

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

Between:

Rachidi EKANZA EZOKOLA

**APPELLANT
(Respondent)**

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**RESPONDENT
(Appellant)**

-and-

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PART I – OVERVIEW

1. The appellant was excluded under Section 98 of the *Immigration and Refugee Protection Act (IRPA)*.¹ This provision incorporates Article 1F(a) of the *United Nations Convention Relating to the Status of Refugees (Refugee Convention)*, a convention of international refugee law (IRL), whose construction explicitly relies on international criminal law (ICL):

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) 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.²

2. Amnesty International Canada (AI Canada) proposes two guiding principles that will help ensure that the application of Article 1F(a) is consistent with international law: 1 – The exclusion clause must be applied with the utmost caution; 2 – The exclusion analysis must be grounded in *established* international criminal law.

PART II – QUESTION IN ISSUE

3. What principles should guide the application of Article 1F(a) of the *Refugee Convention*?

PART III – ARGUMENT

A. The need for coherence and consistency in the jurisprudence

4. Canadian jurisprudence on Article 1F(a) is unclear and contradictory. Refugee claimants are being excluded based primarily on their associational profile, and not on their potential responsibility for international crimes. Recent judgments by the highest courts in other jurisdictions have distanced themselves from the Federal Court of Appeal (FCA)’s approach to exclusion.³ This Court is now charged with bringing coherence and consistency to this area of law.

5. In AI Canada’s view, the three tensions, set out below, have contributed to the confusion in Canadian exclusion jurisprudence.

a) Protection – not criminal liability

¹ *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), s.98 [IRPA].

² *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, [1969] Can. T.S. No. 6, Art. 1F(a) [Refugee Convention].

³ *Al-Sirri and DD v. Secretary of State for the Home Department*, [2012] UKSC 54, para. 16 [Al-Sirri]; *R (on application of JS) (Sri Lanka) v. Secretary of State for the Home Department*, [2010] UKSC 15, para. 29 [JS]; *Attorney General (Minister of Immigration) v. Tamil X*, [2010] NZSC 107, [2011] 1 NZLR 721, para. 70.

6. One of ICL's principal goals is to hold people liable for grave international crimes, whereas IRL is concerned with protecting people who are fleeing persecution. The fact that serious crimes are at issue must not obscure the fact that Article 1F(a) is being interpreted and applied in a protection context. Although ICL does play a role in the application of Article 1F(a), that application clearly occurs within a protection framework. This is evident from the fact that the exclusion clauses are applied by the Refugee Protection Division, within a refugee status determination hearing. The protection context is also apparent from the structure of the *Refugee Convention* (Article 1F(a) is found in the definitional section, rather than in the chapter regulating measures such as expulsion)⁴ and that of the *IRPA* (Parliament placed exclusion in the Part entitled Refugee Protection, rather than in other sections of the statute such as Enforcement, or Loss of Status and Removal.)⁵

b) Substance of international criminal law – but evidentiary standard of exclusion

7. The standard of proof in IRL for exclusion is “serious reasons for considering,” whereas the standard in ICL for conviction is “beyond a reasonable doubt.” The lower standard of proof in IRL has no impact on the elements of the crime and of the modes of commission that *must* be proven to exclude a refugee claimant – only on the degree to which the decision-maker must be satisfied that those elements *have been* proven. In the exclusion analysis, ICL provides the substantive definitions of the specific crimes and modes of commission for which a refugee claimant may fall within the ambit of Article 1F(a); these definitions remain the same, regardless of the standard of proof.

c) Collective criminality – but individual responsibility

8. Many offences in ICL are collective in nature. The fact that *collective criminality* is often at issue in exclusion cases must not deflect the analytical focus away from *individual responsibility*. Systematizing the attribution of individual criminal responsibility for collective wrongdoing has been a key challenge for both ICL and IRL. However, as Professor Gerhard Werle affirms, “the collective nature of crimes under international law does not absolve us of the need to determine individual responsibility.”⁶

⁴ *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, para. 58 [*Pushpanathan*]; *Refugee Convention*, *supra* note 2.

⁵ *IRPA*, *supra* note 1.

⁶ Werle, Gerhard, “Individual Criminal Responsibility in Article 25 ICC Statute,” *Journal of International Criminal Justice* 5 (2007), p.953.

B. Canada is bound by international law

9. There are several international normative regimes at play in the exclusion framework: international human rights law, international refugee law, and international criminal law. Properly interpreted, these regimes work in synergy in the application of Article 1F(a): in exclusion, principles of human rights law inform ICL, which in turn informs IRL.

10. This Court has affirmed that the legislature is presumed to act in compliance with Canada's obligations as a signatory of international treaties and as a member of the international community, as well as in conformity with the values and principles of customary and conventional international law.⁷ While this presumption can be rebutted by unambiguous legislative provisions to the contrary,⁸ no such provisions apply in the exclusion context.

11. In *Suresh*, the Supreme Court of Canada (SCC) held that a full understanding of the *IRPA* "requires consideration of the international perspective."⁹ Parliament signalled its intention to abide by Canada's international commitments in subsection 3(3)(f) of the *IRPA*, which requires the Act to be construed and applied in a way that "complies with international human rights instruments to which Canada is signatory."¹⁰ *Compliance* with international instruments is a more meaningful and rigorous standard than merely being in harmony with them.

12. The SCC specifically found that Article 1F's meaning is derived from the *Refugee Convention*:

Since the purpose of the Act incorporating Article 1F(c) is to implement the underlying [Refugee] Convention, the Court must adopt an interpretation consistent with Canada's obligations under the Convention. The wording of the Convention and the rules of treaty interpretation will therefore be applied to determine the meaning of Article 1F(c) in domestic law.¹¹

In interpreting Article 1F(a), the guidelines on international protection elaborated by the United Nations High Commissioner for Refugees (UNHCR), as well as the exclusion jurisprudence developed by high courts in other jurisdictions, provide persuasive and pertinent guidance.¹²

⁷ *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292, para. 53.

⁸ *Németh v. Canada (Justice)*, 2010 SCC 56, [2010] 3 S.C.R. 281, para. 35.

⁹ *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, para. 59 [*Suresh*].

¹⁰ *IRPA*, *supra* note 1.

¹¹ *Pushpanathan*, *supra* note 4, para. 51.

¹² UNHCR has supervisory responsibility in respect of the *Refugee Convention* and its *Protocol*. Under the *Statute of the Office of the UNHCR*, UNHCR is responsible for providing international protection to refugees, and together with governments, for seeking permanent solutions for their problems. UNHCR's supervisory responsibility is also reflected in Art. 35 of the *Refugee Convention* and Art. 2 of the *Protocol*, obliging State Parties to cooperate with

C. Principle 1: The exclusion clause must be applied with the utmost caution

13. Decision-makers who apply the *Refugee Convention*'s exclusion clauses must do so with the utmost caution, mindful that exceptions to human rights guarantees are to be construed strictly, and that although refugee hearings are not criminal proceedings, the effects of exclusion are nonetheless quasi-punitive.

a) Exceptions to human rights guarantees must be construed strictly

14. Under international law, provisions intended to limit human rights must be interpreted strictly. For instance, the obligations of the *International Covenant on Civil and Political Rights (ICCPR)* must be construed in ways that ensure the practical and effective enjoyment of human rights, and all limitations of those rights must be construed strictly and, when doubt arises, in favour of the rights at issue.¹³ Professor Olivier De Schutter has explained that the requirements pertaining to the *ICCPR* "may in fact be generalized to all human rights treaties."¹⁴ Indeed, the UNHCR has reiterated on multiple occasions that the exclusion clauses of the *Refugee Convention* must be interpreted strictly.¹⁵ This requirement was reaffirmed by the UK Supreme Court recently in *Al-Sirri*, which held that the provisions of Article 1F "should be interpreted restrictively and applied with caution."¹⁶

15. Decision-makers must remain cognizant that at issue in the application of the exclusion clauses is not a discretionary benefit, but rather the right to enjoy asylum from persecution. This right is recognized by the *Universal Declaration of Human Rights* and the *Refugee Convention*.¹⁷

UNHCR in the exercise of its functions, including in particular, to facilitate UNHCR's supervising the application of these instruments. The supervisory responsibility is exercised in part by the issuance of interpretative guidelines.

¹³ *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc. E/CN.4/1985/4, Annex (1984), para. 3.

¹⁴ De Schutter, Olivier, *International Human Rights Law* (Cambridge: Cambridge University Press, 2010), p.290.

¹⁵ UNHCR, *The Exclusion Clauses: Guidelines on their Application*, 2 December 1996, para. 8 [UNHCR, 1996 Guidelines]; UNHCR, *Background Note on the 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. 4 [UNHCR, 2003 Background Note]; UNHCR, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees* (4 September 2003), HCR/GIP/03/05, para. 2 [UNHCR, 2003 Guidelines]; UNHCR, *Refugee Status Determination: Identifying Who is a Refugee*, (1 September 2005), p.70; UNHCR, *Statement on Article 1F of the 1951 Convention Issued in the context of the preliminary ruling references to the Court of Justice of the European Communities from the German Federal Administrative Court*, July 2009, p.7 [UNHCR, 2009 Statement].

¹⁶ *Al-Sirri*, *supra* note 3, para. 16.

¹⁷ *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71, Art. 14; *Refugee Convention*, *supra* note 2.

b) The effects of exclusion are quasi-punitive

16. Caution is also warranted because of the potentially catastrophic consequences of exclusion. Although Article 1F(a) is applied outside of a criminal context, its effects are severe, and have been accurately characterized in the doctrine as quasi-punitive.¹⁸ Excluded individuals are wholly denied the enjoyment of every right enshrined in the *Refugee Convention*, a binding international human rights instrument. They are marked with the stigma of having committed serious crimes. Moreover, Canadian law potentially permits the removal of individuals who have been excluded from refugee protection to a risk of torture or death.¹⁹ These are consequences more grave than could ensue from any other administrative proceeding in Canada, and harsher than those resulting from criminal convictions in this country.

17. The severe consequences that might ensue from exclusion have been widely acknowledged. The UNHCR describes exclusion as “the most extreme sanction provided for by the relevant international refugee instruments,” affirming that it “should be used with utmost caution.”²⁰ Likewise, in *Cardenas*, Jerome A.C.J. found: “The Board must be extremely cautious in its application of the exclusion clause. [...] In light of the potential danger faced by such a claimant, the Board must base its decision to exclude only on clear and convincing evidence [...]”²¹

D. Principle 2: The exclusion analysis must be grounded in *established* international criminal law

18. It is crucial that until all the elements of a crime have been firmly established in international criminal law, such a “crime” should not be relied upon as a basis to exclude someone from refugee protection. Decision-makers who apply the exclusion clauses of the *Refugee Convention* do not have the expertise to resolve doctrinal or jurisprudential controversies in ICL. Moreover, given that exceptions to human rights guarantees must be construed strictly, and the fact that the exclusion clauses are being interpreted and applied in a

¹⁸ Bliss, Michael, “‘Serious Reasons for Considering’: Minimum Standards of Procedural Fairness in the Application of the Article 1F Exclusion Clauses” *International Journal of Refugee Law* 12 (2000), p.99.

¹⁹ *Suresh*, *supra* note 9, para. 78; *IRPA*, *supra* note 1, ss.112(3)(c), 113(d)(ii).

²⁰ UNHCR, 1996 Guidelines, *supra* note 15, para. 8.

²¹ *Cardenas v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 139, para. 24.

protection context, it would be contrary to Canada's obligations under the *Refugee Convention* to exclude someone on a tenuous or uncertain basis.²²

19. The content of ICL can be ascertained from the 1945 *London Charter*, the 1948 *Convention on the Prevention and Punishment of Genocide (Genocide Convention)*, and the statutes of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), Special Court for Sierra Leone (SCSL), and International Criminal Court (ICC).²³ The latter, according to the UK Supreme Court, is "the most comprehensive and authoritative statement of international thinking on the principles that govern liability for the most serious international crimes (which could alone justify the denial of asylum to those otherwise in need of it)."²⁴ The jurisprudence of these Courts and Tribunals is also pertinent.²⁵ Canadian courts have recognized the relevance of these instruments and the related jurisprudence to interpreting the exclusion provisions.²⁶

20. AI Canada proposes four directives that will help confine the exclusion analysis within the bounds of *established* principles of international criminal law.

a) The crime and mode of commission, as defined in international criminal law, must be identified

21. Under the *Refugee Convention*, recourse to ICL is required to ascertain both which criminal offences and which modes of commission fall within the ambit of Article 1F(a). This interpretation is based on the ordinary meaning of the words of Article 1, having regard to the *Refugee Convention's* purpose and context.²⁷ By the phrase "as defined in," the Convention instructs decision-makers to use the definitions in "international instruments" to evaluate whether "there are serious reasons for considering that: [a person] has committed a crime."²⁸

²² *Vienna Convention on the Law of Treaties*, (1969) United Nations, Treaty Series, vol. 1155, p. 331, Arts. 31, 32 [Vienna Convention]; *Refugee Convention*, *supra* note 2, Preamble.

²³ UNHCR, 2003 Guidelines, *supra* note 15, para. 10; United Nations, *Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis*, 8 August 1945, 82 U.N.T.C. 280; UN General Assembly, *Prevention and punishment of the crime of genocide*, 9 December 1948, A/RES/260; *Statute of the International Criminal Tribunal for the Former Yugoslavia*, 25 May 1993, S.C. Res. 827, U.N. Doc. S/RES/827; *Statute of the International Criminal Tribunal for Rwanda*, 8 November 1994, S.C. Res. 955; *Statute of the Special Court for Sierra Leone*, 14 August 2000, S/RES/1315, 2178 U.N.T.S. 138, 145, UN Doc. S/2002/246, appendix II; *Rome Statute of the International Criminal Court*, 17 July 1998, U.N. Doc. A/CONF.183/9 [Rome Statute].

²⁴ JS, *supra* note 3, para. 9.

²⁵ UNHCR, 2003 Background Note, *supra* note 15, paras. 52ff.

²⁶ *Harb v. Canada (M.C.I.)* (2003), 302 N.R. 178, para. 10; *Ramirez v. Canada (Minister of Employment and Immigration)*, [1992] 2 F.C. 306 (C.A.), para. 12 [Ramirez].

²⁷ *Vienna Convention*, *supra* note 22, Arts. 31, 32.

²⁸ *Refugee Convention*, *supra* note 2, Art. 1F(a).

This last clause consists of two separate components: “crime” i.e. wrongdoing (elements of the offence), and “has committed” i.e. attribution (mode of commission of the offence). Decision-makers must look to international instruments to define *both* these concepts.

22. This interpretation of “has committed” as referring to several modes of commission has been adopted by Canadian courts. Beginning with the seminal exclusion case *Ramirez*,²⁹ the FCA has consistently employed this definition. It is also evident in Canada’s related jurisprudence on the *Crimes Against Humanity and War Crimes Act*, in which the term “committing” has been understood to encompass several modes of commission of an offence.³⁰

23. The concept of the “modes of commission” of international offences has undergone important changes since the drafting of the *Refugee Convention*. Although the *travaux préparatoires* of the Convention make no reference to modes of commission, at the time ICL was in its infancy. It was only with the ICTY and ICTR that a “breakthrough to a more sophisticated doctrine of participation was ultimately achieved.”³¹ The ICC has further refined the concept of mode of commission. The *Rome Statute* defines international crimes separately from the modes of commission,³² and the Prosecutor is obliged to provide the legal characterization of the facts as they accord with both the crimes and the modes of commission.³³

24. Therefore, grounding the exclusion analysis in established ICL requires decision-makers to identify both the crime and the mode of commission.

b) Membership is not an accepted mode of commission under international criminal law

25. In ICL, immediately after the Second World War, membership was both a form of accessory liability and an inchoate criminal offence, but this idea is no longer accepted.³⁴ Moreover, although Canadian courts have tended to promote membership as a mode of

²⁹ *Ramirez*, *supra* note 26, para. 11.

³⁰ Lafontaine, Fannie, *Prosecuting Genocide, Crimes Against Humanity and War Crimes in Canadian Courts*, Toronto: Thomson Reuters, 2012, p.225.

³¹ Werle, *supra* note 6, p.955.

³² *Rome Statute*, *supra* note 23, Arts. 6-8, 25, 28.

³³ *Regulations of the Court*, 26 May 2004, ICC-BD/01-01-04, Regulation 52(c).

³⁴ UNHCR, *Exclusion at a Crossroads: The Interplay between International Criminal Law and Refugee Law in the Area of Extended Liability*, 30 June 2011, s.2.9 [UNHCR, 2011].

commission in exclusion cases (albeit conceptualized as a rebuttable presumption),³⁵ high courts in the UK and Australia have recently rejected this doctrine.³⁶

26. Given that membership is not an accepted mode of commission in ICL, it should not be relied upon as the sole or primary basis for exclusion under Article 1F(a). Rather, decision-makers who apply this provision of the *Refugee Convention* must be satisfied that there are serious reasons for considering that the claimant incurred *individual* responsibility for an international crime.

27. This need to focus on individual criminal responsibility has been widely acknowledged. As the UNHCR asserted, exclusion requires an “individualized assessment to determine responsibility for criminal acts.”³⁷ Jettisoning the requirement to establish a causal link between the conduct of the refugee claimant and the crimes alleged would fall far short of the standard articulated by the FCA in *Moreno*, which affirmed that “[p]ersonal involvement in persecutorial acts must be established.”³⁸ The Court of Justice of the European Union and the Supreme Court of the United Kingdom have also recognized that exclusion requires an individualized assessment, which focuses on the individual’s conduct.³⁹

28. Importantly, keeping the analysis focused on the conduct of the individual will help maintain the crucial conceptual difference between individual criminal responsibility and the potential criminal responsibility of other subjects in international law, such as States or corporations.⁴⁰ The liability of an individual is distinct from the liability of an organization to which that person belonged. Even when the refugee claimant was employed by a state responsible for grave human rights violations, what is at issue in exclusion is that person’s individual responsibility under international criminal law.

³⁵ UNHCR, 2011, *supra* note 34, s.3.1; *Ramirez*, *supra* note 26.

³⁶ UNHCR, 2011, *supra* note 34, s.3.1; *JS*, *supra* note 3; *Minister for Immigration and Citizenship v. Haneef*, [2007] FCAFC 203.

³⁷ UNHCR, 2009 Statement, *supra* note 15, p.24.

³⁸ *Moreno v. Minister of Employment and Immigration*, [1994] 1 F.C. 298, para. 50.

³⁹ *Al-Sirri*, *supra* note 3, para. 15; *JS*, *supra* note 3, paras. 38, 55; *Bundesrepublik Deutschland v. B. und D.*, [2010] ECRI-OOO, C-57/09 and C-101/09, para. 87.

⁴⁰ See for example, UN General Assembly, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, A/HRC/17/31 (21 March 2011); *El-Masri v. The Former Yugoslav Republic of Macedonia (Application No. 39630/09)*, [2012].

c) Joint Criminal Enterprise III is a controversial mode of commission

29. Under ICL, the mode of commission termed Joint Criminal Enterprise III (JCE III) is understood as having an actus reus of participating in the execution of a common design involving the perpetration of a crime; and a mens rea of intending to further the common purpose of the JCE, where the crime was a natural and foreseeable consequence of that common purpose.⁴¹ This concept was first proposed by the ICTY,⁴² and has since been applied by the SCSL,⁴³ but was deliberately excluded from the ICC regime.⁴⁴ Professor Fannie Lafontaine has aptly characterized this particular mode as being “one of the most criticised aspects of international criminal law.”⁴⁵ Given that exceptions to human rights guarantees must be strictly construed, and because exclusion occurs in a protection context with potentially severe consequences, the controversy over JCE III makes it unsuited for use in the exclusion analysis.

d) Complicity is an indeterminate and misleading concept

30. The concept of complicity has been defined in a number of different ways. In the Canadian exclusion jurisprudence, being complicit appears to have been understood as being: synonymous with criminal responsibility or with the mode known as aiding and abetting;⁴⁶ a general term for several modes of commission;⁴⁷ and a separate mode of commission.⁴⁸ The meaning of this term is also vague in ICL. In one key judgment of the ICTR, this notion seems to have been understood as the actus reus of a criminal offence,⁴⁹ while in other cases it has been

⁴¹ International Criminal Law Services, *Modes of Liability: Commission and Participation*, Part of the OSCE-ODIHR/ICTY/UNICRI Project “Supporting the Transfer of Knowledge and Materials of War Crimes Cases from the ICTY to National Jurisdictions,” Available at wcjp.unicri.it/deliverables/docs/Module_9_Modes_of_liability.pdf, pp.15-16.

⁴² *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment, 15 July 1999, para. 227; *Prosecutor v. Vasiljević*, Case No. IT-98-32-A, Judgment, 25 February 2004, para. 100; *Prosecutor v. Stakić*, Case No. IT-97-24-A, Judgment, 22 March 2006, para. 64.

⁴³ *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-T, Judgment, 18 May 2012.

⁴⁴ *Rome Statute*, *supra* note 23, Art. 30.

⁴⁵ Lafontaine, Fannie, “Parties to Offences under the Canadian *Crimes against Humanity and War Crimes Act*: An Analysis of Principal Liability and Complicity,” *Les Cahiers de Droit* 50: 3-4 (sept.-déc. 2009), p.1000.

⁴⁶ *Ramirez*, *supra* note 26, para. 16: “What degree of complicity, then, is required to be an accomplice or abettor?”

⁴⁷ *Pourjamaliaghdam v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 666, para. 38: “The case law recognizes that complicity can take two forms. The first involves the actual furthering of international crimes by the claimant (e.g. aiding and abetting). The second involves complicity by association. Complicity by association means that individuals may be rendered responsible for the acts of others because of their close association with the principal actors.” [references omitted]

⁴⁸ *Zazai v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 303, para. 13: “[...] complicity is not a crime. At common law and under Canadian criminal law, it was, and still is, a mode of commission of a crime.”

⁴⁹ *Prosecutor v. Akayesu*, ICTR No. ICTR-96-4-T, Trial Chamber Judgment, 2 September 1998, para. 528: “the physical act which constitutes the act of complicity [...]”

characterized as a broad idea that includes several modes of commission.⁵⁰ The question of whether complicity is a distinct mode of commission is still unresolved in the ICTY and ICTR jurisprudence, and the ICC settled the issue by avoiding the use of this word in its statute.⁵¹

31. Because of the imprecise definition of complicity in ICL and IRL, decision-makers should be extremely cautious in resorting to it as the primary basis for an exclusion finding. A reliance on such an imprecise concept has created an uneven and unpredictable jurisprudence resulting in potentially grave consequences for refugee claimants.

E. Conclusion

32. AI Canada submits that these two principles informing the application of Article 1F(a) will fulfill Canada's international obligations towards refugees without undermining the country's efforts to prevent impunity for international crimes. In other words, IRL and ICL need not be at cross-purposes, but can work together to further each other's aims. Adequately protecting the human rights of asylum-seekers requires that perpetrators of serious crimes – including those that create refugees – be held legally responsible for their acts. Likewise, an international system of criminal liability must respect the human rights of all individuals – particularly those fleeing persecution. If properly applied, Article 1F(a) will never exclude from refugee protection those persons who, under ICL, could not be convicted of an international crime.

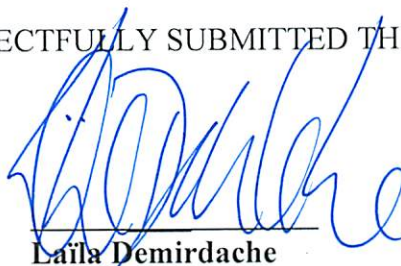
PART IV – REQUEST FOR ORAL ARGUMENT

33. The Intervener requests permission of the Court to present oral argument.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 20th day of December, 2012 BY:



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⁵⁰ UNHCR, 2011, *supra* note 34, s.2.5.

⁵¹ UNHCR, 2011, *supra* note 34, s.2.5. Although the *Genocide Convention* lists “Complicity in Genocide” as an offence under Article 3, decisions of the ICTR and the ICTY have determined that, in fact, complicity in genocide is not a crime itself but merely a form of liability for the crime of genocide.

⁵² The solicitors for AI Canada acknowledge the tremendous work done by AI Canada's articling student, Anna Shea.

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**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF
APPEAL)**

Between:

Rachidi EKANZA EZOKOLA

**APPELLANT
(Respondent)**

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**RESPONDENT
(Appellant)**

-and-

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LIBERTIES ASSOCIATION; UNITED NATIONS HIGH
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