

## **EKSAMEN I JURIDISKE VALGEMNER**

**VÅR 2015**

Dato: Fredag 8. mai 2015

Tid: Kl. 10:00 – 14:00

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### **JUS5530/ JUR1530 – Refugee and Asylum Law**

The language of examination for this course is English: students may answer in English ONLY, answers in any other language than English will be given a F (F for fail).

**Please read the facts, BA students answer question 1. MA students answer BOTH questions 1 & 2. Please refer to the materials in the Annex. Good Luck!!!**

#### **Country Background Information CIA World Factbook:**

In 1959, three years before independence from Belgium, the majority ethnic group, the Hutus, overthrew the ruling Tutsi king. Over the next several years, thousands of Tutsis were killed, and some 150,000 driven into exile in neighboring countries. The children of these exiles later formed a rebel group, the Rwandan Patriotic Front (RPF), and began a civil war in 1990. The war, along with several political and economic upheavals, exacerbated ethnic tensions, culminating in April 1994 in a state-orchestrated genocide, in which Rwandans killed up to a million of their fellow citizens, including approximately three-quarters of the Tutsi population. The genocide ended later that same year when the predominantly Tutsi RPF, operating out of Uganda and northern Rwanda, defeated the national army and Hutu militias, and established an RPF-led government of national unity. Approximately 2 million Hutu refugees - many fearing Tutsi retribution - fled to neighboring Burundi, Tanzania, Uganda, and former Zaire. Since then, most of the refugees have returned to Rwanda, but several thousand remained in the neighboring Democratic Republic of the Congo (DRC, the former Zaire) and formed an extremist insurgency bent on retaking Rwanda, much as the RPF did in 1990.

Rwanda held its first local elections in 1999 and its first post-genocide presidential and legislative elections in 2003. Rwanda in 2009 staged a joint military operation with the Congolese Army in DRC to rout out the Hutu extremist insurgency there, and Kigali and Kinshasa restored diplomatic relations. Rwanda also joined the Commonwealth in late 2009 and assumed a nonpermanent seat on the UN Security Council for the 2013-14 term.

In 2013, UNHCR recommended that states invoke the Cessation clause for refugees who fled events occurring in Rwanda between 1959-98. All but an estimated 100,000 have since returned



home, owing to lasting peace and stability in their country. The 100,000 Rwandan refugees are hosted mainly by Burundi, the Democratic Republic of the Congo, Kenya, Malawi, Mozambique, the Republic of the Congo, South Africa, Uganda, Zambia, and Zimbabwe.

**Facts:**

Joel had been a Hutu police officer who had been imprisoned, interrogated and tortured for 17 months in 1996 by the Tutsi RPF. Tutsi soldiers forced him to watch as they raped his wife in front of him and chopped off his son's hand. He fled to Zimbabwe with his then ten year old daughter, Chantal. Both were granted asylum. Joel returned to Rwanda last year in order to visit his brother who was gravely ill and also to retrieve Chantal's Rwandan passport as she needs it to attain a work permit in Zimbabwe. Joel was in Rwanda for two months and he talked with his family and friends about the current situation in the country before returning to Zimbabwe (without Chantal's Rwandan passport, as the government would not issue it). Joel insists that the current regime in Rwanda is corrupt and abusive against civil society and opposition groups. He states that he is afraid that he will be imprisoned again and subjected to torture once more if he were to move back to Rwanda. He declares that he still has recurrent nightmares about his wife's rape and his son's dismemberment. He has integrated well within the community in Zimbabwe.

Joel's daughter Chantal has grown up in Zimbabwe and joined the Rwanda National Congress (RNC) opposition party in exile. She has stated that she is in grave danger of persecution, due to her dissemination of RNC policy on the internet (see Annex 6). The Rwandan government (under President Kagame) states that Chantal's material influenced opponents in Rwanda and that it will put Chantal under arrest on charges of subversion if she returns.

**Question 1 (BA and Masters Students): You are an immigration officer in Zimbabwe and have been asked to assess whether Joel should be sent back to Rwanda given the UNHCR's general recommendation on cessation. Please discuss whether Joel may still be considered to be a refugee, whether the cessation clause applies to him, and whether he should be granted alternate protection.**

**Question 2 (Masters Students only): Please assess whether Chantal may be considered a refugee according to the Refugees Act of Zimbabwe. The Minister of Justice of Zimbabwe is concerned about Rwanda's complaint of subversion, and would like to know whether or not there is a legal obligation to keep Chantal in Zimbabwe, and in addition whether or not it is necessary to shut down her on line activities (with respect to national law, as well as regional and international human rights law and refugee law).**

**Annex (6 documents or excerpts):**

**1. Amnesty International Report 2014/15 on Rwanda:**

<https://www.amnesty.org/en/countries/africa/rwanda/report-rwanda/>

**2. African Charter on Human and Peoples Rights:**

<https://www1.umn.edu/humanrts/instree/z1afchar.htm>

**3. Refugees Act of Zimbabwe (Excerpts):**

**Meaning of Refugee:**

**A person shall be a refugee for the purposes of this Act if-**

- a) Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, he is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or
- b) Not having a nationality and being outside the country of his former habitual residence, he is unable or, owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, is unwilling to return to it; or
- c) Owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

**A person shall not be a refugee for the purposes of this Act if-**

- a) He has committed a crime against peace, a war crime or a crime against humanity, as defined in any international instrument to which Zimbabwe is a party and which has been drawn up to make provision in respect of such crimes: or
- b) He has committed a serious non-political crime outside Zimbabwe prior to his admission to Zimbabwe as a refugee; or
- c) He has been guilty of acts contrary to the purposes and principles of the United Nations Organization or the Organization of African Unity; or
- d) Having more than one nationality, he has not availed himself of the protection of one of the countries of which he is a national and has no valid reason, based on well-founded fear of persecution or on a reason referred to in paragraph (c) for not having availed himself of its protection

**A person shall cease to be a refugee for the purposes of this Act if-**

- a) He voluntarily re-avails himself of the protection of the country of his nationality; or
- b) Having lost his nationality, he voluntarily re-acquires it; or

- c) He becomes a citizen of Zimbabwe, or acquires the nationality of some other country and enjoys the protection of the country of his new nationality; or
- d) He voluntarily re-establishes himself in the country which he left, or outside which he remained owing to a reason referred to in paragraph (c) as the case may be; or
- e) He can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist-
  - (i) Continue to refuse to avail himself of the protection of his country of nationality; or
  - (ii) If he has lost his nationality, continue to refuse to return to the country of his habitual residence:  
Provided that this paragraph shall not apply to a person who satisfies the Commissioner that he has compelling reasons, arising out of previous persecution, for refusing so to avail himself or so to return
- f) He is a person who is a refugee according to paragraph (c) who has committed a serious non-political crime outside Zimbabwe after his admission into Zimbabwe or he has seriously infringed the purposes and objectives of the Convention Governing the Specific Aspects of Refugee Problems in Africa

**Non-return of refugees, their families or other persons**

1. Notwithstanding any other enactment, no person shall be refused entry into Zimbabwe, expelled, extradited or returned from Zimbabwe to any other country or be subjected to any similar measure, if as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where-
  - a) He may be subjected to persecution on account of his race, religion, nationality, membership of a particular social group or political opinion; or
  - b) His life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disrupting public order in part or the whole of the country.

**4. OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Excerpts).**

**Preamble (setting forth principles):**

We, the Heads of State and Government assembled in the city of Addis Ababa, from 6-10 September 1969,

1. Noting with concern the constantly increasing numbers of refugees in Africa and desirous of finding ways and means of alleviating their misery and suffering as well as providing them with a better life and future,
2. Recognizing the need for and essentially humanitarian approach towards solving the problems of refugees,
3. Aware, however, that refugee problems are a source of friction among many Member States, and desirous of eliminating the source of such discord,
4. Anxious to make a distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside,
5. Determined that the activities of such subversive elements should be discouraged, in accordance with the Declaration on the Problem of Subversion and Resolution on the Problem of Refugees adopted at Accra in 1965,

### **Article 3**

#### **Prohibition of Subversive Activities**

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.
  2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

#### **5. Excerpts from the 1951 Convention:**

##### Article 32. - Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33. - Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

**6. RNC Statement on the Demonstration against Kagame in South Africa (disseminated online by Chantal).**

The truth must be spoken to the Rwandan people and by Rwandans at all material times that we have betrayed ourselves and our people for so long through our silence, there comes a time when one must stand for the inner truth, a cause and justice even when it is not popular because of the nature of dictatorship like one in Rwanda whose reply to critics is only savage attacks on an unarmed and defenceless people resulting in senseless killings with impunity.

There can be doubt that we are facing moral crisis as a national! Because of our neutral stance irrespective of our inner truth and knowledge about the evil regime of president Kagame that most of our people continue to serve in these times of war carried out against the innocent people inside the country and outside.

Millions of Rwanda people have explicitly and tacitly opposed the oppression of Rwandans and evasions of Congo that has killed millions of our young people and delivered devastating

consequences to innocent Congolese people all that to benefit one man and his family Paul Kagame.

This is done by a brutal clique of former escorts of president Kagame turned into generals handpicked by the president himself, but can no longer force the region and international community into silence because the masses of our people have moved beyond the professing smooth patriotism of a ethnicity or confusing decent to disloyalty like members who work for benefit of the clique of individuals led by Kagame who have held the masses of our people hostage.

Rwanda national congress understands perfectly well that our country is facing dark days once again, where the brutal regime is using every method to silence decent or any voice of cause but those days are gone the regime must prepare to hear the truth!!

The truth we seek is the fundamental human rights which include the right to life, to have all political prisoners released unconditionally, to allow freedom of press and release journalists from jails to do their work, to allow separation of government organise so that the judiciary can be independent and carry out its judicial functions without directives by the president.

To stop extra judicial killings with impunity, forced disappearances and safe houses where the masses of our people, who demand their rights are stored without trial or knowledge of their families or allow them access to legal representations.

We therefore call upon all Rwandans to keep staging passionate protest on widest scale together with all peace loving people against the evil and brutal repressive doctrine which says that, a man and woman's legal status, political right, economic opportunities, peace and security and social position shall depend solely on royalty of one man president Paul Kagame.

Ladies and Gentlemen... Kagame and the small group around him as we have pointed out have unabatedly and in various capacities, since 1996; undertaken an unjustifiable, illegal and illegitimate path of invading a sovereign and neighbor state...that is the Democratic Republic of Congo.

Kagame has used many tactics, manipulations, deceptions, lies to attack and stay in DRC at expense of Rwandans and Congolese whose young men and women fighting these wars keep dying in un proportional numbers to enrich president Kagame and his family whose thirty for Congo minerals is endless.

It would be inhuman and insensible if the Rwanda National Congress stays idle and not denounce such endless costly wars in terms life and also not sympathize with the people of the Democratic Republic of Congo who, for almost two decades, have suffered from Kagame's invasion. Since

then, the people of the DRC have continuously been displaced on their own territory; around six millions people both of Congolese origin and Rwandans who sought refuge in the Congo have been mercilessly killed; patients in hospitals, including women, infants, children, elderly men and women, pregnant mothers and other seriously ill persons have been executed, tortured in cruel and inhuman treatment.

Horrible pictures of women being sexually mutilated have circulated in the world media. There comes a time in the name of freedom in any war between storms that we hang on courage,

And there are days when we lose our faith and even days when our allies turn against us!!

But the day will never come when we forsake the cause of our people!!

I thank you, together we shall overcome.

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Sensuren faller fredag 29. mai klokken 15.00. Kontroller på StudWeb eller ta kontakt med Infosenteret på 22 85 95 00. Kandidatene har rett til en redegjørelse for sensurvedtaket ved henvendelse til sensorene innen en uke etter sensur. Kontaktinformasjon for sensorer finnes på Fakultetets nettsider. Du kan også ta kontakt med infosenteret. Klagefristen er tre uker etter sensur.

*The result of the exams will be announced on Friday 29 .May, at 15.00 hours. You can check the results in the StudWeb, or by contacting the Information Centre, phone 22 85 95 00. After the exam results are announced, candidates have the right to be informed of the grounds for the result as long as a request is made within one week of the announcement. The names and contact information of the examiners can be found on the Faculty's website, or by contacting the Information Centre. The deadline for appeal is three weeks after the announcement of the results.*

Oslo, 8.5.2015