

ERITREA – ETHIOPIA CLAIMS COMMISSION

RULES OF PROCEDURE

CHAPTER ONE: RULES APPLICABLE TO ALL PROCEEDINGS

SECTION I - INTRODUCTORY RULES

Scope of Application

Article 1

1. Pursuant to Article 5, paragraph 7, of the Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea concluded in Algiers on 12 December 2000 [the “Agreement”], the conduct of proceedings before the Commission shall be subject to the following Rules, which have been based upon the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States and have been adopted by the Commission after consultation with the two parties.
2. The Commission may modify these Rules after consultation with the two parties.
3. The Agreement constitutes an agreement in writing by Ethiopia and Eritrea, on their own behalf and on behalf of their nationals, submitting to arbitration pursuant to the Agreement and these Rules.
4. These Rules contain three Chapters: Chapter One (Rules Applicable For All Proceedings), Chapter Two (Procedures For Individual Consideration Of Claims) and Chapter Three (Mass Claims Procedures).

Notice, Calculation of Periods of Time

Article 2

1. The Commission intends to utilize e-mail or fax to the greatest extent possible. Any communication to the Commission shall be deemed to have been made at the time and place it was transmitted by e-mail or fax to the Commission's Registrar. The Registrar shall promptly retransmit such communication to each arbitrator and to the contact person of the other party designated pursuant to Article 3.
2. Any communications or documents that cannot reasonably be submitted to the Commission by e-mail or fax shall be delivered to the Registrar in nine copies. Such communications or documents shall be deemed to have been made at the time they are received by the Registrar. The Registrar shall promptly send one copy of such communications or documents to each arbitrator and two copies of such

communications or documents to the contact person of the other party designated pursuant to Article 3 by a rapid and reliable means.

3. Any period of time established under these Rules shall be calculated beginning on the day after a communication establishing that period is made. If the period ends on an official holiday or a non-work day in the State of the recipient, the period is extended until the next working day. Official holidays or non-work days occurring during any period of time are included in calculating the period.

Representation and Assistance

Article 3

Each party shall appoint an Agent and if so desired a Co-Agent. The parties may also be assisted by counsel or other persons of their choice. Each party must communicate in writing to the other party and to the Registrar the name, telephone number, mailing address and e-mail address of the counsel or other person to whom all communications to that party are to be sent.

SECTION II - COMPOSITION OF THE COMMISSION

Appointment of Arbitrators

Article 4

The Commission consists of five arbitrators, one of whom is its President. The President and the other arbitrators are appointed as provided in Article 5 of the Agreement.

Challenge of Arbitrators

Article 5

A prospective arbitrator shall disclose to those who approach him/her in connection with his/her possible appointment any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him/her of these circumstances.

Article 6

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

3. A party who intends to challenge an arbitrator shall send notice of its challenge within thirty days after the appointment of the challenged arbitrator or, following that appointment, within thirty days after the circumstances mentioned in Articles 5 and 6 became known to that party.
4. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other arbitrators. The notification shall be in writing and shall state the reasons for the challenge.
5. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his/her office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Article 5 of the Agreement shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise its right to appoint or to participate in the appointment.
6. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by an Appointing Authority designated by the Secretary General of the United Nations. Pending the Appointing Authority's decision, the challenged arbitrator shall continue to serve as an arbitrator of the Commission, and the Commission shall continue to perform its duties under the Agreement.
7. If the Appointing Authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in Article 5 of the Agreement.

Replacement of an Arbitrator

Article 7

1. In the event of the death or resignation of an arbitrator during the course of the work of the Commission, a substitute arbitrator shall be appointed or chosen as provided in the Agreement. Any resignation of an arbitrator shall be addressed to the Commission and shall not be effective unless the Commission determines that there are sufficient reasons to accept the resignation, and if the Commission so determines the resignation shall become effective on the date designated by the Commission.
2. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his/her performing his/her functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding Articles shall apply.

Repetition of Hearings in the Event of the Replacement of an Arbitrator

Article 8

If any arbitrator of the Commission is replaced, the Commission shall determine whether all, any part of or none of the previous hearings shall be repeated. All prior decisions by the Commission remain in effect.

Registrar

Article 9

The Commission shall have a Registrar. The Registrar shall maintain the archives of the Commission for further disposition as the Commission may direct, and shall act as a channel of communication between the parties and the Commission as directed by the Commission.

SECTION III - ARBITRAL PROCEEDINGS

General Provisions

Article 10

1. Subject to these Rules, the Commission may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that each party is given a full opportunity of presenting its case in accordance with these rules.
2. The Commission shall decide whether to hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.

Place of Arbitration

Article 11

1. As specified in the Agreement, the Commission shall be located in The Hague. At its discretion it may hold meetings and hearings and conduct investigations in the territory of either party, or at such other location as it deems expedient. All awards shall be made at The Hague.
2. Any person or persons appointed by the Commission may enter the territory of either party for the purpose of obtaining information related to the Commission's work. The Commission shall give the parties sufficient notice to enable both to be present at such visits or inspections. Each party shall take all necessary measures to permit and facilitate such visits or inspections, including any measures required to permit the participation of appropriate representatives of the other party.

Language

Article 12

The language to be used in the proceedings of the Commission is English, and any documents in other languages should be accompanied by English translations, except as the Commission may otherwise permit.

Hearings

Article 13

1. In the event of an oral hearing, the Commission shall give the parties adequate advance notice of the date, time and place thereof.
2. If witnesses are to be heard, at least thirty days before the hearing, each party shall communicate to the Commission and to the other party the names and addresses of the witnesses it intends to present, and the subject upon and the languages in which such witnesses will testify. As necessary, the Commission shall make arrangements for translation into English of oral statements to be made at a hearing.
3. The Commission may arrange for a record of the hearing if it deems this necessary, or if the parties have agreed thereto and have so informed the Commission at least thirty days before the hearing.
4. Any documents or other written information that the Commission permits a party to introduce at a hearing shall at the same time or earlier be supplied to the other party, and a copy shall be filed with the Registrar.
5. Hearings shall be held *in camera* unless the parties agree otherwise. The Commission may require the retirement of any witness or witnesses during the testimony of other witnesses. The Commission is free to determine the manner in which witnesses are examined and shall take appropriate measures as required for the protection of the security and privacy of witnesses.
6. Evidence of witnesses may also be presented in the form of written statements signed by them.
7. The Commission may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
8. If one of the parties, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the Commission may proceed with the hearing and decision of the matter involved.

9. The Commission may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

Evidence

Article 14

1. Each party shall have the burden of proving the facts it relies on to support its claim or defense.
2. The Commission shall determine the admissibility, relevance, materiality and weight of the evidence offered.
3. The Commission may require a party to deliver to the Commission and to the other party, within such time as the Commission shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue.
4. At any time, the Commission may request the parties to produce documents, exhibits or other evidence within a specified time. The Commission shall take note of any failure to do so, as well as any reason given for such failure. Where circumstances warrant, the Commission may draw adverse inferences from any failure by a party to produce evidence.
5. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Commission may make the award on the evidence before it.

Interim Measures of Protection

Article 15

1. The Commission may, at the request of either party or on its own initiative, take any interim measures it deems necessary to preserve the respective rights of either party. Such interim measures may be established in the form of interim awards.
2. In taking such interim measures, the Commission must determine that it has *prima facie* jurisdiction, that the interim measures are necessary to avoid irreparable harm, and that they would not constitute a final decision of the issues in dispute.

Consultants and Experts

Article 16

1. The Commission may appoint one or more consultants to advise it.
2. The Commission may also appoint experts to examine and report on particular matters with the parties' assistance. The Commission shall establish an expert's terms of reference, which shall be communicated to the parties.
3. The parties shall assist the expert as requested. They shall provide any relevant information or produce for the expert, or permit the expert's inspection of, any relevant documents, data or location requested by the expert. Any disagreement between a party and the expert regarding the expert's requests for assistance may be referred to the Commission for decision.
4. The expert shall prepare a written report to the Commission. The Commission shall communicate copies of this report to the parties, who may state their views in writing on it and on the expert's conclusions and recommendations.
5. The Commission may in its sole discretion decide to hold a hearing on an expert's report so that the expert may be heard and asked questions by the Commission and the parties. At such a hearing, either party may present expert witnesses to testify on points at issue. The provisions of these Rules relating to hearings shall apply.

Waiver of Rules

Article 17

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance shall be deemed to have waived its right to object.

Decisions and Awards

Article 18

1. The Commission may make final awards, interlocutory awards, interim awards, partial awards and decisions. The Commission may designate as "decisions" significant actions it takes regarding jurisdiction, procedure or other matters that are not related to the legal and factual merits of particular claims.
2. The Commission shall endeavor to decide questions unanimously. When the Commission is not unanimous, it shall decide by a majority of the arbitrators.

3. In the case of questions of procedure, when there is no majority or when the Commission so authorizes, the President may decide on his/her own, subject to revision, if any, by the Commission.
4. Decisions and awards shall be made in writing. As provided in Article 5(17) of the Agreement, they shall be final and binding on the parties. The parties agree to honor all decisions and to pay any monetary awards rendered against them promptly.
5. The Commission shall state the reasons upon which awards are based, unless the parties have agreed that no reasons are to be given.
6. Awards shall be signed by each arbitrator. Each shall contain the date and the place where it was made. If any arbitrator fails to sign an award after being given opportunity to do so, the award shall state the reasons for the absence of signature.
7. All awards shall be made available to the public, including by posting on an appropriate Internet website. The Commission may, at the request of a party or on its own initiative, determine that it will not make an entire award public, but will make public only portions from which the identity of individuals, other identifying facts or trade or military secrets have been deleted.
8. Copies of each award signed by the arbitrators shall be communicated to the parties by the Registrar.

Applicable Law

Article 19

1. As specified in the Agreement, the Commission shall apply relevant rules of international law, and the Commission shall not have the power to make decisions *ex aequo et bono*.
2. In reaching its decisions, the Commission shall look to:
 - a. International conventions, whether general or particular, establishing rules expressly recognized by the parties;
 - b. International custom, as evidence of a general practice accepted as law;
 - c. The general principles of law recognized by civilized nations;
 - d. Judicial and arbitral decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
3. The Commission may also refer to national laws in appropriate circumstances.

Settlement or Other Grounds for Termination

Article 20

1. If, before an award in a claim or group of claims is made, the parties agree on a settlement of that claim or claims, the Commission shall either issue an order terminating the relevant arbitral proceedings or, if requested by both parties and accepted by the Commission, record the settlement as an arbitral award on agreed terms. The Commission need not give reasons for such an award. The provisions of these Rules regarding the form and effect of awards shall apply.
2. If continuation of the arbitral proceedings under the Agreement, or any portion of them, becomes unnecessary or impossible for any reason, the Commission shall inform the parties of its intention to issue an order terminating such proceedings. The Commission shall issue such an order unless a party establishes justifiable grounds not to do so.
3. Copies of any award on agreed terms or order terminating arbitral proceedings shall be communicated to the parties by the Registrar.

Interpretation or Correction of the Award; Additional Award

Article 21

1. Within sixty days after receiving the award, either party, with notice to the other party, may request that the Commission:
 - (a) give an interpretation of the award. Any such interpretation shall be in the sole discretion of the Commission and shall be given in writing within forty-five days after receipt of the request. The interpretation shall form part of the award.
 - (b) correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Commission may also within thirty days after the communication of the award make such corrections on its own initiative. Corrections shall be in writing.
 - (c) make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the Commission considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.
2. The provisions of these Rules regarding the form and effect of awards shall apply to interpretations, corrections and additional awards.

Expenses of the Commission

Article 22

1. The Commission shall determine its own expenses after consultation with the parties. These expenses will include the fees of the arbitrators, the costs of the Commission staff, the costs of the facilities and equipment used by the Commission, the costs of expert advice and of any other assistance required by the Commission and any fees or expenses of the Appointing Authority, as well any related expenses of the Permanent Court of Arbitration.
2. As provided in Article 5(15) of the Agreement, the expenses of the Commission shall be borne equally by the parties. At any time, the Commission may request each party to deposit equal amounts as an advance for the Commission's costs. Each party shall pay any such request from the Commission within thirty days of its receipt.
3. All amounts deposited by the parties pursuant to this Article shall be directed to the Registrar for disbursement for the Commission's costs under direction of the President of the Commission.
4. If the requested deposits are not paid in full within sixty days after the receipt of the request, the Commission shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the Commission may order the suspension or termination of the proceedings. If such payment is made by the party that is not in default, the Commission shall suspend proceedings related to the claims filed by the party that is in default until such time as it has made the required payments.

CHAPTER TWO: PROCEDURES FOR INDIVIDUAL CONSIDERATION OF CLAIMS

Application of this Chapter

Article 23

This Chapter applies to all claims that are to be individually arbitrated. These claims include all claims by the government of one party on its own behalf against the government of the other party, all claims for compensation in excess of US\$100,000 on behalf of persons, and any other claims for which individual treatment is required by Chapter Three.

Statement of Claim

Article 24

1. Claims to be individually considered under this Chapter shall be submitted to the Commission by filing a Statement of Claim for each claim with the Registrar. As specified in the Agreement, Statements of Claim are to be filed by 12 December

2001. The claimant may annex to its Statement of Claim all documents it deems relevant or it may add a reference to documents or other evidence it may submit.
2. Statements of Claim and any annexed documents or other evidence shall be filed by delivering a signed original and nine copies to the Registrar at the premises of the Permanent Court of Arbitration at The Hague. The text of the Statement of Claim and as much supporting documentation or evidence as is reasonably practicable shall at the same time be delivered to the Registrar on computer discs or other electronic media to be prescribed by the Commission.
 3. Statements of Claim shall include a precise statement of the following particulars:
 - (a) The names and addresses of the parties;
 - (b) If the claimant is the government of a Party or an agency of such government, whether the claim is solely of that government or agency or whether it includes the claims of persons, and, if the latter, the identification of such persons, including their names, places of residence and nationalities;
 - (c) A statement of the facts supporting the claim or claims;
 - (d) The violation or violations of international law on the basis of which the claim or claims are alleged to have arisen;
 - (e) Any other points at issue;
 - (f) The relief or remedy sought;
 - (g) The Commission's jurisdiction over the claim or claims;
 - (h) Whether the claim or claims have been filed in any other forum.

Statement of Defense

Article 25

1. Within a period of time to be determined by the Commission, the respondent in each claim under this Chapter shall file its Statement of Defense. Statements of Defense shall be filed utilizing in all respects the procedure for filing Statements of Claim under the previous Article.
2. The Statement of Defense shall reply to the particulars of the Statement of Claim. The respondent may annex to its statement the documents or evidence on which it relies for its defense or may add a reference to the documents or other evidence it will submit.

3. If, within the period of time fixed by the Commission, the respondent has not filed its Statement of Defense without showing sufficient cause for such failure, the Commission shall order that the proceedings continue.

Amendments to the Claim or Defense

Article 26

Either party may amend or supplement its claim or defense unless the Commission considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner as to state a new claim, or so that the amended claim falls outside the jurisdiction of the Commission.

Pleas as to the Jurisdiction of the Commission

Article 27

1. The Commission shall have the power to rule on objections that it has no jurisdiction. A plea that the Commission does not have jurisdiction shall be raised not later than in the Statement of Defense.
2. The Commission should consider whether, in the interests of economy and efficiency, it should rule on a plea concerning its jurisdiction as a preliminary question. However, the Commission may proceed with the arbitration and rule on such a plea in its final award.

Further Written Statements

Article 28

The Commission shall decide which further written statements, in addition to the Statement of Claim and the Statement of Defense, shall be required from the parties or may be presented by them and shall fix the period of time for filing such statements. The Commission may seek the views of the parties in this regard.

Interest and Costs

Article 29

Interest and costs may be awarded.

CHAPTER THREE: MASS CLAIMS PROCEDURES

Filing of Claims

Article 30

1. Claims covered by this Chapter are claims for fixed amount compensation in one of the following categories:
 - (a) Category 1 - Claims of natural persons for unlawful expulsion from the country of their residence;
 - (b) Category 2 - Claims of natural persons for unlawful displacement from their residence;
 - (c) Category 3 - Claims of prisoners of war for injuries suffered from unlawful treatment;
 - (d) Category 4 - Claims of civilians for unlawful detention and for injuries suffered from unlawful treatment during detention; and
 - (e) Category 5 - Claims of persons for loss, damage or injury other than those covered by the other categories.
2. Other claims in the above categories that do not seek fixed amount compensation, including claims that seek to prove actual damages, must be filed as claims for individual compensation pursuant to Chapter Two of these rules. Taking into account the number and nature of such claims filed pursuant to Chapter Two, the Commission may establish a separate process to expedite their resolution.
3. Claims to be considered under Chapter Three shall be filed with the Commission on the claims forms approved by the Commission in both electronic and paper copies. As specified in the Agreement, all claims are to be filed by 12 December 2001.

Sub-Categories of Claims

Article 31

In due course after the claims covered by this Chapter have been filed and following further instructions by the Commission, each party shall group its claims in each category in sub-categories that it selects in such a manner that each sub-category contains claims in that category alleged to arise from a particular violation of international law.

Decisions on Sub-Categories

Article 32

For each sub-category, the Commission shall make its decision as follows:

1. Following consideration of the evidence and pleadings submitted by each party, the Commission shall determine whether the acts or omissions alleged to have been in violation of international law have been proved to have occurred, to be attributable to the other party and to have constituted a violation of international law.
2. If the Commission finds that one or more of these determinations cannot be made for lack of proof, it shall issue an award dismissing all claims in that sub-category.
3. If the Commission makes all of the determinations in paragraph 1, the claims in that sub-category for each of the two levels of compensation shall be subject to random sampling of their evidence to ascertain the percentage of such claims for which the evidence is inadequate to establish the claim. The compensation for all claims in that compensation level of that sub-category is automatically reduced by that percentage, and the Commission shall issue an award of such compensation for all claims in that sub-category.

Other Claims

Article 33

Any claims filed pursuant to Chapter Three that are not subsequently included in a sub-category and are not withdrawn by the filing party shall be dismissed by the Commission.