HUMAN RIGHTS IN PROCEEDINGS BEFORE THE INTERNATIONAL CRIMINAL TRIBUNALS

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INTRODUCTION

The legal provisions governing the proceedings before the International Criminal Tribunal for the former Yugoslavia (ICTY\(^1\)) and the International Criminal Tribunal for Rwanda (ICTR\(^2\)) are, to a large extent, reflective of international human rights standards enshrined in such instruments as the International Covenant on Civil and Political Rights of 19 December 1966 (ICCPR),\(^3\) the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ECHR)\(^4\) (relevant in the context of the ICTY), and the African (Banjul) Charter on Human and Peoples’ Rights of 26 June 1981 (ACHPR)\(^5\) (relevant in the context of the ICTR). In particular, the ad hoc Tribunals’ Statutes and Rules of Procedure and Evidence\(^6\) contain essential fair trial rights for individuals accused of the grave crimes under the jurisdiction of the Tribunals, including inter alia the right to be brought promptly before a judge, the right to counsel, and the right

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\(^3\) 999 U.N.T.S. 171.

\(^4\) 213 U.N.T.S. 221, C.E.T.S. 005.


to a public hearing in the presence of the accused. In the absence of specific provisions in the Tribunals’ Statutes and Rules of Procedure and Evidence, the ICCPR, the ECHR, and the ACHPR provide substantial guidance on how to fill any lacuna in the Tribunals’ procedural law.

In his report on the establishment of the ICTY, the Secretary-General of the United Nations stated that,

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\text{[i]t is axiomatic that the International Tribunal must fully respect internationally recognized standards regarding the rights of the accused at all stages of its proceedings. In the view of the Secretary-General, such internationally recognized standards are, in particular, contained in article 14 of the International Covenant on Civil and Political Rights.}\]

Accordingly, by analyzing some of the jurisprudence of the ad hoc Tribunals, this paper aims at providing an insight into the way international human rights are applied before the ICTY and the ICTR. Special attention will be paid to the implementation of various procedural safeguards, which are provided in the ICCPR as well as in the Statutes and the Rules of Procedure and Evidence of the Tribunals. In order to better illustrate the challenges facing the Tribunals in their everyday work, the article will mirror the general progress of a case before the Tribunals, beginning with the arrest and pre-trial detention of an accused, followed by the trial proceedings, the proceedings on appeal, and the post-judgement phase.

**Arrest and pre-trial detention**

Article 9(3) of the ICCPR provides that,

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\text{[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge…}
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Rule 62 of the ICTR Rules accordingly specifies that,

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\text{upon his transfer to the Tribunal, the accused shall be brought before a Trial Chamber or Judge thereof without delay, and shall be formally charged.}\]

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8 Cf. Rule 62 of the ICTY Rules.