

Expert Meeting on Complementarities between International Refugee Law, International Criminal Law and International Human Rights Law

Arusha, 11-13 April 2011

Concept Note

The establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and of the International Criminal Tribunal for Rwanda (ICTR) in 1994 marked the start of a new era, with the international community unequivocally recognizing its duty to fight impunity and prosecute the perpetrators of gross violations of international humanitarian law and other international crimes.

In over fifteen years, these institutions have, through their extensive jurisprudence, made significant contributions to international law as it relates to war crimes, crimes against humanity and genocide. The Special Court for Sierra Leone and the International Criminal Court, which have been established thereafter,¹ have also made important strides in the development of international criminal justice.

The linkages between international criminal justice and forced displacement are multifaceted. They range from the very crimes over which international criminal courts have jurisdiction, such as deportation and forcible transfer as war crimes or crimes against humanity as well as persecution, to the application of the 1951 Refugee Convention's exclusion clauses to individuals indicted by these institutions. International human rights instruments have also proven particularly crucial in upholding standards of due process in international criminal proceedings. Furthermore, evidence adduced in international criminal proceedings may be relevant in the context of refugee status determination procedures.

The expert roundtable to be held in Arusha, Tanzania, between 11 and 13 April 2011 will bring together academic experts, legal practitioners and policy makers to examine complementarities between international refugee law, international criminal law, and international human rights law, highlighting potential conflicts and converging trends. The outcome of these discussions will be presented in a summary of deliberations addressing both the doctrinal and operational aspects of the various themes explored during the meeting.

¹ Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000; Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998, entered into force on 1 July 2002.

International Criminal Law and Forced Displacement

In terms of substantive law, the statutes of international criminal tribunals include the very act of forcibly displacing people as a war crime and a crime against humanity, reflecting the fact that in many contemporary conflicts, displacement is a key objective in the political and military strategies of warring parties.² The jurisprudence of the tribunals also offers fresh insights on potential convergences and divergences between international criminal law and international refugee law with respect to the scope of persecution. The tribunals' judges have had to determine, for instance, whether summary dismissals from public office on a discriminatory basis or hate speech could amount to persecution as a crime against humanity.³

International tribunals have developed groundbreaking jurisprudence in other areas of relevance to forced displacement. Such is the case with respect to the definitions of rape and of torture developed by ICTY, which resulted from a thorough analysis of comparative law and of international humanitarian and human rights law.⁴ Similarly, the ICTY and ICTR have in numerous decisions examined the definitions of "international" and "non-international armed conflict", as well as those of "civilian" and "protected person", all of which are relevant to UNHCR's legal and operational work.

International Criminal Law and Exclusion

According to UNHCR's Guidelines on the application of the exclusion clauses, an indictment by an international criminal tribunal creates a rebuttable presumption of excludability.⁵ The Guidelines do not contemplate, however, the situation where individuals are acquitted by international criminal institutions. Far from being hypothetical, this issue has come up with several of the individuals acquitted by the ICTR, who refuse to return to Rwanda for fear of ill-treatment.⁶ In such situations, what ought to be the respective roles of UNHCR and international criminal institutions and how can these often difficult cases best be resolved?

Other relevant questions relate to concepts of extended liability which are still evolving under international criminal law and are important for the assessment of exclusion cases under international refugee law.

International Criminal Proceedings and Forced Displacement

Interaction between international criminal justice and refugee protection is frequent with respect to a host of procedural issues. For example, many witnesses who have testified in

² See e.g. *Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-T, Second Amended Indictment, 27 July 2003, para. 26 c).

³ See e.g. *Prosecutor v. Brdjanin*, Case No. IT-99-36-T, Judgement, 1 September 2004, paras. 233-236, 314, 326, 1067; *Prosecutor v. Nahimana et al.* Case No. ICTR-99-52-A, Judgement, 28 November 2007, paras. 983-989.

⁴ See *Prosecutor v. Kunarac et al.*, Case No. IT-96-23 & IT-96-23/1-T, 22 February 2001, paras. 439-460, 466-497.

⁵ Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees (HCR/GIP/03/05), 4 September 2003, para. 34.

⁶ See e.g. *In Re: Ntagerura et al.*, Case No. ICTR-46-A28, Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008, 18 November 2008, paras. 19-20.

international criminal proceedings are refugees or may have a well-founded fear of being persecuted as a result of their testimony.

Before the International Criminal Court, individuals who are recognized by a Chamber as victims have the right to participate in proceedings⁷ and the question arises as to whether such recognition may then be used in refugee status determination procedures. This specific point is in fact part of broader considerations on the weight to be accorded to evidence adduced before international criminal courts in asylum procedures.

⁷ See Article 68.3 of the Statute of the International Criminal Court; Rule 89 of the International Criminal Court's Rules of Procedure and Evidence adopted by the Assembly of State parties, 3-10 September 2002.