A, (Appeals Chamber), June 25, 2009).

Prosecutor v. Josip Jović, Case No. IT-95-14 & 14/2-R77, (Trial Chamber), August 30, 2006.

Prosecutor v. Josip Jović, Case No. IT-95-14 & 14/2-R77-A, (Appeals Chamber), March 15, 2007.

Edouard Karemera, Matthieu Ngirumpatse, Joseph Nziroera v. Prosecutor, Case No. ICTR-98-44-AR91.2, (Appeals Chamber), February 16, 2010.

Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, and Joseph Nziroera, Case No. ICTR-98-44-T, (Trial Chamber) May 18, 2010.

In the Contempt Case of Radislav Krstić, Case No. IT-95-5/18-R77.3 (Trial Chamber), March 27, 2013.

In the Contempt Case of Radislav Krstić, Case No. IT-95-5/18-R77.3 (Trial Chamber), July 18, 2013.

Prosecutor v. Ivica Marijačić and Markica Rebić, Case No. IT-95-14-R77.2, (Trial Chamber), March 10, 2006.

Prosecutor v. Ivica Marijačić and Markica Rebić, Case No. IT-95- 14-R77.2-A, (Appeals Chamber), September 27, 2006.

Prosecutor v. Domagoj Margetić, Case No. IT-95-14-R77.6, (Trial Chamber), February 7, 2007.

Prosecutor v. Slobodan Miloševic, Case No. IT-02-54-R77.4, (Trial Chamber), May 13, 2005.

Prosecutor v. Slobodan Miloševic, Case No. IT-02-54-Misc.5/Misc.6 (Trial Chamber), July 18, 2011.

In the Case Against New TV S.A.L. and Karma Mohamed Thasin Al Khayat, STL-14-05/I/CJ/ (Contempt Judge), January 31, 2014.

Prosecutor v. Augustin Ngirabatware, Case No. ICTR-99-54-T (Trial Chamber), March 12, 2010.

Prosecutor v. Augustin Ngirabatware, Case No. ICTR-99-54-T, (Trial Chamber), February 21, 2013.

Prosecutor v. Pauline Nyiramasuhuko et al., Case No. ICTR-98-42-T (Trial Chamber), July 10, 2001.

Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-01-69-A (Appeals Chamber), December 16, 2010.

Prosecutor v. Leonidas Nshogoza, Case No. ICTR-07-91-T, (Trial Chamber), July 7, 2009.

Leonidas Nshogoza v. Prosecutor, Case No. ICTR-2007-91-A, (Appeals Chamber), March 15, 2010.

Prosecutor v. Leonidas Nshogoza, Case No. ICTR-07-91-A, (Trial Chamber), November 25, 2010.

Leonidas Nshogoza v. Prosecutor, Case No. ICTR-07-91-AR77, (Appeals Chamber), July 7, 2011.

Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, (Trial Chamber), July 9, 2010.

Callixte Nzabonimana v. Prosecutor, Case No. ICTR-98-44D-AR77, (Appeals Chamber), October 28, 2010.

Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, (Trial Chamber), December 8, 2010.

Callixte Nzabonimana v. Prosecutor, Case No. ICTR-98-44D-AR77, (Appeals Chamber), May 11, 2011.

Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T (Trial Chamber), October 21, 2011.

Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T (Trial Chamber), November 18, 2011.

Prosecutor v. Pauline Nyiramasuhuko et al., Case No. ICTR-98-42-T, November 30, 2001.

In the Contempt Case of Dragomir Pećanac, Case No. IT-05-88/2-R77.2, (Trial Chamber), December 9, 2011.

In the Matter of Ljubisa Petkovic, Case No. IT-03-67-R77.1, (Trial Chamber), September 11, 2008.

Decision on Ieng Sary's Rule 35 Application for Judge Marcel Lemonde's Disqualification, Case No. 002/07-12-2009-ECCC/PTC(06) (Pre-Trial Chamber), March 29, 2010.

Decision on Ieng Sary's Appeal Against the Trial Chamber's Decision on Motions for Disqualifications of Judge Silvia Cartwright, Case No. 002/19/09-2007-ECCC-TC/SC(12) (Supreme Court Chamber), April 17, 2012.

Independent Counsel Against Brima Samura, Case No. SCSL-2005-01 (Trial Chamber), October 26, 2005.

In the Matter of Deogratias Sebureze and Maximilien Turinabo, MICT-13-40/41-AR90 (Appeals Chamber), September 5, 2013.

Prosecutor v. Eric Senessie, Case No. SCSL-2011-01-T (Trial Chamber), August 16, 2012.

Prosecutor v. Vojislav Šešelj, Case No. IT-03-67-T (Trial Chamber), July 8, 2008.

Prosecutor v. Vojislav Šešelj, Case No. IT-03-67-R77.2 (Trial Chamber), January 21, 2009.

Prosecutor v. Vojislav Šešelj, Case No. IT-03-67-R77.2, (Trial Chamber), July 24, 2009.

In the Case Against Vojislav Šešelj, Case No. IT-03-67-R77.2-A (Appeals Chamber), May 19, 2010.

Prosecutor v. Vojislav Šešelj, Case No. IT-03-67-R77.3, (Trial Chamber), October 31, 2011.

In the Matter of Vojislav Šešelj, Case No. IT-03-67-R77.4, Judgement (Trial Chamber), June 28, 2012.

Contempt Proceedings Against Vojislav Šešelj, Case No. IT-03-67-R77.4-A, (Appeals Chamber), May 30, 2013.

Prosecutor v. Blagoje Simić et al, Case No. IT-95-9-R77, (Trial Chamber), June 30, 2000.

Prosecutor v. Dusko Tadić, Case No. IT-94-1-A-AR77, (Appeals Chamber), January 31, 2000.

In the Matter of Contempt Proceedings Arising from the Case of Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-12-01-T, (Trial Chamber), October 19, 2012.

Prosecutor v. Prince Taylor, Case No. SCSL-12-02-T (Trial Chamber), January 25, 2013.

Prosecutor v. Prince Taylor, Case No. SCSL-12-02-A (Appeals Chamber), October 30, 2013.

In the Contempt Case of Milan Tupajić, Case No. IT-95-5/18-R77.2, (Trial Chamber), 24 February 2012.

In the Contempt Case of Berko Zećević, Case No. IT-95-5/18R77.1 (Trial Chamber), February 4, 2011.

A) Contempt of Court

i) Statutes

(a) ICTY Rules of Procedure and Evidence, Rule 77: Contempt of Court

1. The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who
   (i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;
   (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber; (Amended 4 Dec 1998)
   (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
   (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness; or

(Amended 4 Dec 1998, amended 13 Dec 2001)

   (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber.

(Amended 4 Dec 1998, amended 13 Dec 2001)

(Amended 10 July 1998, revised 12 Nov 1997, amended 13 Dec 2001)

2. Any incitement or attempt to commit any of the acts punishable under paragraph (A) is punishable as contempt of the Tribunal with the same penalties. (Amended 4 Dec 1998, amended 13 Dec 2001)
3. When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may:
   (i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt;
   (ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings; or
   (iii) initiate proceedings itself.

(Revised 12 Nov 1997, amended 10 July 1998, amended 4 Dec 1998, amended 13 Dec 2001)

4. If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may:
   (i) in circumstances described in paragraph (C)(i), direct the Prosecutor to prosecute the matter; or

(ii) in circumstances described in paragraph (C)(ii) or (iii), issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself.

(Amended 13 Dec 2001)

5. The rules of procedure and evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule. (Amended 13 Dec 2001) The time limit for entering a plea pursuant to Rule 62(A), disclosure pursuant to Rule 66(A)(i), or filing of preliminary motions pursuant to Rule 72(A) shall each not exceed ten days. (Amended 13 Dec 2001, amended 22 July 2009)
6. Any person indicted for or charged with contempt shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned counsel in accordance with Rule 45. (Revised 12 Nov 1997, amended 13 Dec 2001)
7. The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both. (Amended 4 Dec 1998, amended 1 Dec 2000 and 13 Dec 2000, amended 13 Dec 2001)
8. Payment of a fine shall be made to the Registrar to be held in a separate account.
9. If a counsel is found guilty of contempt of the Tribunal pursuant to this Rule, the Chamber making such finding may also determine that counsel is no longer eligible to represent a suspect or accused before the Tribunal or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both. (Amended 13 Dec 2001)
10. Any decision rendered by a Trial Chamber under this Rule shall be subject to appeal. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. Where such decision is rendered orally, the notice shall be filed within fifteen days of the oral decision, unless
    (i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or
    (ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

(Revised 12 Nov 1997, amended 10 July 1998, amended 4 Dec 1998, amended 1 Dec 2000 and 13 Dec 2000)

11. In the case of decisions under this Rule by the Appeals Chamber sitting as a Chamber of first instance, an appeal may be submitted in writing to the President within fifteen days of the filing of the impugned decision. Such appeal shall be decided by five different Judges as assigned by the President. Where the impugned decision is rendered orally, the appeal shall be filed within fifteen days of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Appeals Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

(Amended 12 July 2002)

(b) ICTR Rules of Procedure and Evidence, Rule 77: Contempt of the Tribunal

(A) The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who

(i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;

(ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;

(iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;

(iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness; or

(v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber.

(B) Any incitement or attempt to commit any of the acts punishable under paragraph (A) is punishable as contempt of the Tribunal with the same penalties.

(C) When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may:

(i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt;

(ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings; or

(iii) initiate proceedings itself.

(D) If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may:

(i) in circumstances described in paragraph (C) (i), direct the Prosecutor to prosecute the matter; or

(ii) in circumstances described in paragraph (C) (ii) or (iii), issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself.

(E)The Rules of Procedure and Evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.

(F)Any person indicted for or charged with contempt shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned counsel in accordance with Rule 45.

(G) The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding five years, or a fine not exceeding USD10,000, or both.

(H) Payment of a fine shall be made to the Registrar to be held in a separate account.

(I) If a counsel is found guilty of contempt of the Tribunal pursuant to this Rule, the Chamber making such finding may also determine that counsel is no longer eligible to represent a suspect or accused before the Tribunal or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both.

(J) Any decision rendered by a Trial Chamber under this Rule shall be subject to appeal. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. Where such decision is rendered orally, the notice shall be filed within fifteen days of the oral decision, unless:

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

(K) In the case of decisions under this Rule by the Appeals Chamber sitting as a Chamber of first instance, an appeal may be submitted in writing to the President within fifteen days of the filing of the impugned decision. Such appeal shall be decided by five different Judges as assigned by the President. Where the impugned decision is rendered orally, the appeal shall be filed within fifteen days of the oral decision, unless:

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Appeals Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

(c) SCSL Rules of Procedure and Evidence, Rule 77: Contempt of the Special Court

(A) The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and willfully interferes with its administration of justice, including any person who:

(i) being a witness before a Chamber, subject to Rule 90(E) refuses or fails to answer a question;

(ii) discloses information relating to proceedings in knowing violation of an order of a Chamber;

(iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;

(iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness;

(v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or

(vi) knowingly assists an accused person to evade the jurisdiction of the Special Court.

(B) Any incitement or attempt to commit any of the acts punishable under Sub-Rule (A) is punishable as contempt of the Special Court with the same penalties.

(C) When a Judge or Trial Chamber has reason to believe that a person may be in contempt of the Special Court, it may:

(i) deal with the matter summarily itself;

(ii) refer the matter to the appropriate authorities of Sierra Leone; or

(iii) direct the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings. If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may issue an order in lieu of an indictment and direct the independent counsel to prosecute the matter.

(D) Proceedings under Sub-Rule (C)(iii) above may be assigned to be heard by a single judge of any Trial Chamber or a Trial Chamber.

(E)The rules of procedure and evidence in Parts IV to VIII shall apply, as appropriate, to proceedings under this Rule.

(F)Any person indicted for or charged with contempt shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be entitled to legal assistance in accordance with Rule 45.

(G) The maximum penalty that may be imposed on a person found to be in

contempt of the Special Court pursuant to Sub-Rule (C)(i) shall be a term of imprisonment not exceeding six months, or a fine not exceeding 2 million Leones, or both; and the maximum penalty pursuant to Sub-Rule (C)(iii) shall be a term of imprisonment for seven years or a fine not exceeding 20 million leones, or both.

(H) Payment of a fine shall be made to the Registrar to be held in a separate account.

(I) If a counsel is found guilty of contempt of the Special Court pursuant to this Rule, the Chamber making such finding may also determine that counsel is no longer eligible to appear before the Special Court or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both.

(J) Any conviction rendered under this Rule shall be subject to appeal.

(K) Appeals pursuant to this Rule shall be heard by a bench of at least three Judges of the Appeals Chamber. In accordance with Rule 117 such appeals may be determined entirely on the basis of written submissions.

(L)In the event of contempt occurring during proceedings before the Appeals Chamber or a Judge of the Appeals Chamber, the matter may be dealt with summarily from which there shall be no right of appeal or referred to a Trial Chamber for proceedings in accordance with Sub-Rules (C) to (I) above.

(d) Extraordinary Chambers Internal Rule 35 provides, in relevant part:

1. The ECCC may sanction or refer to the appropriate authorities, any person who knowingly and wilfully interferes with the administration of justice, including any person who:
   a) discloses confidential information in violation of an order of the Co-Investigating Judges or the Chambers;
   b) without just excuse, fails to comply with an order to attend, or produce documents or other evidence before the Co-Investigating Judges or the Chambers;
   c) destroys or otherwise tampers in any way with any documents, exhibits or other evidence in a case before the ECCC;
   d) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with a witness, or potential witness, who is giving, has given, or may give evidence in proceedings before the Co-Investigating Judges or a Chamber;
   e) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an order of the Co-Investigating Judges or the Chambers;
   f) knowingly assists a Charged Person or Accused to evade the jurisdiction of the ECCC; or

g) incites or attempts to commit any of the acts set out above.

2. When the Co-Investigating Judges or the Chambers have reason to believe that a person may have committed any of the acts set out in sub-rule 1 above, they may:
   a) deal with the matter summarily;
   b) conduct further investigations to ascertain whether there are sufficient grounds for instigating proceedings; or
   c) refer the matter to the appropriate authorities of the Kingdom of Cambodia or the United Nations.

[....]

4. Cambodian Law shall apply in respect of sanctions imposed on a person found to have committed any act set out in sub-rule 1.
5. If a lawyer is found to have committed any act set out in sub-rule 1, the Co-Investigating Judges or the Chambers making such finding may also determine that such conduct amounts to misconduct of a lawyer pursuant to Rule 38.
6. Any decision under this Rule shall be subject to appeal before the Pre-Trial Chamber or the Supreme Court Chamber as appropriate. A notice of appeal to the Pre-Trial Chamber shall be filed within 15 (fifteen) days of the date of decision or of its notification, as appropriate. An appeal to the Supreme Court Chamber shall be filed in compliance with Rules 105(2) and 107(1).

(e) Rome Statute of the International Criminal Court

ARTICLE 70

Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:
   (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;
   (b) Presenting evidence that the party knows is false or forged;
   (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
   (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
   (e) Retaliating against an official of the Court on account of duties performed by that or another official;
   (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.

2. The principles and procedures governing the Court's exercise of jurisdiction over offences under this article shall be those provided for in the Rules of Procedure and Evidence. The conditions for providing international cooperation to the Court with respect to its proceedings under this article shall be governed by the domestic laws of the requested State.
3. In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.
4. (a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;

(b) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

ARTICLE 71

Sanctions for misconduct before the Court

1. The Court may sanction persons present before it who commit misconduct, including disruption of its proceedings or deliberate refusal to comply with its directions, by administrative measures other than imprisonment, such as temporary or permanent removal from the courtroom, a fine or other similar measures provided for in the Rules of Procedure and Evidence.
2. The procedures governing the imposition of the measures set forth in paragraph 1 shall be those provided for in the Rules of Procedure and Evidence.

(f) Special Tribunal for Lebanon Rules of Procedure and Evidence

RULE 60 *BIS*

Contempt and Obstruction of Justice

(added 10 November 2010, amended and renumbered 20 February 2013)

(A) The Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, upon assertion of the Tribunal's jurisdiction according to the Statute. This includes, but is not limited to, the power to hold in contempt any person who:

(i) being a person who is questioned by or on behalf of a Party in

circumstances not covered by Rule 152, knowingly and wilfully makes a statement which the person knows is false and which the person knows may be used as evidence in proceedings before the Tribunal, provided that the statement is accompanied by a formal acknowledgement by the person being questioned that he has been made aware about the potential criminal consequences of making a false statement;

(ii) being a witness before a Judge or Chamber refuses or fails to answer a question without reasonable excuse including the situation described in Rule 150(F);

(iii) discloses information relating to proceedings in knowing violation of an order of a Judge or Chamber;

(iv) without reasonable excuse fails to comply with an order to appear or produce documents before a Judge or Chamber;

(v) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Judge or Chamber, or a potential witness;

(vi) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or

(vii) threatens, intimidates, engages in serious public defamation of, by statements that are untrue and the publication of which is inconsistent with freedom of expression as laid down in international human rights standards, offers a bribe to, or otherwise seeks to coerce, a Judge or any other officer of the Tribunal.

(B) Any incitement or attempt to commit any of the acts under paragraph (A) is punishable as contempt of the Tribunal with the same penalties.

(C) The President shall designate a Contempt Judge in accordance with the relevant Practice Direction to hear cases of contempt and obstruction of justice. The Contempt Judge shall also hear cases under Rule 152.

(D) A Party believing that a person is in contempt under paragraph (A) (i) may so inform the relevant Judge or Chamber, submitting, where appropriate, supporting material. In other cases, a Party or any other interested person may inform the Judge or Chamber of an allegation of contempt or obstruction of justice. The Judge or Chamber shall refer the matter to the President for referral to a Contempt Judge.

(E) When the Contempt Judge has reason to believe that a person may be in contempt of the Tribunal, he may:

(i) invite the Prosecutor to consider investigating the matter with a view to the preparation and submission of an indictment for contempt;

(ii) where the Prosecutor indicates a preference not to investigate the matter or submit an indictment himself, or where in the view of the Contempt Judge, the Prosecutor has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Contempt Judge as to whether there are sufficient grounds for instigating contempt proceedings; or

(iii) initiate proceedings himself.

(F) If the Contempt Judge considers that there are sufficient grounds to proceed against a person for contempt, he may:

(i) in circumstances described in paragraph (E) (i), direct the Prosecutor to prosecute the matter; or

(ii) in circumstances described in paragraph (E) (ii) or (iii), issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter himself.

(G) With respect to contempt under paragraph (A) (i), the Contempt Judge shall undertake the steps in paragraph (E) or (F) only if there is *prima facie* evidence that the alleged contempt has led to a material interference with the administration of justice.

(H) The rules of procedure and evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.

(I) Any person indicted for or charged with contempt shall be afforded the rights envisaged in Rule 69 and, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned counsel in accordance with Rule 59.

(J) The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.

(K) Payment of a fine shall be made to the Registrar to be held in a separate account.

(L) If a counsel is found guilty of contempt of the Tribunal pursuant to this Rule, a relevant Judge or Chamber may determine that counsel is no longer eligible to represent a suspect or accused before the Tribunal, or that such conduct amounts to misconduct of counsel pursuant to Rule 60, or both.

(M) A decision of a Contempt Judge finalising a contempt case may be appealed to a bench of three judges designated by the President in accordance with the relevant Practice Direction. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. The Appellant's brief shall be filed within fifteen days of filing of the notice of appeal.

(g) Mechanism for International Criminal Tribunals Rules of Procedure and Evidence

RULE 90

Contempt

(A) The Mechanism in the exercise of its inherent power may, with respect to proceedings before the ICTY, the ICTR, or the Mechanism, hold in contempt those who knowingly and wilfully interfere with the administration of justice, including any person who:

(i) being a witness before a Chamber or a Single Judge, contumaciously refuses or fails to answer a question;

(ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber or a Single Judge;

(iii) without just excuse fails to comply with an order by a Chamber or Single Judge, including an order to attend before or produce documents before a Chamber or a Single Judge;

(iv) threatens, intimidates, causes any injury, or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber or a Single Judge, or a potential witness; or

(v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Chamber or a Single Judge.

(B) Any incitement or attempt to commit any of the acts punishable under paragraph (A) is punishable as contempt of the ICTY, the ICTR, or the Mechanism with the same penalties.

(C) When a Chamber or a Single Judge has reason to believe that a person may be in contempt of the ICTY, the ICTR, or the Mechanism, it shall refer the matter to the President who shall designate a Single Judge who may:

(i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt;

(ii) where the Prosecutor, in the view of the Single Judge, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Single Judge as to whether there are sufficient grounds for instigating contempt proceedings; or

(iii) initiate proceedings himself

(D) Subject to Article 6 of the Statute, if the Single Judge considers that there are sufficient grounds to proceed against a person for contempt, the Single Judge may:

(i) in circumstances described in paragraph (C)(i), direct the Prosecutor to prosecute the matter; or

(ii) in circumstances described in paragraph (C)(ii) or (iii), issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter.

(E) The Rules shall apply *mutatis mutandis* to proceedings under this Rule. The time limit for entering a plea pursuant to Rule 64(A), disclosure pursuant to Rule 71(A)(i), or filing of preliminary motions pursuant to Rule 79(A) shall each not exceed ten days.

(F) Any person indicted for or charged with contempt shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned Counsel in accordance with Rule 43.

(G) The maximum penalty that may be imposed on a person found to be in contempt shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 50,000 Euros or the equivalent thereof, or both.

(H) Payment of a fine shall be made to the Registrar to be held in a separate account.

(I) If a Counsel is found guilty of contempt of the ICTY, the ICTR, or the Mechanism pursuant to this Rule, the Single Judge making such finding may also determine that Counsel is no longer eligible to represent a suspect or accused before the ICTY, the ICTR, or the Mechanism or that such conduct amounts to misconduct of counsel pursuant to Rule 47, or both.

(J) Any decision disposing of a contempt case rendered by a Single Judge under this Rule shall be subject to appeal as of right. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. Where such decision is rendered orally, the notice shall be filed within fifteen days of the oral decision, unless:

(i) the Party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging Party is notified of the oral decision; or

(ii) the Single Judge has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

The appellant shall file an appeal brief within fifteen days after filing the notice of appeal. The respondent shall file a response within ten days of the filing of the appeal brief, and the appellant may file a reply within four days of the filing of the response.

ii) General elements

(a) inherent power to hold in contempt

(i) to prevent frustration of jurisdiction, and to safeguard judicial functions

Tadić, (Appeals Chamber), January 31, 2000, para. 13: "There is no mention in the Tribunal's Statute of its power to deal with contempt. The Tribunal does,

however, possess an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction which is expressly given to it by that Statute is not frustrated and that its basic judicial functions are safeguarded. As an international criminal court, the Tribunal must therefore possess the inherent power to deal with conduct which interferes with its administration of justice. The content of that inherent power may be discerned by reference to the usual sources of international law."

Tadić, (Appeals Chamber), January 31, 2000, para. 18: "A power in the Tribunal to punish conduct which tends to obstruct, prejudice or abuse its administration of justice is a necessity in order to ensure that its exercise of the jurisdiction which is expressly given to it by its Statute is not frustrated and that its basic judicial functions are safeguarded. Thus the power to deal with contempt is clearly within its inherent jurisdiction."

Chea, (Trial Chamber), May 11, 2012, para. 21: "[T]he purpose of prohibiting conduct which tends to prejudice the administration of justice is to ensure that the exercise of a court's jurisdiction is not frustrated and that its basic judicial functions are safeguarded. This clearly requires that outside actors refrain from seeking to influence a court's judges or from acting in a way that could be perceived as an attempt to do so. Given the significance of these principles to the proper functioning of the judiciary, courts have usually sought to reaffirm them whenever comments are made that appear to contravene the presumption of innocence, even where no issues of criminal responsibility arise."

Chea, (Supreme Court Chamber), April 27, 2012, para. 30: "As internationally firmly established, the power to deal with contempt - that is, with interference with the administration of justice - accrues to any court by virtue of its judicial role, and 'is necessary to ensure that the Tribunal's exercise of jurisdiction is not frustrated and its basic judicial functions are safeguarded.' It is therefore of utmost importance that throughout the entire course of proceedings judges retain the power 'to take measures necessary to ensure the integrity of proceedings, which ultimately maintain respect for justice.' Were any of the ECCC judicial organs not entrusted with this fundamental prerogative, the Court would be unable to guarantee a fair trial to an accused and thus properly fulfil its mission."

Krstić, (Trial Chamber), July 18, 2013, para. 16: "Although contempt of court is not expressly articulated in the Statute of the Tribunal ("Statute"), it is well established that the Tribunal possesses an inherent power, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly bestowed to it by the Statute is not frustrated and that its basic functions are safeguarded. The Tribunal therefore possesses an inherent power to deal with conduct interfering with its administration of justice."

(ii) conduct that interferes with the administration of justice

Aleksovski, (Appeals Chamber), May 30, 2001, para. 30: "As an international criminal court, the Tribunal possesses the inherent power to deal with conduct which interferes with its administration of justice. Such interference may be by way of conduct which obstructs, prejudices or abuses the Tribunal's administration of justice. Those who knowingly and wilfully interfere with the Tribunal's administration of justice in such a way may therefore be held in contempt of the Tribunal."

Aleksovski, (Appeals Chamber), May 30, 2001, para. 36: "Both the purpose and the scope of the law of contempt to be applied by this Tribunal is to punish conduct which tends to obstruct, prejudice or abuse its administration of justice in order to ensure that its exercise of the jurisdiction which is expressly given to it by its Statute is not frustrated and that its basic judicial functions are safeguarded."

Beqaj, (Trial Chamber), May 27, 2005, para. 9: "The explicit reference in the Rules to the Tribunal's inherent power to hold in contempt those who knowingly and wilfully interfere with its administration of justice was made in accordance with the terms of Article 15 of the Tribunal's Statute ("Statute"), which mandates the judges of the Tribunal to adopt the Tribunal's Rules. The power to provide for contempt is not expressly mentioned in the Statute of the Tribunal but is part of the inherent powers of judges to deal with any issues necessary for the conduct of matters falling within their jurisdiction. The Tribunal's Chambers have consistently affirmed the Tribunal's inherent power, which exists independently of any statutory reference, to punish conduct which tends to obstruct, prejudice or abuse the Tribunal's administration of justice. This power is necessary to ensure that the Tribunal's exercise of jurisdiction is not frustrated and its basic judicial functions are safeguarded. The Rules express only the general contours of the offense of contempt."

Marijačić and Rebić, (Appeals Chamber), September 27, 2006, para. 23: "[P]ursuant to Rule 77 and in accordance with its consistent jurisprudence, the International Tribunal possesses an inherent power to deal with conduct interfering with its administration of justice. It has thus been explicitly held that the International Tribunal has both the subject matter and personal jurisdiction to prosecute contempt."

Petković, (Trial Chamber), September 11, 2008, para. 25: "[T]he necessity to punish all conduct which tends to obstruct, prejudice or abuse the administration of justice is intended to ensure that the exercise of the jurisdiction which is expressly given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded."

Ayyash et al., (Contempt Judge), April 29, 2013, para. 12: "Rule 60 *bis* allows the Tribunal to hold accountable those who knowingly and willingly interfere with its administration of justice. This includes those who disclose information relating to proceedings in knowing violation of a judicial order, those who threaten and intimidate witnesses, and those who threaten, intimidate, or seek to coerce persons from complying with an obligation under a judicial order. An individual who commits, attempts to commit, or incites others to commit these acts is guilty of contempt of this Tribunal or obstruction of justice." *See also New TV S.A.L. and Al Khayat*, (Contempt Judge), January 31, 2014, para. 9; *Akhbar Beirut S.A.L. and Al Amin*, (Contempt Judge), January 31, 2014, para. 9.

(iii) sources of international law on contempt

Aleksovski, (Appeals Chamber), May 30, 2001, para. 30: "The *content* of that inherent power, however, must be discerned by reference to the usual sources of international law, and not by reference to the wording of Rule 77, although the Appeals Chamber held that each of the formulations in the current Rules 77(A) to (D), *when interpreted in the light of that statement of the Tribunal's inherent power*, falls within – but does not limit – that inherent power, as each clearly amounts to knowingly and wilfully interfering with the Tribunal's administration of justice."

1. London Charter/International Military Tribunals

Tadić, (Appeals Chamber), January 31, 2000, para. 13: "There is no specific customary international law directly applicable to this issue. There is an international analogue available, by way of conventional international law, in the Charter of the International Military Tribunal (an annexure to the 1945 London Agreement) which gave to that tribunal the power to deal summarily with 'any contumacy' by 'imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges.'"

Beqaj, (Trial Chamber), May 27, 2005, para. 10: "The inherent power of an international court to deal with any issues necessary for the conduct of matters falling within its jurisdiction has been affirmed by other international courts. Article 18(c) of the Charter of the International Military Tribunal (an annex to the 8 August 1945 London Agreement) gave the Military Tribunal power to deal summarily with 'any contumacy' by 'imposing appropriate punishment.' The United States Military Tribunals sitting in Nuremberg (and acting in accordance with the Allied Control Council Law No. 10 of 20 December 1945, which incorporated the Charter of the International Military Tribunal) interpreted their judicial power as including the power to punish contempt of court and dealt with three contempt matters."

2. International Court of Justice

Beqaj, (Trial Chamber), May 27, 2005, para. 11: "The International Court of Justice, in the *Northern Cameroons* case in 1963 and then in the *Nuclear Tests* Case in 1974, reiterated the existence of the inherent jurisdiction of an international judicial organ 'enabling it to take such action as may be required, on the one hand to ensure that the exercise of its jurisdiction over the merits, if and when established, shall not be frustrated, and on the other, to provide for the orderly settlement of all matters in dispute to ensure the observance of the "inherent limitations on the exercise of the judicial function" of the Court, and to "maintain its judicial character" (*Northern Cameroons*, Judgement, I.C.J. Reports 1963, at p. 29). Such inherent jurisdiction, on the basis of which the Court is fully empowered to make whatever findings may be necessary for the purposes just indicated, derives from the mere existence of the Court as a judicial organ established by the consent of States, and is conferred upon it in order to that its basic judicial functions may be safeguarded.'"

3. common and civil law

Tadić, (Appeals Chamber), January 31, 2000, para. 15: "Historically, the law of contempt originated as, and has remained, a creature of the common law. The general concept of contempt is said to be unknown to the civil law, but many civil law systems have legislated to provide offences which produce a similar result."

Aleksovski, (Appeals Chamber), May 30, 2001, para. 40: "[T]he offence of contempt (at least so far as the common law is concerned) is a protean one. It is concerned with many widely diverse types of conduct and, for different types of conduct to amount to contempt, different states of mind are required."

Aleksovski, (Appeals Chamber), May 30, 2001, para. 41: "[T]he law of contempt originated as, and has remained, a creature of the common law and, as a general concept, is unknown to the civil law. It is therefore to the common law that reference must *initially* be made to determine the scope of the law of contempt – recognising of course that an international tribunal such as this Tribunal must take into account its different setting within the basic structure of the international community."

Beqaj, (Trial Chamber), May 27, 2005, para. 12: "The power of a court to hold in contempt of court those who interfere with its administration of justice is a well established principle both in major common law and civil law legal systems, and it is based on the postulate that no judge may deliver justice without possessing the necessary power to deal with ancillary matters in order to ensure the integrity of judicial proceedings. In common law systems these powers exist independently of legal codification and in civil law legal systems such power is

exercised on the basis of a codified reference."

(iv) not designed to buttress mere affronts or insults

Tadić, (Appeals Chamber), January 31, 2000, para. 16: "[T]he law of contempt as developed at common law is not designed to buttress the dignity of the judges or to punish mere affronts or insults to a court or tribunal; rather, it is justice itself which is flouted by a contempt of court, not the individual court or judge who is attempting to administer justice."

Petković, (Trial Chamber), September 11, 2008, para. 26: "[T]he rules applicable to contempt are not intended to buttress the dignity of the judges or to punish mere affronts or insults to a court or tribunal; rather, it is justice itself which is flouted by a contempt of court, not the court or judge who is attempting to administer justice."

(v) Rule 77 does not limit the Tribunal's inherent power over contempt

Tadić, (Appeals Chamber), January 31, 2000, para. 12: "Contempt of the Tribunal is dealt with in Rule 77 of the Tribunal's Rules of Procedure and Evidence. That Rule identifies a number of specific situations which are stated to constitute contempt of the Tribunal, but Rule 77(E) provides: Nothing in this Rule affects the inherent power of the Tribunal to hold in contempt those who knowingly and wilfully interfere with its administration of justice."

Aleksovski, (Appeals Chamber), May 30, 2001, para. 38: "The Tribunal's inherent power to deal with contempt has necessarily existed ever since its creation, and the extent of that power has not altered by reason of the amendments made to the Tribunal's Rules, or by reason of its decisions interpreting or clarifying that power."

Aleksovski, (Appeals Chamber), May 30, 2001, para. 39: "[T]he formulations in Rule 77 of various situations which amount to contempt do not limit the Tribunal's inherent jurisdiction to punish for contempt."

(vi) judges may adopt rules of procedure and evidence

Tadić, (Appeals Chamber), January 31, 2000, para. 24: "Care must be taken not to treat the considerable amount of elaboration which has occurred in relation to Rule 77 over the years as if it has produced a statutory form of offence enacted by the judges of the Tribunal, notwithstanding the form in which Sub-rules (A) to (D) may be expressed. Article 15 of the Tribunal's Statute gives power to the

judges to adopt only-

> [...] *rules of procedure and evidence* for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.

That power does not permit rules to be adopted which constitute *new* offences, but it does permit the judges to adopt *rules of procedure and evidence* for the conduct of matters falling within the inherent jurisdiction of the Tribunal as well as matters within its statutory jurisdiction."

(vii) adheres to the principle of legality

Tadić, (Appeals Chamber), January 31, 2000, para. 24: "That power does not permit rules to be adopted which constitute *new* offences, but it does permit the judges to adopt *rules of procedure and evidence* for the conduct of matters falling within the inherent jurisdiction of the Tribunal as well as matters within its statutory jurisdiction."

Beqaj, (Trial Chamber), May 27, 2005, para. 14: "[T]he Chamber endorses the Appeals Chamber's statement in the *Kordić and Cerkez* case that 'the nullem crimen sine lege principle does not require that an accused knew the specific *legal* definition of each element of a crime he committed.'"

Akhbar Beirut S.A.L. and Al Amin, (Contempt Judge), January 31, 2014, para. 12: "It has been argued that, while an international tribunal undoubtedly has inherent power to make rules governing the prosecution of contempt, prosecuting as contempt conduct not explicitly prohibited in the rules is inconsistent with the principle of legality. I agree, however, with the Appeals Chamber of the ICTY that holding in contempt any knowing and wilful interference with a tribunal's administration of justice comports with the principle of legality. In any event, international case-law provides adequate notice that deliberate interference with the administration of justice, expressed in general terms, is an indictable offence. That determining the exact content of the tribunal's power requires 'reference to the usual sources of international law' is perfectly compatible with due process. As a matter of common sense, intentionally broadcasting or publishing information about purportedly confidential witnesses potentially constitutes such interference." *See also New TV S.A.L. and Al Khayat,* (Contempt Judge), January 31, 2014, para. 12.

(viii) authority to investigate contempt

Nyiramasuhuko et al., November 30, 2001. para. 8: "[T]he Tribunal's competence to address contempt is not exclusively vested in its Chambers, the parties also benefit from this competence. Indeed, as officers of the court, they

have a duty not only to report to the Chamber on conduct affecting the administration of justice which comes to their notice, but also to carry on investigations in order to support their allegations by facts."

(b) liability for contempt

(i) standard of proof

1. legal entities

Al Jadeed, (Trial Chamber), September 18, 2015, para. 67: "In light of the above and for the following reasons, I conclude that it is most appropriate in the circumstances to look to Lebanese law on corporate liability."

Al Jadeed, (Trial Chamber), September 18, 2015, para. 72: "Thus, inferring from Lebanese law, in order for the corporate Accused to be held criminally responsible for either count, the prosecution must: (1) establish the criminal responsibility of a specific natural person; (2) demonstrate that, at the relevant time, such natural person was a director, member of the administration, representative (someone authorized by the legal person to act in its name) or an employee/worker (who must have been provided by the legal body with explicit authorization to act in its name) of the corporate Accused; and (3) prove that the natural person's criminal conduct was done either (a) on behalf of or (b) using the means of the corporate Accused."

Akhbar Beirut S.A.L. and Al Amin, (Contempt Judge), January 31, 2014, para. 19: "On its face, Rule 60 *bis* neither embraces nor rejects such liability in the contempt context. Rather, it simply affirms the Tribunal's inherent power to hold in contempt '*those* who knowingly and wilfully interfere with its administration of justice' and details what must be done when a Contempt Judge 'has reason to believe that a *person* may be in contempt of the Tribunal.' No other provision of Rule 60 *bis* in terms limits the Rule's application to natural persons. Notably, Rule 60 *bis* (J), which sets forth the maximum permissible penalties for contempt, allows for the imposition of a monetary fine as a stand-alone penalty. The mere fact that the Rule contemplates imprisonment as one possible penalty, a penalty uniquely applicable to natural persons, does not therefore exclude punishment of legal persons by other means. Further, because Rule 60 *bis* (H) makes Parts Four to Eight of the Rules applicable to Rule 60 his proceedings *mutatis mutandis*, an interpretation appropriate to the contempt context is required. On a literal interpretation any such Rules could be compatible with a proceeding implicating a legal person." *See also New TV S.A.L. and Al Khayat,* (Contempt Judge), January 31, 2014, para. 19.

Akhbar Beirut S.A.L. and Al Amin, (Contempt Judge), January 31, 2014, para. 24: "[I]n order to ensure the administration of justice consonant with Article 28, Rule 60 *bis* must be read to cover acts of contempt allegedly undertaken by legal

persons. Under the highest procedural standards, corporate entities cannot be any more entitled than natural persons to interfere with the judicial process." *See also New TV S.A.L. and Al Khayat,* (Contempt Judge), January 31, 2014, para. 24.

Akhbar Beirut S.A.L. and Al Amin, (Contempt Judge), January 31, 2014, para. 27: "The international trend toward criminal liability for legal persons further supports the case for such liability, which has developed over the past two centuries with recent adoption by civil law States, notably France, whose legal system has underlain much of Lebanon's. As legal persons, and in particular the limited liability company, have assumed ever greater prominence as actors in legal and commercial affairs, domestic jurisdictions have progressively recognized the need to hold them criminally accountable for their conduct. In the mid-19th century, Lord Denman CJ stated that, '[t]here can be no effectual means for deterring from an oppressive exercise of power for the purpose of gain, except the remedy by an indictment against those who truly commit it, that is, the corporation acting by its majority.'" *See also New TV S.A.L. and Al Khayat,* (Contempt Judge), January 31, 2014, para. 27.

Akhbar Beirut S.A.L. and Al Amin, (Contempt Judge), January 31, 2014, para. 28: "This reasoning is the more powerful today, and particularly in the contempt context, where corporate entities hold great power in their ability to publicly broadcast and otherwise disseminate information. It would not only be naive but dangerous to accept that only natural persons can interfere with the administration of justice. To limit criminal liability for contempt to individual natural persons risks undermining the justice process; for the actual and most powerful culprits of any proved interference with justice would go untried. Accepting such an approach here would be contrary to the purpose of Rule 60 *bis* in light of Article 28 of the Statute and the international trend embracing corporate criminal liability. Applying the law of contempt to legal persons reflects the highest procedural standards. I decline to impute to the Plenary an intention to immunize legal persons against liability for interfering with due process. I conclude that Rule 60 *bis* extends to acts of contempt allegedly undertaken by legal persons." *See also New TV S.A.L. and Al Khayat,* (Contempt Judge), January 31, 2014, para. 28.

2. judges

Sary, (Pre-Trial Chamber), March 29, 2010, para. 13: "[T]here are no provisions in procedural rules established at the international level and it further has not found any jurisprudence from international tribunals which provides for jurisdiction to sanction judges for behavior amounting to interference with the administration of justice. Similarly to the provisions in the ECCC the only provisions concerning the acts of judges in their cases can be challenged in an application for disqualification. The provisions in the Internal Rules are there consistent with international standards."

Sary, (Supreme Court Chamber), April 17, 2012, para. 14: "[T]he jurisprudence has not conclusively explained whether judges are in effect immune from jurisdiction under Internal Rule 35 or whether certain categories of judicial conduct are excluded from the provision's *ratione materiae.* In that regard, the Chamber notes that the language of Internal Rule 35 does not expressly exempt any category of individual and indeed applies to 'any person.'. By contrast, by specifying the content of 'interference with the administration of justice' in subparagraphs (a) through (f), the rule clearly contemplates limits on the spheres of conduct to which it applies. Therefore a judge is at least in principle within the jurisdiction of Internal Rule 35, provided that her alleged conduct rises to the level of an interference with the administration of justice within the meaning of that Rule."

Sary, (Supreme Court Chamber), April 17, 2012, para. 18: "Internal Rule 35 applies to 'any person' whose conduct which 'interferes with the administration of justice.' Although examples of such conduct are provided in subparagraphs (a) through (f), the word 'including' in the introductory clause of Internal Rule 35(1) indicates that this list is not exhaustive."

(c) conduct punishable as contempt does have limits

Sary, (Supreme Court Chamber), April 17, 2012, para. 19: "However, the scope of Internal Rule 35 is not limitless. Each of the specific prohibitions set out in Internal Rules 35(a) through (f) entails an effort to frustrate the mandate or functioning of the Court. Paragraphs (a), (b) and (e) concern non-compliance with an order of the Court. Paragraphs (c) and (d) concern interference with the evidence to be given in proceedings before the Court. Paragraph (f) concerns assistance to an accused person to evade the jurisdiction of the Court. In accordance with the *esjudem generis* rule of statutory construction, only conduct that is analogous to these enumerated grounds should be considered to be within the scope of Internal Rule 35. This analysis is supported by the plain meaning of the phrase 'interference with the administration of justice,' which suggests an effort to obstruct the functioning or execution of court proceedings."

Chea (Supreme Court Chamber), September 14, 2012, para. 34: "Each of the specific prohibitions set out in Rule 35(1)(a) through (g) entails an effort to frustrate the mandate and functioning of the Court. Sub-paragraphs (a), (b) and (e) concern noncompliance with an order of the Court. Sub-paragraphs (c) and (d) address interference with evidence to be given in proceedings before the Court. Sub-paragraph (f) governs assistance to an accused person for purposes of evading the jurisdiction of the Court. In accordance with the *ejusdem generis* rule of statutory construction, only conduct analogous to these enumerated grounds should be considered to be within the scope of Rule 35."

(d) *mens rea*

(i) knowingly and willfully interfering with the administration of justice

Aleksovski, (Appeals Chamber), May 30, 2001, para. 30: "[T]he Tribunal possesses the inherent power to deal with conduct which interferes with its administration of justice . . . Those who knowingly and wilfully interfere with the Tribunal's administration of justice in such a way may therefore be held in contempt of the Tribunal."

Nshogoza, July 7, 2009, para. 155: "Rule 77 (A) provides the general *actus reus* and *mens rea* for contempt. The *actus reus* is interference with the administration of justice, and the *mens rea* is the knowledge and will to interfere."

Nshogoza, (Trial Chamber), July 7, 2009, para. 174: "The Chamber considers that the plain language of the Rule dictates that any deliberate (knowing and wilful) conduct that interferes with the administration of justice is sufficiently serious to be punished as contempt."

Chea, (Supreme Court Chamber), September 14, 2012, para. 37: "Under Rule 35(1), proscribed conduct must be 'knowing and willful.' Strict liability is not foreseen. In other words, there is no liability under Rule 35 on the basis of an objective fact itself and irrespective of whether the conduct in question stems from direct intent, indifference or the lack of realisation of the nature and/or consequences of the conduct. Indeed, the procedural options available to the Court pursuant to Rule 35(2) refer to 'a person [who] may have committed any of the acts set out in sub-rule I.' Rule 35(4), likewise, speaks of 'sanctions imposed on a person found to have committed any act set out in sub-rule 1.' Thus, pursuant to the plain language of Rule 35, the whole regime is designed to provide a punitive response, that is, sanction or referral to appropriate authorities of a person attributed with intent to interfere with the administration of justice."

Ngirabatware, (Trial Chamber), February 21, 2013, para. 4: "Pursuant to Rule 77(A)(i)-(v) of the Rules, the Tribunal may hold in contempt those who knowingly and wilfully interfere with its administration of justice. Rule 77(A)(iv) provides that this includes any person who 'threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness.' In addition, Rule 77(B) provides that '[a]ny incitement or attempt to commit any of [these acts] is punishable as contempt of the Tribunal with the same penalties.'"

(ii) specific intent to interfere with the administration of justice

1. required

Beqaj, (Trial Chamber), May 27, 2005, para. 22: "For each *actus reus* encompassed by Rule 77(A), the Prosecution must establish that the accused acted wilfully and knowingly, that is with specific intent to interfere with the Tribunal's administration of justice. Such intent may be separately proved or inferred from the facts of each case."

Brdjanin, (Trial Chamber), March 19, 2004, para. 16: "There are differences in the states of mind required for each of the various types of conduct envisaged in Rule 77(A). The *mens rea* has to be established on a case by case basis in relation to each of the conducts referred to in Rule 77(A)(i) to (v). For each form of criminal contempt, the Prosecution must establish that the accused acted with specific intent to interfere with the Tribunal's due administration of justice."

Brdjanin, (Trial Chamber), March 19, 2004, para. 24: "As to the *mens rea* of the offence of intimidation of a witness as contempt of court, the Prosecution must establish that the accused had knowledge that his conduct is likely to intimidate a witness. Proof is also required that the accused acted with the specific intent to interfere with the Tribunal's due administration of justice."

Chea, (Trial Chamber), May 11, 2012, para. 22: "Where criminal culpability is alleged, the threshold for intervention by a Chamber is higher. In this regard, a person may be found liable for interference with the administration of justice and sanctions imposed only where it is shown that the individual in question has 'knowingly and wilfully' interfered or attempted to interfere with the administration of justice. ICTY Rule 77(A) contains an equivalent provision, which ICTY Trial Chambers have interpreted to require proof of "specific intent to interfere with the Tribunal's administration of justice.' The Chamber agrees with this interpretation and adopts it in respect of Internal Rule 35(1). For the reasons that follow, no issue of criminal culpability arises in this case pursuant to this sub-rule."

Samura, (Trial Chamber), October 26, 2005, para. 18: "Rule 77(A) provides specifically that any person may be punished for contempt for knowingly and wilfully interfering with the administration of justice. I am of the view that the *mens rea* requirement of 'knowingly and wilfully' does apply to those various types of conduct listed under Rule 77 and forms part of the specific intent."

2. not required

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 53: "The Chamber, however, considers this jurisprudence to have been developed by the more recent Appeals Chamber rulings that a violation of a Chamber's order *as such* interferes with the Tribunal's administration of justice. This Chamber considers that any knowing and wilful conduct in violation of a Chamber's order meets the requisite *mens rea* for contempt and is committed with the requisite intent to interfere with the administration of justice."

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 55: "[T]he definition of *mens rea* for conduct under Rule 77(A)(ii) as including an additional element, *i.e.* the 'specific intent to interfere with the administration of justice,' [is] an erroneous characterisation of the law."

Šešelj, (Trial Chamber), July 24, 2009, para. 27: "[T]he *mens rea* element for the form of commission of contempt charged under Rule 77(A)(ii) is solely the knowledge of the alleged contemnor that his disclosure of a particular piece of information is done in violation of an order of a Chamber. Therefore, the *Amicus* Prosecutor was not required to demonstrate that the Accused had intended to intimidate the Protected Witnesses by disclosing their identities."

(e) *actus reus*

(i) conduct that interferes with the administration of justice

Aleksovski, (Appeals Chamber), May 30, 2001, para. 30: "[T]he Tribunal possesses the inherent power to deal with conduct which interferes with its administration of justice. Such interference may be by way of conduct which obstructs, prejudices or abuses the Tribunal's administration of justice."

1. conduct that undermines confidence in protective measures

Marijačić and Rebić, (Trial Chamber), March 10, 2006, para. 50: "Any deliberate conduct which creates a real risk that confidence in the Tribunal's ability to grant effective protective measures would be undermined amounts to a serious interference with the administration of justice. Public confidence in the effectiveness of such orders is absolutely vital to the success of the work of the Tribunal."

2. conduct that undermines tribunal's legitimacy

Chea, (Supreme Court Chamber), September 14, 2012, para. 35: "The Supreme Court Chamber further observes that the significance of a particular act's interference with the administration of justice under Rule 35(1) is measured by its abstract as well as by its concrete impact. Actual interference with the course of proceedings is not necessary where the conduct undermines the Court's legitimacy with the parties and the general public."

3. conduct that undermines tribunal's appearance of independence and impartiality

Chea, (Supreme Court Chamber), September 14, 2012, para. 36: "[A]ctions undermining the independence and impartiality of ECCC judges, such as exerting pressure, constitute interference prohibited under Rule 35(1). Other prohibited conduct may include causing disorder in the courtroom, harassing Court officials and staff, undermining the logistical functioning of the Court, and otherwise bringing about circumstances that damage the Court's appearance of independence or impartiality. Notably, damaging the Court's appearance of independence and impartiality is interference as such, not merely an 'appearance of interference.'"

(ii) Rule 77 conduct punishable as contempt is non-exhaustive

Al Jadeed, (Trial Chamber), September 18, 2015, para. 38: "This count does not fall under one of the specific types of conduct listed in Rule 60 *bis* (A) (i)-(vii). However, as I have held and the Appeal Panel confirmed, Rule 60 *bis* (A) explicitly contemplates prosecution for conduct beyond that which is listed. Any conduct charged under Rule 60 *bis* (A) must, if proven, amount to a knowing and wilful interference with the Tribunal's administration of justice. The particular *actus reus* and *mens rea* will depend on the charge in each case."

Beqaj, (Trial Chamber), May 27, 2005, para. 21: "Rule 77(A)(iv) gives a list of possible *actus reus* of the offence of contempt of court as follows: threat, intimidation, causing of injury, offering of a bribe and otherwise interfering with a witness or a potential witness. The expression 'otherwise interfering with a witness or a potential witness' is an indication that Rule 77 gives a non-exhaustive list of modes of commission of contempt of the Tribunal."

Samura, (Trial Chamber), October 26, 2005, para. 16: "[T]his inherent power subsists independently of the specific terms of Rule 77 of the Rules. Therefore, Rule 77 must be read in that context and therefore I am of the opinion that Rule 77

does not, and was not intended to, limit the Special Court's inherent contempt of court powers. As such, Rule 77(A) identifies and describes certain conduct relating to the offense of contempt of court throughout a defined, though non-exhaustive list of acts."

Margetić, (Trial Chamber), February 7, 2007, para. 13: "Although Rule 77 of the Rules enumerates specific acts of contempt, the list it provides is non-exhaustive, as the formulations in Rule 77 of various situations which amount to contempt do not limit the Tribunal's inherent jurisdiction to punish for contempt."

Margetić, (Trial Chamber), February 7, 2007, para. 14: "Rule 77(A) of the Rules does not contain any legal or factual elements separate from Rules 77(A)(ii) and 77(A)(iv) of the Rules in that Rule 77(A) contains both the material element [i.e. interference with the administration of justice] and the mental element [i.e. knowledge and wilfulness] of the offence of contempt whereas sub-Rules 77(A)(ii) and 77(A)(iv) are non-exhaustive examples of the material elements by which the offence of contempt is constituted. Therefore, if the Prosecution establishes a sufficiently clear factual basis for an accused's liability under Rule 77(A)(ii) or Rule 77(A)(iv) of the Rules, it has automatically established a sufficiently clear basis for an accused's liability under Rule 77."

Margetić, (Trial Chamber), February 7, 2007, para. 64: "Rule 77(A)(iv) of the Rules gives a non-exhaustive sub-list of possible forms of *actus reus* of the offence of contempt of the Tribunal, including 'threat, intimidation, causing of injury, offering of a bribe and otherwise interfering with a witness or a potential witness.'"

Milošević, (Trial Chamber), July 18, 2011, para. 11: "None of the enumerated acts apply to the present situation. However the list of acts contained in Rule 77 (A) (i)-(v) of the Rules is not exhaustive, merely representing examples of acts interfering with the Tribunal's administration of justice. Accordingly, contempt can also be committed through knowingly and willfully interfering with the Tribunal's administration of justice in other ways. The meaning of the term 'administration of justice' in Rule 77 of the Rules is to be interpreted in light of the enumerated *actūs rei* in Rule 77 (A), which concern matters closely related to the functioning of the judicial proceedings before the Tribunal."

(iii) includes non-criminal offenses

Chea, (Supreme Court Chamber), September 14, 2012, para. 33: "[T]he Supreme Court Chamber must determine the normative import of Rule 35(1). . . . this sub-rule articulates, by way of illustration, an array of conduct which may qualify as an interference with the administration of justice. It does not purport to define proscribed conduct exhaustively, nor is it limited in scope by reference to the Cambodian Criminal Code. Such open-ended construction demonstrates that

the notion of interference under Rule 35 is broad, and acts falling thereunder may or may not be criminal in nature. . . . Rule 35, in conjunction with Rule 21, contemplates procedures addressing both crimes against the administration of justice (as defined in the criminal statutes of Cambodia) and non-criminal offences against the administration of justice. Absent relevant Cambodian law, it ultimately falls on the ECCC Judges and Chambers to determine those non-criminal offenses that fall within the scope of Rule 35."

Chea, (Supreme Court Chamber), September 14, 2012, para. 38: "[T]o the extent Rule 35 applies to non-criminal acts, the intent element remains to be defined so as to encompass culpability as is appropriate to effecting the protection that the proscription seeks to establish. In this regard, we consider that the requirement of specific intent construed by ICTY Trial Chambers for criminal contempt of court is too strict for administrative offences. Rather, it is sufficient to establish that the conduct which constituted the violation was deliberate and not accidental. However, acts that *prima facie* lack the requisite intent are excluded from the ambit of Rule 35 barring the initiation of proceedings or application of sanctions."

(iv) seriousness of conduct has minimal probative value

Nshogoza, (Trial Chamber), July 7, 2009, para. 174: "The Chamber notes that the plain language of Rule 77 makes no mention of a 'gravity threshold' or 'sufficiently serious conduct.' Rather it states that the Tribunal 'may hold in contempt those who knowingly and wilfully interfere with its administration of justice.'"

Nshogoza, (Appeals Chamber), March 15, 2010, para. 57: "Considerations of the gravity of an accused's conduct or his underlying motivations are rather to be assessed in connection with the decision to initiate proceedings or in sentencing...the minimal gravity surrounding a violation of a Chamber's order should be understood, not as a finding that the conduct was not contempt, but as an exercise of the discretion of the Chamber not to initiate proceedings in such circumstances."

Chea, (Trial Chamber), May 11, 2012, para. 30. "The principles contained in Internal Rule 87(1) and the relevant international jurisprudence establish that criminal sanctions may only be imposed against an individual where it is shown that he or she knowingly and wilfully interfered with the administration of justice."

iii) Underlying offenses

(1) 'contumaciously refuses or fails to answer questions'

(a) *mens rea*

***(i)* knowingly and willfully interfering with the administration of justice**

Milošević, (Trial Chamber), May 13, 2005, para. 16: "[T]he test of "knowingly and wilfully" interfering with the Tribunal's administration of justice by 'contumaciously' refusing to answer questions was satisfied when the Respondent deliberately refused to comply with an order of the Trial Chamber to answer questions and persisted in that refusal when fully advised of the position and given a further opportunity to respond. Since the Chamber had made an order which it considered to be within its powers and appropriate in the circumstances, the Respondent was bound to answer the questions put by the Prosecutor, whatever his views of that order and the propriety of proceeding in the absence of the Accused."

Jokić, (Trial Chamber), March 27, 2009, para. 12: "Rule 77(A)(i) is imposing criminal liability where a witness knowingly and willfully interferes with the Chamber's administration of justice by persistently refusing or failing to answer a question without reasonable excuse while being a witness before the Chamber."

Jokić, (Appeals Chamber), June 25, 2009, para. 31: "'[C]ontumaciously' falls within the *actus reus* of the offence and therefore does not create an additional element of the *mens rea.*"

Krstić, (Trial Chamber), July 18, 2013, para. 18: "The Appeals Chamber held that Rule 77(A)(i) imposes a criminal liability where a witness knowingly and wilfully interferes with the Chamber's administration of justice by persistently refusing or failing to answer a question without reasonable excuse while being a witness before the Chamber. This includes individuals who have been subpoenaed by a chamber of the Tribunal, who appear before it and then refuse to testify."

(b) *actus reus*

(i) refusal to answer questions in violation of a court order

Jokić, (Appeals Chamber), June 25, 2009, para. 30: "[I]f 'contumacious' is defined as 'persistent.' it is in fact more relevant to the *actus reus* than the *mens rea* in the sense of it being a repeated or continuous refusal . . . In light of the phrase 'malgre la demande qui lui en est faite par la Chambre' (despite the Chamber's request), the crime under Rule 77(A) of the Rules must be consider committed not when the witness merely refuses to answer a question put by one of

the parties, but rather when it is a refusal maintained in the face of the Chamber's request to answer the question of a party or a question put by the Chamber itself."

(2) 'discloses information relating those proceedings'

(a) *mens rea*

(i) in knowing violation of a court order

Aleksovski, (Appeals Chamber), May 30, 2001, para. 19: "[T]the issue involves both a question of interpretation as to what must be proved to establish that the violation was a knowing one (a legal question), and a question of fact, as to whether Mr[.] Nobilo's state of mind fell within that interpretation."

Al Jadeed, (Trial Chamber), September 18, 2015, para. 54: "To satisfy the *mens rea*, the prosecution must prove that the Accused had knowledge that the disclosure was in violation of an order."

Milošević, (Trial Chamber), May 13, 2005, para. 17: "Where the issue is one of compliance with an order of the court, the 'knowledge' required is knowledge of the making of the order requiring that the Respondent should answer. There is no question of special knowledge of the consequences of such refusal being required. It is an obvious consequence of refusing to comply with an order of the Chamber that the administration of justice is interfered with."

Marijačić and Rebić, (Trial Chamber), March 10, 2006, para. 18: "The *mens rea* element of contempt, when charged under Rule 77(A)(ii), is the knowledge of the alleged contemnor of the fact that his disclosure of particular information is done in violation of an order of a Chamber."

Margetić, (Trial Chamber), February 7, 2007, para. 37: "As a general *mens rea* requirement for contempt, the Prosecution must prove that the accused knowingly and wilfully interfered with the administration of justice. Pursuant to Rule 77(A)(ii) of the Rules, it must also prove 'the knowledge of the alleged contemnor of the fact that his disclosure of particular information is done in violation of an order of a Chamber.'"

Margetić, (Trial Chamber), February 7, 2007, para. 51: "The Trial Chamber now turns to the *mens rea* element of contempt under Rule 77(A)(ii) of the Rules, that is, whether the Accused knew that his disclosure of information was done in violation of an order of a Chamber. The Trial Chamber also considers the mental element of contempt under Rule 77(A) of the Rules, that is, whether the Accused knowingly and wilfully interfered with the administration of justice."

Haxhiu, (Trial Chamber), July 24, 2008, para. 11: "The *mens rea* required for the relevant form of commission of contempt in this case, is the knowledge of the Accused that his disclosure of particular information is done in violation of an order of a Trial Chamber."

Nshogoza, (Trial Chamber), July 7, 2009, para. 179: "[S]ince, as held by the Appeals Chamber, any violation of a Chamber's order interferes with its administration of justice, it follows that any knowing and wilful conduct in violation of a Chamber's order meets the requisite *mens rea* for contempt, that is, it is committed with the requisite intent to interfere with the administration of justice."

Nshogoza, (Trial Chamber), July 7, 2009, para. 157: "The *mens rea* for contempt by disclosure of information contrary to Rule 77 (A)(ii) is knowledge by the accused that his disclosure of information was done in violation of a court order. It is sufficient to establish that the act which constitutes the violation is deliberate and not accidental."

Šešelj, (Trial Chamber), January 21, 2009, para. 5: "The *mens rea* of contempt, when charged under Rule 77(A)(ii) is the knowledge of the alleged contemnor of the fact that his disclosure of particular information is done in violation of an order of a Chamber."

Šešelj, (Trial Chamber), July 24, 2009, para. 9: "The *mens rea* element for this form of commission of contempt is the knowledge of the alleged contemnor that his disclosure of a particular piece of information is done in violation of an order of a Chamber."

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 22: "The *mens rea* required for this particular form of contempt is the disclosure of particular information in knowing violation of a Chamber's order. Generally, it is sufficient to establish that the conduct which constituted the violation was deliberate and not accidental. This may be inferred from circumstantial evidence. Where it is established that an accused had knowledge of the existence of a Court order, a finding of intent to violate the order will almost necessarily follow."

Šešelj, (Appeals Chamber), May 19, 2010, para. 26: "[T]he requisite *mens rea* for a violation of Rule 77(A)(ii) of the Rules is knowledge that the disclosure in question is in violation of an order of a Chamber. Such knowledge may be proven by evidence other than the accused's statement expressing a particular intent to disclose protected witness identities." *See also Šešelj*, (Trial Chamber), October 31, 2011, para. 32.

Šešelj, (Trial Chamber), June 28, 2012, para. 41: "The *mens rea* is knowledge of the facts that make the conduct of the accused illegal, that is, knowledge that the disclosure was in violation of a Chamber's order."

1. actual knowledge

Al Jadeed, (Trial Chamber), September 18, 2015, para. 54: "Proof of actual knowledge of the order, which can be inferred from a variety of circumstances, satisfies this element . . ."

Aleksovski, (Appeals Chamber), May 30, 2001, para. 44: "It can never be said that a requirement of *actual* knowledge may be established by anything less than *actual* knowledge. But the acceptance in certain areas of the law of wilful blindness as establishing knowledge is of some assistance in determining whether, in any particular case, a 'knowing' violation implies a requirement of *actual* knowledge of what has been violated. What must be identified in the present context is the type of conduct which can properly be described as 'knowing and willful,' which interferes with the Tribunal's administration of justice and which is appropriately dealt with as contempt, with its liability for imprisonment or a substantial fine."

Margetić, (Trial Chamber), February 7, 2007, para. 37: "'Proof of actual knowledge of an order would clearly satisfy this element, and actual knowledge may be inferred from a variety of circumstances.' This can be fulfilled by actual knowledge, wilful blindness or reckless indifference."

Šešelj, (Trial Chamber), July 24, 2009, para. 9: "Proof of actual knowledge of an order, which can be inferred from a variety of circumstances, satisfies this element." *See also Šešelj*, (Trial Chamber), October 31, 2011, para. 32.

Taylor, (Trial Chamber), October 19, 2012, para. 36: "[T]there are three ways that a violation of Rule 77 (A)(ii) may be satisfied; that is by proof of (i) actual knowledge that the disclosure is in violation of a Chamber's order; (ii) wilful blindness to the existence of the order; or (ii) reckless indifference to the existence of the order."

2. wilful blindness

Aleksovski, (Appeals Chamber), May 30, 2001, para. 43: "Proof of knowledge of the existence of the relevant fact is accepted in such cases where it is established that the defendant suspected that the fact existed (or was aware that its existence was highly probable) but refrained from finding out whether it did exist because he wanted to be able to deny knowledge of it (or he just did not want to find out that it

did exist). In some cases, it has been suggested that such a state of mind is capable of giving rise to the inference of *actual* knowledge, but in most cases it is merely said to be sufficient to prove knowledge."

Aleksovski, (Appeals Chamber), May 30, 2001, para. 45: "[W]ilful blindness to the existence of the order in the sense defined is, in the opinion of the Appeals Chamber, sufficiently culpable conduct to be more appropriately dealt with as contempt."

Aleksovski, (Appeals Chamber), May 30, 2001, para. 51: "There can be no wilful blindness to the existence of an order unless there is first of all shown to be a suspicion or a realisation that the order exists."

Aleksovski, (Appeals Chamber), May 30, 2001, para. 54: "In most cases where it has been established that the alleged contemnor had knowledge of the existence of the order (either *actual* knowledge or a wilful blindness of its existence), a finding that he intended to violate it would almost necessarily follow."

Al Jadeed, (Trial Chamber), September 18, 2015, para. 54: "Proof of actual knowledge of the order, which can be inferred from a variety of circumstances, satisfies this element, as does proof of wilful blindness For wilful blindness, the prosecution must first show that the Accused had a suspicion or realization of the order's existence. In addition, the Accused must have refrained from finding out whether it did exist, so as to be able to deny knowledge of it."

Marijačić and Rebić, (Trial Chamber), March 10, 2006, para. 18: "[A]ctual knowledge may be inferred from a variety of circumstances. In addition, wilful blindness to the existence of an order is sufficient. However, to demonstrate wilful blindness it must first be shown that the alleged contemnor had a suspicion or realisation of the order's existence."

3. reckless indifference is sufficient

Aleksovski, (Appeals Chamber), May 30, 2001, para. 54: "There may, however, be cases where such an alleged contemnor acted with reckless indifference as to whether his act was in violation of the order. In the opinion of the Appeals Chamber, such conduct is sufficiently culpable to warrant punishment as contempt, even though it does not establish a specific intention to violate the order. The Appeals Chamber agrees with the prosecution that it is sufficient to establish that the act which constituted the violation was deliberate and not accidental."

Haxhiu, (Trial Chamber), July 24, 2008, para. 11: "[E]ither willful blindness or reckless indifference to the existence of the order granting protective measures to a witness is sufficiently culpable conduct to be dealt with as contempt."

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 22: "Wilful blindness to the existence of the order, or reckless indifference to the consequences of the act by which the order is violated may satisfy the mental element."

Šešelj, (Trial Chamber), July 24, 2009, para. 9: "[E]ither wilful blindness or reckless indifference to the existence of the order granting protective measures to a witness is sufficiently culpable conduct to be dealt with as contempt." *See also Šešelj*, (Trial Chamber), October 31, 2011, para. 32.

4. reckless indifference is insufficient

Al Jadeed, (Trial Chamber), September 18, 2015, para. 54: "Mere negligence in failing to ascertain whether an order had been made is of an insufficiently culpable nature to constitute contempt. In my view, under a proper understanding of the expression 'knowing violation of an order,' the same is true for basic recklessness."

5. public issuance of an order constitutes notice

Haxhiu, (Trial Chamber), July 24, 2008, para. 27: "On both occasions during these public pronouncements, the Trial Chamber made the nature of the protective measures granted to the Witness unambiguously clear to those present in the courtroom and to the public, in that by assigning a pseudonym to him, the Trial Chamber protected the Witness's identity. Additionally, the Witness's testimony in Haradinaj was not given in closed session, which is a measure available to Trial Chambers wishing to also protect a testimony's content. Therefore, the Defence argument that the Accused was under the impression that it was only the Witness's testimony that was protected, and not his identity, fails. Furthermore, the Defence argument that no written decision was served upon the Accused is without merit because the binding effect of the Trial Chamber's order does not depend on personal service of that order. It is not to be expected from the Tribunal to serve upon every journalist, or every member of the public, a written order that certain information cannot be published. Given its nature, a decision or order publicly issued by the Tribunal constitutes public notice. Furthermore, the Trial Chamber notes that the parties have agreed that the Witness's identity was protected at the time of the publication."

(ii) mere negligence is never enough

Aleksovski, (Appeals Chamber), May 30, 2001, para. 45: "Mere negligence in failing to ascertain whether an order had been made granting protective measures to a particular witness could never amount to such conduct . . . Negligent conduct could be dealt with sufficiently, and more appropriately, by way of disciplinary action, but it could never justify imprisonment or a substantial fine even though the unintended consequence of such negligence was an interference with the Tribunal's administration of justice."

Al Jadeed, (Trial Chamber), September 18, 2015, para. 54: "Mere negligence in failing to ascertain whether an order had been made is of an insufficiently culpable nature to constitute contempt."

Haxhiu, (Trial Chamber), July 24, 2008, para. 11: "[M]ere negligence in failing to ascertain whether an order had been made granting protective measures to a particular witness could never amount to contempt."

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 22: "Mere negligence in failing to ascertain whether an order had been made is insufficient."

Šešelj, (Trial Chamber), July 24, 2009, para. 9: "[M]ere negligence in failing to ascertain whether an order had been made granting protective measures to a particular witness could never amount to contempt." *See also Šešelj*, (Trial Chamber), October 31, 2011, para. 33.

(iii) misunderstanding of law is not a defense

Jović, (Trial Chamber), August 30, 2006, para. 21: "[A] person's misunderstanding of the law does not excuse a violation of it. *Mens rea* is established by an accused's knowledge of an order and his or her conduct in breach of it . . . If mistake of law were a valid defence in such cases, orders would become suggestions and a Chamber's authority to control its proceedings, from which the power to punish contempt in part derives, would be hobbled. Further, a Tribunal unable to guarantee the confidentiality of protected witnesses' identities or testimony would become less able to hear the often pivotal evidence that such witnesses provide, as those doubtful of the Tribunal's ability to protect information likely would decline to testify. That would in turn impair the ability of the Tribunal to perform its function of justly adjudicating alleged crimes."

Jović, (Appeals Chamber), March 15, 2007, para. 27: "[K]nowledge of the legality of the Trial Chamber's order is not an element of the *mens rea* of contempt; to hold otherwise would mean that an accused could defeat a prosecution for contempt by raising the defence of a mistake of law. The *mens rea*

that attaches to contempt under Rule 77(ii) requires only knowledge of the facts that make the conduct of the accused illegal; that is, knowledge that the disclosure was in violation of an order of the Chamber. It is not a valid defence that one did not know that disclosure of the protected information in violation of an order of a Chamber was unlawful."

(b) *actus reus*

(i) disclosure in violation of court order

Šešelj, (Trial Chamber), January 21, 2009, para. 5: "Disclosure of information, within the meaning of Rule 77(A)(ii), is to be understood as revelation of information the confidential status of which has not been lifted, including the publication of a witness' identity where protective measures have been granted to avoid such disclosure."

Nzabonimana, (Trial Chamber), July 9, 2010, para. 14: "The Chamber recalls that under Rule 77 (A)(ii) any person who discloses information relating to [the] proceedings in knowing violation of an order of a Chamber may be held in contempt."

Jović, (Appeals Chamber), March 15, 2007, para. 30: "Any defiance of an order of a Chamber *per se* interferes with the administration of justice for the purposes of a conviction for contempt."

Marijačić and Rebić, (Appeals Chamber), September 27, 2006, para. 44: "The language of Rule 77 shows that a violation of a court order as such constitutes an interference with the International Tribunal's administration of justice."

Milošević, (Trial Chamber), May 13, 2005, para. 17: "Proper control of court proceedings by the Chamber is an essential part of the administration of justice. Any defiance of an order of the court interferes with the administration of justice."

Nshogoza, (Trial Chamber), July 7, 2009, para. 157: "Under Rule 77 (A)(ii)), the *actus reus* for contempt is the physical act of disclosing confidential information relating to proceedings before this Tribunal in an objective breach of a court order."

Marijačić and Rebić, (Trial Chamber), March 10, 2006, para. 17: "The *actus reus* of this particular form of commission of contempt is the physical act of disclosure of information relating to proceedings before the Tribunal, when such disclosure would breach an order of a Chamber. The word disclosure is here to be understood in its literal sense, being the revelation of something that was previously confidential."

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 20: "[T]he physical act of disclosure of information relating to proceedings before the Tribunal, where such disclosure breaches an order of a Chamber. Disclosure is to be understood as the revelation of information that was previously confidential to a third party or to the public. This includes information of which the confidential status has not been lifted."

Šešelj, (Trial Chamber), July 24, 2009, para. 10: "The formulation of Rule 77(A) indicates that knowing and wilful interference with the administration of justice is a consequence of the disclosure of information relating to Tribunal proceedings in knowing violation of an order of a Chamber. There is therefore no additional requirement for the Prosecution to prove that such interference actually occurred."

Chea et al., (Pre-Trial Chamber), September 9, 2010, para. 4(1): "In accordance with Internal Rule 35(1), the Pre-Trial Chamber may sanction or refer to the appropriate authorities any person it has found to have knowingly and wilfully interfered with the administration of justice, including any person who discloses confidential information not in accordance with the Practice Direction on the Classification and Management of Case-Related Information, or who is otherwise in breach of Internal Rule 56(1) insofar as a matter relates to a judicial investigation." *See also Nuon Chea et al.,* (Pre-Trial Chamber), July 9, 2010, para. 1.

Hartmann, (Appeals Chamber), July 19, 2011, para. 53: "Rule 77(A)(ii) of the Rules does not purport to restrict liability in terms of any specific kind of information that might be disclosed. Rather, the focus of Rule 77(A)(ii) of the Rules is the fact of deliberate disclosure in knowing violation of an order prohibiting disclosure."

Šešelj, (Trial Chamber), June 28, 2012, para. 41: "With respect to Rule 77(A)(ii), the *actus reus* consists in "the physical act of disclosure of information relating to proceedings before the Tribunal, when such disclosure would breach an order of a Chamber."

(i) Continuing disclosure in violation of court order to remove information from a website

Al Jadeed, (Trial Chamber), September 18, 2015, para. 52: "The *actus reus* of this form of contempt is the disclosure of information relating to proceedings before the Tribunal, where such disclosure breaches an order of a Judge or Chamber. When the order concerns the removal of information that has already been disclosed, a failure to remove the information constitutes disclosure. In such case, the prosecution must show that the Accused was in a position to remove or

cause the removal of the information. In addition, the order must be objectively breached."

(ii) publication or passing confidential information to a third party

Marijačić and Rebić, (Trial Chamber), March 10, 2006, para. 17: "The word disclosure is here to be understood in its literal sense, being the revelation of something that was previously confidential. Thus, the passing of confidential information to a third party would amount to disclosure, as would the publication of such information in a newspaper. In addition, the act of disclosing the particular information must objectively breach an order issued by a Trial or Appeals Chamber, whether such order is written or oral, before the *actus reus* of contempt as articulated in Rule 77(A)(ii) is satisfied."

Šešelj, (Trial Chamber), July 24, 2009, para. 9: "Disclosure of information within the meaning of this Rule includes the publication of a witness's identity where protective measures have been granted to avoid such disclosure. The passing of confidential information to a third party would amount to disclosure, as would its inclusion in a publication such as a newspaper or a book."

(a) manner of possession is no consequence

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 57: "[T]he manner in which the Accused came into possession of the protected information that she published in her Book and later in the Article, and therefore the fact that she did not physically set eyes on the Appeals Chamber Decisions prior to her suspect interview, is of no consequence to this case. What is of consequence is that she became aware of the confidential information, and of the fact of its confidentiality, and disclosed the information nonetheless."

(iii) in objective breach of a court order

Haxhiu, (Trial Chamber), July 24, 2008, para. 10: "[T]his form of commission of contempt is the physical act of disclosure of information relating to proceedings before the Tribunal in breach of an order of a Trial Chamber . . . this includes information the confidential status of which has not been lifted. An order by a Trial Chamber, which may be oral or written, must be objectively breached."

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 21: "To satisfy the *actus reus* of contempt as articulated in Rule 77(A)(ii) of the Rules, an order by a Trial (or Appeals) Chamber, whether oral or written, must be objectively breached. Where such a breach has occurred, it is not necessary to

prove actual interference with the Tribunal's administration of justice."

Šešelj, (Trial Chamber), October 31, 2011, para. 30: "Disclosure of information within the meaning of this Rule includes the publication of a witness's identity where protective measures have been granted to avoid such disclosure. Disclosure may also include the passing of confidential information to a third party, as well as its inclusion in a publication such as a newspaper or a book."

(iv) court order must apply to accused, protect disclosed information, and exist when information was disclosed

Margetić, (Trial Chamber), February 7, 2007, para. 36: "The act of disclosing information must objectively breach an order issued by a Trial or Appeals Chamber, whether such order is written or oral. The Trial Chamber considers that, for such an order to be breached, the order must apply to an accused, protect the specific information disclosed by an accused and be in effect at the time of the disclosure of information."

1. information was confidential at time of disclosure

Marijačić and Rebić, (Appeals Chamber), September 27, 2006, para. 45: "[T]he fact that the aforementioned information today is no longer confidential does not present an obstacle to a conviction for having published the information at a time when it was still under protection. Although the reason for the Closed Session Order (to protect the status of the information provided by the Witness) no longer exists, the legal rationale (protected information has to remain so until confidentiality is lifted) is still applicable."

(v) no actual interference required

Nshogoza, (Appeals Chamber), March 15, 2010, para. 56: "No additional proof of harm to the Tribunal's administration of justice is required. The Appeals Chamber is not convinced that the *defiance* of a Chamber's order conveys any different connotation than a knowing and wilful *violation* of one." *See also Jović*, (Appeals Chamber), March 15, 2007, para. 30.

Haxhiu, (Trial Chamber), July 24, 2008, para. 10: "It is not necessary to prove that interference with the Tribunal's administration of justice actually occurred."

Šešelj, (Trial Chamber), October 31, 2011, para. 33: "The formulation of Rule 77(A) indicates that knowing and wilful interference with the administration of

justice is a consequence of the disclosure of information relating to Tribunal proceedings in knowing violation of an order of a Chamber. There is therefore no additional requirement for the Prosecution to prove that such interference actually occurred."

(vi) confidentiality protects legal reasoning

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 35: "[L]egal reasoning by its very nature requires the application of the law to the facts, and therefore requires the whole reasoning to be protected. The law is public while the facts often are not. The application of the law to the facts is confidential by virtue of the mix of the two. Exclusion of legal reasoning from the realm of protection by confidentiality would compromise confidential party submissions fundamental to the Chamber's legal reasoning."

Hartmann, (Appeals Chamber), July 19, 2011, para. 51: "The legal reasoning in a confidential decision on protective measures characteristically contains references to the information or documents directly subject to an order of protective measures under the Rules, as well as references to related information or surrounding circumstances that tend to identify the documents or information directly subject to protective measures. The legal reasoning integrates such references, together with the law relevant to the determination of the issues, and the analysis of both by the Chamber in question. It therefore follows that the legal reasoning of a decision on protective measures necessarily falls within the ambit of the confidential status ordered in respect of such a decision."

(vii) closed session orders

1. applies to the public/media

Jović, (Appeals Chamber), March 15, 2007, para. 22: "[A]n order that evidence be given in closed session 'applies to all persons coming into possession of the protected information, given that Rule 79 is directed at the public in general, including the press, being present in court or not.' Should members of the public come into possession of the protected information, they are bound, pursuant to Rule 79, not to disclose it to other third parties."

2. written statements largely the same as closed session testimony

Marijačić and Rebić, (Trial Chamber), March 10, 2006, para. 27: "[W]here the content of a written witness statement is largely the same as the content of oral testimony given in closed session, that content must also be considered protected by the terms of the closed session order, or the protection granted would be ineffectual."

3. witnesses who testify entirely in closed session

Marijačić and Rebić, (Trial Chamber), March 10, 2006, para. 25: "When a witness testifies entirely in closed session, and his name is only ever mentioned during that closed session, his name forms part of the closed session transcript, which is a confidential document . . . [W]hen the name of a witness can only be found in confidential documents of the Tribunal, such as closed session transcripts, and he appeared in the courtroom only when the blinds were lowered and the audio and video broadcast suspended, it must be concluded that his identity is protected by the closed session order."

(iv) not for third parties to decide what should be protected

Marijačić and Rebić, (Appeals Chamber), September 27, 2006, para. 42: "The consequence of a closed session is that *all* information mentioned therein including the identity of the witness who testifies is protected from the public. It is not for third parties to determine which part of a closed session is protected."

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 71: "Individuals, including journalists, may not – with impunity – publish information in defiance of such orders on the basis of their own assessment of the public interest in accessing that information."

Hartmann, (Appeals Chamber), July 19, 2011, para. 52: "The confidential issuance of a decision by a Chamber constitutes an order for the non-disclosure of the information contained therein, and it is not for a party to decide which aspects of a confidential decision may be disclosed. This principle equally applies to third parties. The discretion as to whether the confidential status of a decision may be lifted in whole or in part belongs exclusively to a competent Chamber of the Tribunal with its intimate knowledge of all the facts, information, and circumstances surrounding the relevant case."

(v) protective measures continue until rescinded, varied, or augmented

Nshogoza, (Appeals Chamber), March 15, 2010, para. 65: "Rule 75(F) of the Rules states that protective measures once ordered continue to have effect in any proceeding before the Tribunal until rescinded, varied, or augmented." *See also Prosecutor v. Josip Jović,* (Appeals Chamber), March 15, 2007, para. 30.

Margetić, (Trial Chamber), February 7, 2007, para. 48: "[O]nce protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal, these protective measures continue to apply *mutatis mutandis* unless and until they are 'rescinded, varied or augmented in accordance with the procedure set out in this rule.'"

Margetić, (Trial Chamber), February 7, 2007, para. 49: "[A]ny rescission of protective measures would require an explicit act, rather than a failure to specifically categorise a document as confidential when admitting it into evidence. As the *Marijačić* Appeals Chamber held, protected information must remain protected "until confidentiality is lifted" because otherwise all protective measures imposed by a Chamber could be undermined 'without an explicit *actus contrarius*.'"

Marijačić and Rebić, (Appeals Chamber), September 27, 2006, para. 45: "A court order remains in force until a Chamber decides otherwise."

(vi) confidentiality to secure cooperation of sovereign states

Hartmann, (Specially Appointed Chamber), September 14, 2009, para. 72: "In certain cases, the Tribunal imposes confidentiality to secure the cooperation of sovereign states. In the present case, the interests sought to be protected by the two confidential decisions were those of a sovereign state. The witness Robin Vincent unequivocally confirmed the significant challenges faced by international tribunals in securing the vital cooperation of sovereign states, observing that 'once it's recognised that there has been or may well be dangers of breaches [of confidentiality], then it's unlikely that the cooperation that tribunal seeks will actually be forthcoming.'"

(vii) disclosure by third parties is not a defense

Jović, (Appeals Chamber), March 15, 2007, para. 30: "The fact that some portions of the Witness's written statement or closed session testimony may have been disclosed by another third party does not mean that this information was no longer protected, that the court order had been *de facto* lifted or that its violation would not interfere with the Tribunal's administration of justice."

Šešelj, (Trial Chamber), July 24, 2009, para. 28: "[T]he fact that protected witnesses testifying at the Tribunal may occasionally be identified by persons in the public despite the use of a pseudonym as well as other protective measures cannot justify the disclosure of confidential information in a book published by an accused before the Tribunal."

(viii) may restrict freedom of expression and press

Jović, (Trial Chamber), August 30, 2006, para. 23: "It is undeniable that legal instruments relevant to the work of this Tribunal protect freedom of expression. But it is equally undeniable that, as the Presiding Judge noted at trial, 'all the instruments to which [the Accused] refer[red] on freedom of the press have qualifications in relation to court proceedings.' As the instruments provide, a court's restriction of press freedom is permissible if authorised by law and necessary for the maintenance of an interest such as 'the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'"

Marijačić and Rebić, (Trial Chamber), March 10, 2006, para. 39: "Chambers have the power under the Statute to exclude the press and public from Tribunal proceedings, should it be considered appropriate to do so, and to prohibit the press from publishing protected material. Individuals, including journalists, cannot then decide to publish information in defiance of such an order, on the basis of their own assessment of the public interest in that information."

Margetić, (Trial Chamber), February 7, 2007, para. 81: "[A] journalist has no right to violate a Chamber's orders. It is undeniable that legal instruments relevant to the work of the Tribunal protect freedom of expression and freedom of the press. As the *Jović* Trial Chamber has clearly outlined, these rights have, however, qualifications in relation to court proceedings. While freedom of expression and freedom of the press are fundamental rights, such rights can be limited in relation to court proceedings."

Akhbar Beirut S.A.L. and Al Amin, (Contempt Judge), January 31, 2014, para. 14: "As the allegations of contempt in this case relate to publications by the press and other media, it is necessary to consider both the principles pertaining to freedom of expression, which include freedom of the press, and the proper administration of justice. Where there is a potential conflict, courts evaluating these principles must identify and state them with clarity and apply the law in a manner that respects the values underpinning each. To a certain degree this exercise is likely to be case-specific." *See also New TV S.A.L. and Al Khayat*, (Contempt Judge), January 31, 2014, para. 14.

Akhbar Beirut S.A.L. and Al Amin, (Contempt Judge), January 31, 2014, para. 17: "With respect to contempt of the Tribunal, this means that the freedom of the press must find its limits where it impinges upon the Tribunal's ability to function properly as a criminal court and to administer justice for the benefit of the people of Lebanon. In this regard, the Tribunal's contempt power expressed in Rule 60 his is an acceptable limit on the freedom of the media to report on all matters

concerning the Tribunal because it punishes only conduct that undermines the administration of justice. It leaves intact the ability of the press otherwise to comment on the Tribunal's work, including criticizing it. But it does not allow for interference with the Tribunal's mandate." *See also New TV S.A.L. and Al Khayat,* (Contempt Judge), January 31, 2014, para. 17.

Al Jadeed, (Trial Chamber), September 18, 2015, para. 41: "There is no doubt that this count engages the freedom of the press. However, its implication in this case is properly addressed only if and after the *Amicus* has proved the elements of the count. Should these elements (*actus reus* and *mens rea*) be proved beyond reasonable doubt, then I am required to consider whether the Accused's conduct was justified, accounting for both the freedom of the press and the need to ensure the integrity of the Tribunal's proceedings. The journalistic profession may not be used as an impenetrable shield; where different legitimate interests are involved, they must be weighed in light of the priorities in a democratic society. In sum, the freedom of the press does not relate to the legal foundation of the charge but, if anything, to the possible justification of the conduct."

3. as authorized by law and necessary to protect others

Margetić, (Trial Chamber), February 7, 2007, para. 81: "Human rights law allows for a court to restrict freedom of expression and freedom of the press when such a restriction is authorised by law and necessary for 'the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'"

Hartmann, (Appeals Chamber), July 19, 2011, para. 161: "[I]n order to legitimately restrict Hartmann's freedom of expression under Article 19 of the ICCPR, the restriction must have been provided by law and proportionately necessary to protect against the dissemination of confidential information."

(3) 'discloses information relating those proceedings' not in violation of a court order but nonetheless undermining public confidence in the courts' authority

(a) *generally*

Al Jadeed, (Trial Chamber), September 18, 2015, para. 40: "As affirmed above, Rule 60 *bis* (A) encompasses an array of conduct. In response to the Defence's assertion, I observe that there need not be legal precedent matching the exact behaviour charged in a given case. Here, the only requirement is that the conduct charged *can* amount to knowing and wilful interference with the administration of justice. I consider, in principle, that the disclosure of information on purported confidential witnesses can undermine public confidence in the

Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses, and that such undermining can interfere with the administration of justice. Indeed, while the disclosure of information on purported confidential witnesses does not necessarily interfere with the administration of justice, it *could* do so, if certain effects and a culpable state of mind are proved. Undoubtedly, maintaining public confidence in courts' authority and their ability to administer justice is essential to protecting their proper functioning; such that even the right to criticize is not limitless."

Al Jadeed, (Trial Chamber), September 18, 2015, para. 45: "On the other hand, unlike violating a court order—the very act of which amounts to an interference with the administration of justice—disclosing information on purported confidential witnesses does not automatically constitute contempt. Indeed, I cannot find that public confidence has been undermined just on the basis of 'common sense,' uncorroborated by evidentiary proof. Not every disclosure of this kind of information would create such likelihood."

(b) *mens rea*

Al Jadeed, (Trial Chamber), September 18, 2015, para. 50: "I find that, in this context, what is required for the prosecution is to establish that the Accused (1) deliberately broadcast and/or published information on purported confidential witnesses, and (2) in doing so they knew that their conduct was objectively likely to undermine public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses."

Al Jadeed, (Trial Chamber), September 18, 2015, para. 50: "Actual knowledge that the conduct created such likelihood, which can be inferred from a variety of circumstances, suffices, as does wilful blindness. For wilful blindness, the prosecution must first show that the Accused had a suspicion or realization of the likelihood. In addition, the Accused must have refrained from finding out about the likelihood, so as to be able to deny knowledge of it."

Al Jadeed, (Trial Chamber), September 18, 2015, para. 50: "In my view, however, basic recklessness representing a lower degree of culpability, cannot amount to the "knowing and wilful" conduct required for contempt."

(c) *actus reus*

Al Jadeed, (Trial Chamber), September 18, 2015, para. 43-44: "In order to satisfy the *actus reus* for this count, the prosecution must first prove that the Accused actually broadcast and/or published information on purported confidential witnesses in the *Ayyash et al.* case. Exactly what or how much information is

sufficient will depend on the circumstances. However, I consider that the disclosed information must at least be significant enough that the relevant individual is reasonably identifiable in the circumstances. In addition, the prosecution must show that such broadcast and/or publication created a likelihood of undermining public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses."

Al Jadeed, (Trial Chamber), September 18, 2015, para. 44: "Contrary to the Defence's submission, the prosecution need not demonstrate that public confidence was in fact undermined."

Al Jadeed, (Trial Chamber), September 18, 2015, para. 46: "Accordingly, in this case the conduct must, when it occurred, have been of sufficient gravity to create, objectively, the likelihood of undermining the public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses. Such likelihood cannot be proved in subjective terms (for example, on the basis of the personal feelings of a small number of people). Under the required objective test, likelihood can only be proved through ascertainable facts. Whether or not the Accused's conduct in fact caused harm can be relevant to, but is not dispositive of, the existence or degree of objective likelihood at the relevant time."

(4) 'fails to comply with an order to appear'

(a) *mens rea*

(i) knowing and wilful conduct

Pećanac, (Trial Chamber), December 9, 2011, para. 19: "[A]ny knowing and wilful conduct in violation of a Chamber's order meets the requisite *mens rea* for contempt."

(b) *actus reus*

(i) objective breach of an order

Pećanac, (Trial Chamber), December 9, 2011, para. 18: "To satisfy the *actus reus* of contempt under Rule 77(A), an order by a Chamber, whether oral or written, must be objectively breached." *See also Tupajić*, (Trial Chamber), 24 February 2012.

(ii) Without good cause

Pećanac, (Trial Chamber), December 9, 2011, para. 28: "[W]hether during the period from the service of the Subpoena on the Accused . . . to his arrest . . . the Accused failed to appear before the Chamber as ordered or to show good cause

why he could not comply with the Subpoena."

(5) 'threatens, intimidates, causes any injury, offers a bribe to, or otherwise interferes with a witness'

(a) *mens rea*

(i) knowingly and wilfully

Šešelj, (Trial Chamber), June 28, 2012, para. 40: "The *mens rea* is established where an accused wilfully and knowingly interfered with the Tribunal's administration of justice. The Appeals Chamber has held that 'once a knowing violation of a Chamber's order is proved, '[n]o additional proof of harm to the [...] Tribunal's administration of justice is required' in order to sustain a conviction for contempt.'"

Simik et al, (Trial Chamber), June 30, 2000, para. 91: "The inherent power is to hold in contempt those who knowingly and wilfully interfere with the Tribunal's administration of justice. It includes intimidation of, interference with, or an offer of a bribe to, a potential witness before the Tribunal, or any attempt to intimidate or to interfere with such a witness."

(ii) intent to interfere

Nshogoza, (Trial Chamber), July 7, 2009, para. 158: "Besides the general *mens rea* requirement for contempt, for which the Prosecution must also prove that the Accused acted knowingly and wilfully, Rule 77 (A) (iv) also requires that the conduct was carried out with the intent to interfere with the witness or with the knowledge that the conduct was likely to deter or influence the witness."

Margetić, (Trial Chamber), February 7, 2007, para. 66: "As a general *mens rea* requirement for contempt, the Prosecution must prove that the Accused acted knowingly and wilfully. Rule 77(A)(iv) of the Rules also requires that the conduct was carried out with an intent to interfere with witnesses."

Haraqija and Morina, (Trial Chamber), December 17, 2008, para. 19: "The *mens rea* requires proof that the accused acted willingly and with the knowledge that his conduct was likely to deter or influence the witness."

(iii) motive has limited probative value

Haraqija and Morina, (Trial Chamber), December 17, 2008, para. 59: "[J]ust as the existence of a motive to commit a crime is in itself of minimal, if any, probative value that the accused has committed it, the absence of a motive cannot disprove facts established through reliable evidence. The absence of a motive

may, however, call for further exploration of the convincing potential of the evidence before establishing that the crime was committed and that the accused committed it. In the present case, however, the evidence is strong and convincing."

(b) *actus reus*

Haraqija and Morina, (Trial Chamber), December 17, 2008, para. 18: "The conduct punishable pursuant to Rule 77(A)(iv) of the Rules includes threatening, intimidating, causing injury, offering a bribe to or otherwise interfering with a witness."

(i) threats

Beqaj, (Trial Chamber), May 27, 2005, para. 16: "A 'threat' is liberally construed as a 'communicated intent to inflict harm or loss on another person or another property, especially one that might diminish a person's freedom to act voluntarily or with lawful consent.' A threat can also be defined as the expression of an intention to inflict unlawful injury or damage of some kind so as to intimidate or overcome the will of the person to whom it is addressed."

Haraqija and Morina, (Trial Chamber), December 17, 2008, para. 18: "A 'threat' is defined as a communicated intent to inflict harm or damage of some kind to a witness and/or the witness's property, or to a third person and/or his property, so as to influence or overcome the will of the witness to whom the threat is addressed."

(ii) intimidation

(a) knowing and willful conduct likely to intimidate a witness

Haraqija and Morina, (Trial Chamber), December 17, 2008, para. 18: "'Intimidation' consists of acts or culpable omissions likely to constitute direct, indirect or potential threats to a witness, which may interfere with or influence the witness's testimony."

Beqaj, (Trial Chamber), May 27, 2005, para. 17: "In relation to 'intimidation,' the Committee of Experts on Intimidation of Witnesses and the Rights of the Defense of the Council of Europe defined intimidation as '[a]ny direct, indirect or potential threat to a witness, which may lead to interference with his/her duty to give testimony free from influence of any kind whatsoever.'"

Brdjanin, (Trial Chamber), March 19, 2004, para. 23: "The *actus reus* of the offence of intimidating a witness as contempt of court consists of acts or culpable omissions that are likely to constitute direct, indirect, or potential threats to a witness or a potential witness. In order for the conduct in question to amount to contempt of court, said conduct must be of sufficient gravity to be likely to intimidate a witness. These acts or omissions must be evaluated in the context of the circumstances of each particular case."

(b) no proof of actual interference required

Brdjanin, (Trial Chamber), March 19, 2004, para. 23: "Intimidation of a witness as contempt of court is crime of conduct, which does not require proof of a result. Whether the witness was actually intimidated is immaterial; the Prosecution need only prove that the conduct in question was intended to interfere with the Tribunal's due administration of justice."

(iii) bribe

Beqaj, (Trial Chamber), May 27, 2005, para. 18: "The word 'bribe' is liberally construed as an inducement offered to procure illegal or dishonest action or decision in favour of the giver. It is also defined as a price, reward, gift or favour bestowed or promised with a view to pervert the judgement of or influence the action of a person in a position of trust."

(iv) otherwise interfering with a witness

Beqaj, (Trial Chamber), May 27, 2005, para. 21: "[O]therwise interfering with witnesses encompasses any conduct that is intended to disturb the administration of justice by deterring a witness or a potential witness from giving full and truthful evidence, or in any way to influence the nature of the witness' or potential witness' evidence."

Margetić, (Trial Chamber), February 7, 2007, para. 64: "The phrase 'otherwise interfering with a witness or potential witness' adds to these specifically provided acts any conduct that is likely to dissuade a witness or a potential witness from giving evidence, or to influence the nature of the witness' or potential witness' evidence. The Trial Chamber considers that any conduct which is likely to expose witnesses to threats, intimidation or injury by a third party also constitutes 'otherwise interfering with a witness' as provided by Rule 77(A)(iv)."

Haraqija and Morina, (Trial Chamber), December 17, 2008, para. 18: "'Otherwise interfering with a witness' is an open-ended provision which

encompasses acts or omissions, other than threatening, intimidating, causing injury or offering a bribe, capable of and likely to deter a witness from giving full and truthful testimony or in any other way influence the nature of the witness's evidence."

Brdjanin, (Trial Chamber), March 19, 2004, para. 28: "The *actus reus* for the offence of otherwise interfering with a witness may take one of a number of different forms. Such forms include, but are not limited to, keeping a witness out of the way, by bribery or otherwise, so as to avoid or prevent service of a subpoena; assaulting, threatening or intimidating a witness or a person likely to be called as a witness; endeavouring to influence a witness against a party by, for instance, disparagement of the party; or endeavouring by bribery to induce a witness to suppress evidence."

(v) conduct may be direct or through intermediaries

Margetić, (Trial Chamber), February 7, 2007, para. 65: "The Trial Chamber considers that such conduct can be fulfilled through personal or direct contact, as well as through intermediaries or through the media by way of publications."

(vi) no proof of actual interference required

Margetić, (Trial Chamber), February 7, 2007, para. 64: "Proof is not required that this conduct *actually* produced such a result."

Beqaj, (Trial Chamber), May 27, 2005, para. 21: "There is nothing to indicate that proof is required that the conduct intended to influence the nature of the witness's evidence produced a result."

Haraqija and Morina, (Trial Chamber), December 17, 2008, paras. 18, 20: "[F]or the purposes of establishing the responsibility of the accused, it is immaterial whether the witness actually felt threatened or intimidated, or was deterred or influenced. . . . any act described in Rule 77(A) of the Rule shall be subject to the same penalties as one who commits the act."

Šešelj, (Trial Chamber), July 24, 2009, para. 27: "[F]or the purposes of establishing the responsibility of an accused for having threatened, intimidated, or otherwise interfered with a witness under Rule 77(A)(iv) of the Rules, it is immaterial whether the witness was *actually* threatened, intimidated, deterred or influenced."

(vii) undue influence

Nyiramasuhuko et al., November 30. 2001. para. 20: "Rule 77(C) of the Rules, which refers to interference with a witness as contempt, is to be construed as prohibiting only undue interference with a witness. Undue interference with the Prosecution witnesses who were allegedly contacted could have occurred, in the present case, if the individuals concerned acted in knowing and wilful violation of a witness protection order of this court, or if they tried to intimidate witnesses, as specified under Rule 77(C) of the Rules, or, notably, if they tried to induce them to change their testimony."

B) Incitement to commit contempt

Haraqija and Morina, (Trial Chamber), December 17, 2008, para. 20: "Incitement to commit Contempt of the Tribunal is punishable, as such, by virtue of Rule 77(B) of the Rules. Whereas commission requires that the person's acts form part of the *actus reus* element of the offence, without however being limited to direct and physical perpetration, incitement relates to actions that encourage or persuade another to commit the offence. It follows that any person who knowingly and wilfully encourages and/or persuades another person to commit any act described in Rule 77(A) of the Rules shall be subject to the same penalties as one who commits the act."

C) Sufficient grounds for instigating contempt proceedings

Nshogoza, (Trial Chamber), July 7, 2009, para. 176: "The Tribunal *may* hold persons in contempt who knowingly and wilfully interfere with the administration of justice, but the fact that a Trial Chamber has reason to believe that a person is in contempt does not oblige it to order an investigation or prosecution. The Chamber does not consider it necessary to explore the variety of factors that may influence a Chamber's decision whether or not to order an investigation or prosecution for contempt once its discretion to do so is enlivened. It is sufficient to note that decisions taken pursuant to Rule 77 are discretionary."

Ngirabatware, (Trial Chamber), March 12, 2010. para. 4: "[T]he 'sufficient grounds' standard under Rule 77(D) of the ICTY Rules only requires the Trial chamber to establish whether the evidence before it gives rise to a *prima facie* case of contempt of the Tribunal and not to make a final finding on whether contempt has been committed. The Chamber further notes that Rule 77 of the ICTY Rules is identical to Rule 77 of the ICTR Rules and considers that, therefore, the same legal standard applies."

Nshogoza, (Trial Chamber), November 25, 2010, para. 20: "[E]ven where there are sufficient grounds and therefore a *prima facie* case to pursue contempt

proceedings, a Trial Chamber may consider the gravity of an alleged perpetrator's conduct or his underlying motivations when deciding whether to initiate contempt proceedings."

Nsengimana, (Appeals Chamber), December 16, 2010. para. 17: "[D]ecisions taken pursuant to Rule 77(D) of the Rules are discretionary. Accordingly, the Trial Chamber was entitled to find a prima facie case of contempt and then determine, within the bounds of its discretion, whether or not to initiate proceedings against the Investigators."

Brima et al., (Trial Chamber), March 18, 2011, para. 26: "Notwithstanding the lower standard of proof, an allegation of contempt must be credible enough to provide a judge or Trial Chamber with 'reason to believe' that a person may be in contempt."

Nshogoza, (Appeals Chamber), July 7, 2011, para. 12: "[A] Trial Chamber is entitled to find a *prima facie* case of contempt and then determine, within the bounds of its discretion, whether or not to initiate further proceedings."

Ngirabatware, (Trial Chamber), February 21, 2013, para. 8: "[E]ven where the *prima facie* standard has been met, the Chamber retains discretion to determine whether to initiate proceedings for contempt. The Chamber is entitled to find a *prima facie* case of contempt and then determine, within the bounds of its discretion, whether to initiate proceedings."

i) 'Reason to believe' standard to investigate

Nzabonimana, (Appeals Chamber), October 28, 2010, para. 10: "The Appeals Chamber recalls that, according to Rule 77(C)(ii) of the Rules, when a Trial Chamber has reason to believe that a person may be in contempt of the Tribunal, it may direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings."

Nzabonimana, (Trial Chamber), October 21, 2011. para. 13: "If a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may, in its discretion, direct an investigation of the matter under Rule 77(C). The Chamber again notes the permissive language (*i.e.* the use of the word 'may') of both provisions of Rule 77."

Chea, (Trial Chamber), March 13, 2012, para. 9: "The threshold for intervention under this rule is a reasonable belief that a person 'knowingly and wilfully' interfered in the administration of justice. The relevant jurisprudence has

emphasised that requests sought under this sub-rule must be based upon good cause, and that investigative requests cannot instead be utilized in order to ascertain whether or not such cause might exist."

Chea, (Trial Chamber), May 11, 2012, para. 20: "According to Internal Rule 35(2), a Chamber seized with allegations of interference with the administration of justice may only act under this rule where it has a reason to believe that a person may have interfered with the administration of justice, for example by improperly influencing the judges in charge of a case. This is a minimum, threshold condition for inquiry, triggered by a 'reasonable belief' that conduct with the potential to threaten the administration of justice may have occurred. It gives rise merely to further inquiry and does not require the Chamber to engage in a detailed examination of the merits of an allegation or suspicion of interference, or to assess questions of individual criminal responsibility. This threshold will be satisfied where the material basis for the allegation reasonably leads a Chamber to believe that the allegation is not merely speculative. Where there is a reasonable belief that a person may have interfered with the administration of justice, the Chambers or Co-Investigating Judges may - but need not - take one or more of the courses of action set out in Rule 35(2), which includes dealing with a matter summarily."

Chea, (Supreme Court Chamber), September 14, 2012, para. 26: "Pursuant to Rule 35, the body seised of a request must examine the allegations; assess whether there is, at a minimum, reason to believe that any of the acts encompassed by Rule 35(1) may have been committed; and decide the appropriate action, if any, to be taken pursuant to Rule 35(2)."

Ayyash et al., (Contempt Judge), April 29, 2013, para. 13: "When the Contempt Judge has reason to believe that a person may be in contempt of the Tribunal, he may: (i) invite or direct the Prosecutor to investigate the matter and prepare an indictment for Contempt; (ii) where the Prosecutor is unable to investigate the matter, he may direct the Registrar to appoint an *amicus curiae* to report on whether there are sufficient grounds for commencing contempt proceedings; (iii) or prosecute the matter himself."

(1) no open-ended investigations

Nzabonimana, (Trial Chamber), December 8, 2010, para. 45: "Pursuant to Rule 77, a Trial Chamber may direct the Registrar to appoint *amicus curiae* to investigate allegations of contempt when it has reason to believe that a person may be in contempt of the Tribunal. This rule does not permit the Chamber to direct the registrar to appoint *amicus curiae* to conduct an open-ended investigation on the basis of ill-defined threats made by unnamed individuals or poorly defined organisations."

ii) 'Sufficient grounds' standard satisfied by a prima facie case for contempt

Nshogoza, (Trial Chamber), November 25, 2010, para. 7-8: "Pursuant to Rule 77 (C), when a Chamber has reason to believe that a person may be in contempt of the Tribunal, it (i) may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt; or (ii) where the Prosecutor has a conflict of interest with respect to the relevant conduct, may direct the Registrar to appoint an amicus curiae to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings; or (iii) initiate proceedings itself . . . The sufficient grounds standard is satisfied where the evidence establishes a prima facie case of contempt."

Nzabonimana, (Trial Chamber), October 21, 2011, para. 14: "The ICTR Appeals Chamber has held that the 'sufficient grounds' requirement within Rules 77 [. . .] is satisfied if the Chamber finds that a *prima facie* case exists. The *prima facie* standard is the standard employed by Trial Chambers in determining whether to confirm an indictment pursuant to Article 18 of the Statute. The *prima facie* standard for confirming an indictment was articulated by the ICTY Trial Chamber in *Milošević,* as 'a credible case which, if accepted and uncontradicted, would be a sufficient basis on which to convict the accused.'"

Nzabonimana, (Trial Chamber), October 21, 2011. para. 15: "The *prima facie* standard is a relatively low burden which requires the Chamber to take the evidence adduced in support of the allegations as true. If there is evidence in support of each of the elements of the alleged crime, the *prima facie* standard has been satisfied and there are sufficient grounds to initiate proceedings. The credibility and reliability of witness testimony is only to be examined at the conclusion of the case."

Ngirabatware, (Trial Chamber), February 21, 2013. para. 6: "The Chamber notes that the Appeals Chamber held that 'the "sufficient grounds" standard under Rule 77(D) of the ICTY Rules only requires the Trial chamber to establish whether the evidence before it gives rise to a *prima facie* case of Contempt of the Tribunal and not to make a final finding on whether contempt has been committed.' The Chamber further notes that Rule 77 of the ICTY Rules is identical to Rule 77 of the ICTR Rules and considers that, therefore, the same legal standard applies."

Ngirabatware, (Trial Chamber), February 21, 2013. para. 7: "The Chamber notes that the *prima facie* standard is a relatively low burden which requires the Chamber to take the evidence adduced in support of the allegations as true. If there is evidence in support of each of the elements of the alleged crime, the *prima facie* standard has been satisfied and there are sufficient grounds to initiate proceedings. The credibility and reliability of witness testimony is only to be

examined at the conclusion of a case."

iii) Discretion to initiate contempt proceedings

Nyiramasuhuko et al., (Trial Chamber), July 10, 2001, para. 6: "For this reason, and bearing in mind the principle of the presumption of innocence, any allegations of contempt are to be handled with due care. Consequently, the Prosecution is to justify its request for investigations by *prima facie* satisfying the Trial Chamber that there are reasonable grounds to believe that contemptuous conduct may have taken place, which may be attributable to the alleged contemnor."

Karemera et al., Case No. ICTR-98-44-T, May 18, 2010, para. 7: "If a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may, in its discretion, direct an investigation of the matter under Rule 77(C). The Chamber again notes the permissive language (*i.e.* the use of the word 'may') of both provisions of Rule 77."

Nsengimana, (Appeals Chamber), December 16, 2010, para. 8: "The Appeals Chamber recalls that the decision whether to order the prosecution of alleged false testimony or contempt is discretionary."

Nsengimana, (Appeals Chamber), December 16, 2010, para. 22: "[P]ursuant to Rule 77(D), the Trial Chamber my decline to initiate contempt proceedings despite the fact that sufficient grounds exist to proceed against a person for contempt."

Chea, (Supreme Court Chamber), March 25, 2013, para. 21: "It follows from a plain reading of Rules 35(1) and 35(2) of the Internal Rules that Judges and Chambers enjoy the discretion to decide what procedural avenue to follow against acts of prima facie interference with the administration of justice, and that they are also entitled to decide, within the bounds of their discretion, whether to take any procedural action at all, even where they may believe interference to have occurred."

Nzabonimana, (Trial Chamber), October 21, 2011, para. 16: "Nonetheless, even where the *prima facie* standard has been met, the Chamber retains discretion whether to initiate proceedings for contempt or false testimony."

Ngirabatware, (Trial Chamber), February 21, 2013, para. 8: "Nonetheless, even where the *prima facie* standard has been met, the Chamber retains discretion to determine whether to initiate proceedings for contempt. The Chamber is entitled to find a *prima facie* case of contempt and then determine, within the

bounds of its discretion, whether to initiate proceedings."

Chea, (Trial Chamber), May 11, 2012, para. 20: "According to Internal Rule 35(2), a Chamber seized with allegations of interference with the administration of justice may only act under this rule where it has a reason to believe that a person may have interfered with the administration of justice, for example by improperly influencing the judges in charge of a case. This is a minimum, threshold condition for inquiry, triggered by a 'reasonable belief' that conduct with the potential to threaten the administration of justice may have occurred. It gives rise merely to further inquiry and does not require the Chamber to engage in a detailed examination of the merits of an allegation or suspicion of interference, or to assess questions of individual criminal responsibility. This threshold will be satisfied where the material basis for the allegation reasonably leads a Chamber to believe that the allegation is not merely speculative. Where there is a reasonable belief that a person may have interfered with the administration of justice, the Chambers or Co-Investigating Judges may - but need not - take one or more of the courses of action set out in Rule 35(2), which includes dealing with a matter summarily."

(1) ensuring compliance with court orders

Nsengimana, (Appeals Chamber), December 16, 2010, para. 23: "[A]lthough the Trial Chamber was not required to determine whether the initiation of contempt proceedings against the Investigators [sic] was 'the most effective and efficient way to ensure compliance with the witness protection measures,' the Appeals Chamber finds that the consideration of these factors was within the scope of its discretion."

Nzabonimana, (Trial Chamber), October 21, 2011, para. 18: "In exercising its discretion whether to initiate proceedings for false testimony or contempt, the Chamber may take into consideration certain factors, such as (i) indicia as to the *mens rea* of the witness, including his intent to mislead and cause harm; (ii) the relationship between the statement in question and a material matter in the case; and (iii) the possible bearing of the statement in question on the Chamber's final decision. In short, the Chamber must consider carefully if proceedings for false testimony or contempt are the most effective and efficient way to ensure compliance with obligations flowing from the Statute or the Rules in the specific circumstances of the case."

Nzabonimana, (Trial Chamber), November 18, 2011, para. 12: "According to the established jurisprudence of the Appeals Chamber, the 'sufficient grounds' requirement of Rule 77 (D) is satisfied if the Chamber finds that a *prima facie* case exists. Moreover, even if a *prima facie* case has been established, a Chamber retains discretion whether to initiate proceedings for contempt, and ought to carefully consider whether proceedings for contempt are the most effective and

efficient way to ensure compliance with obligations flowing from the Statute or the Rules in the specific circumstances of the case."

(2) chamber may initiate contempt proceedings itself

Šešelj, (Trial Chamber), July 8, 2008, para. 11: "Article 77 (C) of the Rules describes the procedure to be undertaken when '*la Chambre a des motifs de croire qu'une personne s'est rendue coupable d'outrage au Tribunal.*' In this case, the Chamber may, pursuant to Rule 77 (C) of the Rules, 'where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings. "

Nshogoza, (Trial Chamber), November 25, 2010, para. 8: "Where a Chamber considers that there are sufficient grounds to proceed against a person for contempt, in accordance with Rule 77 (D), the Chamber may: (i) in circumstances described in sub-Rule (C)(i), direct the Prosecutor to prosecute the matter; or (ii) in circumstances described in sub-Rules (C)(ii) or (iii), issue an order in *lieu* of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself."

Zečević, (Trial Chamber), February 4, 2011, para. 4: "When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may initiate proceedings itself and if the Chamber considers that there are sufficient grounds to proceed against a person for contempt, it may issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself."

Hartmann, (Appeals Chamber), July 19, 2011, para 25: "[T]he Chamber in which the contempt allegedly occurred shall adjudicate the matter unless there are exceptional circumstances such as cases in which the impartiality of a Chamber may be called into question, warranting the assignment of the case to another Chamber."

Chea, September 9, 2011, para. 21: "Internal Rule 35(2) contemplates an investigation into such allegations '[w]hen the Co-Investigating Judges or the Chambers have reason to believe that a person may have knowingly and wilfully interfered with the administration of justice.' It follows that an investigation pursuant to this Rule can only be meaningfully be conducted by the judicial body seised of the case."

Ngirabatware, (Trial Chamber), February 21, 2013, para. 5: "Rule 77(D)(ii) provides that after having appointed an *amicus curiae* to present a report to the Chamber, and '[i]f the Chamber considers that there are sufficient grounds to

proceed against a person for contempt, the Chamber may . . . issue an order in lieu of an indictment.'"

Krstić, (Trial Chamber), March 27, 2013, para. 8: "When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may initiate proceedings itself and if the Chamber considers that there are sufficient grounds to proceed against a person for contempt, it may issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself."

(a) indictment must contain precise charges

Aleksovski, (Appeals Chamber), May 30, 2001, para. 56: "It is therefore essential that, where a Chamber initiates proceedings for contempt itself, it formulates at an early stage the nature of the charge with the precision expected of an indictment, and that it gives the parties the opportunity to debate what is required to be proved. It is only in this way that the alleged contemnor can be afforded a fair trial."

iv) Independence of contempt proceedings

Karemera et al., (Appeals Chamber), February 16, 2010, para. 25: "[I]nvestigations and proceedings pursuant to Rule 77 of the Rules are independent of the proceedings, out of which they arise and can be undertaken contemporaneously with those proceedings. As separate proceedings, they give rise neither to concerns regarding inconsistent findings, nor to concerns regarding the expeditiousness of the trial."

D) Punishment for contempt of court

i) Penalty

Beqaj, (Trial Chamber), May 27, 2005, para. 65: "Rule 77(G) stipulates that 'the maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.'"

(1) discretion

Beqaj, (Trial Chamber), May 27, 2005, para. 66: "The Rule gives discretion to the Chamber to choose between three forms of punishment, a term of imprisonment, a fine or a combination thereof."

Jokić, (Trial Chamber), March 27, 2009, para. 38: "In deciding punishment

for contempt, Chambers have considered the gravity of the conduct, the need to deter such conduct, and aggravating and mitigating factors in the individual's circumstance. These factors are non-exhaustive and the Chamber is vested with broad discretion as to the weight accorded to these factors based on the facts of a particular case."

(2) administrative sanctions

Chea (Supreme Court Chamber), September 14, 2012, para. 44: "[I]t is reasonable to interpret Rule 35 as applicable to a wider set of corrective responses that are administrative in nature. These responses include, for example, an admonition; notice to self-regulatory bodies, the superior or contracting authority of the culprit; publication of the outcome of proceedings in the media; or a limited administrative fine. These administrative sanctions still must comport with the basic principles of necessity and proportionality."

ii) Purposes

Pećanac, (Trial Chamber), December 9, 2011, para. 39: "The purpose of the law of contempt is to prevent frustration of the administration of justice. In deciding the punishment to be imposed for contempt, Chambers have taken into consideration both the gravity of the conduct involved and the need to deter such conduct in the future . . . While Trial Chambers are obliged to take these factors into account when determining the punishment, they are not limited to considering them alone. Furthermore, they are vested with a broad discretion as to the weight to be accorded to these factors, based on the facts of the particular case."

Tupajić, (Trial Chamber), February 24, 2012, para. 31: "The Chamber considers the dual nature of the purpose of punishing contempt. First, the punishment is retributive in that it punishes conduct that is found to obstruct, prejudice, or abuse the administration of justice. Second, the punishment has a deterrent effect which ensures to protect the interests of justice by preventing such action from occurring again in the future. Therefore, in deciding the punishment to be imposed for contempt, Chambers have taken into consideration both the gravity of the conduct involved and the need to deter such conduct in the future."

(1) retribution

Beqaj, (Trial Chamber), May 27, 2005, para. 58: "The Trial Chamber has considered the purposes of punishment which generally apply before the Tribunal. The contempt requires punishment as retribution for actions of the Accused. This punishment has then a deterrent effect which serves to protect the interests of justice."

(2) gravity and deterrence

Marijačić and Rebić, (Trial Chamber), March 10, 2006, para. 46: "The most important factors to be taken account of in determining the appropriate penalty in this case are the gravity of the contempt and the need to deter repetition and similar conduct by others."

Marijačić and Rebić, (Trial Chamber), March 10, 2006, para. 50: "Any deliberate conduct which creates a real risk that confidence in the Tribunal's ability to grant effective protective measures would be undermined amounts to a serious interference with the administration of justice. Public confidence in the effectiveness of such orders is absolutely vital to the success of the work of the Tribunal."

Margetić, (Trial Chamber), February 7, 2007, para. 84: "The Trial Chamber considers that the two most important factors to be taken account of in determining the appropriate penalty in contempt cases are the gravity of the conduct and the need to deter repetition and similar action by others."

(3) ensuring fair trial

Chea, (Supreme Court Chamber), September 14, 2012, para. 45: "Rule 35 is primarily designed for the application of punitive measures with the objective of deterrence. The Supreme Court Chamber considers, however, that Rule 35 also serves the overarching goal of ensuring an effective and fair trial. In this respect, the duty of the court is not just to punish the interference with the administration of justice, but also to stop on-going interference and prevent its potential occurrence. These duties are particularly valid in the face of interference that endangers a fundamental right, such as the right to a fair trial. It is therefore reasonable to construe, *a majori ad minus,* that the ECCC may resort to the procedures under Rule 35 to apply not only the *sensu stricto* punitive measures (sanctions) but also undertake other corrective responses that are non-punitive in nature and do not require the finding of culpability (intent), in order to safeguard the right to a fair trial. The Supreme Court believes that this holding also articulates the position implicitly adopted in the Impugned Decision."

E) Appeal of Contempt of Court

i) Standard of review

Marijačić and Rebić, (Appeals Chamber), September 27, 2006, para. 15: "Article 25 of the Statute provides for appeals on the ground of an error of law that invalidates the decision or an error of fact that has occasioned a miscarriage of justice. The settled standard of review applicable for appeals against judgements also applies to appeals against convictions for contempt. A party alleging an error

of law must identify the alleged error, present arguments in support of its claim and explain how the error allegedly invalidates the decision."

Jović, (Appeals Chamber), March 15, 2007, para. 11: "On appeal, the parties must limit their arguments to legal errors that invalidate the decision of the Trial Chamber and factual errors that have occasioned a miscarriage of justice within the scope of Article 25 of the Statute. The settled standard of review for appeals against judgements also applies to appeals against convictions for contempt." *See also Contempt Proceedings Against Vojislav Šešelj*, (Appeals Chamber), May 30, 2013, para. 25.

Haraqija and Morina, (Appeals Chamber), July 23, 2009, para. 14: "The Appeals Chamber reviews errors of law which invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice. This standard of review applicable for appeals against judgements also applies to appeals against convictions for contempt."

Nshogoza, (Appeals Chamber), March 15, 2010, para. 12: "[T]he applicable standards of appellate review pursuant to Article 24 of the Statute of the Tribunal ("Statute"). The Appeals Chamber reviews errors of law which invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice. This standard of review, applicable for appeals against judgements, also applies to appeals against convictions for contempt." *See also Prosecutor v. Prince Taylor,* Case No. SCSL-12-02-A (Appeals Chamber), October 30, 2013, para. 25-27.

Šešelj, (Appeals Chamber), May 19, 2010, para. 9: "On appeal, the Parties must limit their arguments to legal errors that invalidate the judgement of the Trial Chamber and to factual errors that result in a miscarriage of justice within the scope of Article 25 of the Statute of the Tribunal ("Statute"). The settled standard of review for appeals against judgements also applies to appeals against convictions for contempt."

ii) Decisions to investigate and prosecute contempt reviewed for discernible errors

Nshogoza, (Appeals Chamber), July 7, 2011, para. 11: "A Trial Chamber's decision to initiate an investigation or prosecution of contempt pursuant to Rule 77 of the Rules of Procedure and Evidence of the Tribunal ("Rules") is a matter that falls within its discretion. In order to successfully challenge a discretionary decision, a party must demonstrate that the Trial Chamber committed a discernible error."

iii) Decisions under Rule 77 subject to appeal

(1) plain meaning of the rule

Sebureze and Turinabo, (Appeals Chamber), March 11, 2013, para. 7: "Rule 77(J) should be accorded its plain meaning - that '[a]ny decision rendered by a Trial Chamber under this Rule shall be subject to appeal.'"

(2) decisions disposing of contempt cases and other circumstances

Sebureze and Turinabo, (Appeals Chamber), March 11, 2013, para. 4: "ICTR Rule 77(J) provides that 'Any decision rendered by a Trial Chamber under this Rule shall be subject to appeal.' Two previous Appeals Chamber decisions have asserted that an appeal under Rule 77(J) lies 'only with respect to decisions disposing of a contempt case.' However, the Appeals Chamber decisions cited in support of that proposition expressly held that there are other circumstances in which appeals are also permitted."

(3) decisions involving right to a fair trial

Sebureze and Turinabo, (Appeals Chamber), March 11, 2013, para. 4: "The Appeals Chamber has expressly stated in would 'also' entertain appeals under Rule 77(J) where the decision in question would 'harm the party's right to a fair trial.'"

(4) challenges to jurisdiction, referral of case, provisional release

Sebureze and Turinabo, (Appeals Chamber), March 11, 2013, para. 5: "The Appeals Chamber has never had occasion to exhaustively define what other decisions or issues are appealable under Rule 77(J). At a minimum, that Rule should be interpreted as encompassing the same decisions from which an appeal lies as of right in 'regular' proceedings. That would include: challenges to jurisdiction, referral of a case, provisional release."

(5) judgements, decisions not to investigate, denials of requests to investigate

Nzabonimana, (Appeals Chamber), May 11, 2011, para. 13: "Rule 77(J) of the Rules as applying to appeals against judgements on contempt, decisions denying a request for investigation into allegations of contempt, and decisions dismissing a request to initiate contempt proceedings."

(6) sentencing reviewed for discernible errors

Jović, (Appeals Chamber), March 15, 2007, para. 38: "The Appeals Chamber recalls that Trial Chambers are vested with broad discretion in determining an appropriate sentence. In general, the Appeals Chamber will not revise a sentence unless an appellant demonstrates that the Trial Chamber committed a discernible error in exercising its discretion or failed to follow the applicable law."

Marijačić and Rebić, (Appeals Chamber), September 27, 2006, para. 53: "Trial Chambers are vested with broad discretion in determining an appropriate sentence. In general, the Appeals Chamber will not revise a sentence unless the Appellant demonstrates that the Trial Chamber has committed a 'discernible error' in exercising its discretion or has failed to follow the applicable law. It is for the Appellant to demonstrate how the Trial Chamber ventured outside its discretionary framework in imposing the sentence."