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First Annual International Criminal Court Moot Competition: Best Memorial for Victims' Advocate

Santa Clara University School of Law

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**IN THE
INTERNATIONAL CRIMINAL COURT**

Prosecutor

v.

Soldier Nationals of Katonia and Ridgeland

MEMORIAL FOR VICTIMS' ADVOCATE

International Criminal Court Victims' Advocate
Santa Clara University School of Law
Thomas Howe
Eric Ortner
Allison Surowitz

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STATEMENT OF JURISDICTION

The Victims of Vineland request that the International Criminal Court exercise its jurisdiction over Katonia and Ridgeland soldiers and paratroopers pursuant to Article 12 of the Rome Statute.

QUESTIONS PRESENTED

1. Whether the crimes committed by the Katonia and Ridgeland Defendants constitute "war crimes."
2. Whether the ICC has jurisdiction to try the Katonia and Ridgeland Defendants for the war crimes they committed.
3. Whether the victims of these war crimes should be properly remedied.

SUMMARY OF PLEADINGS

IA. Under the Rome Statute of the ICC, the violent acts committed by the Katonia and Ridgeland Defendants are considered "war crimes." Article 8 of the Rome Statute considers both willful killing and extensive destruction to property, not justified by military necessity, to be war crimes. Defendants "willfully killed" at least one man by means of torturing him. Further, Defendants also caused extensive destruction to three villages, including farmland and homes, which were not justified by military necessity.

IB. Under the Nuremberg Charter and the Resolution of the General Assembly of the United Nations, the violent acts of the Katonia and Ridgeland Defendants are considered "war crimes." The International Law Commission identified several crimes that would be punishable under international law, including "war crimes." Historically, the international community has unanimously agreed on the definition of war crimes. Reading the language of both the Rome Statute and the Nuremberg Charter, it is clear that the world refuses to tolerate the types of crimes committed by Defendants. There is no excuse for well-trained paratroopers to destroy three villages and kill hundreds of civilians.

IIA. The ICC's jurisdiction over war crimes addresses the harm suffered by victims. It is customary international law to prosecute grave breaches and other serious violations of the laws and customs of war. Also, the international community agrees that Security Council resolutions are subject to international law. Finally, Resolution 1234 recognizes the jurisdiction of the ICC. The war crimes committed by Defendants fall within the ICC's jurisdiction.

IIB. Immunity deals are void under customary international law. Common interests of society must prevail over individual interests, especially when goals are the *raison d'être* of a treaty. For international human rights law to be internationally respected, individuals should not be able to take advantage of the act of state doctrine and international comity to escape accountability for gross violations of human rights. War criminals that senselessly murder and torture innocent victims

should not be protected by this Court simply because a one-sided agreement was created to protect them from this very situation.

IIIA. Redress and reparation for victims of gross violations of human rights is an imperative demand of justice and a pressing requirement under international law. The Vineland citizens who suffered this great harm are considered "victims" under applicable international law. Victims of international war crimes are entitled to access the mechanisms of justice and to prompt redress. Katonia and Ridgeland offenders must provide fair restitution to these victims, their families and dependants.

IIIB. The ICC must establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. This Court has the power to make an order directly against criminal defendants. If the Katonia and Ridgeland Defendants are unable to fully compensate the Vineland victims, the trust fund created in the Rome Statute may contribute to rehabilitation efforts.

STATEMENT OF FACTS

For four years, three ethnic groups living in Vineland suffered as its northern and southern regions sought to obtain independence. Pace Law School, International Criminal Court Moot Problem ¶ 1 (2005) ("ICC Prob."). The conflict appeared to end in September 2001, when the parties signed a peace agreement to create a democratic coalition government in which the various ethnic groups would all share the power. *Id.*

In January 2002, the United Nations Security Council authorized UNVINE to deploy 500 military and 600 civilian personnel to aid Vineland in establishing its new government. *Id.* The task of this deployment was to verify the cessation of hostilities, set up a security zone for civilians and refugees, and make preparations for the forthcoming elections in the various regions. *Id.* Furthermore, the Security Council requested that the Secretary-General invite member States to contribute the necessary equipment and personnel to UNVINE to carry out the mandate. *Id.* As a result, member States Katonia and Ridgeland both committed and deployed soldiers and paratroopers to the UNVINE mission in Vineland. *Id.*

In June 2002, an insurgent group from the northern region, called "the ANVA," broke away from the coalition government when it became dissatisfied with the amount of representation it was to receive in the new government and the way in which oil revenues were to be shared. ICC Prob. ¶ 2. When this development was brought before the Security Council, the representative from Katonia, a permanent member, informed the Council that it would not participate in this or any other UN peacekeeping missions unless its soldiers were granted immunity from prosecution by the International Criminal Court ("ICC"). ICC Prob. ¶ 3. Despite the safeguards against such actions provided by the Rome Statute, Katonia feared that its soldiers would be subject to politically motivated prosecutions. *Id.* Katonia then vetoed a draft renewing a UN peacekeeping mission to Bosnialand, agreeing to extend the deadline for fifteen days pending further negotiation on whether the Council would immunize its soldiers from ICC prosecution. *Id.*

On July 1, 2002, the Statute of the ICC entered into force, thereby giving the ICC jurisdiction as a court of last resort over the most serious violations of international humanitarian and

human rights law: genocide, war crimes, and crimes against humanity. ICC Prob. ¶ 4.

On July 10, 2002, ten Katonian and fifteen Ridgeland members of the UNVINE peacekeeping force were killed in an attack outside Bridgetown in Vineland's northern region. The identities of the perpetrators were never determined. ICC Prob. ¶ 5. However, newspapers in neighboring countries reported that the attack was sponsored by "foreign oil companies interested in keeping the UN peacekeepers out of the region." *Id.*

Instead of allowing the Vineland authorities or UNVINE to conduct an investigation of the attack or conduct an investigation of their own, Katonia and Ridgeland responded to the attack by sending 200 additional troops to Vineland which were not sanctioned by the Security Council as part of the peacekeeping mission. ICC Prob. ¶ 6. They then engaged in a continuous ten-day massive bombing raid in the general area of the attacks, ruining thousands of acres of farmland and destroying large quantities livestock. *Id.* Several reputable non-governmental organizations ("NGO's") which were monitoring the situation reported that a number of ANVA encampments were destroyed, killing hundreds of inhabitants. *Id.* After the bombing raids, numerous unexploded bombs were left on the roadsides and fields where civilians frequently walked. *Id.*

Paratroopers from Katonia and Ridgeland also cordoned off the surrounding areas and conducted house-to-house raids. *Id.* After the cordon was removed, NGO's monitoring the situation received numerous reports that civilian personal property was taken during the raids. *Id.* Fifty men and twenty boys were also detained during the house-to-house searches and placed in a detention compound. There was however, no indication that they were charged with any crime. *Id.* Four of the detainees were tortured in an isolated area of the compound, away from civilian witnesses, one of which later suffered a heart attack and died. *Id.*

PLEADINGS

I. THE ACTIONS OF THE KATONIA AND RIDGELAND DEFENDANTS CAUSING TOTAL DESTRUCTION TO THREE VILLAGES, KILLING THREE-HUNDRED CIVILIANS, AND SERIOUSLY INJURING FIVE-HUNDRED-AND-FIFTY MORE, CONSTITUTE WAR CRIMES.

A. Under the Rome Statute of the ICC, the Violent Acts Committed by the Katonia and Ridgeland Defendants are Considered "War Crimes."

Article 8 of the Rome Statute defines the term "war crimes." Rome Statute of the International Criminal Court art. 8, Nov. 10, 1998, U.N. Doc. A/Conf.183/9 (July 17, 2002). Specifically, section 2(a) of Article 8 defines "war crimes" as: "Grave breaches of the Geneva Convention of August 12, 1949, namely, any of the following acts against persons or property. . . (i) Willful Killing. . . (iii) Willfully causing great suffering, or serious injury to body or health, [and] (iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. . ." *Id.*

The Katonia and Ridgeland paratroopers ("Defendant Paratroopers") "willfully killed" at least one man by means of torturing him. ICC Prob. ¶ 6. Further, Defendant Paratroopers caused extensive destruction to three villages, including farmland and homes, which was not justified by military necessity. *Id.* The Katonia and Ridgeland governments ordered their paratroopers to attack the ANVA headquarters. *Id.* Instead of focusing their attack on the ANVA target, Defendant Paratroopers spent ten straight days carpet bombing three separate villages, killing hundreds of civilians and destroying an entire small civilization. *Id.* In no way can these crimes against innocent civilians be justified as "military necessity."

B. Under the Nuremberg Charter and the Resolution of the General Assembly of the United Nations, the Violent Acts of the Katonia and Ridgeland Defendants are Considered "War Crimes."

The International Military Tribunals at Nuremberg and Tokyo functioned on the basis of Charters which required the

punishment of individuals for war crimes. Ian Brownlie, Principles of Public International Law 599 (6th ed. 2003). The General Assembly affirmed "the principles of international law recognized by the Charter of the Nuremberg Tribunal" in 1946. *Id.* at 600. Soon after, The International Law Commission formulated several crimes punishable under international law, including "war crimes." Yearbook of the International Law Commission, 1950, vol. II, pp. 374-78. War crimes were defined as: "Violations of the laws or customs of war which include, but are not limited to, murder. . . , plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity." *Id.*

With today's modern technology, there is no excuse for Katonia and Ridgeland's well-equipped and trained paratroopers to aim specifically for ANVA headquarters, but instead destroy three villages, killing three hundred civilians. It would be entirely disingenuous for Defendant Paratroopers to claim anything but purposeful destruction and voluntary war crimes. The international community has unanimously agreed, decade after decade, on the definition of war crimes. Reading the language of both the Rome Statute and the Nuremberg Charter, it is clear that the world population refuses to tolerate specific crimes. These intolerable crimes are precisely what both the Katonia and Ridgeland Defendants committed.

Proving the intent of an accused war criminal may be difficult given the subjective nature of the mens rea. In Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 523 (Sept. 2, 1998), the International Criminal Tribunal for Rwanda ("ICTR") found that "absent a confession from the accused, his intent can be inferred from a certain number of presumptions of fact." In this case, Katonia and Ridgeland sent hundreds of paratroopers and soldiers on a ten day aerial bombing of the "general area" of the attacks. ICC Prob. ¶ 6. Instead of temporarily refraining from bombing the general area to take inventory of what targets were hit, Defendant Paratroopers senselessly continued to bomb for ten straight days over civilian property. *Id.* Shortly thereafter, Defendant Military Police conducted house-to-house raids, where they tortured at least four men. *Id.* Thousands of acres of farmland were ruined, civilian property was stolen and numerous unexploded bombs were

abandoned on the roadsides where women and children often walked. *Id.* The above facts, combined with Defendant Paratroopers failure to hit their authorized target, conclusively shows that they intended to destroy private property and kill innocent civilian women and children. *Id.*

II. THE ICC HAS JURISDICTION TO TRY THE KATONIA AND RIDGELAND DEFENDANTS FOR THE WAR CRIMES THEY COMMITTED.

The Court shall have jurisdiction over war crimes when they are committed as part of a plan, policy or a large-scale commission of such crimes. Rome Statute art. 8, ¶ 1. The ICC is entitled to exercise jurisdiction over all defendants in this dispute because the crimes they committed constitute war crimes that were committed as part of a premeditated plan.

The Rome Statute, recognized by the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, affirmed by the finalized text of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and adopted by the Human Rights Commission in April 2005, recognizes a trinity of rights: the right to an effective remedy and access to justice, including the ability to have access to, and participate in, proceedings where interests are affected; the right to fair treatment, dignity and respect throughout the process including protection from reprisals and re-traumatisation, access to support and respect for victims' privacy; and the right to adequate and effective reparation, including access to appropriate forms of reparation. *Id.* See Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, Annex, U.N. Doc. A/RES/40/34/Annex (Nov. 29, 1985).

A. The ICC has the Appropriate Jurisdiction for Multiple War Crimes Which Reflect the Harm Suffered by the Victims.

The drafters of the Rome Statute and the ICC Rules of Procedure and Evidence recognized the importance of involving victims of the most serious crimes directly and integrally in the

Court's procedures, not only as witnesses for the prosecution but also as actors with a number of roles and rights within the process. Redress, Ensuring the Effective Participation of Victims before the International Criminal Court, May 2005, available at <http://www.redress.org/> (follow "Publications" hyperlink; then follow "Reports" hyperlink.).

1. *The War Crimes Committed by the Katonia and Ridgeland Defendants Fall Within the ICC's Jurisdiction.*

The ICC may exercise jurisdiction when the requirements of Article 12(2) of the Rome Statute have been satisfied. Rome Statute, art. 12. Pursuant to Article 12(2)(a), jurisdiction arises when conduct proscribed under the Rome Statute has "occurred" on the "territory" of a State party to the Statute. *Id.* This territorial requirement is based on the principle of territorial jurisdiction under general international law. N. Atl. Coast Fisheries (U.K. v. U.S.), 11 R. Int'l Arb. Awards 167, 180 (Perm. Ct. Arb. 1910); Oppenheim's International Law 458 n.26 (Sir Robert Jennings & Sir Arthur Watts eds. Pearson 1992); Harvard Research Project, Codification of International Law: Part II – Jurisdiction With Respect to Crime, 29 Am. J. Int'l L. Supp. 435 (1935). A State which becomes a party to the Rome Statute accepts the jurisdiction of the Court with respect to the crimes referred to in Article 5. Rome Statute, art. 12. The war crimes that are the focus of this case occurred in Vineland, which is a State party to the Rome Statute.

The ICC is the proper venue for this matter even if Vineland was not a State party to the Rome Statute. Vineland issued an official statement that it had no intention to exercise jurisdiction over the accused criminals. ICC Prob. ¶ 13. When a state expressly refuses to exercise jurisdiction over an international war criminal, the ICC, as a court of last resort, is the precise location where these accused criminals should be tried.

2. *Security Council Resolutions are Subject to International Law.*

Security Council resolutions are subject to international law. Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lock-

erbie (Libyan Arab Jamahiriya v. United States of America), Preliminary Objections, 1998 I.C.J. 115, 154 (Feb. 27) (separate opinion of Judge Rezek); Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures, 1992 I.C.J. 114, 155 (Apr. 14); Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 294 (June 21); Prosecutor v. Tadic, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 32-34 (Oct. 2, 1995). See also Elihi Lauterpacht, The Legal Effect of Illegal Acts of International Organizations, in Cambridge Essays in International Law: Essays in Honour of Lord McNair (Stevens & Sons 1965) 89; T.M. Franck, The Security Council and Threats to "The Peace": Some Remarks on Remarkable Developments, in The Development of the Role of the Security Council 84 (R.J. Dupuy ed., 1993); John Dugard, Judicial Review of Sanctions, in United Nations Sanctions and International Law 85-86 (Vera Gowlland-Debbas ed., 2001). "The Security Council is the United Nations' most powerful body. It has [the] 'primary responsibility' for the maintenance of international peace and security." Benedict E. DeDominici, Global Policy Forum on UN Security Council, <http://ben.aubg.bg/> (follow "Spring 2002" hyperlink; then follow "POS 312: International Law and Organization" hyperlink; then follow "Global Policy Forum on UN Security Council" hyperlink under "Week of 8 April 2002") (last visited Nov. 15, 2002). "Since 1990, the Council has dramatically increased its activity and it now meets in nearly continuous session." *Id.* "It dispatches military operations, imposes economic sanctions, mandates arms inspections, deploys human rights and election monitors and more." *Id.* An institution so steeped in the maintenance and creation of international law is necessarily accountable to international norms.

3. *Resolution 1234 Recognizes the Jurisdiction of the ICC.*

The Preamble of Resolution 1234 notes the importance of protecting civilians, specifically women, children, and other vulnerable groups during armed conflict, whose injuries are a re-

sult of acts of violence directed against them. S.C. Res. 1234, ¶ 4, U.N. Doc. S/RES/1234 (July 12, 2002). This category of protected individuals is precisely the group who were victimized by the criminal acts committed by the Defendants. Section 2 of the Resolution emphasizes the responsibility of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, and serious violations of international humanitarian law. *Id.*

Both Katonia and Ridgeland are required to cooperate with the process of reprimanding those responsible for the serious violations of international humanitarian law. It has been over two years since Defendants have committed these war crimes. Both Katonia and Ridgeland have refused to investigate the criminal actions of their soldiers. Pursuant to the language of Resolution 1234, Defendants must be prosecuted for their criminal actions. Therefore, because all other prospective jurisdictions are either unwilling or unable to move forward with this action, the ICC, the international court of last resort, pursuant to Resolution 1234, must prosecute Defendants.

4. *Every Internationally Wrongful Act of a State Entails the International Responsibility of that State.*

The prohibition of war crimes is a rule of *jus cogens*. States are obligated under international law to extradite or prosecute persons accused of war crimes. Further, international law requires that States prohibit the commission of war crimes. Rome Statute, preamble. See also Velasquez Rodriquez Case, 1989 Inter-Am. Ct. H.R. (ser. C) No. 4, 291 (July 29, 1988). Parties of the Geneva Convention are obligated to extradite or prosecute those accused of war crimes, especially when the crime is intentionally directed against a civilian population. Rome Statute art. 8. Although the Katonia and Ridgeland Defendants clearly violated international law, these nations refuse to take responsibility for their actions. Therefore, the ICC is forced to exercise its proper jurisdiction and prosecute Defendants for the crimes Katonia and Ridgeland refuse to investigate.

5. *It is Customary International Law to Prosecute Grave Breaches and Other Serious Violations of the Laws and Customs of War.*

By virtue of the almost universal ratification of the Geneva Conventions, the obligation to prosecute or extradite persons accused of grave breaches, as enumerated in the Geneva Conventions, is a customary rule of international law. Yasmin Naqvi, Amnesty for War Crimes: Defining the Limits of International Recognition, 85 Int'l Rev. of the Red Cross 583 (2003), available at <http://www.icrc.org/> (follow "Info resources" hyperlink; then follow "International Review" hyperlink; then follow "2003-No. 851" hyperlink.). The Nuremberg International Military Tribunal in 1945 held that the humanitarian rules included in the Regulations annexed to the Hague Convention IV of 1907 "were recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war." Judicial Decisions Involving Questions of International Law – International Military Tribunal (Nuremberg), Judgment and Sentences, 41 Am. J. Int'l L. 172, 254 (1947).

International Military Tribunal at 254. The International Military Tribunal also pointed out that: "[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced." *Id.* at 220-21.

In accordance with long-standing rules of customary international law, the criminals who committed these war crimes, killing hundreds of innocent lives, must be properly punished.

B. Immunity Deals are Void Under Customary International Law.

In Reservations to Convention on Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15 (May 28), the court faced the question of whether states could make reservations, as a multilateral human rights treaty. The court made clear that those reservations could not undermine the object and purpose of the treaty. In such treaties, there are no individual interests, but rather common interests, namely, the accomplishment of the goals that are the raison d'être of the treaty.

"The general reluctance of most states to recognize or enforce foreign penal judgments suggests that foreign amnesties that provide immunity from criminal liability should never be recognized." Ronald C. Slye, The Legitimacy of Amnesties under International Law and General Principles of Anglo-American Law: Is Legitimate Amnesty Possible?, 43 Va. J. Int'l L. 173, 213 (2002). "If we are to take international human rights law seriously. . . individuals should not be able to take advantage of the act of state doctrine and international comity to escape accountability for gross violations of human rights." *Id.* at 215.

Similarly, an immunity agreement that enforces criminals' immunity over the protection of human rights should be strictly condemned. The immunity agreement presented before the court in this case goes against every theory of progress and humanitarianism. War criminals who senselessly murder and torture innocent victims should not be immune from this Court's jurisdiction simply because a one-sided agreement was created to protect them from these foreseeable war crimes.

III. THE VICTIMS OF THESE WAR CRIMES MUST BE PROPERLY REMEDIED.

"In many ways, victims have been the silent partners in the legal process, with little role other than as witnesses, and at the mercy of litigants." Victims' Rights Working Group, What are Victims' Rights Under International Law and Before the ICC?, <http://www.vrwg.org/victimrights.html> (last visited Nov. 15, 2002). In order for this Court to provide true justice for victims of international criminal acts, it must incorporate a process that adequately recognizes the personal interest of the victim, and not simply focus on punishing the criminal.

A. Redress and Reparation for Victims of Gross Violations of Human Rights is an Imperative Demand of Justice and a Pressing Requirement Under International Law.

International Law Professor, Theo Van Boven, illustrates the growing awareness in the international community that reparation for victims of gross violations of human rights is necessary in offering justice. See generally Theo Van Boven, Study

Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms 11-15, in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 1, General Considerations (Neil J. Kritz ed., United States Institute of Peace Press, 1995). Victims of international criminal acts are entitled to seek justice and receive prompt redress. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, Annex, U.N. Doc. A/RES/40/34/Annex (Nov. 29, 1985). Regardless of the outcome, the very fact that the ICC hears this dispute will help build a body of jurisprudence relating specifically to victims' reparations. The Court will therefore be better equipped to aid victims in future cases.

1. *The Vineland Citizens Who Suffered this Great Harm are Considered "Victims" Under Applicable International Law.*

The formulation for status under international law is contained in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power ("the Victims Declaration") adopted by a consensus of the General Assembly in November 1985. *See* Victims' Rights Working Group, *supra*. The Victims Declaration reflects the collective will of the international community to establish a balance between the fundamental rights of suspects and offenders, and the rights and interests of victims. *Id.* The Victims Declaration recognizes that victims should be treated with compassion and respect for their dignity, and recommends measures to improve their access to justice and prompt redress, including restitution, compensation and access to all the necessary assistance/rehabilitation for their suffering. *Id.*

The Victims Declaration defines "Victims" as: "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States. . . ." Victims Declaration, *supra*. Certainly, human beings who have witnessed three hundred senseless murders; who are being forced to nurse all the injured and

must rebuild destroyed villages would be considered "victims" under the Victims Declaration when all of these tragic events were caused by the Defendants' intentional criminal acts. ICC Prob. ¶ 10.

The civilian victims from Vineland have both individually and collectively suffered great physical from explosives dropped over their homes. *Id.* at 10. The surviving victims have suffered immense mental injury and emotional suffering from witnessing family members brutally murdered from exploding bombs. Finally, these victims have suffered extreme economic loss as their personal property was stolen, thousands of acres of farmland ruined, and entire villages destroyed, all directly resulting from the violations of international criminal laws.

2. *Victims of International War Crimes are Entitled to Access the Mechanisms of Justice and to Prompt Redress.*

Victims should be treated with compassion and respect for their dignity. Victims Declaration, *supra*. The General Assembly has acknowledged the necessity of establishing and strengthening Judicial and administrative mechanisms where necessary to enable victims to obtain redress through formal procedures that are fair. *Id.*

B. The ICC Must Establish Principles Relating to Reparations to, or in Respect of, Victims, Including Restitution, Compensation and Rehabilitation.

This Court may, either upon request or on its own motion, determine the scope and extent of any damage, loss and injury to, or in respect of, victims. *Rome Statute* art. 75. This case has the potential to set a respected precedent for all cases heard in front of the ICC in the future. It is necessary for the ICC to steer away from the conventional prosecution/defense court system, which only focuses on punishing criminals, and instead, establish a system that punishes criminals and also compensates victims. A consistent theme throughout court systems around the world is "deterrence." If the ICC adjudicates cases of this nature, and these specific crimes are condemned, perpetrators will be deterred from committing future crimes because their fate will lead them to real consequences from the ICC.

These consequences will not only include criminal sanctions, but also international shame and disrespect, and be forced to monetarily compensate victims.

1. *The Court May Make an Order Directly Against a Convicted Person.*

The ICC has jurisdiction over individual criminals. 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. Rome Statute art. 75, ¶ 2. Defendants must make fair restitution to these victims, their families and dependants. The General Assembly has agreed that victims are entitled to have their property returned, get paid for the harm or loss suffered, and receive reimbursement of expenses incurred as a result of the victimization. Victims Declaration, supra.

The surrender of a national to the ICC does not violate international law. Customary international law entitles states to exercise jurisdiction over foreign nationals without the consent of the State. Restatement (Third) of Foreign Relations Law of the United States, §§ 207 cmt. d, 404 (1987); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/RES/39/46 (Dec. 10, 1984). See also United States v. Yunis, 724 F.2d 1086, 1092 (D.C. Cir. 1991). Therefore, even if Katonia and Ridgeland claim they have not given their consent for jurisdiction to be exercised over defendants, the ICC may still move forward with the prosecution and restitution to the hundreds of victims.

In this case, three Katonia and two Ridgeland pilots were contained after bombing and killing local civilians. ICC Prob. ¶ 11. Also, four Ridgeland military police officers who abducted local men and boys were held by ANVA members. Id. Each of these nine individuals violated international criminal laws, and therefore, each is in debt to the victims of their crimes.

2. *The Rome Statute Created a Trust Fund for Victims in this Situation.*

Article 79 of the Rome Statute sets forth the concept of a trust fund. Subsection (1) of Article 79 enables the Assembly of States Parties to establish a trust fund for the benefit of vic-

tims. Rome Statute art. 79. Once the ICC is found to be the proper jurisdiction for international crimes, the Court may order money and other property collected through fines to be transferred through the trust fund to the victims and the families of such victims. Id.

The defendants in this case who committed these vicious war crimes are soldiers from Katonia and Ridgeland. Because it is likely these specific defendants will be unable to fully compensate the hundreds of victims who suffered from defendants' inexcusable acts, the Court must reach out for other means of compensation. The trust fund created in Article 79 of the Rome Statute is precisely what the victims from Vineland need in order to reestablish some order in their villages, and be compensated for the harm they have suffered.

IV. PRAYER FOR RELIEF

The Victims respectfully request that the International Criminal Court:

- (a) Exercise jurisdiction over the Katonia and Ridgeland soldiers and paratroopers;
- (b) Determine that the Katonia and Ridgeland soldiers and paratroopers are guilty of war crimes; and,
- (c) Compensate the victims of Vineland for the harm caused by the international war crimes.