

I. THE APPLICANT

1. This application for leave to make written submissions as *amicus curiae* is filed by Louise Arbour, the United Nations High Commissioner for Human Rights (the Applicant). The Applicant is the head of the Office of the High Commissioner for Human Rights (OHCHR), a department of the United Nations Secretariat.
2. The Applicant's address is: Louise Arbour, United Nations High Commissioner for Human Rights, Office of the High Commissioner for Human Rights, Palais Wilson, 52 Rue de Paquis; 1211 Geneva 10; Switzerland; phone: +41-22-917-9130; fax: +41-22-917-9012; e-mail: larbour@ohchr.org.
3. The Applicant is submitting this application at the Applicant's own initiative.

II. THE APPLICANT'S GROUNDS FOR SUBMITTING THIS APPLICATION:

4. The Applicant submits this application for leave to make written submissions as *amicus curiae* on the grounds that the case addresses important legal issues in which the Applicant has a specific interest. Moreover, the Applicant believes that she has a unique perspective and contribution to make to the arguments advanced by the parties in the case.

The case will address important points of international law

5. In addition to considering the interpretation and construction of Rule 70(B) and Rule 70(D) of the Rules of Procedure and Evidence of the Special Court of Sierra Leone (the Rules), which are addressed in the first and second grounds of appeal contained in the Prosecution's Notice of Appeal and Submissions filed with the Court on 19 October 2005, the case will consider whether a United Nations human rights officer testifying before a criminal tribunal may be compelled to disclose his or her confidential sources. This issue is addressed in the Prosecution's third ground of appeal, and involves the following important points of international law:
 - (i) The nature and extent of any evidentiary privilege or immunity attaching to confidential communications between United Nations human rights officers engaged in monitoring, investigating and reporting on human rights violations, and their sources; and
 - (ii) The manner for ascertaining if, and the circumstances in which, the public interest in upholding any such privilege or immunity may yield to the public interest



served by an open administration of justice, exemplified by the principle that an accused person is entitled to make full answer and defence.

The Applicant has an interest in the legal issues to be determined in the case

6. The legal issues to be determined in this case go to the heart of the work of United Nations human rights officers, and thereby directly affect the manner in which the Applicant carries out her mandated functions.
7. The Applicant's mandate, set forth in United Nations General Assembly resolution 48/141 of 7 January 1994, includes promoting and protecting the effective enjoyment by all of all civil, cultural, economic, political and social rights, carrying out the tasks assigned to her by the competent bodies of the United Nations system and to making recommendations to them with a view to improving the promotion and protection of all human rights, preventing human rights violations, enhancing international cooperation for human rights, coordinating relevant activities throughout the United Nations and strengthening and streamlining the United Nations human rights machinery. A copy of General Assembly resolution 48/141 is attached to this application as Annex A.
8. The Applicant is required to perform certain functions as part of the mandate of the human rights component of the United Nations peace mission in Sierra Leone (United Nations Assistance Mission in Sierra Leone, UNAMSIL). The human rights mandate of UNAMSIL is wide-ranging and includes promoting respect for human rights, and monitoring, investigating and reporting on violations of human rights.¹ One of the primary functions of the human rights component in both UNAMSIL and its predecessor, UNOMSIL, has been to monitor and report on human rights violations and abuses of international humanitarian law throughout the country. United Nations human rights officers carry out these tasks by relying on a wide-range of sources, including witnesses and victims, to establish trends and patterns and verify specific incidents.
9. The capacity of human rights officers to effectively perform the functions of monitoring, investigating and reporting on human rights violations in particular communities is dependent on their ability to establish and maintain relationships of trust and confidence with members of those communities.
10. Any legal rule that tends to reduce the basis for this trust and confidence (for example, by requiring United Nations human rights officers to disclose the identities of their sources) will adversely affect the ability of human rights officers to operate effectively. Potential sources will be far less willing to cooperate with human rights officers in providing sensitive and vital and sometimes sensitive information about human rights violations when they know that the human rights officer is legally incapable of maintaining the confidentiality of that information, or of the identity of the informant.

¹ SC Res 1270 (1999), 22 October 1999; SC Res 1289 (2000), 7 February 2000; SC Res 1313 (2000), August 2000.



11. Moreover, compelled disclosure of the identities (or of information tending to point to the identities) of persons providing information to human rights officers in the course of carrying out their monitoring, investigation and reporting functions may also endanger the safety of those persons and of their families and communities, leading to the paradox that the work of human rights officers may endanger the very people it is supposed to protect and assist.

The Applicant has a unique perspective and contribution to make to the arguments advanced by the parties in the case

12. The Applicant and the OHCHR has developed a depth and diversity of expertise in relation monitoring, analysing and reporting on violations of human rights and humanitarian law. The Applicant, through OHCHR, implements country-level human rights activities under a variety of arrangements that include:
- (i) Human rights components of United Nations peace missions established by the Security Council or the General Assembly.²
 - (ii) Stand-alone Offices funded and managed by OHCHR, based on agreements with the governments concerned, or in keeping with decisions or resolutions made by the Commission on Human Rights;³
 - (iii) Human rights officers within United Nations Country Teams (UNCTs), who are appointed to support human rights efforts, including peace efforts, at the request of United Nations resident coordinators;⁴

III. THE ISSUES THE APPLICANT SEEKS TO ADDRESS AND THE NATURE OF THE INFORMATION OR ANALYSIS THE APPLICANT PROPOSES TO SUBMIT.

13. The Applicant seeks to make submissions generally supporting the grounds of appeal and submissions filed by the Prosecution on 19 October 2005.

² For example, Abkhazia/Georgia (UNOMIG); Afghanistan (UNAMA); Burundi (ONUB); Central African Republic (BONUCA); Côte d'Ivoire (UNOCI); The Democratic Republic of the Congo (MONUC); Ethiopia/Eritrea (UNMEE); Haiti (MINUSTAH); Iraq (UNAMI); Liberia (UNMIL); Sierra Leone (UNAMSIL) and Sudan (UNAMIS).

³ There are offices managed and resourced by OHCHR in Bosnia and Herzegovina, Burundi, Cambodia, Colombia, The Democratic Republic of the Congo, Guatemala, Serbia and Montenegro, Nepal and Uganda.

⁴ For example, there are human rights officers within UNCTs in Angola, Guyana, and Sri Lanka.

14. Although the Applicant also seeks to make submissions on the interpretation and construction of Rule 70(B) and Rule 70(D) of the Rules, the Applicant intends to focus her submissions on issues pertaining to the third ground of appeal.
15. In particular, the Applicant seeks to address the following issues:
- Whether confidential information provided to a United Nations human rights officer in the course of that officer's monitoring, investigation and reporting on human rights violations, gives rise to an evidentiary privilege or immunity that prevents that officer from being compelled to reveal that information in testimony before international criminal tribunals;
 - The nature and scope of any such privilege or immunity, including whether the privilege or immunity may be waived, and by whom;
 - Identification of the public interest forming the basis of any such privilege or immunity and of any competing public interest in requiring disclosure of the information; and
 - The circumstances and manner in which the public interest giving rise to the privilege or immunity may be balanced against such competing interests.
16. The Applicant will address the issues as matters of general principle, informed by reasoning from analogy with cases decided in domestic jurisdictions, and adapted to the particular context of criminal proceedings before an international tribunal.

IV. THE APPLICANT'S SUBMISSIONS WILL AID IN THE PROPER DETERMINATION OF THE CASE OR ISSUE.

17. The Applicant intends to analyse the issues in the present case in the broader context of the fundamental role of the monitoring, assessing, investigation and reporting functions of United Nations human rights officers.
18. Over the years, the OHCHR has accumulated unique experience and expertise in monitoring and reporting on human rights violations in various contexts within the United Nations mandates. The applicant will provide a practical insight based on this experience. She will also propose a framework to determine when and how the confidentiality of a United Nations human rights source should be protected and how best to ensure that the protection of the confidentiality does not impair the search for the truth in the context of criminal proceedings.



19. If leave is granted, the Applicant will provide more detailed submissions on the issues addressed in this application within the next two weeks. The Applicant believes that her submissions will assist the Court in fashioning workable, flexible and fair principles for dealing with assertions of privilege or immunity regarding evidence which may have varying degrees of relevance to the matter before the court in different cases.

Respectfully submitted,
on 24 November 2005



Louise Arbour
United Nations High Commissioner for Human Rights

UNITED
NATIONS

A



General Assembly

Distr.
GENERAL

A/RES/48/141
7 January 1994

Forty-eighth session
Agenda item 114 (b)

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the Third Committee (A/48/632/Add.4)]

48/141. High Commissioner for the promotion and protection of
all human rights

The General Assembly,

Reaffirming its commitment to the purposes and principles of the Charter of the United Nations,

Emphasizing the responsibilities of all States, in conformity with the Charter, to promote and encourage respect for all human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Emphasizing the need to observe the Universal Declaration of Human Rights 1/ and for the full implementation of the human rights instruments, including the International Covenant on Civil and Political Rights, 2/ the International Covenant on Economic, Social and Cultural Rights, 2/ as well as the Declaration on the Right to Development, 3/

Reaffirming that the right to development is a universal and inalienable right which is a fundamental part of the rights of the human person,

1/ Resolution 217 A (III).

2/ See resolution 2200 A (XXI), annex.

3/ Resolution 41/128, annex.

/...

Considering that the promotion and the protection of all human rights is one of the priorities of the international community,

Recalling that one of the purposes of the United Nations enshrined in the Charter is to achieve international cooperation in promoting and encouraging respect for human rights,

Reaffirming the commitment made under Article 56 of the Charter to take joint and separate action in cooperation with the United Nations for the achievement of the purposes set forth in Article 55 of the Charter,

Emphasizing the need for the promotion and protection of all human rights to be guided by the principles of impartiality, objectivity and non-selectivity, in the spirit of constructive international dialogue and cooperation,

Aware that all human rights are universal, indivisible, interdependent and interrelated and that as such they should be given the same emphasis,

Affirming its commitment to the Vienna Declaration and Programme of Action, 4/ adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993,

Convinced that the World Conference on Human Rights made an important contribution to the cause of human rights and that its recommendations should be implemented through effective action by all States, the competent organs of the United Nations and the specialized agencies, in cooperation with non-governmental organizations,

Acknowledging the importance of strengthening the provision of advisory services and technical assistance by the Centre for Human Rights of the Secretariat and other relevant programmes and bodies of the United Nations system for the purpose of the promotion and protection of all human rights,

Determined to adapt, strengthen and streamline the existing mechanisms to promote and protect all human rights and fundamental freedoms while avoiding unnecessary duplication,

Recognizing that the activities of the United Nations in the field of human rights should be rationalized and enhanced in order to strengthen the United Nations machinery in this field and to further the objectives of universal respect for observance of international human rights standards,

Reaffirming that the General Assembly, the Economic and Social Council and the Commission on Human Rights are the responsible organs for decision- and policy-making for the promotion and protection of all human rights,

4/ A/CONF.157/24 (Part I), chap. III.

Reaffirming the necessity for a continued adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights and the need to improve its coordination, efficiency and effectiveness, as reflected in the Vienna Declaration and Programme of Action and within the framework of a balanced and sustainable development for all people,

Having considered the recommendation contained in paragraph 18 of section II of the Vienna Declaration and Programme of Action,

1. Decides to create the post of the High Commissioner for Human Rights;
2. Decides that the High Commissioner for Human Rights shall:
 - (a) Be a person of high moral standing and personal integrity and shall possess expertise, including in the field of human rights, and the general knowledge and understanding of diverse cultures necessary for impartial, objective, non-selective and effective performance of the duties of the High Commissioner;
 - (b) Be appointed by the Secretary-General of the United Nations and approved by the General Assembly, with due regard to geographical rotation, and have a fixed term of four years with a possibility of one renewal for another fixed term of four years;
 - (c) Be of the rank of Under-Secretary-General;
3. Decides that the High Commissioner for Human Rights shall:
 - (a) Function within the framework of the Charter of the United Nations, the Universal Declaration of Human Rights, 1/ other international instruments of human rights and international law, including the obligations, within this framework, to respect the sovereignty, territorial integrity and domestic jurisdiction of States and to promote the universal respect for and observance of all human rights, in the recognition that, in the framework of the purposes and principles of the Charter, the promotion and protection of all human rights is a legitimate concern of the international community;
 - (b) Be guided by the recognition that all human rights - civil, cultural, economic, political and social - are universal, indivisible, interdependent and interrelated and that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms;
 - (c) Recognize the importance of promoting a balanced and sustainable development for all people and of ensuring realization of the right to development, as established in the Declaration on the Right to Development; 3/
4. Decides that the High Commissioner for Human Rights shall be the United Nations official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General; within the framework of the overall competence, authority and decisions of the

/...

A/RES/48/141

Page 4

General Assembly, the Economic and Social Council and the Commission on Human Rights, the High Commissioner's responsibilities shall be:

- (a) To promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights;
 - (b) To carry out the tasks assigned to him/her by the competent bodies of the United Nations system in the field of human rights and to make recommendations to them with a view to improving the promotion and protection of all human rights;
 - (c) To promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose;
 - (d) To provide, through the Centre for Human Rights of the Secretariat and other appropriate institutions, advisory services and technical and financial assistance, at the request of the State concerned and, where appropriate, the regional human rights organizations, with a view to supporting actions and programmes in the field of human rights;
 - (e) To coordinate relevant United Nations education and public information programmes in the field of human rights;
 - (f) To play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world, as reflected in the Vienna Declaration and Programme of Action; 4/
 - (g) To engage in a dialogue with all Governments in the implementation of his/her mandate with a view to securing respect for all human rights;
 - (h) To enhance international cooperation for the promotion and protection of all human rights;
 - (i) To coordinate the human rights promotion and protection activities throughout the United Nations system;
 - (j) To rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness;
 - (k) To carry out overall supervision of the Centre for Human Rights;
5. Requests the High Commissioner for Human Rights to report annually on his/her activities, in accordance with his/her mandate, to the Commission on Human Rights and, through the Economic and Social Council, to the General Assembly;
6. Decides that the Office of the High Commissioner for Human Rights shall be located at Geneva and shall have a liaison office in New York;
7. Requests the Secretary-General to provide appropriate staff and resources, within the existing and future regular budgets of the United Nations, to enable the High Commissioner to fulfil his/her mandate, without

/...

diverting resources from the development programmes and activities of the United Nations;

8. Also requests the Secretary-General to report to the General Assembly at its forty-ninth session on the implementation of the present resolution.

85th plenary meeting
20 December 1993