



**JUSTICE IS IN THE EYES OF THE BEHOLDERS:
Restorative and Retributive Justice in Northern Uganda.**

By

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A typical displaced people's Camp in Gulu, Northern Uganda. Photographer: Moses Adokonyero, 2008.

Declaration

The work I have submitted is my own effort. I certify that all the material in the dissertation which is not my own work has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

Signed: Mabel Turyagenda



Date: 27/05/2009

Dedication.

To all the victims of the Northern Uganda war.

“Mankind must put an end to war, or war will put an end to mankind.”

John F. Kennedy (1917-1963)

To my daughter, Ella. The wind beneath my wings.

“Listen to the mustn'ts, child. Listen to the don'ts. Listen to the shouldn'ts, the impossibles, the won'ts. Listen to the never haves, then listen close to me... Anything can happen, child. Anything can be.” Shel Silverstein

For my mum, my inspiration and my biggest fan.

“I remember my mother's prayers and they have always followed me. They have clung to me all my life.” Abraham Lincoln

To God be the glory through him all things are possible.

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Abstract

The aim of this report was to explore local interpretations of Mato Oput as a mechanism of traditional justice and the effects of the International Criminal court (ICC) intervention as tools for transitional justice in Northern Uganda. Fieldwork was carried out in Gulu district, involving various stakeholders in the peace process and the grassroots.

The study found that traditional justice, albeit with a few variations to institutionalize it, is an important method of reconciliation for Northern Uganda due to three factors; the faith the people have in it, scale of the war and because those involved in the war, who found each other on opposite sides, were neighbors, friends and family. The Acholi are so willing to forgive one another and emphasized that they want peace more than justice at the moment.

The study also found that ICC intervention came in at an inopportune time of the peace process as Amnesty was working and the peace talks were progressing positively. However, it would be a welcome option, amongst Northern Ugandans on condition that the ICC carries out its prosecutions within Uganda or be present as neutral observers to ensure fair trials within domestic courts for all parties to the war.

The study recommends the application of legal pluralism as the international, national and traditional/local systems can each play a major role in Uganda's transitional justice process.

TABLE OF CONTENTS

Declaration	iii
Dedication.....	iv
Acknowledgements.....	v
Abstract.....	vi
1.0 List of Abbreviations	x
1. CHAPTER ONE:	
1.1 Introduction	
1.2 Problem statement	
1.3 Objectives of the study	
1.4 Significance of the study	
1.5 Scope of the Study	
1.6 Background	
1.6.1 Uganda’s evolution	
1.6.2 The Lord’s Resistance Movement	
2. CHAPTER TWO	
2.1 Literature Review	
2.1.1 Transitional Justice, Human Rights and International law.	
2.1.2 Transitional Justice	
2.1.3 Restorative Justice.....	
2.1.4 Retributive justice	
2.1.5 Reconciliation.....	
3. CHAPTER THREE	
3.1 Study Area	
3.2 Methodology	
3.3 Sample size and sampling method	
3.4 Ethical and Methodological challenges	
4. CHAPTER FOUR	

4.1 Introduction	
4.1.1 Acholi theological beliefs and community Organizational Structure.....	
4.2 Mato Oput introduction.	
4.2.1 Breaking the Egg	
4.2.2 Mato Oput and brief cleansing ceremony.....	
4.3 Current Situation	
4.3.1 Findings and discussions.....	
4. 4 Challenges of Mato oput in the current context.....	
4.5 Conclusion.....	
4.6 International Criminal Court Intervention.....	
4.6.1 Introduction.....	
4.6.2 Findings and discussion.....	
4.6.3 Legal Pluralism.....	
4.7 Conclusion.....	

CHAPTER FIVE

5.1 Conclusion.....	
5.2 Recommendations.....	

APPENDICES

Appendix 1 : Interview Schedule	
Appendix 2 : Questionnaire	
Appendix 3 : Consent Form	
Appendix 4 : List of Glossary	
Appendix 5 : Map of the districts affected by the LRA insurgency.....	
Appendix 6 : The Major ethnic groups of Uganda.....	
Appendix 7 : The Uganda Amnesty Act.....	
Appendix 8 : The Rome Statute.....	

LIST OF FIGURES

Figure 1: Photo of a typical IDP camp setting.....	
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Figure 2: Phot of an over populated and cingested IDP camp in Gulu

Figure 3: Over populated and congested IDP camp in Gulu

Figure 4: Photos of the demolition process of abandoned IDP's huts.....

Figure 5: Illustration of the processes of a successful traditional justice ceremony.....

List of Abbreviations

ARLPI	Acholi Religious Leaders' Peace Initiative
CSOs	Civil Society Organizations
HSM	Holy Spirit Movement
FAPs	Formerly Abducted Persons
ICC	International Criminal Court
ICTJ	International Centre for Transitional Justice
IDPs	Internally Displaced People's camps
KM	Kacoke Mandit
LRA	Lord's Resistance Movement
NGOs	Non Government Organizations.
NRA/M	National Resistance Army/Movement
RLP	Refugee Law Project
TJ	Transitional Justice
UHRC	Uganda Human Rights Commission
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNLA	Uganda National liberation Army
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UPDA	Uganda people's Defence Force

Key words: Transitional justice, Retributive justice, Restorative justice, Reconciliation, Northern Uganda.

1. CHAPTER ONE

1.1 Introduction.

For the last two decades the government of Uganda has been at war with the Lord's Resistance Army (LRA), a rebel group, concentrated in the Northern part of Uganda. The LRA have allegedly raided, demolished villages, mass murdered and mutilated civilians and kidnapped children and women to serve as sex slaves or forcibly join their ranks.

The government has mostly used military tactics to combat the rebel movement and attempted peace talks with the rebel faction to no avail.

Eighteen years into the war, in 2003, the government eventually invited the International Criminal court (ICC) legislated to investigate war crimes and crimes against humanity, to investigate the LRA crimes and ensure justice in the hope that this will put an end to the war. Arrest warrants were issued for the five top commanders of the LRA, including the leader Joseph Kony¹.

The invitation of the International criminal court (ICC) and what was largely conceptualized as 'western' legal principles in fulfilling the notion of "justice" for the LRA's atrocities, however, created controversy in Uganda.

Opponents of ICC intervention feared that it would undermine the Uganda's Amnesty Act and the on going peace talks and they felt that traditional approaches to justice, emphasizing collective reconciliation, would better address the needs created by the on going war; while the ICC proponents argue for justice and an end to impunity. "that individuals who commit crimes against humanity should be punished for the sake of justice. They say that it would be unprincipled - as well as sending a dangerous

¹ Details at <http://www.globalsecurity.org/military/library/news/2005/10/mil-051007-irin04.htm> accessed 26/05/09

message worldwide - for the prosecutor to submit to the demands of armed thugs who have been maiming, raping and killing with impunity.”²

Simplified, these diverging views may be summarized as follows: whilst those in favor of traditional justice see peace as a prerequisite for justice, those in favor of the ICC see justice as a prerequisite for peace. The national ‘disputes’ pro or contra traditional/international justice have moreover, seemingly created a dichotomy between the ICC and traditional justice mechanism "Matto Oput", corresponding to the notions of retributive (individual punishment) and restorative (collective reconciliation) justice respectively. These apparent incommensurable national views (peace vs. justice and retributive vs. restorative justice) finds their resonance in the international debate on transitional justice and human rights, which will be explored in the literature review (chapter 2). Using the international debate as a backdrop, this study, in an effort to shed light on the apparent dichotomy, aims to explore restorative (traditional) and retributive mechanisms (international) as tools for transitional justice (hereafter referred to as TJ) and their implications to the people of Northern Uganda.

PROBLEM STATEMENT

Even with the increase of TJ mechanisms across continents and states in post conflict/authoritarian societies, there is still a debate over the most desirable or effective means of consolidating peace, promoting human rights, democracy and healing past wrongs in such post conflict situations.

TJ efforts are always initiated with good intentions; however, they have sometimes caused harm before any good. The ICC issuing of arrest warrants in Uganda in the hope of putting the war to end and bringing perpetrators to justice has become a stumbling block in the peace process and has had ramifications on other TJ efforts already in play the Amnesty law in place and the traditional justice option. It caused

² Katshung Joseph “Mato Oput Versus the International Criminal court” Pambazuka News, Weekly forum for social justice in Africa at <http://pambazuka.org/en/category/comment/37403> Accessed on 18/05/09

divisions between ICC proponents (retributive justice) and traditional justice (restorative justice) proponents placing the two models at opposite ends of the continuum. This is the problem from which this study originates.

Purpose of the study

This study aims to explore the traditional justice approaches i.e. The Mato Oput in meeting the TJ needs of the people in northern Uganda and the ramifications of International intervention in Northern Uganda.

Objectives of the study

1. To explore the key principles and practices of Acholi traditional justice system and the limitations of applying these methods in the current context.
2. To explore the capacity of the traditional justice approaches to meet the TJ needs of the people of northern Uganda.
3. Explore the ramifications of international intervention on Uganda's peace process and the grass root populations.

Significance of the study

Several studies have been done on Northern Uganda war, but they mainly reflect general and popular opinions, population surveys and statistics.

A report by Oxfam, in September of 2004:2 revealed that

“While most IDPs [internally displaced people] recognize that the Government's peace efforts brought about these improvements, most also continue to feel skeptical about the ultimate commitment of the Government and the LRA to bring a lasting peace to their area. Many feel that they are not being represented at or informed about the Juba peace process, and they do not trust the Government to promote development and address the perceived marginalization of the north.”

This study therefore aims to present the voices of the people and especially the grass root communities and moreover include the voices of the women and children who have barely been consulted in the processes of TJ efforts.

Although there is a need to exhaustively explore all viable TJ possibilities it is equally important to involve the people for whom these mechanisms are being designed. Findings such as those of the Oxfam report and those in this study (discussed in chapter 4) are the foundation of this study. This study will reflect the people's voices especially the people at the grassroots.

This study will also add to the information pool on TJ in conflict situations for academicians and policy makers in this arena. It also shades more light and therefore increases awareness on the newly created ICC for which the Uganda case was a first.

It aims to provide academic readers and the international communities with more information about the situation of the Northern Ugandans.

This study is also unique as it discusses the two sides of the coin in Uganda's TJ case, for restorative justice in this case, Traditional justice specifically the Mato Oput and for retributive justice, the ICC in Uganda.

The scope of the study

Geographically, the study was carried out in Northern Uganda taking Gulu District as a case study area. It targeted Acholi Elders, the Acholi chiefs' institution, relevant institutions like the Uganda Human Rights Commission, Amnesty Commission and Non government organizations (NGOs) and the civil society organizations (CSOs).

In Gulu it targeted IDP camps because they guaranteed a collection of victims to the war and to the atrocities and 'Formerly Abducted People' (FAPs) who witnessed the crimes committed by the LRA.

The study was done in two IDP camps in Gulu where Danish Refugee council was working at the time; i.e. St Anthony and Okwir camps.

1.2 Background of Uganda's civil strife

Uganda's history has been characterized by conflict and violence since its independence in 1962. The current Northern Uganda conflict stems from tribal divisions and the North and South divisions within the country which are deeply rooted in Colonial times.

In order to consider the appropriate TJ mechanisms that can be applied in Northern Uganda, one must understand Uganda's history and the root causes of the war.

1.2.1 Uganda's evolution

The Northern Uganda war stems from deeply rooted practices and policies by the British colonial administration in the colonial times. (1894- 1962)

The colonial policy in Uganda applied indirect rule where existing local traditional structures³ were used to exercise and maintain control of social and political order. The British "designated a large portion of the territory in southern Uganda as cash-crop growing, whereas the north was designated as a labor reserve." (Senyonjo, 2005: 409) Soldiers were recruited from among the Northerners. This marked the beginning of the North⁴-South⁵ divisions which led to tensions between the politically and economically enriched central and the marginalized North.

Different regimes mainly of Obote I (1966-1971), Obote II (1981-85) and Idi Amin (1971-97) – "found this formula politically expedient, which in turn further fuelled ethnic polarization and the militarization of politics." (Senyonjo, M., 2005: 409)

Post colonization, since Uganda's history is largely characterized by conflict and violence, its always led to changes in regimes.

3 Uganda is classified into five broad linguistic groups. The Bantu speaking, concentrated mainly in the south and central, the eastern Nilotics, the western Nilotics, the Nilo-hamites, and the Madi (bordering with Sudan) who occupy the east and North of the country.

4 Occupied by non Bantu speaking tribes.

5 Occupied Bantu speaking tribes

Changes in regimes meant massive changes in the composition of the army and many former soldiers were left redundant with no particular skills other than 'wielding the gun'. These former soldiers found themselves with other options but to join rebel groups whether they shared their agendas or not. A case in point is the return of former soldiers, the Uganda National Liberation Army/Force (UNLA) in Obote's regime (1981-85) to their villages in the north of Uganda after the National Resistance Movement (NRM) victory in 1986. This contributed to the later developments and connections of UNLA to the LRA and the insurgency. (Van Acker, 2004)

The army and security organs in Uganda were particularly a force to reckon with. They treated civilians the way they wanted and wielded a lot of power. Eventually ethnic groups competed to constitute the core of the security forces and hence have control of it in order to manipulate the country's politics. On top of this, Uganda has had a tendency to attract and recruit low skilled people in the military which led the country into having an army that was comprised of "a class of ill trained officers and soldiers with no particular skills and poor discipline, a 'lumpen militariat'" (Frank Van Acker 2004:399) prone to misbehave and or be easily manipulated into violating people's rights.

In 1986, when president Museveni ordered UNLA soldiers to report to barracks, they fled towards the North fearing a repetition of history because in 1972, President Idi Amin (1971-1979) ordered Acholis and Langi officers to report to the barracks only for them to be massacred. They feared more so because towards the NRA's victory, the UNLA soldiers under president Obote's (1981-85) command had brutalized the Baganda, torturing, killing and robbing civilians in Luwero Triangle, under operation Bonanza. The Acholi expected revenge so they fled to the bush joining rebel groups already there. (Ibid)

The economic growth and development of Uganda under Museveni's regime (1986 to date), has also acted as a catalyst for this war. For so long, Uganda's economy had been mismanaged and there were so many political upheavals. However the current

government through economic reforms, debt relief and foreign investments, managed to turn the economic tide to increase Uganda's Gross National Product (GDP) from an average 6% from 1990 to 2003. (World Bank 2005) However evidence of this growth was not visible in the North increasing the bitterness amongst of the Northerners against the government.⁶ (Ibid)

Some situational factors also played a role in enabling this war; like Northern Uganda sharing a border with Sudan, another country with its own rebellions within and with no government control in the Southern part that borders with Uganda also played a role in the scheme of things. It enabled the rebels to use Sudan as a refuge and allowed easy access to cheap arms. An AK47 cost as little as 25000 Uganda shillings (appr. \$12) at the Sudanese border of Kajo-Keji⁷ (Van Acker 2004: 345)

1.2.2 The Lords Resistance Movement.

The LRA came up in 1987 led by Joseph Kony, a self professed spirit medium and general after the Holy Spirit Movement (HSM) of Alice Auma.

At the time of the NRM takeover, the Acholi leadership suffered a crisis as the political and military leaders failed to protect Acholi interests⁸. "In this vacuum of inefficient leadership, came the rise of Alice Lakwena and Joseph Kony who emerged as leaders offering holistic solutions. They exploited cultural experience and trends to reinvent

6 The Uganda Human Development Report (2006) illustrates that Kitgum district has the lowest standard of living, followed by Gulu district - both in the war-affected region. Karamoja region has the highest poverty index at 65.3, while Kampala (the capital) has the lowest poverty index at 9.6. Kitgum also has the lowest life expectancy of 29 years, followed by Gulu at 30 years. Northern Uganda also has the lowest literacy rate at 56%..

<http://www.resolveuganda.org/node/507> Accessed on 20/03/09

7 Larjour Consultancy, 'South Sudan case study covering a number of counties in Central and Western Equatoria', Jei, December 2002, paper presented at a Pax Christi conference on the proliferation of small arms in the DRC, Sudan and Uganda, Arua, February 2003.

8 There had been presidents from the North and East who during their regmes did nothing worthy of mention for their people or to develop the north for example Milton Obote (1962-1971 and again in 1981-85), Idi Amin (1971-79),

traditional healing and cleansing, thereby establishing a new social hierarchy that successfully mobilized the population during the late 1980s.” (Van Acker 2004: 345)

The LRA mostly used traditional guerilla tactics but the harder it became to attack government troops, the more they resorted to terror tactics on local civilian populations mostly women and children. During the course of this war, “the LRA has burned at least 1946 houses and 1600 storage granaries, looted at least 1327 houses, 116 villages and 307 shops.” (Senyonjo, 2005: 411)

The LRA’s political agenda remained a mystery because they never publicized one which crippled any peace negotiations. Senyonjo, (2005) contends that they committed atrocities to generate publicity and to embarrass the government.

Over 2,000,000 people, mostly self sustaining farmers, have been displaced and living in protected camps established by the government in 1996 making Northern Uganda a ghost of what it used to be. People have “been confined to small security perimeters around the camps for up to 10 years leading to high levels of disease, poor hygiene, and high levels of poverty, violence, desperation, alcoholism and alienation.” (Van Acker, 2004: 343)

The LRA has proved elusive to the government of Uganda which has employed mostly military tactics to deal with this war. The most known military attack was ‘Operation Iron fist’ which targeted LRA bases in Sudan between 2002 and 2005. However, instead of curbing the movement, it led to massive counterattacks by the LRA who targeted civilians and protective camps. The most infamous of these was the attack on the Barlonyo camp which was burnt down and an estimate of 5000 people died.⁹

9 Justice and reconciliation project report,2005. Kill Everything: The Barlonyo Massacre



Figure 2: *Over populated and congested IDP camps in Gulu (Photos by Moses Odokonyero UNHCR)*

Efforts to negotiate peace were implemented but they all came to nothing, like the failed 1994 peace talks led by the then government minister, Betty Bigombe. The government also offered Amnesty to the rebels through the Amnesty Act of 2000.¹⁰ The latest peace talks, initiated by the Acholi religious and traditional leaders and

¹⁰ See Appendix 7.

elders were under way and the agreement drafted proposed Amnesty and the application of traditional mechanisms to deal with perpetrators in the conflict for peace and reconciliation.

In December of 2003, president Museveni, pursuant to Article 14¹¹ of the Rome statute, referred LRA to the International Criminal Court to investigate and determine if the LRA are guilty of war crimes and bring them to justice. October 15th 2005, the ICC announced that it had issued arrest warrants for Joseph Kony and his four senior commanders.¹²

The invitation of the ICC to investigate and intervene sparked off a series of debates as already mentioned in the introduction and further discussed in Chapter 4 and caused controversy between those for the ICC therefore retributive justice and those for traditional justice therefore restorative justice, presented as two sides of a coin. On one side is “a formal, rational-legalistic strategy, initiated, organized and controlled by (national or international) state institutions; The ICC”. (Huysse, L. 2008) On the other side are “predominantly informal and ritualistic-communal, community-initiated and community-organized policies”(Ibid) which will be developed in the academic literature in the following chapter.

Report structure.

This report is divided in to five main parts, Chapter 1 as already presented.

11 It permits state parties to that treaty to “refer to the (ICC) prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes”

12 See, International Crisis Group: “Northern Uganda: Understanding and Solving the conflict” African report No. 77 (14April 2004) online: International Crisis Group

<http://www.crisisgroup.org/home/index.cfm?id=2588&l=1>: Hovil, Lucy & Zachary Lomo. :Behind the Violence: Causes, Consequences and the search for Solution in Northern Uganda” Refugee Law Project Working Paper No. 11(2004)

Chapter 2 provides international literature related to this topic and presents contemporary debates in the TJ arena.

Chapter 3 lays out the study area, sample technique and size, methodology used and the ethical and practical challenges in the field.

Chapter 4 entails the details of a typical Mato oput ceremony, a traditional justice mechanism to reconciliation as it used to be performed prior to the war and the challenges of applying this practice in the current context. This chapter also explores the ICC intervention and its implications on the peace process and on the grassroots and presents the findings of this study and a discussions on these issues.

Chapter 5 concludes this report and provides recommendations for academicians, practitioners and the international community.

CHAPTER TWO

2.0 Literature review of main arguments and disputes within the field of Transitional Justice

2.1 Transitional Justice, Human Rights and International Law.

The field of transitional justice has expanded as a result of the search for ways of dealing with mass human rights violators during or post conflict. TJ has been enhanced by the increasing scope of international legal regulation, particularly in the field of human rights concerned as it is with reform of states aimed at entrenching internationally accepted standards of governance. International law has now allowed for the application of liberalization principles to diverse societies in the context of TJ. Turner (2008) “Liberalization policies grant an extensive role to the international community in restructuring the political, economic and legal systems of states emerging from conflict, as well as in international initiatives for the prosecution of past human rights abuses.” (Ibid: 127)

Prior to World War 1, human rights were categorized under "reserved domain" of States, a matter which was "not, in principle, regulated by international law". (Pellet 2000)¹³ After 1945, with the creation of the United Nations, the freedom of action traditionally belonging to States when dealing with human rights was restricted in many respects. The UN was mandated not only to prevent “the Scourge of war” but also to promote justice, social progress and fundamental Human Rights,¹⁴ The developments in international law, Human Rights, and therefore also in Transitional Justice, advocate for “the spread of the principles of democracy and the rule of law” as a means of delivering international stability. (Turner, 2008)

13 At <http://www.pugwash.org/reports/rc/pellet.htm> Accessed on 9/03/09

14 See for example the UN Charter, Preamble and Articles 1, para. 3, Art.13, para. 1.(b), Art. 55, among others.

Within the United Nations, the discourse on post conflict justice originally grew out of the Nuremberg trials (1945 to 46) and focused on prosecutions of accused individuals for serious international crimes, placing accountability at an individual level and not on an entire state. International law, however, holds states responsible for and ensures that individuals are held accountable. Those that hold this view argue that rule of law and human rights norms cannot be established in a society while the perpetrators of the crimes enjoy impunity, hence the eventual establishment of the ICC. (Turner, 2008)

Further developments in international law have led to prohibiting amnesties for crimes under international law and the right to ‘reparations’ and what has come to be referred to as the “Pinochet Effect.” The Pinochet case was not only an unprecedented development in the fight against global impunity,¹⁵ it set precedent on Universal Jurisdiction¹⁶, the case opened up new possibilities for holding traveling dictators to account for their crimes, including heads of states and contributed to deliberations for, and eventual establishment of the ICC¹⁷.

According to the International Centre on Transitional Justice (ICTJ)¹⁸, “part of TJ’s legal foundation is in the decision of the Inter-American court of Human Rights in the case of Velasquez Rodriguez V. Honduras, in which the Inter-American court found that all states have four fundamental obligations in the area of Human Rights. i.e. To take reasonable steps to prevent Human rights violations, to conduct a serious

¹⁵ Thijs Bouwknecht, 2008, Universal jurisdiction: 'the Pinochet precedent' Impunity on a downfall after Pinochet's arrest. At <http://www.rnw.nl/internationaljustice/specials/Universal/081015-pinochet> Accessed on 18th /03/09

¹⁶ The “principle of universal jurisdiction allows any state to prosecute individuals who are believed to have committed certain international crimes, even if the prosecuting state has no link to the crime in question other than the bonds of common humanity. In an earlier time, the principle applied to crimes of piracy and participation in the slave trade. After World War II, it was extended to a small number of offenses against the basic code of humanity, such as genocide and serious war crimes”(Orentlicher, Diane, 2003: 2)

¹⁷ For details see. Roht-Ariaza, (2005)The Pinochet Effect, Transitional justice in the age of Human Rights, University of Pennsylvania.

¹⁸ At <http://www.ictj.org/en/tj/> Accessed on 15/03/09

investigation of violations when they occur, to impose suitable sanctions on those responsible for the violations and to ensure reparation for the victims of the violations.”

The development and creation of an international court in 1998 ICC, signifies a big step in international law and poses adverse effects on TJ. One of the main objectives of the ICC is to put an end to impunity and thus to contribute to the prevention of genocide, war crimes, and crimes against humanity.¹⁹

The ICC, governed by the Rome Statute, is the first permanent; treaty based international criminal court established to end impunity for the perpetrators of the most serious crimes of concern in the international community. Its jurisdiction covers crimes like genocide, crimes against humanity and war crimes, committed after 1st July 2002, that are clearly defined in the Rome Statute.(See Annex 8) The ICC is based on the concept of Complementarity of the ICC jurisdiction and that of nation states; meaning that the ICC can only intervene when State parties are either “unwilling or unable genuinely to carry out the investigation or prosecution.”²⁰ (Seils & Weir, 2005: 3) Because the ICC is a permanent body, it means it gets to act not only in post conflict situations but also during conflict. This is the cause of the court’s biggest challenges. Scholars have labeled it as the ICC operating in ‘Uncharted waters’

Transitional Justice

The “Contemporary Transitional Justice approach mushroomed in the late 1980s and early 1990s, mainly in response to political changes in Latin America and Eastern Europe. Human Rights activists wanted to address systematic abuses by former regimes without jeopardizing the ongoing political transformations.”²¹

As the number of states facing transition rises so to is the academic interest in this field. Scholars agree that the term transitional justice, although widely accepted, is “slippery”, its conception is still surrounded with confusion, and the processes may be

19 See paragraph 5 of the preamble to the ICC Statute.

20 Article 17 of the Rome Statute.

21 See, International Centre for Transitional Justice (ICTJ) 2008 at <http://www.ictj.org/en/tj/> Accessed on 14/11/2008.

“highly politicized.”²² While definitions may vary they all view TJ as “the attempt to deal with past violence in societies undergoing or attempting some form of political transition” (Christine Bell, 2009: 7)

The ICTJ, refer Contemporary TJ “to a range of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuse as they move from a period of violent conflict or oppression towards peace, democracy, the rule of law, and respect for individual and collective rights”²³.

Teitel (2003) defines TJ as the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes. This is the Traditional view of Transitional justice.

Teitel (2000:5) suggests that “the problems of transitional justice arise within the distinctive context of transition- a shift in political orders” and advances a conception of transition clearly “defined and demarcated as a post revolutionary period of political change, thus implying that the problem of transitional justice arises within a bounded period, spanning two regimes”.

Teitel (2000: 3-5), advances two perspectives to transitional justice.

First, the political realists’ who believe that the prevailing balance of power, structures the “path” of the transition, which in turn is expected to explain the legal response. The realists “generally conflate the question of why a given state action is taken with that of what response is possible” (ibid). Teitel argues that such theories clarify why transitional justice is an important issue in some countries and not in others.

Second, the political idealist’s, who believes that Transitional justice relies on universalist conceptions of justice, which consider retributive or corrective justice

22 See Roht-Arriaza, (2008: 1), Borraine Alexander,(2006), Teitel,R.(2000: 4), McVoy and MCGregor, (2008: 6)

23 International Centre for transitional justice at <http://ictj.org/en/tj/> Accessed 12/15/07

measures to correct past wrongs necessary. (Teitel 2000: 3-5) The invitation of the ICC in Uganda was advanced from this perspective. This theory stipulates that perpetrators of war crimes and massive human rights violations must be prosecuted to discourage impunity.

Roht-Arriazza and Mariezcurrena (2006: 1) point out problems with Teitel's definition are that "it supposes a specific or defined period of flux after which a period of post transitional state sets in and it doesn't specify what the state is 'transitioning' to", it "hypes the legalities" and it over values "the role of law and legislation and giving short shift to the roles of education and culture and distributional justice in the process of dealing with past atrocities" They also argue that in some cases the very governments that carry out the war or repression may be the ones to instigate the transitional measures. Case in point Uganda as will be discussed in chapter 4.

Lundy and McGovern in McEvoy and McGregor (2008: 6) argue that the framework within which traditional transitional justice is addressed "ignores the problem that human rights abuses may continue to take place in circumstances where, in theory at least, the norms of liberal democratic accountability prevail" and that "It also therefore permits a radical critique of implicit liberal versions of transition that may otherwise struggle to deal with the subversion of the rule of law, under the guise of law itself, in ostensibly liberal democratic states" (ibid).

McEvoy and McGregor (2008), point out that even in jurisdictions where governments are all too willing to adopt the contemporary transitional justice framework, they are not exempt to manipulating the framework to suit their purposes. A case in point is Uganda, where "the president [Museveni] has sought to co-opt international criminal justice in an explicitly political fashion as the 'stick' while Amnesties are offered as the carrot to pressurize the LRA to lay down their arms." (Ibid: 7)

The main objectives of TJ are; addressing, and attempting to heal, divisions in society that arise as a result of human rights violations, bringing closure and healing the

wounds of individuals and society, particularly through “truth telling”, providing justice to victims and accountability for perpetrators, creating an accurate historical record for society, restoring the rule of law, reforming institutions to promote democratization and human rights, ensuring that human rights violations are not repeated and promoting co-existence and sustainable peace (see ICTJ 2008²⁴, Anderlini, et al. n.d²⁵.)

Ni’Aolain (2008), ICTJ, Mc Evoy and McGregor (2008), suggest Truth commissions, Criminal prosecutions, Memorialization efforts, Reparations programs and Security system reforms as approaches that have generally been adopted by post conflict governments that have become the basic approaches to Transitional Justices but they acknowledge that although these initiatives have been widely affiliated to TJ, they are not exclusive.

“Conceptions of Justice tend to be grounded in models that are either retributive or restorative”. (Harvey, 2006) and justice as understood by TJ theory is not necessarily the one experienced by the people on the ground (Kai et al. 2009)Turner (2008: 142) also agrees and further details that discussions on TJ have centered on the “need for justice ‘to be seen to be done’ in order to promote peace and reconciliation.” Implying “a need for domestic populations to feel that the injustices that they have suffered have been acknowledged and that a break with abusive and unaccountable governance has occurred” (Ibid) She however, points out that the international community tends to make the decision on how the justice is served basing its decisions, on international standards that have nothing to do with the affected communities. She sums it up in Michael Bank’s words that

“Often debate about [justice] is tinged by the influence of some ideological formula which is regarded as sacrosanct by people living in one society although hateful to those who live in another society” (Ibid: 142)

24 At <http://www.ictj.org/en/> Accessed 20/10/08

25At http://www.huntalternatives.org/download/49_transitional_justice.pdf Accessed 15/03/09

RESTORATIVE JUSTICE

Restorative justice on the one hand, is a theory of justice that emphasizes healing, restoration and reparation²⁶ Restorative justice views crime as a violation of more than the law. (Gilbert and Settles in Clark, 2008.)

Proponents for Restorative justice argue that the direct involvement of the victims and the affected communities is what sets restorative justice from retributive justice. (Galaway & Hudson, 1996) They argue that victims should be central to the process and that restorative justice mechanisms focus on repairing harm between offenders, victims and the entire community. Haley, in Galaway and Hudson (1996: 3) argues that “the state and its criminal justice system cannot stand in as fictitious surrogate for real people who have been personally afflicted by a crime. The debts offenders owe are not an abstract entity called ‘the state’ but to the victims and actual communities”

Recent developments in and the growth of TJ field has allowed for societies to try other creative approaches that do not rely only on Universalist perceptions of retributive justice but also explore the possibilities of restorative justice. This development has led to the exploration of traditional justice models as tools for TJ, allowing for some post conflict societies to look back to their indigenous practices of conflict settlement and reconciliation. Like, Uganda is seeking to use traditional justice as a tool for transitional justice as will be evaluated in chapter 4. (See IDEA report 2009 and Kai et.al. 2009)

Huyse in IDEA report (2009: 3) argues “that traditional and informal justice systems may be adopted or adapted to develop an appropriate response to a history of civil war and oppression. He cites Kofi Annan, the then UN secretary-general, who

26 For more details See. Mclaughlin, et. al. (eds) 2003 Restorative Justice : Critical issues, Sage Publications, Beck and Britto, 2006 “Using restorative Justice in Capital cases”

acknowledged that “due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition.” (*Ibid*) This is the foundation on which this study seeks to explore the applicability of Mato Oput in Uganda in chapter 4.

Traditional justice mechanisms are unique justice models often premised on the restorative justice principles. These mechanisms originated from some aboriginal communities like in Canada and New Zealand (Harvey, 2008) and many African communities that share restorative understandings of justice. They have been applied in some communities; like the healing and reconciliation rituals in Sierra Leone, and Liberia (Palaver huts), the Conseil National des Bashingantahe in Burundi, the Gacaca courts in Rwanda and the healing rituals of the Curandeiros in Mozambique and the Mato Oput in Uganda (see IDEA report, 2009)²⁷

Retributive Justice

Retributive justice on the other hand, is a theory of justice that emphasizes punishing offenders for what they have done.

Advocates for Retributive Justice²⁸ argue that punishment is “crucial to make perpetrators accountable for their past actions; to deter future crime; to counter a culture of impunity; and create an environment in which perpetrators and victims can realistically be expected to live next to one another. They also urge that its helps avoid break the cycle of revenge and it ensures that the perpetrators do not rise to power again. It individualizes guilt and it instills trust in the new legal, justice and political

27 See International Institute for Democracy and Electoral Assistance, (2009) Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences. Hereafter referred to as IDEA, 2009 report.

28 See Cahill, Michael 2007, Retributive Justice in the real world. Washington Law review, Volume 85, 4. Raymond, Greg 2005. "Retributive Justice in Statecraft: International Punishment in the Context of the Emerging Society of States" and Harvey, 2006.

systems, ensuring that people believe in those systems”. (Anderlini, Conaway and Kays, n.d)²⁹

Moghalu in Clark, J. N. (2008: 332) maintains that “when justice is done, and seen to be done, it provides a catharsis for those physically or psychologically scarred by violations of international humanitarian law. Deep-seated resentments – key obstacles to reconciliation – are removed and people on different sides of the divide can feel that a clean slate has been provided for.”

TJ developments³⁰ indicate a consistent trend against impunity that has seen to the establishment of war tribunals and courts going as far back at least to the fourteenth century. There were the prosecutions of war criminals under the Treaty of Versailles and World war II with the Nuremberg trials (Teitel 2000: 47) Other prosecutions that have been initiated for transitional justice purposes include the domestic trials of former members of military juntas in Greece(1975) and Argentina (1983),³¹ the International Crime Tribunal for Former Yugoslavia (1993), the International Tribunal for Rwanda 1994; and the most recent International Criminal Court in (2002). (Harvey, 2007)

Clark, (2008:331) contends that “while these tribunals are an important part in the peace building process like in Former Yugoslavia and in Rwanda, the retributive justice they dispense is not the most effective means to promote reconciliation.”

29 At http://www.huntalternatives.org/download/49_transitional_justice.pdf Accessed 15/03/09

30 “Developments include: the creation and continued backing of the ad hoc tribunals for the former Yugoslavia and Rwanda; the exercise and expansion of the concept of extraterritorial jurisdiction, including universal jurisdiction; and the establishment of the Special Court for Sierra Leone and other mixed tribunals for Cambodia, Kosovo, and Timor-Leste, all with the direct participation (albeit in varying degrees) of the United Nations” (Seils and Weirda 2005: 2)

31The Encyclopedia of Genocide and Crimes Against Humanity (Macmillan Reference USA, 2004), vol. 3, pp. 1045-1047 <http://www.ictj.org/static/TJApproaches/WhatisTJ/macmillan.TJ.eng.pdf> Accessed on 10/3/09.

Seils and Weirda (2008: 3) introduce a debate on international justice. That it “has tended to focus on the somewhat narrow justifications of deterrence and retribution, ignoring developments in criminal punishment theory and practice. Such narrow justifications lead policy-makers to argue that peace and justice are often competing choices, and they may lead them to equate criminal justice with a form of vengeance, thus casting doubt on the morality of its pursuit over that of forward-looking ideals”

Kai et. al.(2009) discusses tensions between peace and justice that have long been debated by scholars and agencies that call for a revision of theory and policy of transitional justice to allow for different scenarios in times of post conflict or political repression. She argues that experience has shown that the quest for justice has often times conflicted with efforts towards peace. Like the case of Uganda as discussed in chapter 4.

Turner (2008) also identifies the need to recognize a tension between what is necessary for the international community and what is necessary for the state and argues that this tension calls for political reform. This is the exact issue in Uganda as discussed in chapter 4. Turner contends that the UN secretary general acknowledged that the UN has learned from experience that internationally designed solutions are not always appropriate, so it is now looking into “nationally led strategies of assessment and consultation.”(*Ibid*: 150)

RECONCILIATION

Both the aforementioned justice systems share a common element and that is; to foster reconciliation in societies. There are different views to what reconciliation is but for this study, we will borrow Brouneus’s definition because covers the important aspects of the reconciliation process. Reconciliation “is a societal process that involves mutual acknowledgement of past suffering and the changing of destructive attitudes and behavior into constructive relationships towards sustainable peace.”(Kai, et al. 2009: 205)

Brouneus emphasizes that change in attitudes and behavior doesn't occur instantaneously on declaration of peace, therefore there is a need for reconciliation to balance issues of truth and justice to allow for slow changes in attitudes, behavior and emotions. (Kai, et al. 2009)

Staub suggests that "Effective reconciliation requires engaging with and changes in a whole range of actors in a society, from members of the population whose psychological orientation is the core to reconciliation, to national leaders who can shape policies, practices and institutions" (Clark, 2008: 334) therefore reconciliation should be examined for the "top-down, middle-out and bottom-up."(Kai, et al. 2009: 206)

To sum TJ up Alexander Boraine (2006:18) aptly defines "TJ not as a contradiction of criminal justice, rather as a convenient way of describing the search for a justice in a society in the wake of undemocratic, often oppressive and violent systems .It offers a deeper, richer and broader vision of justice, that seeks to confront perpetrators, address the needs of victims and assist in the start of a process of reconciliation and transformation and that while criminal justice is extremely important, societies in transition need other instruments and other models in order to supplement one form of justice." He advocates for a holistic approach to Transitional justice that attempts to complement retributive justice with restorative justice as a benefit in establishing a just society".

CHAPTER 3

3.1 Study Area

The research concentrated on Northern Uganda taking Gulu district as the case study. Gulu district is bordered by Sudan in the north and the Democratic Republic of Congo in the south east. It has an estimated population projection of 479,496 as of the 2002 National population census.

Gulu district was selected for two reasons. First, it has the highest number of over populated Internally Displaced People's (IDPs) camps of all the districts affected by the war.³²

Secondly, because it is a melting pot of people from various ethnic tribes like the Itesots, Langi, Lugbara and Acholis in the North who may have varying perspectives on these processes. Therefore it ensured a good representation of perspectives from the various tribes.

Field work was done in Kampala, Gulu town and in Okwir and St Anthony IDP camps.

3.2 Methodology.

This research was a country level study that carefully analyzed individuals' knowledge and experiences. It targeted a totality of 45 persons including members of government bodies, NGOs, CSOs and members of the Gulu community.

The study targeted people at various levels of organization in order to clearly represent the voices of all those involved in Northern Uganda's peace process. It targeted representatives from government i.e. the ombudsman on Human Rights (the Uganda Human Rights commission, UHRC), Amnesty commission (UAC); the international

³² Gulu has got 53 camps with total population of 460,222 according to 2006 statistics update carried out by district authorities in collaboration with OCHA, UN Agencies and NGOs working in the districts.

community i.e. Danish Refugee council, Office of the High commissioner for Human Rights; Local NGOs and CSOs (activists, observers and advisors in the peace process) i.e. Human Rights Focus (HURIFO), religious leaders, community elders, victims and returnees.³³

These were also included in the study because they are very well known and are active participants in the Northern Uganda peace processes and are influential in the development of transitional justice policy of Uganda.

The study also included traditional leaders and elders because they have an important role to play if traditional justice is to be applied and they can give insight into the viability of its implantation in the current context of Northern Uganda.

The study further targeted people in IDP camps because IDP camps ensured a high concentration of people, especially victims of the war and the very people for whom TJ mechanisms are being developed. Special emphasis was given to women and children because their voices are seldom heard, they are rarely involved in consultations regarding the peace process and yet they have suffered the most in this war.

The field research was carried out over the months of December 2008 and January 2009. In Gulu, field work was carried out with the aid of the Danish Refugee council, (DRC) who are working in 19 camps in six sub-counties of Bobi, Oganko, Bungatira, Koro, Palaro and Patiko in Gulu district.

This study employed semi-structured and open-ended questionnaires, face-to-face interviews and participant observation.

Questionnaires were mainly applied to staff members of NGOs and Civil society who answered them at their convenience and were processed for this study.

³³ Returnees refer to former abductees or rebels that have sought Amnesty and are now being rehabilitated and being incorporated back into society.

Interviews were conducted with in IDP camps, in Gulu town and with other NGO staff who were willing to be interviewed. The face to face interviews were the major instrument used in data collection because the majority of the people in the villages of Gulu District are illiterate.

Secondary data has also been utilized in this research to compliment information gathered from the field, especially data from other studies that have been carried out in Northern Uganda. As O’leary (2004: 66) points out “Research may be done alone- but it is never done in isolation. The production of new knowledge is fundamentally dependent on past knowledge. Knowledge builds, and it is virtually impossible for researchers to add a body of literature, if they are not conversant with it.”

The data in this study was interpreted in relation to the other studies and theories. Data was also interpreted inn relation o the international debates on peace and justice as outlined in the previous chapter and incorporated in Chapter 4.

The study rehearsed case studies and stories, to trace consistent patterns, including the intervening steps being applied in the Northern Uganda scenario, affirming or challenging what has already been written by others.

3.3 Sample size and Sampling method

The study interviewed a total of 45 participants using Simple random sampling technique. The study considered those who were available and willing to partake in this study within the time allocated for this research.

3.4 Ethical issues and methodological challenges

Respondents in this study were all made aware of what the study was about and their role in the study. Consent forms were drafted and distributed however, all the participants preferred to give verbal consent and didn’t sign the form.

Bryman (2008: 129), states that “it has been shown that the requirement to sign such forms reduces prospective participants’ willingness to be involved in survey research.” This however, did not happen during this study. They declined to sign the forms but agreed to take part in the study perhaps because they felt that the exercise wasn’t a threat and they trusted the researcher and those in the villages could have declined due to their illiteracy challenges of not being able to write.

Some respondents were at first hesitant, to participate in the study because they thought it was government research, however on learning that it was an academic study, they opened up and participated more freely. This showed that perhaps people fear and are skeptical towards government efforts for reasons this study preferred not to get into.

The new media was utilized i.e. Internet sources provided interesting data for this research particularly the discussions and debates on this research topic. Bryman (2008:129) puts forward an argument that “it is debatable how far it is acceptable to treat ongoing interactions as ‘documents’ that are ripe for analysis. When participants have not given their consent to having their postings used in this way, it could be urged that the principle of informed consent has been violated.” However, the information used for this study is on public domains with no written limitations/restrictions or passwords, it was not sensitive and there were no policy prohibitions limiting its use.

Changes on the ground at the time of the research necessitated quick readjustments and implementation strategies, which were time consuming on an already tight schedule. The Uganda Human Rights commission which was supposed to be the hosting organization was in a ‘dormant phase’ because all the terms of office of the commissioners had expired and the president had not yet appointed new ones. Because of that, finances for field activities were not available therefore no fieldwork could be carried out at this time, hence a quick change to work with the Danish Refugee council. The research done had to rely on the host organization for transportation so research had to be done according to their availability.

At the time of the research, people in IDP camps were in a process of relocation. The government gave the IDP residents a period within which to voluntarily relocate (2005 to date), so the camp phase out activities were at a stage where relocation was compulsory no matter where you have to go. The relocation process in the IDP camps constrained the research in the sense that negative feelings of bitterness, anger and resentment as well as a need for money, put the researcher in a delicate situation and made the interview process difficult. The Gulu residents and respondents in IDP camps were under the misconception that the researcher was being paid for this research and wanted some money in order to answer questions. They said that many researchers have been there and some pay them for their information “you people are being paid to research on us yet we don’t benefit in any way. We are tired. You have to pay us too to tell you what we know.”³⁴ The researcher had to tread carefully in this matter in order not to offend the respondents and still get results.

Lack of a professional translator also limited the research greatly. A translator required a lot of money which this research could not afford. Therefore the researcher had to rely on volunteers who were Acholi natives working with the Danish Refugee Council.

There may be limitations in the ability to generalize these results to the whole Acholi land populations because the study was limited by finances and time. It was only limited to 2 IDP camps and these had to be among those where the Danish Refugee council worked at the time the research was done. These results therefore cannot be generalized to represent the whole region or country.

However this study still contains valuable material presenting the voices of the people and complemented by other secondary sources.

³⁴ Personal Interview at St Anthony IDP 13/01/09

CHAPTER 4

4.1 Introduction

After nearly eighteen years into the war, the President Museveni eventually invited the ICC to bring the LRA to justice, whilst simultaneously providing Amnesty for those who wished to renounce the rebellion and entering into peace talks with the rebels. Civil society, traditional, religious and cultural leaders, victims of this war, who had been spearheading the peace talks want to see the conflict put to an end. They are advocating for traditional and collective approaches to restorative justice in Acholi land in the name of peace before justice whereas the former argues for individual accountability and retributive justice which will eventually ensure peace. This chapter explores these seemingly incommensurable views with the aim to shed light on ‘both sides of the coin’.

First, this chapter explores what traditional justice means to the Acholi people, and the challenges of applying such mechanisms in the current context. Mato Oput was selected because it is the most suggested traditional approach to reconciliation and justice and because it shares the same principles as many other traditional approaches of other tribes in that region. This chapter describes Mato Oput, what it means to the Acholi and the challenges of applying Mato Oput in the current context.

Second, this chapter discusses International justice and its effects on the on going peace talks and the effect of international intervention on the grassroots before reviving the peace Vs Justice debates that were mainly sparked off by the ICC intervention in Northern Uganda.

4.1.1 Acholi theological beliefs, social and organizational structure informing traditional justice rituals.

This section provides a detailed layout of Acholi land before the war and the community's organizational structure that played a big role in determining which ritual was performed and by whom. It lays a foundation for exploring what Mato Oput means to the Acholi people and for understanding the complexities of applying Mato Oput in the current context while many people are still in IDP camps or transiting sites.

According to Fr Okumu, in the Examiner (2005)³⁵ in order for one to understand the intricacies of performing these rituals, one has also got to understand the theological beliefs, the political and social system of the Acholi people. Their organisation and surroundings play a big role in these rituals.

The Acholi theologically believe in "Jok-kene" also referred to as "Rubanga" a supreme being, a concrete force amongst his people manifested through the lives of heads of families, grand parents, chiefs and ancestors; all of whom are somehow gods, jogi.(plural of jok) Their belief is concrete and powerfully existential and is part of their every day lives. (See Examiner, 2005)

The Acholi also theologically and morally believe in collective responsibility therefore the sins of an individual has consequences on the entire community. They believe that the consequences of the disputes and infightings are detrimental to the Acholi social and political order and an insult to their deity, 'Jok' who wishes his people to live in unending happiness and harmony. (Examiner, 2005)

Rituals were performed to reconcile as a moral command from the Acholi god 'Jok' whom they believe lives among the people in their sacred shrines ('abila') in every household on Acholi land. (Ibid)

The Acholi system is made up of five inter related levels of organization which independently may not share organizational principles but they all share the same

35 Rev. Fr. Joseph Okumu is a respected scholar, elder and traditional leader in the Acholi community, from whom this section is based. He is also the chairman board of directors HURIFO

theological and morale principles; The household, Hamlet, Village, Domain and the Heptarch.

A household is formed when a man and a woman co-habit or get married, forming the core from which another household may develop. The head of the a household is the father of the hut(won-ot) and the wife is known as the mother of the hut(min-ot) sizes of household vary and define the structure and development of a village and domain.

A number of households make a village and subsequently a domain. They are characterized by the number of women and minors united under the authority of the head of household.³⁶ (won-ot) (Examiner, 2005: 24) Every such household was believed to have a sacred shrine, the ‘abila’ where ‘jok’ resides.

A hamlet consists of sons of one man, (several brothers) who when they got married, set up their own nuclear families/households in the same yard with their parents. The Acholi refer to the yard as the ‘dye-kal’; whose occupants shared a common fireplace referred to as the ‘wang-o’.³⁷ Within the hamlets were traditional shrines, the abode of the ancestors and a place for sacrifices to ‘jok’. The ‘abila’ and ‘wong-o’ had to be in the centre of the dye-kal. Hamlets were characterized by a high degree of joint economic cooperation and they included cousins, nephews, in laws³⁸ who live in the same territory and share a fireplace (wang-o) The head of a hamlet is known as the ‘won-paco’ who is the eldest of the male heads of households forming the hamlet.(Examiner 2005: 24)

The village level is formed of agnatic lineages and is bigger than the hamlet and they are also characterized by cooperation in economic and social activities especially

36 One household head can have even up to four wives and so many children but this is also considered as one household equal to a household with one wife and any number of children,

37 This fire place also served as a learning place for children at nightfall. Elders would share stories and experiences with the children through story telling, singing, dancing and poetry. And for the gal children, this is where they learnt knitting, sewing skills.

38 “Not necessarily from the same ‘agnatic’ descent, although the core inhabitants are made up of agnates” Fr. Okumu.

agricultural activities. There are more non agnates than in the hamlet and the agnates within refer to themselves by ‘flirtation names’ (nying-mwoc or simply mwoc).³⁹ The head of the village is known as the hoe, ‘rwot-kweri’ and village mates all share the same hunting grounds (tim) (Examiner 2005: 24-25)

Different rituals are performed depending on the targets, For instance, to purify and reconcile an individual with his conscience, the ‘Breaking of the egg’ (nyonno tong-gweno) ritual is performed; for the communal purposes like between a wife and husband (tummu kiri and tummu buru) were carried out. (Ibid)

For groups or collectivities as big as clans or chiefdoms, drinking the bitter root ‘Matto Opwut’ and bending the spear ‘gommo tong’ were performed particularly to address serious crimes such as murder.

According to Fr Okumu, in The Examiner (2005) ‘Tummu kir or tommu-buru’ are applied for the first two levels especially for simple offences and family relations between husband and wife or offences involving children.

4.2 MATO OPUT⁴⁰

The Mato Oput proceeds in three phases, the cleansing ceremony (Breaking the Egg) then a brief purification rite of spitting in a sheep’s mouth and then the actual reconciliation rite of Mato Oput as shown below.

4.2.1 Breaking the Egg ceremony.

An elder prepares an Egg and a stick of tender plant, ‘pobo’ known for its strong but slippery fibres used to tie objects together. The Fresh egg is placed down visibly on the pathway leading into the homestead. The ‘pobo’ stick, which is about two meters long is ripped into two and placed in the same pathway leading into the homestead keeping

39 Flirtation names may at first be used only between members of the same age level in the village but may later be used by all. (Examiner 2005)

40 As described by Rev. Fr. Joseph Okumu in the Examiner 2005, Mato Oput in Action 2, Issue 2.

the fresh eggs in the middle. A local calabash containing water and creeping plant known as “Anyero”⁴¹ is also prepared.

An elder stands on one side of the courtyard with well-wishers standing behind him, holding the water container with a bunch of wet grass to sprinkle bless the offender. The side the elder stands on represents the clean, welcoming side and the offender is on the unclean side. The elder blesses the offender by sprinkling water on the chest and both legs, symbolizing the washing of the heart and feet. The offender steps on the fresh egg⁴² breaking it then joins the congregation of well wishers and enjoys a life free of sin and of omissions. Thereafter, offender has to share freely and confesses all his crimes committed and y. He is then pardoned and assured of a warm welcome. The offender has to identify whom he committed the crimes and the clan to which the deceased or victim belongs is identified.

After a period of time, the offender’s clan representatives and the offender go to the victim’s village as a clan⁴³. They inform the victim’s reconciliation committee (‘Kal kwaro’) and preparations for compensation (‘cullu kwor’) are initiated. Compensation is levied on the entire clan, the payment of which is made at the same time as with the rite of reconciliation.

The offender’s clan goes back to their village to prepare for the reconciliation rite which is also about purification for moral, psychological and social re-integration.

4.2.2 The Mato Oput ceremony and a Brief cleansing ceremony

41 “Anyero is a noun from Acholi word infinitive ka nyero which means to laugh. So anyero is a creeping plant that causes laughter, brings joy and happiness”.(The examiner 2005:19)

42 “The egg symbolizes innocence and newness of life. The offender is purified and now returned to innocence like that of an egg I his homestead”.(The Examiner 2005:19)

43 After confession, the sins of the son or daughter now belong to the clan. It would be said, for example, that the Pa-Atiko clan has murdered someone from the Pa-cwa clan. No individuals are mentioned.

The reconciliation drink is made by an elder (senior of all in age) who prepares the roots ('Opwut'), who dries and pounds them into a powder and mixes the powder with juice (acuga) in a local calabash carefully placed on the ground.

Before the journey to the victim's clan/village, the offender undergoes a brief purification ceremony. He spits into the mouth of the black sheep which is to be lead to the mother of the victim.

The sheep is presented and laid down facing North where the victim's family is standing. The elder, on the victim's side, then stabs the sheep with a sharp knife. Likewise, the elder on the offender's side also lays down a reddish-white sheep facing south where the offenders well-wishers and clan members are standing and it is also stabbed to death. The offender's clan gathers round on their South side while the victim's clan also gather on the North side. This act signifies the diversification of enmity which must be brought together and the families will no longer harbor ill feelings or hostilities but become reconciled and live in peace (Examiner 2005)

The elder leading the reconciliation will then take blood from the two slaughtered sheep combine it into the 'Opwut' and 'Acuga' mix forming the reconciliation drink.

The close relatives to the offender on one side and the offended on the other, gather round the reconciliation mix and paired (from the north and the south) they drink of the mix. They kneel down hands behind their backs and drink from the calabash. This signifies coming together of both clans and reconciling. And all the other members of the delegations follow in the same way. While this is going on the slaughtered sheep are cooking. The liver of the sheep is cooked and put on the fresh hides of the sacrificial sheep. The close relative of the offender picks a piece and feeds it to the offender and then picks another and feeds it to a close relative to the deceased or victim. The rest of the meat is enjoyed by the congregation during the processes (Examiner, 2005)

Amidst these celebrations, the elders from the victim move towards the offender's delegation to examine the indemnity which ranges but can be, for example, two healthy

cows. If it's accepted, the elders bless the indemnity by smearing the chest of each person present with the content of the entrails of the sheep saying;

“Let these cows produce many and only female offspring. We all do mistakes. May peace and clam now return among us.” (Examiner, 2005:18)

When the reconciliation rites are successfully concluded, the elder sons the royal drum; 'bwola'. The sound of drums signifies the success of the reconciliation and also serves to invite well-wishers to join in the celebrations which can go on even for two days and other animals slaughtered (Examiner, 2005).

4.3 Findings and discussions.

At the time of this research, the security situation in Gulu district was stable. The Juba peace talks⁴⁴ were still underway, since the renewed peace negotiations begun and a cessation of hostilities agreement was signed in August 2006. Efforts to dissolve the LRA have shifted target to LRA bases in the Sudan.⁴⁵

In Gulu, people in IDPs in Acholi land were being resettled involuntarily. Government gave them a period in which to voluntarily resettle back to their homes (from 2005 to date) and many had gone home especially those from Teso and Lango regions basically because these areas were not destroyed as badly as those in Gulu and these people had not been displaced for as long as the Gulu residents have.

44 The Juba peace talks are series of negotiations held in Juba (Sudan) headed by Riek Machar the Vice president of Sudan between the Uganda government and the Lord's Resistance Army for cessation of hostilities and a peace agreement. The talks began in 2006 but Joseph Kony (LRA leader) refused to sign the peace agreement in April of 2008.

45 In October 2008 the LRA allegedly attacked a town in Southern Sudan killing 38 civilians which led to withdrawal of Sudan as negotiators in the peace process (BBC news at <http://news.bbc.co.uk/2/hi/africa/6072994.stm> Accessed on 24/02/09).

Many of those who have resettled did not go back to their homes but rather settled close to transiting sites⁴⁶ where there is easier access to services and security.

Some have resettled near social service centers like schools, hospitals, town centers and the like. They claim that they are still afraid to go back home since the peace talks are not yet finalized and Kony is still in the bush.

Those who are still at camp sites are forcibly being asked to resettle back to their homes. The government's objective is to clear IDP camp areas and return ownership to the landlords.



Locals and volunteers destroying abandoned huts in internally displaced people's camps in Gulu, under the camp phase out programme (*Photo by Moses Odokonyero/UNHCR*).

46 Transit sites were developed as temporary and some permanent sites by Humanitarian agencies and government to facilitate the relocation of IDPs. These sites are near the affected villages. Refugee law project identifies four types of sites, The mother camps, which are the original camps established by the government, the decongestion camps into which people have moved from the mother camps, which are closer to people's original homes and thus usually consist of people from the same parish(es), the new settlements: sites identified by IDPs near their pre-displacement homes and the Home sites: pre-displacement homes.

Due to what the people felt was forceful resettlement; emotions were running high expressing sentiments of bitterness, resignation, hopelessness and anger.

One Acholi woman⁴⁷ said, “Government doesn’t really care about us, they haven’t been to where they are sending us. Things are bad there.”

The people acknowledged that government and NGOs were providing them with packages like Iron sheets, seedlings, hoes and other humanitarian aid to help enable their transition to their homes but they have nowhere to go. Okille⁴⁸, an IDP resident at St Anthony IDP, explained that he doesn’t really know where his home stood, that the area had been burnt down and is now overgrown and those who got there before him have claimed what they found using estimates so the people are fighting amongst themselves for land.

There was a general need for money in Gulu therefore, the researcher experienced first hand, ‘the survival by any means possible’ philosophy that many in Acholiland live by.

Traveling through Gulu town, NGOs and civil society presence is evident with offices on so many streets and the near outskirts of town. There are notices of various organizations. This can be attributed to the attention drawn to the plight of the Northern Ugandans by the International intervention which has enabled availability of funds for peace efforts and social reconstruction directed at Gulu district.

On further investigations by the researcher, it was discovered that not all these organizations actually existed. Some were one man operations, with no particular offices referred to as “Brief case NGOs”. These are scams of sorts where individuals with creative minds, draft proposals and lobby for funds from international donors and the government in the name of implementing activities for the people of Northern

47 Interview on 20 January 2009 at Okwir IDP camp

48 Interview on 15th January 2009 at St Anthony IDP camp

Uganda. Their homes are their bases, everything about their organization is in their brief case which they carry around to lobby. They put up notices outside other establishments to add authenticity to their operations. This is how some of the aid doesn't reach the people for whom it's meant.

4.3.1 Findings and discussions

To set the stage for the interviews respondents in this research were asked what traditional justice was and if they had been recipients to it. 95% of those interviewed in IDP camps didn't know the exact details of traditional justice but they all agreed that it involved forgiveness and will foster reconciliation.

The youth admitted to knowing what they had been told by the elders in recent times and what was being said in the media but also said that they had never witnessed such ceremonies. They said that they were too young when this war began and haven't had the honor of knowing of such ceremonies during these troubled times. Two elderly women, above 50 years, admitted that such ceremonies used to take place long before the war but, they also had not witnessed any in the recent times. They said that even in the old days the common ceremonies were the purification ceremonies (breaking the Eggs.) and that Mato Oput was not so common a practice. They said, "we have heard that there have been ceremonies in recent years but haven't attended any yet."⁴⁹ So they couldn't testify to whether it is applicable today or not.

Results from another study by Patrick Vink⁵⁰ (2006:123) varied from the ones in this research. Vink showed that 37.3% of the sampled individuals knew about traditional justice. Over half, 54.4% had actually participated in the ceremonies and found them to be useful. These diverging results can be explained by the fact that Vink used a larger population and sample area and due to the fact that this study engaged many youths who haven't had an opportunity to witness and partake in these ceremonies.

49 Personal Interview at St Anthony IDP camp 13/01/09

50 Vink, P. 2006, In the eyes of victims, Peace and Justice in Northern Uganda

In general respondents to this research expressed an immediate need to end the war and safely return to their homes of origin. They said that until Kony and other rebel commanders were arrested they believe that this war will revive and they would be the recipients of the brunt of his vengeance again. Betty Okot, a resident at Okwir IDP camp said that this is why it is important to see to it that this war ends by any means necessary. She lost three children to the war and testified that she would forgive the perpetrators if she believed that they would renounce war. “We are tired of this war. Our lives must go on” she said.⁵¹ Many other respondents shared this view, and admitted to hesitating to return to their villages of origin incase the war starts again. Another respondent Peter Okille said that his mother and uncle returned home to survey the area and start working on their land in the village but they want to retain their place at the IDP camp as well incase anything should happen again and because it is easier to access services from the camp than in the village. So the four children and three orphaned grandchildren still reside at the camp.

Respondents also identified a need for government intervention in their land issues. The interviewees in Gulu town centre and the IDP camps visited, suggested that this can be done by government investigating land ownership before the war because some people have taken advantage of the lack of proper land demarcations to expand their land areas in the process denying others of their land rights. They said that people in the villages are fighting amongst themselves. Customary land deep in the villages in Gulu and other parts of Uganda are not clearly demarcated. It is marked by certain natural features like certain types of trees, stones or streams. In Gulu, many of these land marks were destroyed during the war, leaving nothing to demarcate some portions of land. Now those returning to their homes are scrambling for whatever land they find and some have extended their boundaries denying others of their land. For example, Walter Okot, 35, quoted in *The Examiner* (2007)⁵², narrates that

51 Personal Interview Okwir Camp 20/01/09

52 Ocowun Chris, Spirits of victims killed in Northern conflict, in *The Examiner*, Issue 3 2007.

“We first came to this village 20 of us after leaving it since 1997 due to LRA attacks and killings. We begun by clearing the bushy road using hand hoes with the help of UNHCR. We were given tarpaulins by UNHCR to cover our huts with; others camping in classrooms and teachers houses of Katum Primary school. Some people are in abandoned huts of UPDF soldiers. We have come along with our cows, goats and other domestic animals because we are confident that nothing wrong will happen again to us apart from the problem of spirits of the dead people, haunting us.”⁵³ Okot elaborates that “I used these cashew-nut trees that you are seeing to identify our home; other people identified their homes with Mango trees”.

According to this research, all of the 45 participants were in support of the use of traditional collective justice mechanisms to reconciliation in Acholi land. However there were variations in how it can be applied and some reservations on whether it will be enough under the current situation as explained below.

When ranking the proposed mechanisms to justice, Amnesty ranked next to the traditional methods, by 75% of those interviewed. The acholi prefer Amnesty because they believe it would bring a speedy end to the war and facilitate quick reintegration for the former combatants. As Peter Ocaya, a resident farmer at St Anthony IDP⁵⁴, said: “We need to forgive these people [rebels] because this is the only quick solution to this war. Arresting all these people will take so long and they cannot all go to court. If they escape, they will just go back to the bush and continue fighting.” Lanyero Grace, a FAP said “We have all done bad things, not only the rebels or us the FAPs but even our fellow village people. We should forgive each other and move on with our lives. We have suffered long enough”⁵⁵

⁵³ The people in Gulu theologically believe that the spirits of the dead will not rest until proper rituals have been performed. The fear is so real that it is manifested into sickness in some people and illusions of seeing ghosts, poverty and violence

⁵⁴ Personal Interviewed on 13th/01/09

⁵⁵ Personal Interview on 20th/01/09

Some participants supported Amnesty, because it has encouraged and enabled so many people to denounce the war and return home. According to these respondents, it is a mechanism that has proven results as opposed to the military methods and the retributive methods.

Nyeko Bosco at Okwir IDP⁵⁶, a FAP, elaborated that he would never have “come out of the bush if not for the Amnesty deal”. That he knew the things he had done, even if under duress, were terrible and if a pardon was not on the table he would never have returned because he would have had to be killed or tortured.

Ojok⁵⁷ at St Anthony IDP camp said “I don’t mind Amnesty for the young ones who were taken by force but for the leaders it should be more than that. They should be arrested and tried in front of all us.”

Results from another study by the Office of the United Nations High Commissioner for Human Rights⁵⁸ are in line with the results from this study, however it also showed that the Acholi were more willing to forgive unlike the Itesots and the Langi. The study attributed this to the Acholis forgiving nature and the fact that “more Acholis had loved ones who committed crimes and wish to see them integrated quickly into society.” (UN report 2007: 48)

However, 70% of respondents also want the LRA leaders and those still in the rebellion to be brought to justice as OJok says above rebels leaders ought to be brought to justice while Amnesty and traditional justice can be applied for the rest involved or forced into the war.

The registrar of the UHRC, Ruth Senkandi⁵⁹ supports the application of traditional methods because “the mechanism is appreciated and respected by the locals in

56 Personal Interview on 20th/01/ 09

57 Personal Interview at St Anthony 13th/01/09

58 United Nations Office of the High Commissioner for Human Rights, 2007, Making peace our own: Victims’ perceptions of accountability, reconciliation and transitional justice in Northern Uganda.(Here after referred to as UN report 2007)

59 From a questionnaire received on the 15th of March 2009.

Northern Uganda”. According to her: “we need to use a mechanism in which the people have confidence, and will easily respect.” She adds that traditional justice is important because it has elements of truth and reconciliation necessary for such a large number of people who have been involved in the war.

She did, however, express reservations on the “ingredients” of the traditional methods and wrote that “it may be very difficult to prove some of the ingredients under any judicial system.” On the use of the ordinary judicial system, she believes that it will not be sufficient to end the conflict that “Many people will be hurt in the process unlike in the traditional mechanisms where truth telling and therefore accountability are voluntary.”

Indeed such respondents in favor of traditional justice see the value of applying restorative justice in a situation such as in the case of Northern Uganda. The essence of restorative justice theory, as depicted in chapter two, is healing, restoration and reparation of the victims who are central to the process. Therefore focus has got to be on repairing not only the harm but also the relationships between offenders, victims and the community at large especially amongst people where relatives and friends were on opposing sides of the war.

This study found that the priority for the respondents is to put an end to the war by any means possible and then justice in other forms can come in later corresponding with the peace first and justice later debate corresponding with the literature in chapter two. A youth at Okir IDP said, “We are tired of this war, we need peace. We want to move on happily with our lives like normal people.”⁶⁰

Therefore, in as much as the traditional approach to justice is a popular option in Northern Uganda, and has very strong suits, some of the afore mentioned issues and concerns have got to be addressed to enable this system to hold water in the formal justice system and on the international arena.

⁶⁰ Interviewed on 20/01/09

4.4 Limitations/Challenges of traditional methods in the current context

There have been practices of traditional ceremonies officiated over by politically appointed chiefs in the camp settings in recent years during the war. Studies on these practices have shown limitations of applying traditional justice in the current context.

Okumu in the Examiner (2005: 18) for instance, pointed out that “the masters (the Rwodi moo⁶¹) of the rite of reconciliation are special⁶² and cannot be appointed by any political power outside the clan.” This has raised questions of the legitimacy of the current efforts in IDP camps.

The current practices of reconciliation being performed in the IDP camps for Formerly Abducted Persons (FAPs) are being carried out by IDP camp paramount chiefs. These

61, “These traditional chiefs had no executive powers to rule the people single handedly, so dictatorship was not possible. They worked or governed strictly through the intercession of ‘masters of ceremonies’ or an aide-de-camp known as the luted-jok and under the guidance of the most powerful Council of Clan Elders, called the Ludito Kaka. The members who made up this council were chosen democratically by the particular clan to sit on the Grand Council known as the Gure Madit. As guardians of the society, the elders, sitting together in the Grand Council, identified the problems and urgent needs of their people and together thought out and charted appropriate solutions to the problems of the society and how to realize its urgent needs. Their principal aim was to eliminate the vast and complex social causes of unhappiness in Acholi land. The Grand Council also doubled as a ‘Supreme Court’ to try cases of mass killings and land disputes between different clans, essentially handling all cases of both a criminal and a civil nature.

It made laws and took decisions in the form of religious injunctions to be observed and implemented by the members of the Acholi society for their own good, akin to the functions of judiciary, parliament and executive in ‘modern’ government systems. Given the religious-based system of governance, no godless citizen could become a political leader, and all public figures were devout people who governed their society strictly in accordance with their beliefs, norms and customs. This ensured that no person could commit a crime and go unpunished, although there were no formal law enforcement institutions such as police and prison services. As the governing body, the Councils of Elders at all levels dealt firmly with recalcitrant individuals and groups and ensured that everyone conformed strictly to the Acholi world view”. Ojera Latigo in IDEA report 2009: 102)

62 “Masters of the rite of reconciliation are ‘Rwodi moo’ at the chieftain and domain levels, while at the village, hamlet and household level, it’s an elderly woman who has passed the age of fertility and is in most cases not sexually active in life”.Fr. Okumu (The examiner, 2005)

are politically appointed chiefs. According to Okumu (2005: 18) “To the Acholi all these are just political shows which are empty of all religious and moral content”.

This worry stems from the Acholi traditions that peace and stability in Acholi land was overseen by the ‘Rwodi moo’. An anointed chief, James Ojera Latigo cited in IDEA_report (2009;102) emphasizes:

“The *rwodi*, or chiefs, who headed the Acholi traditional government, were believed to have been chosen by the supernatural powers, and were enthroned and specifically anointed with fat preserved from the carcasses of lions in solemn religious ceremonies. After these ceremonies they were believed to have been initiated into an esoteric relationship with the world of invisible deities and spirits of ancestors. They were thus held in high esteem, adored and respected by their people.”

Added to the above is the setting in IDP camps where families are scared over different IDP camps and those within the same camp are not even clans’ men, let alone relatives. As indicated in the Acholi social/organizational structure, families and clans are important in order to identify how the traditional processes will proceed and for collectivity purposes.

This study found that the participants in IDP camps had doubts as whether the rituals being performed in camps will hold water when they return to their villages communities. The arrangement in the camps is far from what the communities used to be like or what they are now. 90% of all those interviewed in the camps said that they will prefer to undergo the cleansing with their families and clansmen in their ancestral traditional shrines. Such findings show that people’s beliefs are potent and are crucial to the traditional processes, so until these worries are dealt the current traditional practices may be declared empty or for show.

Fr. Okumu in the Examiner (2005: 15) also emphasized that the lay of the land is of great importance to the rituals of Mato Oput. “the Wang-o and the abilas, the streams, mountains and rocks are endowed with spiritual powers which are part and parcel of the peoples beliefs [which] have been their systems as far back as anyone of them can

recall”. The essence of these places is powerful for the people. He therefore suggests that the government should first ensure that the people go back to their original homes then try to facilitate and empower them to perform proper traditional rites: “Let the Acholi back home in peace and you have let the Acholi religious and moral orders back in place” (ibid).

In order for Mato Oput and other traditional mechanisms to work, the process has to fulfill certain obligations for it to be regarded as a ‘success’. First and obviously; there has to be an offender who has to voluntarily come forward. He/She has to confess what he or she has done and to identify whom they have aggrieved or murdered before asking for forgiveness. This can be illustrated by the following figure:

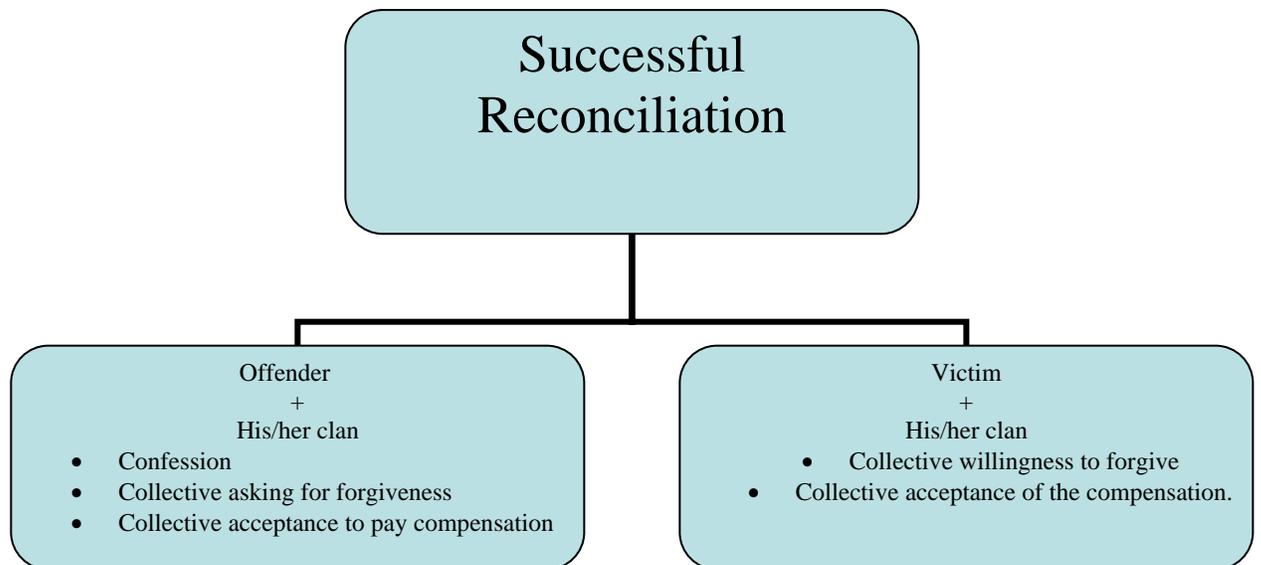


Figure 4: Illustrating the processes of a successful traditional justice ceremony.

In the current context of the Northern Uganda war, fulfilling the above criteria is complicated because the FAPs and the rebels cannot identify all or in some cases, any,

of their victims. They acknowledge that they killed and harmed people often in large numbers but they don't really know the identities of their victims. Thereby begging, the question: to whom will these offenders reconcile? This question becomes paramount considering that the victims of the war are also scattered all over Acholiland, Eastern Uganda and Southern Sudan. There is in other words a gap here that needs to be dealt with or bridged.

Moreover, Mato Oput has never been performed for many or all clans combined and this war involved other ethnic groups other than the Acholi, who have their own beliefs and practices and many even prefer the 'western' retributive justice methods like the international ICC intervention. Traditional methods cannot apply to all those affected by the war. Owor Ogora⁶³ from Gusco Peace centre, Gulu points out that nearly all the ethnic groups in Northern Uganda have their own methods to reconciliation "For a crime such as homicide for example, Mato Oput is to the Acholi, Kayo Cuk for the Langi, Ailuc for the Itesots, Ajupe for the Kakwa, Ajufe for the Lugbara, Aja for the Alur, and Tolu Koka for the Madi among others" (Owor, 2009) The challenge for traditional justice is to create harmony amongst these various tribes.

Some elders within Northern Uganda also expressed reservations regarding traditional justice in the current context as a study by the Lui institute (2005) shows some of the views from the elders.

Rwot(Elder) Poppy Paul⁶⁴ from Amuru district said that institutions and not only individuals have got to confess and ask forgiveness because some the atrocities although committed by individuals, were orders from top leaders whether in the LRA or the UPDF.

63 Owor Ogora Lino, 20-21 February 2009, Traditional Justice: What we know versus what we want to do! Workshop presentation on Transitional Justice in Uganda. GUSCO Peace Center Gulu

64 Rwot Poppy Paul interviewed in Kitgum town 20/05/05 in Lui institute report, 2005:67

Rwot Justo Obita, another elder,⁶⁵ also pointed out that the scale and the ongoing nature of the Northern war creates a problem because, in his opinion, a core component of the LRA still remains ‘in the bush’. “Until all these people come out and return home, Northern Uganda will remain at war” (Lui institute, 2005: 67)

Interviewees in the Liu institute study also highlighted the significance of the principles of confession and compensation that they illustrate acceptance of wrongdoing and therefore give a psychological release, alleviating feelings of guilt and trauma. However, this study found that very few people can afford to make any kind of compensation.

A common fact amongst all the respondents in this research was that many people in Acholi land cannot afford or are not in a position to make any kind of financial compensation at the moment. A group of women and young men at Okwir IDP⁶⁶ camp said that they barely had enough food to feed their families. They said that they earned⁶⁷ just enough to eat and feed their families each day. One went as far as acknowledging that the highest amount of money he has ever owned at one given time was 3000 Uganda shillings (app.2 dollars) So, one may question how effective and legitimate traditional rite of reconciliation may be if one of its principle aspects (compensation) cannot be met.

On the confession aspect, this study also found that the women especially do not wish to discuss the atrocities in detail lest it revives negative emotions. The women especially said that it would be enough to just generally acknowledge the wrong doings but not how their loved ones were starved, beaten, raped and mutilated. That it would be too emotional for them and that they are traumatized enough as it is.

65 *Ibid*: Interviewed on 18/04/05

66 Personal Interview on 20/01/09

67 The respondents said that they earned money any way they could. They didn’t have particular jobs, but jobs ranged from digging gardens for others who could pay them, (Sometimes with money or with food like cassava, potatoes and such) to fetching water, others acknowledged that circumstances have many times forced them to steal. Interview at

A chief mediator in Pajule IDP camp⁶⁸ said that women are generally left out in the important phases of the traditional healing process. They are never consulted while evidence gathering or fact finding processes, they only play minor roles during the reconciliation processes as witnesses or officiators. This is also a flaw in the traditional system, especially bearing in mind that the women and children have been most affected by this war.

4.5 Conclusion

Despite the above mentioned limitations, this study found that Traditional justice still has popular support because it would enable the people to deal with perpetrators in their own way, forgive one another and move on with their lives. The participants in this study contend that this is a desired option because many of those in the war were either taken under duress and many others were just following orders from commanders and above all they are all in some way relatives and or one time friends. Some also said that the government can't afford to prosecute all those involved in the war and domestic courts are corrupt and biased since they haven't attempted to prosecute the NRM whom they believe also committed atrocities.

4.6 The International Criminal Court

The ICC is a permanent international institution; therefore it is bound to operate during ongoing conflict and is charged with the duty of not only preventing crimes but also pursuing those who may commit them. (Kai, et al.2009)

4.6.1 Introduction

In December of 2003, President Museveni requested the chief prosecutor of the ICC, Luis Moreno-Ocampo, to investigate "the situation concerning the LRA."

At the time of the ICC invite Uganda was enjoying a period of relative calm due to persistent peace efforts that eventually resulted into the drafting and signing a cessation

68 Ibid Pg 64

of hostilities agreement⁶⁹. A ceasefire agreement was eminent and prospects for more rebels denouncing the war under the Amnesty law⁷⁰ was at a high and when there was a lot of activity by civil society and religious and community leaders.

The criticisms of the ICC intervention are three fold; One, the ICC's justice was perceived as imposing a 'western' notion of retributive justice clashing with the desired traditional restorative justice. As Katherine Southwick in Lanz (2007:9) submits that the ICC is "...widely opposed by those groups the Rome statute is designed to serve: the victims" Those that share this view want reconciliation and reintegration of perpetrators into their communities so that they can go on with their lives.

Second, the ICC was also criticized for being biased, due to the fact that it was invited by the government. This bias was explicitly manifested when the ICC prosecutor Moreno Ocampo stood side by side at a press conference with the Uganda President when he made the announcement of ICC's involvement and amplified when ICC indictments were limited to only the LRA, yet the government had also committed similar crimes to those of the LRA. Adam Branch (2007: 180) argues that government's invitation to the ICC reflects how much the government down plays its role in the war and hence undermines the neutrality of the ICC. According to Branch: "in accepting the referral and prosecuting only the LRA, (the ICC) in effect chose to pursue a politically pragmatic case, despite that doing so contravened its own mandate and the interests of peace, justice, and the rule of law. Thus, the ICC has allowed itself to be politically instrumentalized by the Ugandan government to the detriment of its own legitimacy." (*Ibid*)

69 "It covered 13 action points touching on a declaration of cessation of hostilities; hostile propaganda; the 'surfacing' of LRA forces (their coming out into the open and to assembly points); a process for assembling the LRA forces in Sudan; safe passage for the LRA forces; monitoring and protection of the LRA forces at the assembly areas; communication of the declaration of cessation of hostilities; completion of the movement of LRA forces to the assembly areas; supervision/monitoring of the implementation; the provision of basic services; renewal of the terms of the agreement; commencement of the agreement; and dispute resolution" IDEA report 2009

70 See Annex 7.

Third, that the ICC intervention is said to interfere with the peace talks between the government and the LRA. These critics were spearheaded mostly by civil society especially the influential Acholi Religious Leaders' Peace Initiative (ARLPI) and the famous Refugee Law project Uganda. (RLP) (Lanz, 2007)

The RLP, released a statement based on its study of the war in northern Uganda, acknowledging the ICC investigations as a positive but ill conceived initiative because of the ongoing nature of the war. RLP believed such "initiative is bound to increase incentive for the rebels to fight and exacerbate the existing cycle of violence and violation of human rights; and it will most likely obliterate any opportunities for a peaceful end to the war". (Allen, 2005: 4)

4.6.2 Findings and Discussions

According to this research, 80% of the respondents in the IDP camps and Gulu town showed little or no knowledge about the ICC. Infact the 20% who were familiar with the ICC had only heard about it through the media.⁷¹ The responses given with regard to the ICC expressed the grassroots unawareness of the operations of the ICC and its mandate. The respondents in the IDPs attributed more power to the ICC than its mandate allows.

40% of the respondents in the camps said that they expected the ICC to have already captured and arrested Joseph Kony by now. They are not aware that the ICC mandate requires the government to enable Kony's arrest and hand him over to the ICC. The respondents at grassroots spoke of the ICC as though it was the enemy. Others just disregarded the ICC saying that "it hasn't brought the war to end so far so how powerful can it be?"⁷² One respondent outrightly asked "where is the ICC these days?"⁷³ This knowledge gap could perhaps be due to the fact that the ICC is not as popular on the airwaves as used to be three years ago.

71 Bear in mind that media reports are often exaggerated or slanted thereby biasing the readers.

72 Denis Opoka, a hawker in Gulu town interviewed on 15/01/09

73 Interview with a cyclist in Gulu town 14/01/09

These findings show that the government or the ICC did not publicize their work enough to prepare the people for their announcements and consequent investigations and warrants to help the grassroots understand in what capacity they have intervened and how they intended to foster peace and justice. This very same weakness on international courts was identified by Gordy, (2003) quoted in Clark (2008: 334) he maintains that the ICTY 'has not really invested enough energy to explain its goals and procedures, and establish its legitimacy, to the people in the countries where it has oversight.' This is the same weakness that has plagued the ICC in Uganda. This knowledge gap has contributed to the people's dislike of the ICC as this study discovered.

However, the unawareness of the grassroots to ICC's work could perhaps be due to the ICC's silence which can in turn be attributed to the fact that the ICC doesn't want to add pressure or jeopardise the ongoing peace process so they have opted to keep a low profile. It can also be argued that the government wants 'to have its cake and eat it too'. The government wanted to be seen to do the right thing by the international community hence inviting the ICC but they don't exactly care for the ICC's success in the matter within Uganda. After all, they now want to withdraw ICC indictments and proceed with the amnesty option and traditional justice. This properly illustrates what McEvoy and McGregor say in chapter 2, that even when governments are willing to adapt the contemporary TJ framework they are not exempt from manipulating it to suit their purposes.

85% of respondents both at Okwir and St Anthony camps said that it is because of the ICC that Kony has refused to "come out of the bush."

Respondents from NGOs the Danish Refugee Council also laid the blame for the stalled peace talks on the ICC. "ICC has blocked the signing of the peace agreement" "It (Peace) can only be achieved if ICC removed the arrest warrant it has placed on Kony and his men because it was one of the main reason if not only reason why the peace talked." said a female senior protection officer with the Danish Refugee council

said⁷⁴. “It’s the main reason why the peace talks have failed. ICC came in a very wrong time when we are desperately looking for peace”⁷⁵ says a community development officer with Danish Refugee council. These responses highlight the importance of sequencing of transitional justice mechanisms especially when there is ongoing conflict as hinted in the literature. What should precede the other, peace or justice? This study consistently finds that people in Gulu want peace first.

Others believe that the ICC is in Uganda to arrest Kony and take him to a destination unknown.

None of the respondents in the IDPs knew where the headquarters of the ICC are or why exactly the ICC came to Uganda. The objectives of international law is ending war and bringing criminals to justice but this ought to be done in the better interest of victims and making them a part of the process and giving them the sense that justice has been served. The worries of the grassroots are justified in the sense that these are poor people. Many of whom cannot read news papers and don’t even have televisions. How can they follow ICC proceedings on Kony to the extent that they feel a part of the proceedings? It is worthy to consider these worries and address them accordingly. International literature suggests that international justice is selective. The above voices give credence to this argument. Trials in the Hague will serve justice more for the international community than the grassroot communities in Northern Uganda.

70% of the respondents in this study, as indicated above want the top LRA rebel commanders and those still in the rebellion to be brought to justice. The respondents however, stressed that this justice needs to be served in Uganda. They expressed fears that if Kony was taken by the ICC he would be taken to another country where they cannot follow what happens thereafter. They preferred domestic trials for high ranking officials. Although the majority expressed a lot of doubt in the domestic system that it is corrupt and they know it will not adequately prosecute the UPDF/government

74 Interview at Okwir IDP camp on 20/01/09

75 Interview at St Anthony IDP camp on 13/01/09

soldiers who also committed crimes. The UN report (2007: 46) also reflected the same results that “most respondents argued that the civilian, local councils and military courts were corrupt.” Giving credence to this finding, the UN report 2007 also reflected a lack of faith in domestic courts by its respondents who expressed concerns, although they were “not usually related to prosecution in principle and its virtues, but to its operations and functions” (UN Report 2007:50).

Clark, J. N. (2008:334) forwards an argument that former International tribunals and in Uganda’s case the ICC is far removed, “both spatially and mentally, from the fractured societies their work is intended to help heal.” The ICTY and ICTR just like the ICC have their headquarters at the Hague in the Netherlands which is far away from where the atrocities occur and from the people. This is the Acholi people’s main worry that they will not be able to follow whatever happens if the ICC captures Kony. This distance between the ICC and the people for whom it seeks justice may have adverse implications on the reconciliation process.

One UHRC staff member,⁷⁶ however expressed doubt about how realistic ICC efforts will be. He elaborated, that without the governments help to capture Kony it is nearly impossible for the ICC to get him and at the moment the government does not want to jeopardize the peace process in anyway. It is requesting the ICC to withdraw the arrest warrants.

He further explained that of the five commanders for whom warrants were issued, four are allegedly dead. “So if Kony dies today, then what? For many of us welcoming the ICC, the objective is that someone be accountable for the war in the north. Someone has to be an example to discourage impunity.”

Despite all the negative arguments against the ICC, some respondents also had positive thoughts towards it as shown below.

76 Personal Interview at the Uganda Human Rights Commission December 2008

The 70 % who want justice, said that since Uganda's domestic courts are corrupt therefore they welcome the presence of the ICC as international observers to ensure fairness and neutrality. A member of the local council in the IDP said "The bad thing with our courts, they are corrupt. Even at our local level, people suppress certain issues and guilty people go free for money especially the rich."⁷⁷ Acoko Alice added that, "Courts are corrupt but if the international community can oversee for fairness, then we can accept."⁷⁸

The respondents especially emphasized that the ICC is their only hope that the government can also be brought to justice too.

From these responses, this study found that the people at the grassroots do not exactly share the public opinion from the national debates that criticized the ICC's neutrality. The grassroots have faith that the ICC can be neutral. "It is our only hope that the government will also be brought to justice for their part in this war."⁷⁹

This study found that all the participants from the UHRC and the Amnesty Commission were all for the ICC's involvement to prosecute the top commanders. According to them, it is important to set an example that impunity will not be tolerated. Ruth Sekandi⁸⁰ of the UHRC said that she personally would prefer Kony to be tried by the ICC but in the name of peace, she also respects the fact that Kony has expressed a preference for domestic trial other than the ICC trial.

The people feel that retributive justice particularly the ICC indictments are a threat to peace. This Uganda scenario is a clear example of how the theory of transitional justice on paper may not necessarily be applicable on the ground. It is indeed true that retributive justice contributes to the fostering of long term peace and reconciliation but other concerns have to taken into account when applying retributive justice. As

77 When asked to elaborate who the rich were in the IDP context he said those who can afford to pay some money as opposed to those who just cannot even if they wanted to. Interview at Okwir IDP 20th January 2009

78 Interview at Okwir IDP camp on 20th January 2009

79 Interview with a Youth leader in St Anthony camp on 13/01/09

80 From a questionnaire received from the UHRC on 15th /03/ 2009

indicated in the literature review, demand for accountability and justice often conflicts with official efforts towards peace and reconciliation. This therefore calls for exerted effort to modify transitional justice to suit different situations and also highlights the significance of sequencing TJ mechanisms to complement one another while avoiding clashing.

Worthy of note perhaps, is the fact that it could be argued that the ICC played a role in nudging the LRA rebels on to the table for negotiations

It drew attention to the Northern Uganda situation and discourages Sudan from aiding the rebels and influenced Humanitarian agencies to cut off aid supplies to the areas where the rebels were. This brought reality home to the rebel who then took the peace negotiations seriously.

The theory of retributive justice on which the ICC operates suggests that prosecuting the top LRA commanders for crimes against humanity and war crimes would enhance peace for the people of Uganda while putting an end to impunity. However, findings in this study emphasize that, in the event of mass human rights violations such as those of Northern Uganda, the entire society is affected therefore any attempts at reconciliation have to involve all the stakeholders in this war. ICC prosecutions in distant lands like the Netherlands will serve justice more for some than for others. Staub, in Clark, (2008, 334) suggests correctly that “Effective reconciliation requires engaging with and changes in a whole range of actors in a society, from members of the population whose psychological orientation is the core to reconciliation, to national leaders who can shape policies, practices and institutions”

From the debate on traditional (restorative) justice and the international (retributive) justice in Uganda came the debate on peace and justice, peace or justice which precedes which? This debate is in line with those that accuse the ICC of jeopardizing the Peace process. However, Lanz, 2007, argues that ICC in fact promotes peace in Northern Uganda because, first it prevents the commission of future crimes, second it

put so much pressure on the LRA that they just had to negotiate and third pressured Sudan to stop aiding and abetting the LRA thereby enabling peace.

Lanz also argues that “atrocities committed in the past must imperatively be dealt with in order to built a sustainable peace.” And this he says can be argued under a flag of “No peace without Justice”

The LRA has refused to sign the final peace agreement unless the ICC warrants are withdrawn. So the government promised that ICC would not stand in the way of a comprehensive agreement. Vincent Otti⁸¹, then second in command to Joseph Kony, promised “to sign a comprehensive agreement” but he said that the LRA forces would not converge at the agreed assembly points until the ICC withdraws the indictment.⁸² According to media reports the president allegedly said that he would ask the ICC to stops its investigations (Allen, 2005)

However, the Uganda government cannot withdraw ICC warrants. It can only arrest the culprits, submit them to the ICC and then reapply for them to be prosecuted in Uganda. President Museveni, can request the ICC prosecutor to forward the case to the pretrial chamber on the grounds that proceeding with the indictments would not be in the interests of justice or the victims. This process can take a long time and prolong the war in Northern Uganda.

4.7 Legal Pluralism.

The situation in Uganda has necessitated the application of a number of different efforts at different levels, i.e. Granting Amnesty, using domestic courts, applying traditional justice and the ICC.

It can be urged that this is Legal pluralism at play. Transitional justice has to a great extent until recently, mostly concentrated on formal, legal, retributive measures to deal with past wrongs. However new developments like in Afghanistan and now in Uganda

81 Vincent Otti died in 2007, allegedly murdered by Joseph Kony under suspicion of double crossing Kony with the government of Uganda.

82 Northern Uganda: Peace process at <http://northernuganda.usvpp.gov/peacerec2.html> Accessed on 15/03/09

illustrates that traditional justice could play an important role in delivering lasting peace in conflict and post conflict states. As this study has shown, the Mato oput still requires some work to iron out the above mentioned challenges but generally traditional justice has strong merits as well.

It is in many cases assumed that formal, legal and retributive mechanisms are the opposites of informal/non formal, traditional and restorative mechanisms but that is not necessarily the case. This kind of thinking is shaped by the terms used to refer to them⁸³. Arguments and debates portray these systems as opposites but as this study and others have shown, these systems can complement one another especially if their objective is the same; in this case to ensure peace and justice after conflict. These systems can be utilized to develop an all encompassing Transitional Justice package. The voices of the people in this study do not have a unanimous solution to the TJ needs of the Northern Uganda people, infact the voices demand for various efforts to be applied. Like for LRA leaders, both retributive and restorative measures are required, for the majority restorative methods particularly Amnesty and traditional justice methods are desired.

4.8 Conclusion.

In as much as the traditional approaches to justice in Northern Uganda may not be sufficient in handling such cases as those that involve violation of international humanitarian law, ICC also doesn't help in the restoration of relations within Acholi land where neighbors and family members fought on opposite sides. It doesn't help relations between the government and the people especially since its legitimacy is in question as reflected above. Therefore, western and traditional justice in the case of Northern Uganda are not necessarily opposites, if well implemented and with clear information to make people well aware of their roles, they can complement one another to develop a comprehensive TJ package with a vision to sustainable and lasting peace.

83 Terms such as Formal being the other side of informal, portraying retributive as the opposite of restorative

CHAPTER FIVE.

Conclusion.

Even with the many development in TJ in the last two years in Africa, the desire to develop a more effective framework in conflict and post conflict situations is still present. TJ is still a work in progress. Like Kai, et al. 2009 says experience shows that the quest for justice sometimes collides with the processes for peace building especially in contexts of ongoing conflict like in Uganda. And while developing more effective framework for TJ, the people for whom these designs are being made are rarely consulted.

Therefore, this being the underpinning of this study, this study set out to explore the application of traditional justice methods and the ICC intervention ad its implications to the people of Northern Uganda. It intended to reflect the voices of the people at national, international and mostly importantly at the grassroots levels.

This qualitative study employed interviews, discussions, questionnaires and participant observation, gathering data from the experiences of various parties in Uganda's peace process and the grassroots. The study explored traditional justice and international interventions as tools for TJ and their implications to grass root populations and on the peace process.

The study found that the people's immediate need is for peace, reconciliation and social reconstruction. Therefore traditional justice is a desired option for northern Ugandans because those in this war are mostly family, friends and neighbors caught on opposite sides of the war, many of whom were taken captive and forced to carry out heinous crimes. Traditional justice has popular support because it is a system that the grass root communities have more faith in than the domestic judicial system. However, international intervention is also required to ensure neutrality and ensure justice for all parties involved in the war including the government and it draws optimum attention to the northern Uganda war and this will help bring the war to an end.

The voices of the people in this study, express a need to apply various judicial systems i.e. legal pluralism involving international, national and traditional systems of justice to formulate an all encompassing/holistic TJ package with modifications to the mechanisms as expressed in the recommendations below.

Recommendations

- The transitional methods that may eventually be implemented in Northern Uganda, should ensure that Kony is prosecuted before the people. Proceedings should be widely publicized because this study realized a deep seated desire by the people to know for sure what happens to Kony. As much as this desire may be due to vengeance on the Acholi people's part, it will also serve as an example for those who would try to engage in such inhumane atrocities and may hence discourage impunity while fulfilling justice for many victims.
- Government and the international community should look beyond the problems of the Acholi social institutions and their psycho-social behavior to the politics of the situation at national and the international level.. A lot of attention has been directed at the Acholi social and cultural institutions and less is being directed at the root causes of this war. History in Uganda has repeatedly shown that many rebel activities originate in the North or involve Northerners. It is time to understand the grievances of all northerners and address them accordingly.
- The Uganda government should also acknowledge their role in this war. They should tell the truth and account for their activities and apologize to the people of Northern Uganda. If this isn't done the discontent amongst the people of Northern Uganda will continue.
- Traditional justice should be considered in the case of Northern Uganda as it can be a very powerful tool for transition. However, it should be formalized or institutionalized to hold water in other judicial systems. This however, should be done with respect to and for the traditional/cultural beliefs of the people in order for it to retain its authenticity and legitimacy amongst the people. The institutionalization of these practices has got to be in ways that are acceptable to the people for which they

are being designed. Spirituality and belief are very potent powers that shouldn't be taken lightly.

- International courts should invest more time and effort to public awareness and consultations within the transitional justice recipient communities in order to help these communities to conceptualize their roles of these international institutions. History has shown that international courts are spatially and mentally distanced from the people for whom they seek justice. International institutions should consult more with local and national leaders before implementing what they deem Justice.

WORD COUNT: 16,323

JUSTIFICATION: I have exceeded 15,000 words mainly because my study reflects the voices of the people and I wanted to stay as close to their words as possible. Therefore I used so many quotations to complement my discussions.

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APPENDIX 1: Interview Schedule.

(Name, Gender, Role in the war)

1. What are your current immediate concerns or needs? What do you want done for you as victims?
2. How do you want justice served for you? What do you want done to the people who mistreated you during the war?
3. The government has proposed to apply domestic judicial hearings, invited the ICC, Amnesty for those who voluntarily renounce war and there are proposals for applying traditional justice. Which one of these would be most appropriate for you and why??
4. What is traditional justice?
5. What do you know about the ICC?
6. What are your views on the governments involving the International criminal court??
7. How does it affect you right now?
8. A lot has been said and done about traditional justice; do you think traditional justice can work for the crimes of the LRA? How do you propose this to be done?
9. What do you foresee as a problem in applying traditional justice in the current context?

APPENDIX 2: Questionnaire

Please answer the following questions as well as you can. Feel free to include anything you feel is relevant to the current peace process in Northern Uganda.(Particularly regarding the ICC and traditional justice.

1	Name(optional:
2	Position in office:
3	Gender:
4	What in your opinion, is the immediate concern regarding the Northern Uganda Peace process?
5	How can peace be achieved in Northern Uganda?
6	What do you see as the immediate needs for the people of Northern Uganda at the moment?
7	What transitional justice mechanisms should be applied in the case of Northern Uganda and why?
8	What are your views on the use of traditional justice as tool for transitional justice for Northern Uganda?
8	Comment on the ICC intervention in Uganda and its effects on the peace process.

9	Recommendations for the way forward in this peace process at the moment?

APPENDIX 3: CONSENT FORM

An analysis of Traditional justice as a tool for transitional justice.

My name is TURYAGENDA MABEL. I am a Student at the Universities of Roehampton-London, Gothenburg-Sweden and Tromso- Norway, pursuing a Masters degree in Human Rights practice. I am carrying out research on Transitional Justice as stated above and would like to hear what the receiptient communities to transitional efforts have to say for themselves regarding the mechanisms that are in place or that are being proposed; specifically on the ICC and traditional justice.

You are invited to partake in the above mentioned research. You have been selected for your knowledge and experience in the northern conflict, the peace process or as a victim to this war.

If you agree to partake in this study, you will be required to fill in a very brief questionnaire and or sit in for an interview.

Participation is voluntary. Whatever you disclose in these interviews is strictly confidential and is strictly for academic purposes. Disclosure of particulars is optional especially your name if you feel the need for anonymity.

There will be no payment for participation and feel free to withdraw from the exercise if you feel uncomfortable. Your participation or decline will not affect you, your family or your workmates in any way.

Where necessary, feel free to ask questions for clarifications and add information or comments on what you feel is important to the transitional justice process that I may have been neglected.

Thank you for your time.

Appendix 4: GLOSARY LIST

Abila	Sacred shrine
Acuga	The mix of the fruit juice
Anyero	It is a creeping plant that is used during the cleansig ceremony
Bwola	It's a royal drum sounded during the Mato opwut ceremony
Cullu kwor	Making compensation
Dye-kal	The yard
Dyang ma gineko i dwol pe giculu	An Acholi saying translated according to context.
Gomo-tong	Bending the spear
Jok (Jok-kene)	God
Jogi	Gods
Matto opwut	Rite of reconciliation
Min-ot	Mother of the hut in a household
Mwoc	Short for Nying-mwoc (See nying-mwoc
Nying-mwoc	Flirtation names
Nyonno tong-weno	Breaking the egg
Pobo	It is a tender plant generally known for its strong but slippery fibers used in the cleansing ceremony
Rubanga	God
Rwot kweri	Head of a village
Tim	Hunting ground
Tummu-kiri	
Tummu-buru	
Opwut	roots

Wong-o	Common fireplace
Won-paco	Head of a hamlet
Wot-ot	Father of the Hut in a household/Household head

APPENDIX 5: Districts affected by the LRA insurgency



Source: <http://schools-wikipedia.org/images/70/7043.png>

Accessed on 13/03/09

APPENDIX 6: MAJOR ETHNIC GROUPS OF UGANDA

GROUP	%	GROUP	%
Baganda	16.2	Bagisu	5.1
Iteso	8.1	Acholi	4.4
Basoga	7.7	Lugbara	3.6
Banyankore	8.0	Banyoro	2.9
Banyaruanda	5.8	Batoro	3.2
Bakiga	7.1	Karamojong	2.0
Lango	5.6	Others (est.)	20.3

Source: Kurian, George Thomas 1992. *Encyclopedia of the Third World*, fourth edition, volume III, Facts on File: New York, N.Y., pp. 2009-2010 from the African studies Centre, University of Pennsylvania at <http://www.africa.upenn.edu/NEH/uethnic.htm> Accessed 04/09

APPENDIX 7: THE UGANDA AMNESTY ACT, 2000

An Act to provide for an Amnesty for Ugandans involved in acts of a war-like nature in various parts of the country and for other connected purposes.

WHEREAS it is common knowledge that hostilities directed at the Government of Uganda continue to persist in some parts of the country, thereby causing unnecessary suffering to the people of those areas;

AND WHEREAS it is the expressed desire of the people of Uganda to end armed hostilities, reconcile with those who have caused suffering and rebuild their communities;

AND WHEREAS it is the desire and determination of the Government to genuinely implement its policy of reconciliation in order to establish peace, security and tranquillity throughout the whole country:

NOW THEREFORE, be it enacted by Parliament as follows –

PART I - PRELIMINARY

1. This Act may be cited as the Amnesty Act, 2000.
2. In this Act, unless the context otherwise requires –

“Amnesty” means a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State;

“Commission” means the Amnesty Commission established under Part II of this Act;

“DRT” means the Demobilization and Resettlement Team;

“Minister” means the Minister responsible for internal affairs;

“Reporter” means a person seeking to be granted Amnesty under this Act.

PART II – DECLARATION OF AMNESTY, ETC.

3. (1) An Amnesty is declared in respect of any Ugandan who has at any time since the 26th day of January, 1986 engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda by –
- (a) actual participation in combat;
 - (b) collaborating with the perpetrators of the war or armed rebellion;
 - (c) committing any other crime in the furtherance of the war or armed rebellion; or
 - (d) assisting or aiding the conduct or prosecution of the war or armed rebellion.
- (2) A person referred to under subsection (1) shall not be prosecuted or subjected to any form of punishment for the participation in the war or rebellion for any crime committed in the cause of the war or armed rebellion.
4. (1) A reporter shall be taken to be granted the amnesty declared under section 3 if the reporter –
- (a) reports to the nearest Army or Police Unit, a Chief, a member of the Executive Committee of a local government unit, a magistrate or a religious leader within the locality;
 - (b) renounces and abandons involvement in the war or armed rebellion;
 - (c) surrenders at any such place or to any such authority or person any weapons in his or her possession; and
 - (d) is issued with a Certificate of Amnesty as shall be prescribed in regulations to be made by the Minister.

- (2) Where a reporter is a person charged with or is under lawful detention in relation to any offence mentioned in section 3 of this Act, the reporter shall also be deemed to be granted the amnesty if the reporter –
- (a) declares to a prison officer or to a Judge or Magistrate before whom he or she is being tried that he or she has renounced the activity referred to in Section 3 of this Act; and
 - (b) declared his or her intention to apply for the amnesty under this Act.
- (3) A reporter to whom subsection (2) applies shall not be released from custody until the Director of Public Prosecutions has certified that he or she is satisfied that –
- (a) the person falls within the provisions of section 3 of this Act; and
 - (b) he or she is not charged or detained to be prosecuted for any offence not falling under section 3 of this Act.
- (4) Subject to subsection (3), the Director of Public Prosecutions shall investigate the cases of all persons charged with or held in custody for criminal offences and shall take steps to cause to be released all persons involved in such cases who qualify for grant of amnesty under this Act, if those persons renounce all activity mentioned in section 3, in which they have been involved.
- (5) Persons to whom section 3 applies and who are living outside Uganda shall be deemed to have been granted the amnesty if –
- (a) they renounce all activities described in section 3; and
 - (b) report to any Ugandan diplomatic mission, consulate or any international organisation which has agreed with the Government of Uganda to receive such persons.
- (6) A reporter who has complied with any of the provisions of subsections (1), (2), (3), (4) and (5) applicable to him or her shall be granted a certificate to be specified by regulations as evidence of the grant of the Amnesty.

5. An official or authority specified in section 4 of this Act who receives a reporter under section 4 shall hand over the reporter and weapons, if any, to the Sub-county Chief of the area.

6. The Sub-county Chief on receiving a reporter seeking amnesty, shall hand over that reporter to the Demobilization and Resettlement Team established under section 11.

PART III – AMNESTY COMMISSION

7. An Amnesty Commission is hereby established.

8. The Amnesty Commission shall be composed of the following persons appointed by the President with the approval of Parliament –

- (a) a Chairperson who shall be a judge of the High Court or a person qualified to be a judge of the High Court; and
- (b) six other members who shall be persons of high moral integrity.

9. The Commission shall have the following functions –

- (a) to monitor programmes of –
 - (i) demobilization;
 - (ii) reintegration; and
 - (iii) resettlement of reporters;
- (b) to co-ordinate a programme of sensitization of the general public on the amnesty law;
- (c) to consider and promote appropriate reconciliation mechanisms in the affected areas;
- (d) to promote dialogue and reconciliation within the spirit of this Act;
- (e) to perform any other function that is associated or connected with the execution of the functions stipulated in this Act.

10. (1) The Commission shall have a Secretary who shall be a public officer appointed by the Commission acting in consultation with the Public Service Commission, upon such

terms and conditions as may be determined by the Commission in consultation with the Public Service Commission and specified in his or her instrument of appointment.

- (2) The Secretary shall be a person of high moral character and proven integrity, possessing the relevant qualifications and proven ability in the field of public administration.
- (3) The Secretary shall perform such functions as may be assigned to him or her by the Commission.
- (4) The Secretary may be removed by the Commission only for –
 - (a) inability to perform the functions of his or her office arising out of physical or mental incapacity;
 - (b) misbehaviour or misconduct; or
 - (c) incompetence.
- (5) The Commission shall also have such other officers and employees as may be necessary for the discharge of its functions.
- (6) The officers and employees referred to in subsection (5) shall be appointed by the Commission acting in consultation with the Public Service Commission, and shall hold office upon such terms and conditions as shall be determined by the Commission in consultation with the Public Service Commission.

11. A Demobilization and Resettlement Team is hereby established.

12. The DRT shall be composed of not more than seven members to be appointed by the President with the approval of the Sectoral Committee on Defence and Internal Security of Parliament.

13. The functions of the DRT shall be to draw programmes for –

- (a) de-commissioning of arms;
- (b) demobilization;
- (c) re-settlement; and
- (d) reintegration of reporters.

14. (1) Subject to this Act, the DRT shall carry out its functions in accordance with Regulations made by the Minister.
- (2) The DRT shall, in its day to day functions, be under the direct supervision of the Commission.

15. The Minister in consultation with the Minister responsible for finance shall determine the salaries and emoluments of the members of the Commission and the DRT which shall be charged on the Consolidated Fund.

16. All monies required to defray all expenses that may be incurred in the discharge of the functions of the Commission or the DRT in the carrying out of the purposes of this Act are charged on the Consolidated Fund.

Part IV – GENERAL

17. This Act will remain in force for a period not exceeding six months and on expiry, the Minister may by statutory instrument extend that period.

18. The Minister may make regulations for the settlement of persons under this Act and generally for the better carrying out of the provisions and principles of this Act.

Annex



ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT*

PREAMBLE

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows

PART 1. ESTABLISHMENT OF THE COURT

Article 1

The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2

Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3

Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4

Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;

- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection

with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

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

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

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance

with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual

violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 9

Elements of Crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Elements of Crimes may be proposed by:
 - (a) Any State Party;
 - (b) The judges acting by an absolute majority;
 - (c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11

Jurisdiction *ratione temporis*

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12

Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Article 13

Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14

Referral of a situation by a State Party

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.
2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 15

Prosecutor

1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.
2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.
3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.
4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.
5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.
6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

Article 16

Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 17

Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
 - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
 - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
 - (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
 - (d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 18

Preliminary rulings regarding admissibility

1. When a situation has been referred to the Court pursuant to article 13 (a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.

4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.

5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.

6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.

7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of

additional significant facts or significant change of circumstances.

Article 19

Challenges to the jurisdiction of the Court or the admissibility of a case

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.
2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:
 - (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
 - (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
 - (c) A State from which acceptance of jurisdiction is required under article 12.
3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.
4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the

commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).

5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.

6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.

7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.

8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:

(a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;

(b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and

(c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.

9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.

10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.

11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

Article 20

Ne bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

(a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

(b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a

manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Article 21

Applicable law

1. The Court shall apply:
 - (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
 - (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
 - (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

Article 22

Nullum crimen sine lege

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.
3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 23

Nulla poena sine lege

A person convicted by the Court may be punished only in accordance with this Statute.

Article 24

Non-retroactivity ratione personae

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25

Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
 - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
 - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;
 - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26

Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27

Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 29

Non-applicability of statute of limitations

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30

Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

Article 31

Grounds for excluding criminal responsibility

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:

(a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;

(b) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;

(c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;

(d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

(i) Made by other persons; or

(ii) Constituted by other circumstances beyond that person's control.

2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.

3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

Article 32

Mistake of fact or mistake of law

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

Article 33

Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 34

Organs of the Court

The Court shall be composed of the following organs:

- (a) The Presidency;
- (b) An Appeals Division, a Trial Division and a Pre-Trial Division;
- (c) The Office of the Prosecutor;
- (d) The Registry.

Article 35

Service of judges

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.

2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.

3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.

4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49.

Article 36

Qualifications, nomination and election of judges

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.

2. (a) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.

(b) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.

(c) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (b), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and article 37, paragraph 2;

(ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (b) and (c) (i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (a) and (b). In the event that

the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.

3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

(b) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:

(i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or

(ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.

(b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a

national of a State Party.

(c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.

5. For the purposes of the election, there shall be two lists of candidates: List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and

List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii).

A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.

6. (a) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting.

(b) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (a) until the remaining places have been filled.

7. No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

8. (a) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:

(i) The representation of the principal legal systems of the world;

(ii) Equitable geographical representation; and

(iii) A fair representation of female and male judges.

(b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

9. (a) Subject to subparagraph (b), judges shall hold office for a term of nine years and, subject to subparagraph (c) and to article 37, paragraph 2, shall not be eligible for re-election.

(b) At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years.

(c) A judge who is selected to serve for a term of three years under subparagraph (b) shall be eligible for re-election for a full term.

10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

Article 37

Judicial vacancies

1. In the event of a vacancy, an election shall be held in accordance with article 36 to fill the vacancy.

2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36.

Article 38

The Presidency

1. The President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.

2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.

3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for:

(a) The proper administration of the Court, with the exception of the Office of the Prosecutor; and

(b) The other functions conferred upon it in accordance with this Statute.

4. In discharging its responsibility under paragraph 3 (a), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual

concern.

Article 39

Chambers

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (b). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.

2. (a) The judicial functions of the Court shall be carried out in each division by Chambers.

(b) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;

(ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;

(iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence;

(c) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.

3. (a) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.

(b) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.

4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

Article 40

Independence of the judges

1. The judges shall be independent in the performance of their functions.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.

4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

Article 41

Excusing and disqualification of judges

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.

2. (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, inter alia, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.

(b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.

(c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

Article 42

The Office of the Prosecutor

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.

2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.

3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.

5. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.

6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.

7. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, inter alia, they have

previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.

8. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.

(a) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article;

(b) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter;

9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

Article 43

The Registry

1. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42.

2. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.

3. The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.

5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.

6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

Article 44

Staff

1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.

2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, mutatis mutandis, to the criteria set forth in article 36, paragraph 8.

3. The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff

of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.

4. The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties.

Article 45

Solemn undertaking

Before taking up their respective duties under this Statute, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

Article 46

Removal from office

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person:

- (a) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or
- (b) Is unable to exercise the functions required by this Statute.

2. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot:

(a) In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges;

(b) In the case of the Prosecutor, by an absolute majority of the States Parties;

(c) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.

3. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.

4. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

Article 47

Disciplinary measures

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

Article 48

Privileges and immunities

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.

3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.

4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.

5. The privileges and immunities of:

(a) A judge or the Prosecutor may be waived by an absolute majority of the judges;

(b) The Registrar may be waived by the Presidency;

(c) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;

(d) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

Article 49

Salaries, allowances and expenses

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

Article 50

Official and working languages

1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.

2. The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.

3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

Article 51

Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Rules of Procedure and Evidence may be proposed by:

- (a) Any State Party;
- (b) The judges acting by an absolute majority; or
- (c) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.

4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.

5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

Article 52

Regulations of the Court

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.

2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.

3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.

PART 5. INVESTIGATION AND PROSECUTION

Article 53

Initiation of an investigation

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:

(a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;

(b) The case is or would be admissible under article 17; and

(c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.

2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:

(a) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;

(b) The case is inadmissible under article 17; or

(c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime;

the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.

3. (a) At the request of the State making a referral under article 14 or the Security Council under article 13, paragraph (b), the Pre-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.

(b) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on paragraph 1 (c) or 2 (c). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber.

4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

Article 54

Duties and powers of the Prosecutor with respect to investigations

1. The Prosecutor shall:

(a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;

(b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and

(c) Fully respect the rights of persons arising under this Statute.

2. The Prosecutor may conduct investigations on the territory of a State:

(a) In accordance with the provisions of Part 9; or

(b) As authorized by the Pre-Trial Chamber under article 57, paragraph 3 (d).

3. The Prosecutor may:

(a) Collect and examine evidence;

(b) Request the presence of and question persons being investigated, victims and witnesses;

(c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;

(d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;

(e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the

purpose of generating new evidence, unless the provider of the information consents;
and

(f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

Article 55

Rights of persons during an investigation

1. In respect of an investigation under this Statute, a person:

(a) Shall not be compelled to incriminate himself or herself or to confess guilt;

(b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;

(c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and

(d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

(a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;

- (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and
- (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

Article 56

Role of the Pre-Trial Chamber in relation to a unique investigative opportunity

1. (a) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.

(b) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.

(c) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in response to a summons in connection with the investigation referred to in subparagraph (a), in order that he or she may be heard on the matter.

2. The measures referred to in paragraph 1 (b) may include:

- (a) Making recommendations or orders regarding procedures to be followed;

- (b) Directing that a record be made of the proceedings;
- (c) Appointing an expert to assist;
- (d) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been designated, appointing another counsel to attend and represent the interests of the defence;
- (e) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;
- (f) Taking such other action as may be necessary to collect or preserve evidence.

3. (a) Where the Prosecutor has not sought measures pursuant to this article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor's failure to request the measures. If upon consultation, the Pre-Trial Chamber concludes that the Prosecutor's failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.

(b) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.

4. The admissibility of evidence preserved or collected for trial pursuant to this article, or the record thereof, shall be governed at trial by article 69, and given such weight as determined by the Trial Chamber.

Article 57

Functions and powers of the Pre-Trial Chamber

1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.

2. (a) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.

(b) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.

3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:

(a) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;

(b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;

(c) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information;

(d) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a

request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9.

(e) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

Article 58

Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:

(a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and

(b) The arrest of the person appears necessary:

(i) To ensure the person's appearance at trial,

(ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or

(iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

2. The application of the Prosecutor shall contain:

- (a) The name of the person and any other relevant identifying information;
- (b) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed;
- (c) A concise statement of the facts which are alleged to constitute those crimes;
- (d) A summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes; and
- (e) The reason why the Prosecutor believes that the arrest of the person is necessary.

3. The warrant of arrest shall contain:

- (a) The name of the person and any other relevant identifying information;
- (b) A specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and
- (c) A concise statement of the facts which are alleged to constitute those crimes.

4. The warrant of arrest shall remain in effect until otherwise ordered by the Court.

5. On the basis of the warrant of arrest, the Court may request the provisional arrest or the arrest and surrender of the person under Part 9.

6. The Prosecutor may request the Pre-Trial Chamber to amend the warrant of arrest by modifying or adding to the crimes specified therein. The Pre-Trial Chamber shall so amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed the modified or additional crimes.

7. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to

believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear. The summons shall contain:

- (a) The name of the person and any other relevant identifying information;
- (b) The specified date on which the person is to appear;
- (c) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and
- (d) A concise statement of the facts which are alleged to constitute the crime.

The summons shall be served on the person.

Article 59

Arrest proceedings in the custodial State

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.
2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:
 - (a) The warrant applies to that person;
 - (b) The person has been arrested in accordance with the proper process; and
 - (c) The person's rights have been respected.

3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.

4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b).

5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.

6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.

7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

Article 60

Initial proceedings before the Court

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to

apply for interim release pending trial.

2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

Article 61

Confirmation of the charges before trial

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.

2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:

- (a) Waived his or her right to be present; or
- (b) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:

- (a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and
- (b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.

5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.

6. At the hearing, the person may:

- (a) Object to the charges;

- (b) Challenge the evidence presented by the Prosecutor; and
- (c) Present evidence.

7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:

- (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
- (b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;
- (c) Adjourn the hearing and request the Prosecutor to consider:
 - (i) Providing further evidence or conducting further investigation with respect to a particular charge; or
 - (ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.

9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.

11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

PART 6. THE TRIAL

Article 62

Place of trial

Unless otherwise decided, the place of the trial shall be the seat of the Court.

Article 63

Trial in the presence of the accused

1. The accused shall be present during the trial.
2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

Article 64

Functions and powers of the Trial Chamber

1. The functions and powers of the Trial Chamber set out in this article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.
2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:
 - (a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;
 - (b) Determine the language or languages to be used at trial; and
 - (c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.
4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.
5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.
6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:
 - (a) Exercise any functions of the Pre-Trial Chamber referred to in article 61, paragraph 11;

- (b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;
- (c) Provide for the protection of confidential information;
- (d) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;
- (e) Provide for the protection of the accused, witnesses and victims; and
- (f) Rule on any other relevant matters.

7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.

8. (a) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65 or to plead not guilty.

(b) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.

9. The Trial Chamber shall have, inter alia, the power on application of a party or on its own motion to:

- (a) Rule on the admissibility or relevance of evidence; and

(b) Take all necessary steps to maintain order in the course of a hearing.

10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

Article 65

Proceedings on an admission of guilt

1. Where the accused makes an admission of guilt pursuant to article 64, paragraph 8 (a), the Trial Chamber shall determine whether:

(a) The accused understands the nature and consequences of the admission of guilt;

(b) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and

(c) The admission of guilt is supported by the facts of the case that are contained in:

(i) The charges brought by the Prosecutor and admitted by the accused;

(ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts; and

(iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.

2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.

4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may:

(a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or

(b) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.

5. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

Article 66

Presumption of innocence

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.

2. The onus is on the Prosecutor to prove the guilt of the accused.

3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

Article 67

Rights of the accused

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

(c) To be tried without undue delay;

(d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;

(f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks;

(g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;

(h) To make an unsworn oral or written statement in his or her defence; and

(i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

Article 68

Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.

5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

Article 69

Evidence

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.

2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of viva voce (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.

3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.

4. The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.

6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:

(a) The violation casts substantial doubt on the reliability of the evidence; or

(b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

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.

Article 72

Protection of national security information

1. This article applies in any case where the disclosure of the information or documents of a State would, in the opinion of that State, prejudice its national security interests. Such cases include those falling within the scope of article 56, paragraphs 2 and 3, article 61, paragraph 3, article 64, paragraph 3, article 67, paragraph 2, article 68, paragraph 6, article 87, paragraph 6 and article 93, as well as cases arising at any other stage of the proceedings where such disclosure may be at issue.

2. This article shall also apply when a person who has been requested to give information or evidence has refused to do so or has referred the matter to the State on the ground that disclosure would prejudice the national security interests of a State and the State concerned confirms that it is of the opinion that disclosure would prejudice its national security interests.

3. Nothing in this article shall prejudice the requirements of confidentiality applicable under article 54, paragraph 3 (e) and (f), or the application of article 73.

4. If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this article.

5. If, in the opinion of a State, disclosure of information would prejudice its national security interests, all reasonable steps will be taken by the State, acting in conjunction with the Prosecutor, the defence or the Pre-Trial Chamber or Trial Chamber, as the case may be, to seek to resolve the matter by cooperative means. Such steps may include:

(a) Modification or clarification of the request;

(b) A determination by the Court regarding the relevance of the information or evidence sought, or a determination as to whether the evidence, though relevant, could be or has been obtained from a source other than the requested State;

(c) Obtaining the information or evidence from a different source or in a different form; or

(d) Agreement on conditions under which the assistance could be provided including, among other things, providing summaries or redactions, limitations on disclosure, use of in camera or ex parte proceedings, or other protective measures permissible under the Statute and the Rules of Procedure and Evidence.

6. Once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests, it shall so notify the Prosecutor or the Court of the specific reasons for its decision, unless a specific description of the reasons would itself necessarily result in such prejudice to the State's national security interests.

7. Thereafter, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused, the Court may undertake the following actions:

(a) Where disclosure of the information or document is sought pursuant to a request for cooperation under Part 9 or the circumstances described in paragraph 2, and the State has invoked the ground for refusal referred to in article 93, paragraph 4:

(i) The Court may, before making any conclusion referred to in subparagraph 7 (a) (ii), request further consultations for the purpose of considering the State's representations, which may include, as appropriate, hearings in camera and ex parte;

(ii) If the Court concludes that, by invoking the ground for refusal under article 93, paragraph 4, in the circumstances of the case, the requested State is not acting in accordance with its obligations under this Statute, the Court may refer the matter in accordance with article 87, paragraph 7, specifying the reasons for its conclusion; and

(iii) The Court may make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances; or

(b) In all other circumstances:

(i) Order disclosure; or

(ii) To the extent it does not order disclosure, make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances.

Article 73

Third-party information or documents

If a State Party is requested by the Court to provide a document or information in its custody, possession or control, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, it shall seek the consent of the originator to disclose that document or information. If the originator is a State Party, it shall either consent to disclosure of the information or document or undertake to resolve the issue of disclosure with the Court, subject to the provisions of article 72. If the originator is not a State Party and refuses to consent to disclosure, the requested State shall inform the Court that it is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator.

Article 74

Requirements for the decision

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.

2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.

3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.

4. The deliberations of the Trial Chamber shall remain secret.

5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

Article 75

Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.

5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.

6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

Article 76 Sentencing

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.

2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.

3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.

4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

PART 7. PENALTIES

Article 77

Applicable penalties

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:

(a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

2. In addition to imprisonment, the Court may order:

(a) A fine under the criteria provided for in the Rules of Procedure and Evidence;

(b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Article 78

Determination of the sentence

1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.

3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life

imprisonment in conformity with article 77, paragraph 1 (b).

Article 79

Trust Fund

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.
2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.
3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

Article 80

Non-prejudice to national application of penalties and national laws

Nothing in this Part affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this Part.

PART 8. APPEAL AND REVISION

Article 81

Appeal against decision of acquittal or conviction or against sentence

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:

(a) The Prosecutor may make an appeal on any of the following grounds:

(i) Procedural error,

(ii) Error of fact, or

(iii) Error of law;

(b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:

(i) Procedural error,

(ii) Error of fact,

(iii) Error of law, or

(iv) Any other ground that affects the fairness or reliability of the proceedings or decision.

2. (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;

(b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 81, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 83;

(c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (a).

3. (a) Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal;

(b) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below;

(c) In case of an acquittal, the accused shall be released immediately, subject to the following:

(i) Under exceptional circumstances, and having regard, inter alia, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;

(ii) A decision by the Trial Chamber under subparagraph (c) (i) may be appealed in accordance with the Rules of Procedure and Evidence.

4. Subject to the provisions of paragraph 3 (a) and (b), execution of the decision or sentence shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

Article 82

Appeal against other decisions

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

(a) A decision with respect to jurisdiction or admissibility;

(b) A decision granting or denying release of the person being investigated or prosecuted;

(c) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;

(d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

2. A decision of the Pre-Trial Chamber under article 57, paragraph 3 (d), may be appealed against by the State concerned or by the Prosecutor, with the leave of the Pre-Trial Chamber. The appeal shall be heard on an expedited basis.

3. An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.

4. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

Article 83

Proceedings on appeal

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.

2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:

(a) Reverse or amend the decision or sentence; or

(b) Order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.

4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.

5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

Article 84

Revision of conviction or sentence

1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the grounds that:

(a) New evidence has been discovered that:

(i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and

(ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;

(b) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;

(c) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under article 46.

2. The Appeals Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

(a) Reconvene the original Trial Chamber;

(b) Constitute a new Trial Chamber; or

(c) Retain jurisdiction over the matter,

with a view to, after hearing the parties in the manner set forth in the Rules of Procedure and Evidence, arriving at a determination on whether the judgement should be revised.

Article 85

Compensation to an arrested or convicted person

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed on the ground that a new or

newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.

3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 86

General obligation to cooperate

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

Article 87

Requests for cooperation: general provisions

1. (a) The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession.

Subsequent changes to the designation shall be made by each State Party in accordance with the Rules of Procedure and Evidence.

(b) When appropriate, without prejudice to the provisions of subparagraph (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.

2. Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession.

Subsequent changes to this choice shall be made in accordance with the Rules of Procedure and Evidence.

3. The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.

4. In relation to any request for assistance presented under this Part, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under this Part shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families.

5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.

(b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.

6. The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.

7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

Article 88

Availability of procedures under national law

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.

Article 89

Surrender of persons to the Court

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.

2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of ne bis in idem as provided in article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall

proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.

3. (a) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.

(b) A request by the Court for transit shall be transmitted in accordance with article 87. The request for transit shall contain:

(i) A description of the person being transported;

(ii) A brief statement of the facts of the case and their legal characterization; and

(iii) The warrant for arrest and surrender;

(c) A person being transported shall be detained in custody during the period of transit;

(d) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State;

(e) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (b). The transit State shall detain the person being transported until the request for transit is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.

4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is

sought, the requested State, after making its decision to grant the request, shall consult with the Court.

Article 90

Competing requests

1. A State Party which receives a request from the Court for the surrender of a person under article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.

2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:

(a) The Court has, pursuant to article 18 or 19, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or

(b) The Court makes the determination described in subparagraph (a) pursuant to the requested State's notification under paragraph 1.

3. Where a determination under paragraph 2 (a) has not been made, the requested State may, at its discretion, pending the determination of the Court under paragraph 2 (b), proceed to deal with the request for extradition from the requesting State but shall not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.

4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State,

shall give priority to the request for surrender from the Court, if the Court has determined that the case is admissible.

5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.

6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:

- (a) The respective dates of the requests;
- (b) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and
- (c) The possibility of subsequent surrender between the Court and the requesting State.

7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:

- (a) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;
- (b) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or to extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to

those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.

8. Where pursuant to a notification under this article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the Court of this decision.

Article 91

Contents of request for arrest and surrender

1. A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).

2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under article 58, the request shall contain or be supported by:

(a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;

(b) A copy of the warrant of arrest; and

(c) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.

3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain or be supported by:

(a) A copy of any warrant of arrest for that person;

(b) A copy of the judgement of conviction;

(c) Information to demonstrate that the person sought is the one referred to in the judgement of conviction; and

(d) If the person sought has been sentenced, a copy of the sentence imposed and, in the case of a sentence for imprisonment, a statement of any time already served and the time remaining to be served.

4. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (c). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

Article 92

Provisional arrest

1. In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in article 91.

2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:

(a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;

(b) A concise statement of the crimes for which the person's arrest is sought and of the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;

(c) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and

(d) A statement that a request for surrender of the person sought will follow.

3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.

4. The fact that the person sought has been released from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and surrender of that person if the request for surrender and the documents supporting the request are delivered at a later date.

Article 93

Other forms of cooperation

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:

(a) The identification and whereabouts of persons or the location of items;

(b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;

(c) The questioning of any person being investigated or prosecuted;

(d) The service of documents, including judicial documents;

- (e) Facilitating the voluntary appearance of persons as witnesses or experts before the Court;
- (f) The temporary transfer of persons as provided in paragraph 7;
- (g) The examination of places or sites, including the exhumation and examination of grave sites;
- (h) The execution of searches and seizures;
- (i) The provision of records and documents, including official records and documents;
- (j) The protection of victims and witnesses and the preservation of evidence;
- (k) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and
- (l) Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.

2. The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State.

3. Where execution of a particular measure of assistance detailed in a request presented under paragraph 1, is prohibited in the requested State on the basis of an existing fundamental legal principle of general application, the requested State shall promptly consult with the Court to try to resolve the matter. In the consultations, consideration should be given to whether the assistance can be rendered in another

manner or subject to conditions. If after consultations the matter cannot be resolved, the Court shall modify the request as necessary.

4. In accordance with article 72, a State Party may deny a request for assistance, in whole or in part, only if the request concerns the production of any documents or disclosure of evidence which relates to its national security.

5. Before denying a request for assistance under paragraph 1 (l), the requested State shall consider whether the assistance can be provided subject to specified conditions, or whether the assistance can be provided at a later date or in an alternative manner, provided that if the Court or the Prosecutor accepts the assistance subject to conditions, the Court or the Prosecutor shall abide by them.

6. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.

7. (a) The Court may request the temporary transfer of a person in custody for purposes of identification or for obtaining testimony or other assistance. The person may be transferred if the following conditions are fulfilled:

(i) The person freely gives his or her informed consent to the transfer; and

(ii) The requested State agrees to the transfer, subject to such conditions as that State and the Court may agree.

(b) The person being transferred shall remain in custody. When the purposes of the transfer have been fulfilled, the Court shall return the person without delay to the requested State.

8. (a) The Court shall ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request.

(b) The requested State may, when necessary, transmit documents or information to the Prosecutor on a confidential basis. The Prosecutor may then use them solely for the purpose of generating new evidence.

(c) The requested State may, on its own motion or at the request of the Prosecutor, subsequently consent to the disclosure of such documents or information. They may then be used as evidence pursuant to the provisions of Parts 5 and 6 and in accordance with the Rules of Procedure and Evidence.

9. (a) (i) In the event that a State Party receives competing requests, other than for surrender or extradition, from the Court and from another State pursuant to an international obligation, the State Party shall endeavour, in consultation with the Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.

(ii) Failing that, competing requests shall be resolved in accordance with the principles established in article 90.

(b) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.

10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.

(b) (i) The assistance provided under subparagraph (a) shall include, inter alia:

a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and

b. The questioning of any person detained by order of the Court;

(ii) In the case of assistance under subparagraph (b) (i) a:

a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;

b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of article 68.

(c) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this Statute.

Article 94

Postponement of execution of a request in respect of ongoing investigation or prosecution

1. If the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the requested State may postpone the execution of the request for a period of time agreed upon with the Court. However, the postponement shall be no longer than is necessary to complete the relevant investigation or prosecution in the requested State. Before making a decision to postpone, the requested State should consider whether the assistance may be immediately provided subject to certain conditions.

2. If a decision to postpone is taken pursuant to paragraph 1, the Prosecutor may, however, seek measures to preserve evidence, pursuant to article 93, paragraph 1 (j).

Article 95

Postponement of execution of a request in
respect of an admissibility challenge

Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19.

Article 96

Contents of request for other forms of
assistance under article 93

1. A request for other forms of assistance referred to in article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).
2. The request shall, as applicable, contain or be supported by the following:
 - (a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;
 - (b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;
 - (c) A concise statement of the essential facts underlying the request;
 - (d) The reasons for and details of any procedure or requirement to be followed;
 - (e) Such information as may be required under the law of the requested State in order to execute the request; and

(f) Any other information relevant in order for the assistance sought to be provided.

3. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (e). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

4. The provisions of this article shall, where applicable, also apply in respect of a request for assistance made to the Court.

Article 97

Consultations

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter. Such problems may include, inter alia:

(a) Insufficient information to execute the request;

(b) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the requested State is clearly not the person named in the warrant; or

(c) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

Article 98

Cooperation with respect to waiver of immunity and consent to surrender

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

Article 99

Execution of requests under articles 93 and 96

1. Requests for assistance shall be executed in accordance with the relevant procedure under the law of the requested State and, unless prohibited by such law, in the manner specified in the request, including following any procedure outlined therein or permitting persons specified in the request to be present at and assist in the execution process.

2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.

3. Replies from the requested State shall be transmitted in their original language and form.

4. Without prejudice to other articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a

voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:

(a) When the State Party requested is a State on the territory of which the crime is alleged to have been committed, and there has been a determination of admissibility pursuant to article 18 or 19, the Prosecutor may directly execute such request following all possible consultations with the requested State Party;

(b) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.

5. Provisions allowing a person heard or examined by the Court under article 72 to invoke restrictions designed to prevent disclosure of confidential information connected with national security shall also apply to the execution of requests for assistance under this article.

Article 100

Costs

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:

(a) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody;

(b) Costs of translation, interpretation and transcription;

- (c) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court;
 - (d) Costs of any expert opinion or report requested by the Court;
 - (e) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and
 - (f) Following consultations, any extraordinary costs that may result from the execution of a request.
2. The provisions of paragraph 1 shall, as appropriate, apply to requests from States Parties to the Court. In that case, the Court shall bear the ordinary costs of execution.

Article 101

Rule of speciality

1. A person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.
2. The Court may request a waiver of the requirements of paragraph 1 from the State which surrendered the person to the Court and, if necessary, the Court shall provide additional information in accordance with article 91. States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so.

Article 102

Use of terms

For the purposes of this Statute:

(a) "surrender" means the delivering up of a person by a State to the Court, pursuant to this Statute.

(b) "extradition" means the delivering up of a person by one State to another as provided by treaty, convention or national legislation.

PART 10. ENFORCEMENT

Article 103

Role of States in enforcement of sentences of imprisonment

1. (a) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.

(b) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.

(c) A State designated in a particular case shall promptly inform the Court whether it accepts the Court's designation.

2. (a) The State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, the State of enforcement shall take no action that might prejudice its obligations under article 110.

(b) Where the Court cannot agree to the circumstances referred to in subparagraph (a), it shall notify the State of enforcement and proceed in accordance with article 104, paragraph 1.

3. In exercising its discretion to make a designation under paragraph 1, the Court shall take into account the following:

(a) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, as provided in the Rules of Procedure and Evidence;

(b) The application of widely accepted international treaty standards governing the treatment of prisoners;

(c) The views of the sentenced person;

(d) The nationality of the sentenced person;

(e) Such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate in designating the State of enforcement.

4. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State, in accordance with the conditions set out in the headquarters agreement referred to in article 3, paragraph 2. In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the Court.

Article 104

Change in designation of State of enforcement

1. The Court may, at any time, decide to transfer a sentenced person to a prison of another State.

2. A sentenced person may, at any time, apply to the Court to be transferred from the State of enforcement.

Article 105

Enforcement of the sentence

1. Subject to conditions which a State may have specified in accordance with article 103, paragraph 1 (b), the sentence of imprisonment shall be binding on the States Parties, which shall in no case modify it.

2. The Court alone shall have the right to decide any application for appeal and revision. The State of enforcement shall not impede the making of any such application by a sentenced person.

Article 106

Supervision of enforcement of sentences and conditions of imprisonment

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.

2. The conditions of imprisonment shall be governed by the law of the State of enforcement and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.

3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

Article 107

Transfer of the person upon completion of sentence

1. Following completion of the sentence, a person who is not a national of the State of enforcement may, in accordance with the law of the State of enforcement, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the State of enforcement authorizes the person to remain in its territory.
2. If no State bears the costs arising out of transferring the person to another State pursuant to paragraph 1, such costs shall be borne by the Court.
3. Subject to the provisions of article 108, the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

Article 108

Limitation on the prosecution or punishment of other offences

1. A sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.
2. The Court shall decide the matter after having heard the views of the sentenced person.
3. Paragraph 1 shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the

full sentence imposed by the Court, or returns to the territory of that State after having left it.

Article 109

Enforcement of fines and forfeiture measures

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.
2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.
3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgement of the Court shall be transferred to the Court.

Article 110

Review by the Court concerning reduction of sentence

1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.
2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.
3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.

4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:

(a) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;

(b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or

(c) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.

5. If the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.

Article 111

Escape

If a convicted person escapes from custody and flees the State of enforcement, that State may, after consultation with the Court, request the person's surrender from the State in which the person is located pursuant to existing bilateral or multilateral arrangements, or may request that the Court seek the person's surrender, in accordance with Part 9. It may direct that the person be delivered to the State in which he or she was serving the sentence or to another State designated by the Court.

PART 11. ASSEMBLY OF STATES PARTIES

Article 112

Assembly of States Parties

1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.

2. The Assembly shall:

(a) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;

(b) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;

(c) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;

(d) Consider and decide the budget for the Court;

(e) Decide whether to alter, in accordance with article 36, the number of judges;

(f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;

(g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.

3. (a) The Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms.

(b) The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.

(c) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.

4. The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.

5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.

6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.

7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:

(a) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting;

(b) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.

8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

9. The Assembly shall adopt its own rules of procedure.

10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations.

PART 12. FINANCING

Article 113

Financial Regulations

Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by this Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties.

Article 114

Payment of expenses

Expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be paid from the funds of the Court.

Article 115

Funds of the Court and of the Assembly of States Parties

The expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, as provided for in the budget decided by the Assembly of States Parties, shall be provided by the following sources:

(a) Assessed contributions made by States Parties;

(b) Funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council.

Article 116

Voluntary contributions

Without prejudice to article 115, the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

Article 117

Assessment of contributions

The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

Article 118

Annual audit

The records, books and accounts of the Court, including its annual financial statements, shall be audited annually by an independent auditor.

PART 13. FINAL CLAUSES

Article 119

Settlement of disputes

1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.

2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

Article 120

Reservations

No reservations may be made to this Statute.

Article 121

Amendments

1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.

2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.

3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.

4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.

5. Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.

6. If an amendment has been accepted by seven-eighths of States Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from this Statute with immediate effect, notwithstanding article 127, paragraph 1, but subject to article 127, paragraph 2, by giving notice no later than one year after the entry into force of such amendment.

7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.

Article 122

Amendments to provisions of an institutional nature

1. Amendments to provisions of this Statute which are of an exclusively institutional nature, namely, article 35, article 36, paragraphs 8 and 9, article 37, article 38, article 39, paragraphs 1 (first two sentences), 2 and 4, article 42, paragraphs 4 to 9, article 43, paragraphs 2 and 3, and articles 44, 46, 47 and 49, may be proposed at any

time, notwithstanding article 121, paragraph 1, by any State Party. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations or such other person designated by the Assembly of States Parties who shall promptly circulate it to all States Parties and to others participating in the Assembly.

2. Amendments under this article on which consensus cannot be reached shall be adopted by the Assembly of States Parties or by a Review Conference, by a two-thirds majority of States Parties. Such amendments shall enter into force for all States Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

Article 123

Review of the Statute

1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.

2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary-General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.

3. The provisions of article 121, paragraphs 3 to 7, shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

Article 124

Transitional Provision

Notwithstanding article 12, paragraphs 1 and 2, a State, on becoming a party to this Statute, may declare that, for a period of seven years after the entry into force of this Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory. A declaration under this article may be withdrawn at any time. The provisions of this article shall be reviewed at the Review Conference convened in accordance with article 123, paragraph 1.

Article 125

Signature, ratification, acceptance, approval or accession

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.

2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 126

Entry into force

1. This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 127

Withdrawal

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

Article 128

Authentic texts

The original of this Statute, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by
their respective Governments, have signed this Statute.

DONE at Rome, this 17th day of July 1998.