



ICTR Newsletter

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United Nations International Criminal Tribunal for Rwanda

September 2010

Diplomatic Outreach of the Registrar in Senegal



Mr. Adama Dieng

The Registrar, Mr. Adama Dieng, was invited by the International Committee of Red Cross (ICRC) and the Faculty of Law and Political Science of the Dakar University (UCAD) to deliver a lecture on the role, functions and contributions of international criminal jurisdictions *ad hoc* in International Humanitarian Law (IHL), with a particular focus on ICTR practices and jurisprudence of the ICTR. The seminar which took

place from 13 to 17 September 2010 in Dakar-Saly, Senegal, was an opportunity for the Registrar to showcase once again the important work of the ICTR in the elaboration of International Criminal Law and in the expansion of the scope of IHL.

The ICTR jurisprudence was presented in its main aspects, with focus on the role of the Tribunal in reviving the dormant 1948 Genocide Convention, applied for the first time in the *Akayesu* Judgment. The Registrar also emphasized among others, the breakthrough mission of the ICTR in equating armed conflicts of non- international character with international armed conflicts, making also the former a possible grave breach of the Geneva Conventions of 1949 and the Additional Protocols thereto. The manifold innovations in terms of international procedural guarantees afforded to accused persons before the ICTR were also presented.

The Registrar's lecture, delivered to a target audience of lecturers and professors of international law in West Africa, was very well received. It generated a renewed interest in the work of ICTR. The Registrar returned with a long list of persons eager to be added to the mailing list of ICTR, in order to receive henceforth any publication from the Tribunal.

Before leaving Dakar, the Registrar was granted an audience by the President of the Republic of Senegal, Maître Abdoulaye Wade. They had exchanges on issues pertaining to international Justice, comparative law as well as the Millennium Development Goals and the Rule of Law in general. President Wade congratulated the ICTR for its achievements and reiterated his full support for the preservation of the ICTR Legacy.



Maître Abdoulaye Wade, President of the Republic of Senegal

Winners of the Essay and Drawing Competition to Receive Awards during 2010 UN Day

The "Essay and Drawing Competition" organized by the United Nations International Criminal Tribunal for Rwanda and aimed at sensitizing the youth of the Great Lakes Region on "The Role of the Tribunal in Promoting International Justice", has successfully taken place. Four winners have now been identified per country, two in each of the two categories; Essays and Drawings. The first winners in each category will now receive their awards in Arusha on Monday 25 October 2010 during the UN Day celebrations.

This year's celebrations, observing the 65th anniversary of the UN, will therefore also mark the climax of the Competition. The celebrations will also be attended by senior cabinet ministers in charge of Education and East African Community from the participating countries, Kenya, Uganda, Tanzania, Burundi, Rwanda and Tanzania. Also in attendance will be the German Ambassador to Tanzania HE Guido Hertz and hundreds of students and pupils from schools in and around Arusha.

The Competition was part of the Tribunal's Educational and Outreach campaign to raise awareness of the youth in the region in the global fight

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Speciosa Kitindi, Secretary of Communication Cluster, with entries for the 2 competitions

against the culture of impunity, following the tragic event which led to the genocide in Rwanda in 1994. It involved students from Primary and Secondary schools in the East African countries.

At the awards ceremony the Tribunal will also organize an exhibition on the work of the ICTR and genocide as well as display some of the outstanding entries in the Drawings competition.

The winners in the Competition are:

- **Drawings**

Arusha: Josephine Goh, 11 years old, Braeburn Primary School; Margreth Kileo, 12 years old, Green Acres School

Tanzania: Tune Suleyman Amani, 10 years old, Oysterbay Primary School; Sarah Makuyu, 12 years old, Oysterbay Primary School

Rwanda: Herimana Ange Divin, 12 years old, GS Butare Catholic; Kangabo Ariane, 12 years old, Le Pigeonnier

Uganda: Mwanje Ernest, 12 years old, Kitebi Primary School; Nyombi Jonathan, 12 years old, Kitebi Primary School

Burundi: Kimana Rose Dally, 10 years old, Saint Michael Archange; Niyongabo Benny, 12 years old, Saint Michael Archange

Kenya: Derick Macakiage, 9 years old, Makini Schools (Primary); Jeremy Biwott, 10 years old, Makini Schools (Primary)

- **Essays**

Arusha: Ummehani M. Dossajee, 17 years old, Arusha Meru Secondary School; Gerald Havira, 16 years old, Ilboru Secondary School

Tanzania: Brighton Methew Lipawaga, 17 years old, Azania Secondary School; Imran Mitha, 15 years old, Aga Khan Mizima Secondary School

Rwanda: Bruce Ishimwe, 18 years old, Ecole Petit Seminaire Virgo Fidelis; Chantal Uwamaliya Bashali, 17 years old, Ecole Indatwa N'Inkesha

Uganda: Nagawa Judith Mukisa, 14 years old, Makerere College; Calvin Ainebyona, 14 years old, St. Mary's College

Burundi: Reine Pamela Katikati, 14 years old, Lycee

Scheppers; Valdo Irakoze, 15 years old, Lycee Scheppers

Kenya: Ely Arumba Uhuru, 17 years old, Jahmuri High; Elizabeth Jepchumba Sang, 17 years old, Kenya High School

ICTR Judicial Activities

- **Work of the Trial Chambers and the Appeals Chamber in September 2010**

1. Trial Chamber I

With the delivery of the *Munyakazi* judgement on 30 June 2010, Trial Chamber I has completed its work and will be discontinued.

2. Trial Chamber II

Ongoing trials

Ngirabatware

The Prosecution closed its case-in-chief on 31 August 2010, and the Defence case-in-chief remains scheduled to commence on 15 November 2010. There are six pending motions on which the Chamber expects to rule shortly.

Trials in Judgement Drafting Phase

Nyiramasuhuko et al. ("Butare")

The Chamber is involved in deliberations and judgement drafting.

Nidiliyimana et al. ("Military II")

Judgement drafting is in progress.

Bizimungu et al.

Judgement drafting in the case is ongoing.

Hategakimana

Judgement drafting is in process.

Kanyarukiga

The Chamber is currently undertaking deliberations and judgement drafting.

3. Trial Chamber III

Ongoing trials

Nzabonimana

The Defence case adjourned on 15 July 2010 and is scheduled to resume on 11 October 2010. Twenty-five Defence witnesses have testified thus far. The Trial Chamber issued four written decisions in the case during the month of September.

Karemera et al.

The Chamber continued hearing the evidence in defence of Matthieu Ndirumpatse, the last of the two remaining accused in the case after the death of Joseph Nzirorera. On 30 September 2010, the session that had started on 23 August ended. In September, the Chamber heard 12 witnesses in support of



Ngirumpatse's case and delivered six decisions. The next session will start on 18 October 2010.

Ndahimana:

The Trial commenced on 6 September 2010 and adjourned on 16 September 2010. Six Prosecution witnesses were heard during this session. The Prosecution case will continue on 1 November 2010. The Trial Chamber issued three written decisions during this reporting period.

Case awaiting Closing Arguments

Gatete

The case is currently under deliberations, as the evidence phase of the trial has been completed and both parties have submitted their closing briefs. The Chamber issued a scheduling order in September regarding a site visit it will undertake in Rwanda from 26 to 30 October 2010 and oral closing arguments, which will be held on 8 and, if necessary, 9 November 2010.

Pre-Trial

Nizeyimana:

The Trial Chamber composed of Judges Muthoga (presiding), Park and Fremr were appointed. The Chamber held a status conference with the parties on 22 September. The Prosecution also submitted a revised Amended Indictment and Pre-Trial Brief. In September, the Chamber rendered three decisions.

Uwinkindi

A preliminary meeting between the parties took place on 3 September 2010. The Prosecution has filed an Amended Indictment as well as a Motion for Protective Measures. The Chamber rendered two decisions during the month of September.

Appeals Chamber

In September, the Appeals Chamber decided two interlocutory appeals and issued 14 pre-appeal decisions or orders. The Appeals Chamber is currently seized of 15 matters, including eight cases involving appeals from judgement.

Bagosora

The Bagosora et al. Trial Judgement was pronounced on 18 December 2008 and issued in writing on 9 February 2009. Theoneste Bagosora, Aloys Ntabakuze, and Anatole Nsengiyumva appealed. The briefing in respect of the appeals was completed at the end of July 2010 and the appeals are being prepared for a hearing.

Rukundo

In the Rukundo case the Trial Judgement was rendered on 27 February 2009, the briefing of the appeals concluded on 10 May 2010, and the appeals were heard in Arusha on 15 June 2010. Judgement delivery is scheduled for 20 October 2010.

Kalimanzira

In the Kalimanzira case the Trial Judgement was rendered on 22 June 2009, the briefing of the appeals concluded on 13 April 2010, and the appeals were heard in Arusha on 14 June 2010. Judgement delivery is scheduled for 20 October 2010.

Renzaho

In the Renzaho case the Trial Judgement was rendered on 14 July 2009, the briefing in this appeal concluded on 5 May 2010, and the appeal was heard in Arusha on 16 June 2010. Deliberations and Judgement drafting are in progress.

Muvunyi

The Trial Judgement in the Muvunyi case was rendered on 11 February 2010. The briefing of the appeals was completed at the end of July 2010 and the appeals are scheduled to be heard on 21 October 2010.

Setako

The Trial Judgement in the Setako case was rendered on 25 February 2010 and issued in writing on 1 March 2010. Both parties filed notices of appeal and the briefing is in progress.

Munyakazi

The Trial Judgement in the Munyakazi case was rendered on 30 June 2010 and issued in writing on 5 July 2010. Both parties filed notices of appeal and the briefing is in progress.

Ntawukulilyayo

The Trial Judgement in the Ntawukulilyayo case was rendered on 3 August 2010 and issued in writing on 6 August 2010. Dominique Ntawukulilyayo filed his notice of appeal on 6 September 2010.

Nsengimana

The Trial Judgement in the Nsengimana case was pronounced on 17 November 2009 and issued in writing on 18 January 2010. On 17 February 2010, the Prosecution indicated that it did not intend to appeal Nsengimana's acquittal. The Prosecution is, however, appealing against a decision of the Trial Chamber not to prosecute certain members of the defence team for contempt.

In addition to these appeals, the Appeals Chamber is seized of three interlocutory appeals in the *Nzabonimana* and *Nizeyimana* cases as well as requests for review in the *Kamuhanda* and *Karera* cases and post-appeal requests in the *Rutaganda* and *Niyitegeka* cases.

On 20 September 2010, the Appeals Chamber denied an appeal by Callixte Nzabonimana concerning the cooperation of France with the Tribunal. On 24 September 2010, the Appeals Chamber dismissed appeals by Edouard Karemera and Matthieu Ngirumpatse against a decision of Trial Chamber III concerning amendments to the indictment and evidence on the record in their case following the death of Joseph Nzirorera, one of their former co-accused.



Visit of Ms Erika Feller, UNHCR Assistant High Commissioner for Protection

Ms. Erika Feller, UNHCR Assistant High Commissioner for Protection, accompanied with Mr. Ron Mponda, Senior Protection Officer, visited the ICTR on 7 September 2010. During this visit, Ms. Feller met with the Principals of the Tribunal with whom she had extensive discussions on the cooperation between UNHCR and ICTR. The main focus of the discussions was on the relocation of the ICTR acquitted persons and the preparation of a colloquium on the exclusion clause of Article 1 F of the 1951 Refugee Convention. The colloquium would take place in Arusha, in the margins of the celebration of the 60th anniversary of the 1951 Refugee Convention.



l-r: Mr. Ron Mponda, Mr. Adama Dieng, Ms. Erika Feller, Mr. Mandiaye Niang and Ms. Chiara Biagioni

Ms. Feller also addressed the Judges and Legal Officers of the Tribunal on the activities of UNHCR. This forum of exchanges was an opportunity for Ms Feller to explain the peculiarity of the legal framework within which UNHCR operates, compared to an institution like ICTR. One of the important points of departure was to clarify why the legal rulings handed down by ICTR judges regarding the innocence of accused persons would not necessarily be acknowledged by UNHCR, when considering those persons for eligibility as refugees.

The questions asked revolved around the legal test used by UNHCR for a determination of the Refugee status and the role of UNHCR in this process. The difficulty in differentiating refugees from displaced persons was also touched upon, as well as the question of the final status of the persons admitted in a



Ms. Feller addressing the Judges and Legal Officers

country as refugees.

Ms Feller left Arusha with the firm promise to take up the case of the ICTR acquitted persons as part of UNHCR good offices mission to find them a country of relocation. She also agreed to look into the role the UNCHR may play in connection with the relocation of ICTR convicted persons who have served their sentence, and face difficulties similar to, if not greater than, the ones pertaining to the acquitted persons.

ICTR Conducts Mass Casualty Evacuation Drill

The United Nations International Criminal Tribunal for Rwanda in collaboration with its landlord, the Arusha International Conference Centre (AICC) and the other major tenant of the AICC complex, the East African Community (EAC), on 29 September 2010 successfully conducted a Mass Casualty Evacuation Drill.



Evacuated staff members and tenants of AICC

The drill which involved the evacuation of thousands of staff members, visitors and other tenants of the building complex took place for about 30 minutes beginning 10:20 am. Medical teams, the Arusha Fire Brigade and other supporting emergency teams were alerted and rushed to the AICC complex to evacuate casualties including the injured and some 'dead' bodies.

The evacuation exercise was conducted to familiarize ICTR staff members and other tenants of AICC complex on how to react in time of emergency and gauge their disaster preparedness and for the ICTR Clinic, the AICC hospital and ICTR First Aid personnel to rehearse procedure of handling injured and dead persons in an emergency in which mass casualties are involved.

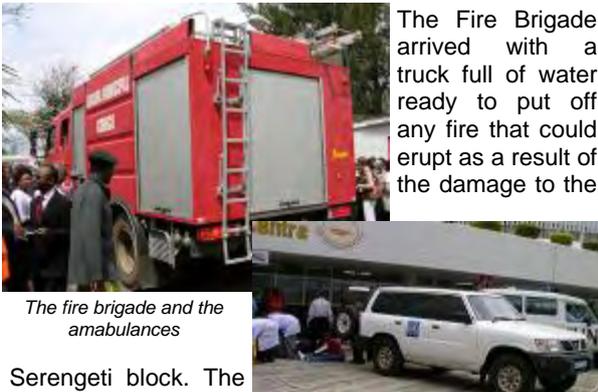
The drill was made to simulate an aftermath of an earthquake which had affected Arusha and its environs and which had damaged the Serengeti Block of the AICC complex trapping and injuring many staff members.

All AICC floors, the ICTR and EAC offices, NHIF and private shops operating at the complex evacuated their offices and shops, and moved to the assembly points in response to the emergency alarm. Floor Wardens and their assistants were at hand to direct staff members to these areas.



Medical teams with the casualties

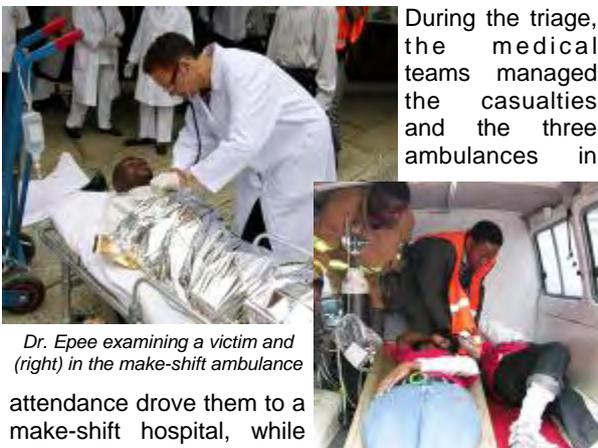
Many staff members were presumed killed or trapped under the rubble while others escaped with injuries and were asking for assistance. A Floor Warden at 2nd floor of Serengeti called the Security Control Centre with “details” of what had happened and asked for immediate urgency assistance.



The fire brigade and the ambulances

The Fire Brigade arrived with a truck full of water ready to put off any fire that could erupt as a result of the damage to the

Serengeti block. The assistance of the Security Group and the Ultimate Security companies was sought as the ICTR and other security outfits within the complex could not cope with the mass casualties. With the assistance of responding teams, the casualties were rescued and conveyed to a safe area where a triage was staged.



Dr. Epee examining a victim and (right) in the make-shift ambulance

attendance drove them to a make-shift hospital, while the dead were committed to the nearby morgue.

Staff members at the assembly areas were addressed



I-r: Ms. Sarah Kilemi, Mr. Wayne Hull and Mr. Adama Dieng at the scene of the drill

by officers of ICTR, EAC and AICC before they returned to their regular work.

Mr. Lanceni Diakite, the Deputy Chief of Security and Chief Fire Warden said that the objectives of the exercise were to gauge the Staff Members’ disaster preparedness by rehearsing systematic ways of reacting to emergencies; ensuring complete evacuation of the whole AICC complex within the shortest possible time; and familiarizing medical teams with the procedure of mass casualty evacuation.

Creation of New Section at The Hague



With the expansion of the Appeals Chamber, the Appeals Chamber Support Unit (ACSU) at The Hague has recently been transformed into a Section (ACSS). This new set up, entailing greater responsibilities for The Hague team triggered the creation of a Senior Legal Officer (P5) position to head the Section.

Mr. Roman Boed, Legal Officer, Coordinator of the Chambers sub-unit at the Appeals Chamber was appointed by the Registrar as Senior Legal Officer and the head of this Section as of 1 October 2010. Mr. Boed's career at the ICTR started in 1999 as Associate Legal Officer assigned to Judge Yakov Ostrovsky in TC3. In 2001, he became Judgement Coordinator in TC 3. He was transferred to the Appeals Chamber as Legal Officer in 2004.

The ICTR Interpretation Unit at the Service of Inter-agency Cooperation

As part of the cooperation between UN agencies and at the invitation of the Economic Commission for Africa (UNECA), a delegation of four ICTR interpreters went to Addis Ababa to cover a Conference of African Ministers in charge of Civil Registration that was held from 9 to 15 August 2010. That meeting was preceded by an expert meeting on the same subject.

The main objective of the high-level Experts and Ministerial Conference was to mobilize and rally the political commitment of national governments, civil registration authorities and national statistical offices in the improvement of civil registration and vital statistics in Africa.



While commending the ICTR interpreters for the major contribution they made towards the success of the two meetings, Mr Etienne Kabou, OIC of the Publications and Conference Management Section of the UNECA pointed out that ICTR had a pool of seasoned interpreters whose competence was recognized the world over. The UNECA was therefore honoured to be able to tap from that pool since, for some time now, it has been using the services of those ICTR interpreters and he was hoping that such cooperation will be further strengthened in the months and years to come.

For three years now, many institutions have been drawing from, and recruiting from the pool of ICTR interpreters, to wit, the International Criminal Court (ICC), The African Development Bank (AfDB), the Islamic Development Bank (IDB), the United Nations Assistance to the Khmer Rouge Trials (UNAKRT), the Africa, Caribbean, Pacific (ACP) Secretariat, AFRICARE, the UN International Criminal Tribunal for the former Yugoslavia (ICTY), etc.

All ICTR interpreters who have resigned or gone on retirement are doing well in the freelance market, and continue to keep the ICTR flag flying high.

Such inter-agency cooperation affords ICTR Interpreters an opportunity to refresh and update their skills, given that their work at the Tribunal is generally limited to legal matters and material.

Mr. François Bembatoum, Head of the ICTR Interpretation Unit and head of the delegation, had the task of coordinating the entire team of 16 (sixteen) interpreters servicing the conference. The Addis Ababa experience was a challenge that he and his colleagues were able to rise up to thanks to their extraordinary capacity to adapt to different circumstances.

The Language Section of ICTR is headed by Ms. Justine Ndong-Keller, while Mr. Bembatoum was Head of the Interpretation Unit and the Chief Interpreter until his retirement at the end of August, when Mr Oscar Tanifum took over. The Interpretation Unit comprises three sub-units: the English Sub-Unit, the French Sub-Unit, and the Kinyarwanda Sub-Unit.

ICTR Represented at Vienna ICL Conference

The Working Group of German-speaking scholars on International Criminal Law held its yearly conference on International Criminal and Humanitarian Law in Vienna, Austria from 1-2 October 2010. The conference was co-hosted by ex-ICTY Judge Frank Hoepfel from Vienna University and Professor Claus Kress from Cologne University, Germany.

This year, for the first time a representative of the ICTR, Associate Legal Officer in the Appeals Chamber Philipp Ambach, spoke at the conference and gave a presentation on the Tribunal's Appeals Chamber's recent jurisprudence (2009/2010), which was received with much interest. Participants were German-speaking legal scholars (from Germany, Austria,

Switzerland and Liechtenstein), representatives who assisted at the Review Conference of the International Criminal Court (ICC) in Kampala and representatives of the German National Police and the Federal Prosecution Office. Since much discussion focused on the ICC, the Kampala conference and the final ASP Resolution on the crime of aggression, it was felt to be important to remind the audience that the Tribunals are more active and efficient than ever before, and can truly be considered as the main "engines" of important jurisprudence and the creation and interpretation of legal standards in international criminal and humanitarian law (together with the SCSL in Sierra Leone and the ECCC in Cambodia). In the participating staff member's view, the ICTR's work and important jurisprudence not only of the past 12 months could be successfully brought back into focus during the conference as an institution that is of equal importance as the ICC and one of the most efficient mechanisms to codify the consented and applicable standards of international criminal and humanitarian law.

OP-ED

• The Status of Acquitted Persons and the Exclusion Paradox by Carmel Shenkar, Intern



Carmel Shenkar

Finding a country of residence for ICTR acquitted persons is increasingly urgent as the Tribunal moves towards its completion. Despite significant efforts on behalf of the Registrar, there are currently three acquitted persons whose relocations is still pending: Gratien Kabiligi, André Ntagerura, and Protais Zigitanyirazo. What should have been a natural cooperation between the ICTR and the UN High Commissioner for Refugees, is in reality impeded by an over expanded interpretation given by the UNHCR to the exclusion clause of the *Convention Relating to the Status of Refugees, 1951* (hereinafter "1951 Convention").

Article 1(f) of the 1951 Convention obliges States and the UNHCR to deny the benefits of refugee status to certain persons who would otherwise qualify as refugees. This provision is commonly referred to as "the exclusion clause". The article states that:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- he has been guilty of acts contrary to the purposes and principles of the United Nations.

According to the *UNHCR Guidelines on International*



Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees (HCR/GIP/03/05) of 4 September 2003 (hereinafter: UNHCR Guidelines), the rationale for the exclusion clauses, which should be borne in mind when considering their application, is that certain acts are so grave as to render their perpetrators undeserving of international protection as refugees. Their primary purpose is to deprive those guilty of heinous acts, and serious common crimes, of international refugee protection and to ensure that such persons do not abuse the institution of asylum in order to avoid being held legally accountable for their acts. However, given the possible serious consequences of exclusion, it is important to apply them with great caution and only after a full assessment of the individual circumstances of the case. The exclusion clauses should, therefore, always be interpreted in a restrictive manner (UNHCR Guidelines, para. 2).

Only where it has been determined that an applicant fulfils the inclusion criteria, the question may arise as to whether he may not be covered by the terms of one or more of the exclusion clauses. Therefore, the exclusion clauses may only come to force after it had been determined that the person in question does fulfill the inclusion criteria and thus qualifies as a refugee. This understanding is crucial to the rest of the argument.

The burden of proof with regard to exclusion rests with the State (or UNHCR) and, in all refugee determination proceedings, the applicant should be given the benefit of the doubt. However, the UNHCR indicates that when an individual has been indicted by an international criminal tribunal, or where individual responsibility is presumed, the burden of proof is reversed, creating a **rebuttable presumption** of excludability (UNHCR Guidelines, para. 34). The question therefore arises in our case as to what can indeed rebut this presumption.

UNHCR emphasizes that it is not necessary for an applicant to have been convicted of the criminal offence, nor does the criminal standard of proof need to be met in order to satisfy the standard of proof under article 1(f). Confessions and testimony of witnesses may suffice if they are reliable (UNHCR Guidelines, para. 35). A paradox is therefore created resulting in a burden which is impossible to rebut and an irreversible determination of excludability: an indictment by an international criminal court is a sufficient condition to exclude an applicant from a refugee status, but a full acquittal from all charges indicated in that indictment is not a sufficient condition to rebut the presumption of excludability.

This resulting situation is in contradiction with the object and purpose of the 1951 Convention. Two main safeguards are enshrined in the Convention and its application to ensure the object and purpose of the exclusion clause will be maintained and the exclusion provisions interpreted in a restrictive manner: first, when information casting doubt on the basis on which an individual has been excluded from refugee status comes to light, this should lead to reconsideration of

eligibility for refugee status (UNHCR Guidelines, para. 7). Second, the incorporation of a proportionality test when considering exclusion and its consequences. The proportionality consideration provides a useful analytical tool to ensure that the exclusion clauses are applied in a manner consistent with the overriding humanitarian object and purpose of the 1951 Convention (UNHCR Guidelines, para. 24).

These two procedural safeguards are in accordance with other human rights developments prevailing since 1951. Present day international human rights standards emphasize central notions such as the presumption of innocence, fair trial guarantees and the rule of law. International criminal law has also witnessed some major developments in this same direction. A lot had been changed since 1951, and although the exclusion clause explicitly indicates "serious reasons for considering" as a sufficient standard for exclusion; as long as a full acquittal remains insufficient ground for reconsideration, it can be argued strongly that this standard is inconsistent with present day human rights law.

A different solution is however possible, the legal basis of which is already entailed in the Convention and UNHCR Guidelines: an applicant who fulfils the inclusion criteria qualifies as a refugee. In case the individual has been indicted by an international criminal tribunal, there is a rebuttable presumption of excludability and the burden of proof rests with the applicant. However, in case of full acquittal granted by an international criminal tribunal, one should introduce the proportionality consideration (which usually relates to article 1(f)(b)), so the gravity of the reason for exclusion is weighed against the consequences of exclusion. Therefore the insertion of the proportionality consideration in cases of full acquittals offers a way out of the unavoidable paradox through legal means already existing in the Convention: a full acquittal alters the balance of proportionality and put more weight on the consequences of excludability in relation to the gravity of the offence in the specific circumstances of the case. This solution is in accordance with international human rights standards and conforms to the object and purpose of the exclusion clause, since it is obviously not a case of a person seeking refugee status as a means to avoid being held legally accountable for his acts.

Of the eight persons acquitted by the ICTR, there are three whose relocation is still pending. In all three cases the **exclusion paradox** had created a situation where although fully acquitted by the tribunal, in large part due to the lack of sufficient evidence to prove the charges in the indictment, are still excluded from refugee status because of that same indictment.

Zigiranyirazo was transferred to the Tribunal on 3 October 2001. The Appeals Chamber reversed his convictions for genocide and extermination as a crime against humanity and entered a verdict of acquittal on 16 November 2009, stating in fact that the Trial Judgment misstated the principles of law governing the distribution of the burden of proof with regards to alibi and seriously erred in its handling of the evidence (*Protais Zigiranyirazo v. the Prosecutor*, Judgment, Appeals Chamber, ICTR-01-73-A, 16 November 2009, para. 75).

Kabiligi was arrested and transferred to the ICTR on 18 July



1997. The Trial Chamber acquitted Kabiligi of all charges on 18 December 2008, stating that the Prosecution did not prove beyond reasonable doubt that Kabiligi was responsible either directly or as a superior for any of the crimes alleged against him in the indictment (*The Prosecutor v. Bagosora et al.*, Judgment and Sentence, ICTR-98-41-T, 18 December 2008, paras. 1976-1986, 2056, 2110-2112, 2159-2162, 2187, 2195, 2204, 2214, 2225, 2246, and 2255). The Prosecution did not appeal the judgment.

André Ntagerura was transferred to ICTR on 23 January 1997. *Ntagerura* was acquitted of all charges by the Trial Chamber on 25 February 2004 and the judgment was affirmed by the Appeal Chamber on 7 July 2006, with a lone dissenter emphasizing, while concurring entirely with the decision, that not only is the Indictment vague, but it must also be declared null and void as none of the crimes with which the Accused is charged is sufficiently pleaded and the scope of the charges is not sufficiently defined (*The Prosecutor v. Ntagerura et al.*, Judgment, Appeal Chamber, ICTR-99-46-A, 7 July 2006, Dissenting Opinion of Judge Schomburg, paras. 1-2).

Staff Counselling & Welfare Unit News

- **ICTR Reunion Party**

The Staff Counselling & Welfare Unit organized a Reunion Party in order that staff members could get together and have fun. The party was very well

attended—about 300 staff members fitted themselves into a space meant for 250 people! Judge and Mrs. Byron, Mr. and Ms. Jallow, Mr. and Mrs. Besnier, Ms. Kilemi, Mr. Kabore, Judge Arrey, Judge Muthoga, Mme Dieng, Dr. Epee, and other senior officials also graced this occasion. It was held at Karafuu Hall on 18 September 2010. It started at 7.00 pm and went on till the wee hours. This shows how much everybody enjoyed themselves.

After the dinner, raffles and auction staff were treated to an amazing fashion show.

The turnout was very encouraging. The dance floor was crowded and all in all, the evening was a great success.

Thank you everybody who assisted in organizing this event, and to everybody who supported it by buying the tickets and attending it.

We are now looking forward to the next event – the ICTR Family Fun Day, tentatively scheduled for 20 November 2010. This will include a walk, various sport competitions, games for children, and much more ...

Photos on p. 9

Obituaries

The ICTR extends its condolences to the families of the staff members below, who passed away during 2010.



Ms. Dainess Nevava, Legal Assistant, Defence Counsel and Detention Management Section, 17 September 2010



Mr. Moses Ally Mtwalizya, Stores Clerk, 15 August 2010



Xavier Rozencwajg, Audio Visual Unit, 29 January 2010



ICTR Reunion Party—a pictorial extravaganza

(photos by Arnold Lazaro)

