

EXPERT ROUNDTABLE

INTERNATIONAL PROTECTION FOR PERSONS FLEEING ARMED CONFLICT AND OTHER SITUATIONS OF VIOLENCE

*Cape Town, South Africa
13 & 14 September 2012*

hosted by the Refugee Rights Project, University of Cape Town

TENTATIVE PROGRAMME

Day 1 – Thursday, 13 September 2012

8:30-9:00 **Registration – welcome coffee and tea**

9:00-9:20 **Welcome**

- Ms Lindile Kgasi, Chief Director, Asylum Seeker Management, Department of Home Affairs, Republic of South Africa (*tbc*)
- Fatima Khan, Director, Refugee Rights Unit, University of Cape Town
- Volker Türk, Director, Division of International Protection, UNHCR

9:20-10:00 **Introduction - Volker Türk**

During the introduction short video clips will be shown as illustration of various situations of conflict and violence, including:

- “**Targeting children in Syria**”, Nadim Houry of Human Rights Watch talking about the multiple conflicts emerging in Syria, CNN (Amanpour), 1 min. (15:05-16:02), available at: <http://amanpour.blogs.cnn.com/2012/06/13/full-length-edition-documenting-the-bloodshed-in-syria/>
- “**Lies, damned lies and statistics in Mexico’s drugs war**”, BBC journalist Ian Pannell taking about becoming the victim of violence in Mexico, BBC News, 2:58 min., available at: <http://www.bbc.co.uk/news/world-us-canada-15378399>.

10:00-11:00 **Session 1 – Armed conflicts and other situations of violence: Setting the scene**

This session will introduce the complexities of modern-day armed conflicts and other situations of violence, followed by discussion. The focus will be on understanding the causes, character and impact of such situations for the purposes of subsequent sessions focusing on eligibility for international protection.

Introduced by: Professor Theo Farrell, Department of War Studies, King’s College London

11.00-11.30 *Coffee break*

11.30-13.00 **Session 2 –The 1951 Convention and the protection of persons fleeing armed conflict or other situations of violence – A Well-Founded Fear of Persecution**

This session examines the key issues of material law relevant to the interpretation and application of the refugee definition contained in Article 1A(2) of the 1951 Convention relating to the Status of Refugees in the context of conflict and violence; and will address explicitly:

- *How does the 1951 Convention/1967 Protocol apply to persons fleeing armed conflict or other situations of violence?*
- *How should persecution be interpreted in the context of persons fleeing armed conflict and other situations of violence?*
- *How individualized does a risk of persecution need to be in order to qualify for refugee status under the 1951 Convention/1967 Protocol?*
- *What threshold is required for the harm to amount to persecution? What indicators can be used to assist decision-makers in making such a determination?*
- *To what extent is the meaning of persecution informed or influenced international humanitarian law (IHL)? For example, do violations of international humanitarian law amount to persecution? Are there any exceptions?*

Introduced by: Vanessa Holzer, University of Frankfurt, Germany

13:00-14:00 *Lunch*

14:00-15:30 **Session 3 - The 1951 Convention and the protection of persons fleeing armed conflict or other situations of violence – The causal link and the Convention grounds**

- *How should the causal link (“nexus”) required under the 1951 Convention definition between the well-founded fear of persecution and one or more Convention grounds be construed in relation to persons fleeing armed conflict and/or other situations of violence?*
- *How would the Convention grounds apply to persons fleeing armed conflict and other situations of violence?*
- *How should the notion of internal flight/relocation alternative be understood, and should it even apply, in respect of persons fleeing armed conflicts or other situations of violence?*

Introduced by: Vanessa Holzer, University of Frankfurt, Germany

15:30-16:00 *Coffee break*

16:00-17:00 **Session 4 – The 1951 Convention and the protection of persons fleeing armed conflict or other situations of violence – Gender dimensions**

This session will discuss how the gendered character and impact of many contemporary armed conflicts and other situations of violence should be taken into account in status determination under the 1951 Convention. In particular, is violence during armed conflict

directed at women and girls on account of their gender/sex inherently persecutory (and by its gendered nature, cannot therefore be classified as generalized or indiscriminate)? Are there any lessons from the jurisprudence around these types of claims for non-gender-specific claims?

Introduced by: Professor Valerie Oosterveld, University of Western Ontario, Canada

17:00-18.00 **Wrap Up**

19:30 **Dinner**

Day 2 – Friday, 14 September 2012

8:15-8:45 **Early morning coffee**

8:45-9:00 **Welcome, summary of key findings Day 1, and introducing Day 2**
By Volker Türk

9:00-10:30 **Session 5 – Interpreting and applying the “extended” refugee definitions to persons fleeing violence and conflict, including in particular the relationship with the 1951 Convention definition**

This session will introduce and discuss key substantive legal issues relevant for the interpretation and application of the “extended” refugee definitions contained in Article I(2) of the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa, and Conclusion 3 of the 1984 Cartagena Declaration in the context of conflict and violence.

The following questions will be addressed in this session:

- *What is the relationship between the 1951 Convention definition and the “extended” definitions contained in the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa and the 1984 OAS Cartagena Declaration? Is it hierarchical or sequential?*
- *What are contemporary understandings of the situations referred to in the two regional conventions for the protection of refugees: external aggression, occupation, foreign domination or aggression, internal conflicts, generalized violence, massive human rights violations, and other circumstances or events which seriously disturb public order? Are all these grounds still applicable?*
- *How individualized does a “compulsion to leave” or “threat to live, safety or freedom” have to be in order to be granted protection as a refugee under the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa and the 1984 OAS Cartagena Declaration respectively?*

Introduced by: - On the 1984 Cartagena Declaration: Michael Reed-Hurtado, Universidad Externado de Colombia
- On the 1969 OAU Convention: Professor Boneventura Rutinwa, University of Dar Es Salaam, Tanzania and Marina Sharpe, University of Oxford

10:30-11:00 **Coffee Break**

11:00-12:30 Session 6 –Procedural Issues

This session will discuss two procedural issues. First, it will discuss the burden of proof in the context of claims for international protection of persons fleeing armed conflict and other situations of violence. In such context it is often difficult for the claimant to present concrete individual facts and circumstances and provide relevant documentation to substantiate the claim for protection. More often the claimant must be given the benefit of the doubt, or the assessment is more equivalent to a nationality credibility test than an individual assessment. Second, it will discuss the need for and appropriateness of *prima facie* determination of international protection rather than an individual status determination.

Introduced by: Professor Boneventura Rutinwa, University of Dar Es Salaam, Tanzania – on the theory and practice regarding the 1969 OAU Convention on prima facie recognition of refugee status

12.30-13.30 Lunch

13.30-15.00 Session 7 – Subsidiary protection under the EU Qualification Directive and the relationship with the 1951 Convention/1967 Protocol refugee definition

This session will discuss the specifics of the EU Qualifications Directive definition of “serious harm” as it relates in particular to Article 15(c).

Introduced by: Cornelis (Kees) Wouters – introducing the findings of UNHCR’s study ‘Safe at Last’ on the application of subsidiary protection, in particular under Article 15c of the EU Qualifications Directive, including in relation to protection as a refugee under the 1951 Convention

15:00-15:30 Coffee Break

15:30-17:15 Session 8 – Closing