

# Adquisitorial: The Mixing of Two Legal Systems

Kafayat Motilewa Quadri<sup>1</sup>, Prof. Dr. Hunud Abia Kadaouf,<sup>2</sup> Prof. Dr. Mohammad Naqib Ishan Jan,<sup>3</sup>  
Asst. Prof. Dr. Mohd. Iqbal AbdulWahab<sup>4</sup> and Asst. Prof. Dr. Haniff Ahamat<sup>4</sup>

**Abstract**— Adquisitorial is a concept that embodies the actuality of a fusion of two legal systems in order to achieve sustainable justice through the merging of best practices from the adversarial and inquisitorial methods of criminal procedure. There are some national courts and even international bodies such as the ICC that have started operating the adquisitorial method. Ample examples can be found in the South African Laws and in the Rome Statute of the International Criminal Court. It had been noted that the procedure used by ICC shows the characteristics of the Common Law System or Adversarial System and the Civil Law System or Inquisitorial System in a mixed mode. This paper will look into the play out of criminal trials using the adversarial method on one hand and the inquisitorial method on the other hand; and then finally look into systems that are practicing the mixed system of adquisitorial.

**Keywords**— adversarial method, adquisitorial, inquisitorial method, international criminal court, sustainable justice

## I. INTRODUCTION

THE law that guides the conduct of criminal proceedings is called the law of criminal procedure. The criminal procedure of any jurisdiction is the heart of the criminal justice framework. It is the vehicle by which justice is delivered. Criminal procedure is generally understood as that body of law governing the legal treatment of a criminal deed from the offence until an unappeasable decision (acquittal or conviction). It is thus described as the process, by which the guilt of a possible wrongdoer may be legitimately established and a criminal sanction attributed. These rules encompass, inter alia, the determination of factual evidence (the facts of the case in the light of a possible responsibility of a wrongdoer), the proper interpretation of the substantive law applicable to this case, and the sentencing decision, which is the determination of the sanction fitting both the crime and the criminal in the light of requirements of deterrence. [1]

<sup>1</sup>Kafayat Motilewa Quadri is a faculty member at the Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria and a PhD Candidate at AIKOL, IIUM, Malaysia. (Phone: +601121177706; e-mail: keefayahq@gmail.com).

<sup>2</sup>Hunud Abia Kadaouf, is the Dean of the Ahmad Ibrahim Kulliyah (Faculty) of Laws (AIKOL) at the International Islamic University Malaysia (IIUM), Malaysia and a former Judge, Court of Appeal of Sudan. (e-mail: ).

<sup>3</sup>Mohammad Naqib Ishan Jan is a Professor of International Law at the Ahmad Ibrahim Kulliyah (Faculty) of Laws at the International Islamic University Malaysia, Malaysia. (e-mail: ).

<sup>4</sup>Mohd. Iqbal AbdulWahab and <sup>4</sup>Haniff Ahamat are both senior lecturers and Asst. Professors at Ahmad Ibrahim Kulliyah (Faculty) of Law, IIUM, Malaysia

The legal system of any given country, particularly the criminal procedure, is derived from, and embedded in the customs, history, legal and political traditions of its people. [2]

This study looks into the adversarial methods and the inquisitorial methods as used in criminal trials and contends in favour of a mixed system of the two methods for sustainable justice while observing some of the procedures of the ICC and some provisions of the South African legal system that practice the mixed method of adquisitorial. [3]

## II. THE ADVERSARIAL CRIMINAL TRIAL

In the words of Walpin, no one pretends that the adversarial system is perfect; indeed the adversarial system may be the worst form of judicial procedure except for all others that have been tried from time to time. [4] It is claimed that the adversarial has been the traditional, cardinal basis for the conduct of both the criminal and civil procedure in England since about the middle of the thirteenth century and that this claim is well settled and deeply rooted. However, more recent evidence has shown that there was at a time when there was not much of a division between Continental Law and the English Common law into the rivalry of adversarial and inquisitorial; but that they in actual fact constantly borrowed from one another until the 19<sup>th</sup> Century. [5] The firmness of the adversarial nature of the Common Law system was not the creation of statute nor was it implanted as the result of a doctrinal choice of other methods of procedure but rather it grew and developed out of the soil, responding in a practical way to the social, political and cultural needs of the people.

The adversary or adversarial system is attributed to operate as a contest. The judge acts as a natural intermediary between the State and the defendant. Cases can be settled at any time before or during trial. Judges do not search for facts. During the proceedings, judges only intervene to assure proper presentation of evidence and legal arguments. The police through his investigations and subsequent arrest of the accused person represent the government prior to the court proceedings. The police will normally pass the baton to a government legal officer, who will stand in for the government as a prosecutor. However, in some Common Law jurisdictions, the police can prosecute in a magistrate court. [6]

The duty of the defence and prosecuting counsels usually entails presenting all the evidence they have come across that

are relevant to the case before the court. The judge in applying the law will act as an umpire that does not interrupt unnecessarily the examinations and cross-examinations of witnesses and the subsequent submissions by the two opposing sides. Ordinarily, the judge decides or gives judgement on the issue of law only while the jury decides on facts. In an ideal setting, the jury is the organ of the court that weighs and decides the facts in the case and they determine whether the witnesses are telling the truth. They also decide whether the evidence is overwhelming enough to convict the accused person. [7] The judge however, does much more when there is no jury.

The principles relevant to the duty to disclose relevant evidence in criminal proceedings were set out by the Grand Chamber in the case of *Rowe and Davis v UK* [8] while equating having a fair trial to using the adversarial methods. The court said the following:

It is a fundamental aspect of the right to a fair trial that criminal proceedings should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and evidence adduced by the other party.

It is the duty of the judge to equality of arms between the prosecution and the defence. This decision was also upheld in the 2007 case of *Uoti v Finland*, [9] The Role of a judge in Adversarial System:

Malaysian courts adhere to the common law adversarial system of procedure as distinct from the inquisitorial system used in the civil law jurisdiction. Under an adversarial system, the judge merely presides at the hearing and takes a passive role in the presentation of the evidence. He is a passive umpire of the facts as presented by him (see *Halsbury's Law of Malaysia Vol 1 (10.1-004)*). It is the view of this court that if the plaintiff intends to throw the evidential burden on the other side, ample notice must be given to the defendants so that the defendants will be given the opportunity to negative the burden, if any. In this case, since the plaintiff or his counsel himself did not take the initiative to address the learned sessions court judge on the issue of *res ipsa loquitur*, it is not the function of this court sitting on appeal to consider this issue in favour of the plaintiff for reasons stated hereinbefore. [2]

However, if the judge does not give assistance when a party seems to be at loss of understanding what is going on at a particular stage of a trial; then the balance of equality between the prosecution and the defence may be lost.

### III. THE INQUISITORIAL CRIMINAL TRIAL

In the inquisitorial criminal trial, the judge works with the prosecution to determine and investigate the matter before the court. The inquiry in the inquisitorial system is usually controlled and conducted by judge. The judge is quite active while the lawyers have a more passive role. Witnesses are

called by the court, and the judges determine the order of trial and conduct most of the examinations. If experts are needed, it is the judge who designates and initially examines the expert. The proceedings are conducted in a fact-finding, less formal, and less confrontational manner. According to Diehm, this form of dispute resolution requires fewer rules and is much less dependent on the establishment of procedural guidelines. [10]

Generally in inquisitorial systems, witnesses can be compelled under a subpoena properly issued and the witnesses can be cited and punished for contempt of court if they refuse. All cases of crimes and major are brought by the public prosecutor's office to the judge prior to the court hearings. The judge or magistrate has investigating and judicial powers. His mission is to search for the manifestation of truth and in order to do so he must conduct further investigations in order to determine whether or not enough evidence exists to bring the case to trial. He must also conduct an inquiry into the suspected offender's personality and past criminal record. In order to carry out this task he may instruct the police to conduct further investigations also and he can hear witnesses in regard to the facts or the defendant's personality. If it is required, the judge or magistrate may also appoint scientific experts (psychiatrists, forensic scientists etc.) and he can search the premises of the accused person. The judge also interviews the accused person and challenges him with witness statements and other evidence. On frequent occasions, the judge will confront the defendant in his office with witnesses and victims, asking them to repeat their allegations and taking note of the defendant's statements.

Article 49 of the French Code of Criminal Procedure provides that the investigating judge [11] is in charge of judicial investigations unlike as it is the case in most Common Law Systems where the police usually solely conduct criminal investigations. In order, however to prevent a biased judge, the Code provides further that the investigating judge may not take part in the trial of the criminal cases he dealt with in his capacity as investigating judge, under penalty of nullity. [12]

Later in the Code, Article 83 provides that where several investigating judges are posted to a court, the court's president or, where he is unable to act, the judge replacing him will appoint for each judicial investigation the judge who will be in charge. It further provides that where the seriousness or complexity of the case call for it, the court's president or, where he is unable to act, the judge replacing him, may second to the investigating judge in charge of the investigation one or more investigating judges whom he appoints either at the start of the proceedings or at the request or with the agreement of the judge in charge of the investigation, any point in the proceedings, upon the application of the judge in charge of the investigation. [13]

The investigating judge may only begin an investigation after having been informed of the case by a submission made by the district prosecutor or by a complaint with a petition to become a civil party, pursuant to the conditions set out in articles 80 and 86. In the event of flagrant felonies or misdemeanors, the district prosecutor exercises the powers attributed to him by Article 72 of the Code, which

allows him instead to conduct the investigations, but if there is any difficulty or complexity, the judge will take over and sometimes more than one investigating judge is assigned to such a case. [14] The investigating judge has the right to enlist the assistance of the law-enforcement agencies in the performance of his duties. [15]

At the start of the investigation, the investigating judge must inform the victim of the offence to be instigated that he has the right to exercise civil party rights, and the ways in which this right may be exercised. Where the victim is a minor; this information is given to his legal representatives. The victim that decides to constitute a civil party has the right to be assisted by an advocate of his choice, or, if he so requests, one nominated by the *batonnier* of Bar (President of the Bar). It also explains that this will be at his expense, unless he is eligible for legal aid or if he is covered by legal protection insurance. Where the investigating judge is informed by the victim that he is constituting himself a civil party and that he has requested that an advocate be appointed for him, the investigating judge informs the *batonnier* of Bar of this immediately. [16]

#### IV. THE RECENT HYBRIDS OF INQUISITORIAL AND ADVERSARIAL SYSTEM

In most adversarial system, there are elements of the inquisitorial and the same can be said vice versa. Some adversarial systems have some form of inquiry for special court proceedings while the inquisitorial systems too do practise the jury system.

In the Malaysian Criminal Procedure Code, the magistrate plays the role of a coroner. He makes inquiries and investigates the death of a victim. This is the case in most common Law systems even though they practice adversarial methods there are sometimes the element of the inquisitorial. Section 337 of the Malaysian Criminal Procedure Code provides that a Magistrate holding an inquiry shall inquire when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of the death. [17]

Another form of inquiry common amongst Common Law countries is the inquiry into persons disturbing the peace and the security of the court's jurisdiction. [18]

According to Walpin, [4] those who favor substituting the inquisitorial system for the adversarial system or vice versa are driven by the greed of grass-is-greener elsewhere philosophy but what if it is actually for a true wave of change for things to be done different in order to get new and better results.

However, some times, the change may go bad. For instance, Taiwan is said to be transforming the inquisitorial structure that characterized the criminal justice system of its dictatorial past into a so-called "reformed adversarial system" that emphasizes a sort of contest between the prosecution and the defence. However, the reform seems to be giving more strength to the prosecution while weakening the prospects of a good defence for accused persons. [19]

#### A. The Position in South Africa

A more prominent mix of inquisitorial and adversarial into acquisitorial is the position in South Africa. The South African criminal procedure system is originally derived from the common law. The country's basic system is derived from English law and thus it is adversarial in nature and character. However, over the years, the South African system of criminal procedure, particularly as regards pre-trial procedures has acquired certain distinctive features of inquisitorial system. [20]

Dugard contends on why some systems might be considering inquisitorial methods and he makes reference to the surge of terrorism. According to him, while the Criminal Procedure Act of South Africa introduces a procedure with slight resemblances to the inquisitorial system, this has produced a procedure with striking similarities to the **inquisitorial method**. So that the 90 days detention law (section 17 of Act 37 of 1963), the 14 days detention law (section 22 of Act 62 of 1966), section 6 of the Terrorism Act and section 13 of the Abuse of Dependence-producing Substances and Rehabilitation Centers Act all authorise police interrogation in solitary confinement before the arrested person is brought to trial. He further contends that this is not normal of a Common Law system or even a Civil law system but that it is closer to the Roman-Dutch extra-ordinary procedure than it is to the modern continental inquisitorial methods where the person subjected to interrogation is assured all the guarantees normally accorded to a person under the accusatorial system. [21] However, looking at the secrecy of trial and inquiries in the French criminal court, it will not be conclusive to say that all guarantees normally accorded to a person under an adversarial criminal system is necessarily the same as what is done in the inquisitorial jurisdictions.

South African small-claims courts operate just as it is done in the inquisitorial system. Section 20(3) of the Small Claims Court Act of 1984 provides that a party shall neither question nor cross-examine any other party to the proceedings, including his/her own witness. The same section provides that the presiding commissioner should proceed inquisitorially to ascertain the relevant facts, and may question any party or witness at any stage of the proceedings. [21]

Another essential inclusion of inquisitorial elements into South African Law is section 30(1) - (3) of the Restitution of Land Rights Act of 1994. It allows for the admission of hearsay evidence surrounding the dispossession of land, empowers the court to admit evidence whether or not such evidence is admissible in any other court and introduces the notion of weighing the evidence admitted. [21]

#### B. The Position in The International Criminal Court and other International Tribunals

Just as the South African system blends the adversarial and inquisitorial methods or even in a far more complex way is the position in the International Criminal Court. Also, a Chamber of the International Criminal Tribunal Yugoslavia (ICTY) stated in 1996 that the procedure before the ICTY established a unique fusion of common and civil law features and does not strictly follow the procedure of civil law or common law. [22]

The 'Adquisitorial' [23] role of the Judge in the International Criminal Court (ICC) and the procedure for trial and appeals before the ICC is a hybrid of common law and civil law. This reflects the fact that the Rome Statute was negotiated by states from every part of the world, each with their own legal traditions. Nonetheless, all states agreed that trial before the ICC should be conducted in accordance with the highest international standards for fair trials. Thus, the rights of accused persons are fully elaborated in the Rome Statute. In addition to the presumption of innocence, these rights include the right to legal representation and to be tried without undue delay. Under article 66(3), guilt must be proved beyond reasonable doubt. The Rome Statute also requires the protection of the rights of people who are questioned in an investigation by the ICC, whether as witnesses or suspects. States parties assisting the ICC must also guarantee all of these rights.

In recognition that the judges of the ICC will play a large role in determining whether the ICC is impartial, fair and competent, the Rome Statute prescribes that the ICC judges meet certain qualifications and characteristics. They must be of high moral character and be highly qualified in their own legal system, whether as judges, criminal prosecutors or advocates or as experts with practical and relevant experience in international humanitarian and human rights law. [24]

Given the nature of the crimes that the ICC will be prosecuting, it is essential that among the eighteen judges some have legal expertise in specific issues, in particular, relating to crimes of sexual violence against both males and females, and violence against women and children. States must take this into account when choosing their judges. In addition to these requirements, the judges, sitting on an international court established by the world community, must symbolize the diversity of that community. So, the Rome Statute also requires states parties, in their selection of judges, to take into account the need for the representation of the principal legal systems of the world, equitable geographical representation and a fair representation of female and male judges. [25] [26]

In the Article 56 of the Rome Statute, there is a special caption, which is the 'Role of the Pre-Trial Chamber in relation to a unique investigative opportunity'. This Article provides that where the Prosecutor considers an investigation 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 and the Pre-Trial Chamber will make recommendations or orders regarding procedures to be followed such as directing that a record be made of the proceedings; the appointment of an expert to assist; authorization of a counsel for a person who has been arrested or name 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 and taking such other action as may be necessary to collect or preserve evidence. This whole process to be undertaken by the Pre-Trial Chamber is adquisitorial in nature even though it

tends more towards the inquisitorial model than that of adversarial.

In the words of Kai Ambos:

'In sum, it is fair to say that the rules of evidence adopt, despite the broad powers of the Trial Chamber (of the ICC), a mixed approach combining civil and common law features. The practical application of these rules will ultimately depend on the legal background of the judges who are given sufficient discretion to conduct trials in accordance with their own preferences'. [27]

From the foregoing, it can be seen that the whole composition and entirety of the procedure of the International Criminal Court embodies diversity and openness that may serve the interest of our world today, which, has become a global village.

## V.CONCLUSION

Roman law had always some influence on English law: until the 18th century it was Roman law and not English law that was taught in English universities, and it is possible that one reason for Roman law not being more of an influence in England was merely that most practicing lawyers would learn their law through an apprenticeship at the Inns of Court, clustered around the courts, rather than at university. [28]

Common Law practitioners have often been hostile to any perceived Roman Law or Civil Law intrusions into their legal system. Despite this, Roman Law and Civil Law have influenced the Common Law at various points in English legal history. [29]

Having said that, the two systems still stand largely different from each other except for the occasional borrowing of jury methods by the Inquisitorial system and the inquiries sometimes made by the adversarial judges. However, some writers insist the best way to understand the distinctions between the two systems is in terms of a range because neither system exists today in a pure form. They contended that for the past hundred years the differences have been disappearing. That not only has the jury been adopted as the preferred mode of trial in many European systems, [30] but there is an increasing number of hybrid systems that have blended features from both systems, such as the European Court of Justice, and the International Criminal Court. Also, it may be wrong to insist that the jury remains the primary driver of the English legal system seeing the gradual decline in its use of it.

As the world moves to a more globalized system of justice, with international norms and procedures, the distinction between adversarial and inquisitorial systems may become less glaring and insignificant. Indeed, the more important question is not whether the trial procedure adopted is inquisitorial or adversarial, but whether those processes are, in the end, fair and just. [31]

Notwithstanding, each system still prides itself in certain attributes that remain almost immutable so much that the other cannot resist its adoption; as can be seen in the case of the

adoption of the jury system in some countries in continental Europe. A merge of this distinctive and balanced attributes of each of these two systems may be the way forward; an adquisitorial attitude.

The role of the judge in some adversarial system such as South Africa is becoming more dynamic towards the inquisitorial methods in certain circumstances. While other countries such as Malaysia and Nigeria still crawl on the grounds of inquiry into the cause of a death. The methods in the International Criminal Court (adquisitorial) which, involves the merging of the two systems opens the doors of justice and it creates a more just and humane criminal justice system.

In order to give a balance in the two systems; more judicial inquiries should be adopted in adversarial systems especially to aid the proper defence of an accused person. Judicial precedent is perhaps the most prominent and unchanging feature of the adversarial system. The rate at which it helps to develop the law in generally can never be overrated. Judicial precedent is the pillar that puts judicial law-making and judicial activism in place. Despite the superiority of judicial precedent in the mind of the adversarial judge, respect is still accorded to the strength of codification.

The inquisitorial system allows the criminal and civil proceedings to take place together. This is an attribute worthy of emulation by adversarial systems as it eases the burden on the accused persons and the victims by putting the criminal and civil trial in one proceeding. It may also be means of reducing the backlog of cases rotting in the adversarial courts. An attribute of the inquisitorial that is unpalatable is the bane of secret trials, which may serve as a form of bondage to an accused person even before he or she is found guilty.

In conclusion, a combination of the best practices of the criminal procedure of both systems (adquisitorial) will be an ideal and effective system that will aim at sustainable justice.

#### REFERENCES

- [1] P. Lewisch, *'Criminal Procedure (7700)'*, University of Vienna - School of Law, 1999, p. 241
- [2] J. W. Diehm, 'The Introduction Of Jury Trials And Adversarial Elements into the Former Soviet Union and Other Inquisitorial Countries', *Journal of Transnational Law & Policy*, (2001), Vol. 11, No. 1, p. 38
- [3] A new word coined by one of the co-authors (Kafayat Motilewa Quadri)
- [4] G. Walpin, *'American's Adversarial And Jury Systems: More Likely To Justice'*, *Harvard Journal of Law and Public Policy*, Vol. 26, p. 175
- [5] R.H. Helmholz, 'Continental Law and Common Law: Historical Strangers or Companions?' *Duke Law Journal*, pp. 1207 – 28 in David Sugarman, *'International Library of Essays in Law and Legal Theory Schools 17.2: Law in History: Histories of Law and Society, Volume II'*, Dartmouth 1996
- [6] Section 213 of the Criminal Procedure Act of Federal Republic of Nigeria
- [7] Joel Samaha, *Criminal Procedure*, 2<sup>nd</sup> Edition, University of Minnesota and West Publishing Company, 1993 p. 45; Michael Zander, *The Law-Making Process*, 5<sup>th</sup> Edition, Butterworths, 1999, p. 372
- [8] [2000] ECHR 28901/95 at paras 60-63
- [9] Uoti v Finland (App no 20388/02), [2007] ECHR 20388/02
- [10] Payremalu A/L Veerappan v Dr Amarjeet Kaur & Ors [2001] 3 MLJ 725, para 49

- [11] The investigating judge is selected from the judges of the court, and is appointed following the formal rules provided for the appointment of judges. In case of necessity, another judge may be temporarily entrusted with the investigating judge's duties following the same formalities, concurrently with the judge appointed in the manner specified under the first paragraph. Where the appeal court president delegates a judge to the court, he may similarly make an order temporarily putting the judge in charge of judicial investigations. Where the investigating judge is absent, ill or otherwise unable to act, the district court appoints one of the court's judges to replace him. Article 50 - (Ordinance no. 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959) (Act no. 87-1062 of 30 December 1987 Article 24 Official Journal 31 December 1987, in force on 1 March 1998)
- [12] A similar provision can be found in Article 54 of the Criminal Procedure Code of the Kingdom of Cambodia - Mandatory Abstention: The investigating judge shall not participate in the trial of a criminal offense that he or she conducted the investigation or otherwise, the trial shall be nullified. The investigating judges shall exercise the powers as stipulated in this Code.
- [13] Article 83 - (Ordinance no. 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959) (Act no. 89-146 of 6 July 1989 Article 8 Official Journal of 8 July 1989 in force on 1 December 1989) (Act no. 93-2 of 4 January 1993 Article 232 Official Journal of 5 January 1993 in force on 1 March 1993) (Act no. 93-2 of 4 January 1993 Article 19 Official Journal of 5 January 1993 in force on 1 January 1994) (Act no. 93-1013 of 24 August 1993 Article 35 Official Journal of 25 August 1993 in force on 2 September 1993) (Act no. 94-89 of 1 February 1994 Article 17 Official Journal of 2 February 1994 in force on 2 February 1994) (Act no. 2000-516 of 15 June 2000 Article 132 Official Journal of 16 June 2000 in force on 1 January 2001) (Act no. 2004-204 of 9 March 2004 art.113 Official Journal of 10 March 2004)
- [14] Article 83 of the French Code of Criminal Procedure
- [15] Article 51 of the French Code of Criminal Procedure
- [16] Article 80-3 of the French Code of Criminal Procedure
- [17] Similar provisions can be found in the Nigerian Criminal Procedure Code, Sections 310 – 324 - Preliminary Inquiry by a magistrate into an Indictable Offence; Section 208 – 209 – The Inquiry into the Determination of Age
- [18] Section 69 – 75 of the Malaysian Criminal Code - Security for good behaviour from habitual offenders; Sections 35 – 45: The Prevention of Offences - The Inquiry into the Security for Keeping the Peace and for Good Behaviour;
- [19] M. K. Lewis, 'Taiwan's New Adversarial System and the Overlooked Challenge of Efficiency-Driven Reforms', *Virginia Journal Of International Law*, Vol. 49:3, 2009, pp. 651 – 726
- [20] S. S. Hlophe, 'The Adoption Of An Inquisitorial Model Of Criminal Procedure In Court Proceedings Relating To Children', LLM Thesis, Nelson Mandela Metropolitan University, 2011, pp. 1- 75
- [21] J. Dugard, *South African Criminal Law and Procedure* (1977), vol. IV, p 86
- [22] Prosecutor v. Tadic, Decision on Defence Motion on Hearsay, 5 August 1996 (IT-94-1-T), para. 14, reprinted in Klip/Sluiters (eds.), *Annotated Leading Cases of International Criminal Tribunals*, Vol. I, 1999, at 193 (196).
- [23] 'Adquisitorial' (new word) refers to the Fusion between the Adversarial and Inquisitorial Roles of a judge and how it is operated in the International Criminal Court)
- [24] M. Banchik, *'The International criminal court & Terrorism'*, *Peace Conflict and Development An Interdisciplinary Journal*, (2003), pp. 1 - 19
- [25] W. Schabas, *'An Introduction to the International Criminal Court'*, Cambridge University Press, 2001, pp. 1 - 20
- [26] I. Rosenthal, *'Making the International Criminal Court Work: A Handbook for Implementing the Rome Statute'*, *Human Rights Watch*, September 2001 Vol. 13, No. 4(G)
- [27] K. Ambos, *'International criminal procedure: "adversarial", "inquisitorial" or mixed?'*, *International Criminal Law Review* Vol. 3: pp.1 – 37, 2003
- [28] S. Bronitt & H. Mares, *'The History And Theory of The Adversarial and Inquisitorial Systems Of Law'*, *Legaldate*, Vol. 16, No. 3, Warringal Publications, 2004, p. 1

- [29] D. Nestorovska, '*Influences of Roman Law and Civil Law on the Common Law*', *International Law / Internationales Recht*, 2005, *Hanse Law Review*, Vol. 1 No. 1, pp. 79 - 88
- [30] For instance, The French Code of Criminal Procedure adopted the jury system in 1972. SEE Article 254 – 267 of the Code
- [31] S. Bronitt & H. Mares, 'Playing by the Rules: Justice and the Law', *Legaldate*, vol. 13, no. 1, 2001, pp. 1-3.