

# Definition of persecution

Adapted from an article by Dr Shafik Awad

## II- Definition of persecution as crime against humanity under (Article 3) of the Statute of the International Criminal Tribunal for Rwanda

ICTR Statute, Article 3:

“The *International Tribunal for Rwanda* shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- a) Murder;
- b) Extermination;
- c) Enslavement;
- d) Deportation;
- e) Imprisonment;
- f) Torture;
- g) Rape;
- h) Persecutions on political, racial and religious grounds;**
- i) Other inhumane acts.”

### 1- Persecutions on political, racial and religious grounds

#### (1) Elements

Quoting the ICTY, the Trial Chamber “summarized the elements that comprise the crime of persecution as follows:

- a) Those elements required for all crimes against humanity under the Statute,
- b) a gross or blatant denial of a fundamental right reaching the same level of gravity as the other acts prohibited under Article 5,
- c) Discriminatory grounds.”

*\*(see. Ruggiu, (Trial Chamber), June 1, 2000, para. 21)*

“Persecution may take diverse forms and does not necessarily require a physical act.” “[P]ersecution may include acts enumerated under other sub-headings of crimes against humanity, such as murder or deportation, when they are committed on discriminatory grounds. Persecution may also involve a variety of other discriminatory acts, not enumerated elsewhere in the Statute, involving serious deprivations of human rights.” “[T]he enumerated grounds of discrimination for persecution in Article 3(h) . . . do not include national or ethnic grounds, which are included in the list of discriminatory grounds for the attack contained in the chapeau of Article 3.”

*\*(See, Semanza, (Trial Chamber), May 15, 2003, para. 347-350)*

## **(2) intent/mental state (*mens rea*)**

“[T]he crime of persecution specifically requires a finding of discriminatory intent on racial, religious or political grounds. The Chamber notes that this requirement has been broadly interpreted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) to include discriminatory acts against all those who do not belong to a particular group.”

\*(See, *Nahimana, Barayagwiza and Ngeze*, (Trial Chamber), December 3, 2003, para. 1071)

## **(3) Persecution also defined in terms of impact**

“[T]he crime of persecution is defined also in terms of impact. It is not a provocation to cause harm. It is itself the harm. Accordingly, there need not be a call to action in communications that constitute persecution. For the same reason, there need be no link between persecution and acts of violence.”

\*(See, *Nahimana, Barayagwiza and Ngeze*, (Trial Chamber), December 3, 2003, para. 1073)

## **(4) Persecution is broader than incitement**

“[P]ersecution is broader than direct and public incitement, including advocacy of ethnic hatred in other forms.”

\*(See, *Nahimana, Barayagwiza and Ngeze*, (Trial Chamber), December 3, 2003, para. 1078)

## **III- DOCUMENT**

### **Rome Statute of the International Criminal Court in 1998**

#### **PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW**

##### Article 7

##### Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

**(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or Collectively;**

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give

information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above:

### **References**

<http://www.worldevangelical.org/persecanalysis.html>

[http://www.moodymagazine.com/articles.php?action=view\\_article&id=441](http://www.moodymagazine.com/articles.php?action=view_article&id=441)

[www.ictr.org/legal.htm](http://www.ictr.org/legal.htm)

<http://www.ictr.org/ENGLISH/cases/Ruggiu/trialchamber.htm>