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INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS

Acquittals in International Criminal Justice: Pyrrhic Victories?

JORIS VAN WIJK AND BARBORA HOLÁ*^{*}

Abstract

Despite the great body of academic research on international criminal justice, little attention has been given to the situation of those who have been acquitted. This article aims to fill this gap by offering an empirical overview of what happens to persons acquitted by the ICTY, ICTR, and the ICC. Rather than providing an in-depth legal analysis, the article emphasizes the challenges acquitted persons encounter. It discusses in particular: (1) to what extent and why some acquitted individuals are barred from residing in the country of their preference; (2) whether and why they are facing subsequent prosecution; and (3) what obstacles there are for acquitted persons seeking to obtain compensation for the lengthy periods spent in detention. Although similar problems may be experienced by individuals who have been acquitted for conventional crimes in domestic systems, the authors argue that persons acquitted by international criminal tribunals are relatively more susceptible to post-acquittal challenges because of the unique nature of the alleged crimes and the institutional context in which international criminal trials take place. The authors conclude that there are no easy solutions, and that some of the problems identified are inherent to the system of international criminal justice.

Keywords

acquittals; international crimes; international criminal justice; safe house; subsequent prosecution

I. INTRODUCTION

In 2013, Judge Theodor Meron, President of the International Criminal Tribunal for the former Yugoslavia (ICTY), stated that criminal justice cannot be a synonym for convictions, and acquittals are its integral part. ‘When you have acquittals’, he posited, ‘it shows the health of the system’.¹ Persons acquitted by international criminal tribunals (ICTs) have, however, also been referred to as a ‘forgotten party’.²

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¹ See BBC Hardtalk, Judge Theodor Meron, 16 March 2013, www.bbc.co.uk/programmes/boirmc1i (accessed 13 April 2015).

² B. Henry, ‘The Acquitted Accused, a Forgotten Party of the ICTR’, (2005) 12 *New England Journal of International & Comparative Law* 81.

An acquittal can be defined as a finding by a judge or a jury that a defendant is not guilty. As such, an acquittal is a legal technicality, which ‘signifies that a prosecutor failed to prove his or her case beyond a reasonable doubt, not that a defendant is innocent’.³ When Presiding Judge Cotte of the International Criminal Court (ICC) read out a public summary of the judgment acquitting Mathieu Ngudjolo Chui of war crimes and crimes against humanity, he defined an acquittal in similar terms:

finding an accused person not guilty does not necessarily mean that the Chamber considers him ... to be innocent ... [It] merely demonstrates that the evidence presented in support of the accused’s guilt has not satisfied the Chamber “beyond reasonable doubt”.⁴

However, in practice acquittals by ICTs often prove to be much more than a legal technicality and come with many challenges related to the special character of international crimes and the international criminal justice system. This article outlines the challenges that could follow an acquittal at the ICTs. First, we shall discuss how quite a number of acquitted individuals have reintegrated into society without any problems; some of them even benefitted from their status as ‘acquitted war heroes’. In the subsequent paragraphs, emphasis will be given to the problematic aspects of an ‘international acquittal’. We describe how many Rwandan acquitted persons consider that their status as a former accused person turned them into ‘international pariahs’. Next, we explain why and how a surprisingly high number of acquitted individuals see themselves confronted with subsequent criminal prosecutions. Finally, we address how a relatively large number of acquitted individuals have – so far in vain – demanded compensation for the, often excessively long, periods of time spent in detention. We conclude that the unique context in which international criminal trials take place, as well as the unique nature of international crimes, complicate life after acquittal at the ICTs and reflect on the possibilities of improving the current system.

Instead of developing an in-depth legal analysis, the aim of this article is to provide an explorative empirical overview of what happens to acquitted persons, identify the most pertinent challenges they face and discuss possible ways to solutions. The overview presented in the article can serve as the basis for further legal doctrinal or theoretical research on the effects of ICTs’ acquittals. We, however, intentionally abstain from taking any normative stance and from evaluating fairness of the presented challenges or their compatibility with applicable legal standards.

The article is based on an analysis of publicly available sources, such as case law, academic publications, policy papers, reports, and journalistic articles. This information is complemented with data from interviews with acquitted individuals themselves and officials of the International Criminal Tribunal for Rwanda (ICTR).⁵

³ Legal Information Institute Legal Dictionary, Cornell University Law School, www.law.cornell.edu/wex/acquittal (accessed 13 April 2015).

⁴ *The Prosecutor v. Mathieu Ngudjolo Chui*, Judgment pursuant to article 74 of the Statute, ICC-01/04-02/12, T.Ch. II, 18 December 2012, para. 36.

⁵ We thank Maaikje Zeeuw for allowing us to use the results of the interviews taken in the context of her Master Thesis: M. Zeeuw, ‘Acquitted but not Free; On the Limitations Defendants Face When Acquitted by

We focus on persons fully acquitted by the ICTY, ICTR,⁶ and ICC after a trial.⁷ Until April 2016 final judgments had been rendered against 173 individuals at the ICTY, ICTR, and ICC. Out of these, 33 persons (19.07 per cent) – 18 at the ICTY, 14 at the ICTR, and one at the ICC – were acquitted of all charges.⁸

2. LIFE AFTER ACQUITTAL

Persons acquitted by ICTs usually spend a long time in detention, often during a period in which their country of origin is massively changing. Arguably, anyone who has been detained abroad for a long time encounters some difficulties after returning to their home society, for example in finding a house or a job and reuniting with family members. Our exploratory research nonetheless demonstrates that a smooth transition to post-trial life for acquitted ICTs defendants is certainly possible, in particular for those individuals acquitted by the ICTY, who could return to the successor countries of the former Yugoslavia. In this region, acquittals are often perceived as evidence of ‘collective vindication’, which counters the general feeling of ‘collective stigmatization’.⁹ Because of these perceptions some more prominent acquitted persons have even benefitted from their trials and subsequent acquittals. Take the example of the response to the acquittal of the Croatian General Ante Gotovina: Many Croats regarded his trial as an attempt to discredit their newly minted homeland¹⁰ and Croatia spent millions of euros paying for his defence.¹¹ After his trial about 100,000 people greeted him upon his return home.¹² His acquittal signalled, in their eyes, the rebuttal of the ‘*Stigma Hrvatska*’ (Croatian stigma).¹³

the International Criminal Courts and Tribunals’, Master Thesis VU University Amsterdam, 19 April 2014. The interviews were conducted between June 2013 and December 2014 and had a semi-structured character.

⁶ The functions of the ICTY and ICTR have been taken over by the Mechanism for International Criminal Tribunals (MICT). Since the closing of the ICTR in December 2015, the MICT has been carrying out all of its functions. The ICTY is still functional but some of its tasks, including the enforcement of sentences or appeals hearings, have already been transferred to the MICT.

⁷ This means that the article does not discuss the situation of individuals whose charges were not confirmed or were vacated. Nor does it touch upon the situation of defendants who have been only partially acquitted.

⁸ On 31 March 2016 the ICTY Trial Chamber, by majority, acquitted Vojislav Šešelj of all charges. However, as the prosecution is appealing this judgment at the MICT, the Šešelj case is not included in our analysis. See *Prosecutor v. Vojislav Šešelj*, Judgement, Case No. IT-03-67-T, T.Ch. III, 31 March 2016. Besides the ICTY, ICTR and the ICC, acquittals have been relatively rare at the ICTs. Although the International Military Tribunal at Nuremberg acquitted three individuals, the International Military Tribunal for the Far East, the Special Court for Sierra Leone (SCSL), and the Extraordinary Chambers in the Courts of Cambodia (ECCC) have not acquitted any.

⁹ R. Williams, ‘The Fog of War Crimes Prosecution; the ICTY Appeals Chamber Acquits Perišić’, *TerraNullius*, 1 March 2013, available at www.terra>nullius.wordpress.com/2013/03/01/the-fog-of-war-crimes-prosecution-the-icty-appeals-chamber-acquits-perisic/ (accessed 15 June 2015).

¹⁰ See, e.g., in this respect J.N. Clark, ‘Courting Controversy: The ICTY’s Acquittal of Croatian Generals Gotovina and Markač’, (2013) 11(2) *Journal of International Criminal Justice* 418.

¹¹ J. Ivanović, ‘Croatia: Backing “Homeland War” Generals’, *Balkan Insight*, 23 December 2013, available at www.balkaninsight.com/en/article/croatia-backing-homeland-war-generals (accessed 15 June 2015).

¹² B. Pavelić, ‘Croatian Generals Greeted with Hero’s Welcome’, *Balkan Insight*, 16 November 2012, available at www.balkaninsight.com/en/article/croatian-generals-greeted-with-hero-s-welcome (accessed 6 April 2016).

¹³ J. Hopkin, ‘Croatia Starts to Hope Again, as a “War Crime” Stigma is Lifted’, *The Guardian*, 20 November 2012, available at www.theguardian.com/commentisfree/2012/nov/20/croatia-war-crime-stigma-lifted (accessed 15 June 2015).

Mladen Markač, who was tried and acquitted together with Gotovina, suggested that their acquittal indicated that every Croat abroad could now say that their homeland had been liberated, ‘without the smallest stain on our reputation’.¹⁴ Gotovina’s hero’s welcome went further than popular acclaim: He has been awarded two honorary citizenships, appears regularly on national media and his tuna farming business is in receipt of a credit of over €1,000,000 from the Croatian Bank for Reconstruction and Development.¹⁵

Gotovina’s positive reception and smooth integration is not exceptional. Ivan Čermak, the former advisor to Croatian President Franjo Tuđman and commander of the Knin Company, was a wealthy oil entrepreneur before the war. After his acquittal in 2011, he resumed his business and his assets are estimated at around €1,000,000.¹⁶ In fact, virtually all other republics of the former Yugoslavia have their own acquitted heroes, who after a warm welcome – at least initially – reintegrated without many challenges. These include Macedonian Ljube Boškosi,¹⁷ Bosnian Sefer Halilović,¹⁸ and Kosovar Ramush Haradinaj.¹⁹ Although high-profile Serbian acquitted persons have, to a much lesser extent, been celebrated as heroes, they too have been taken good care of by their government. After a sober

¹⁴ L. Radonić, ‘The Acquittal of the Croatian Generals Ante Gotovina and Mladen Markač’, *Imre Kertész*, available at www.imre-kertesz-kolleg.uni-jena.de/?id=455&l=1 (accessed 15 June 2015). Headlines by international media at time takes the same perspective. After the acquittals of Gotovina and Markač, a British newspaper *The Guardian* featured an article by I. Traynor with the following headline: ‘Croatia’s “War Crime” is no Longer a Crime after UN Tribunal Verdict; Successful Appeal in The Hague Exonerates 1990s Regime of Franco Tudjman and has a Huge Significance for International Law’, 16 November 2012, available at www.theguardian.com/world/2012/nov/16/croatia-war-crime-analysis (accessed 15 June 2015).

¹⁵ ‘Ante Gotovina: One Year of Freedom’, *Croatiaweek*, 16 November 2013, available at www.croatiaweek.com/ante-gotovina-one-year-of-freedom/ (accessed 15 June 2015).

¹⁶ ‘Ivan Čermak’, *Vecernji List*, available at www.vecernji.hr/biografije/ivan-cermak-58 (accessed 15 June 2015). Less is known about the reintegration of Croat Mladen Markač. He himself did not foresee many problems. However, when receiving an honorary citizenship in 2012, he stated that he had no interest in politics, but that he would like to engage in humanitarian work, writing, hunting, and further dissemination of the truth about the Homeland War. See D. Derk, ‘Gotovina Ekstremnoj Desnici: Ja Sam Slobodan Čovjek i Tako Mislim’, *Vecernji List*, 5 December 2012, available at www.vecernji.hr/hrvatska/gotovina-ekstremnoj-desnici-ja-sam-slobodan-čovjek-i-tako-mislim-483329 (accessed 15 June 2015).

¹⁷ Arriving in a government plane he was greeted by the Prime Minister and thousands of people. The Macedonian government stated it would provide him with moral and financial support. He resumed his political career but was later convicted for illegally financing his campaign and a murder plot. See ‘Acquitted Macedonia Minister Arrives Home’, *Balkan Insight*, 11 July 2008, available at www.balkaninsight.com/en/article/acquitted-macedonia-minister-arrives-home; ‘Hero’s Welcome for Freed Macedonia Minister’, *Balkan Insight*, 11 July 2008, available at www.balkaninsight.com/en/article/hero-s-welcome-for-freed-macedonia-minister; and S. Dimovski, ‘Macedonia Jails Ex-Police Minister for 12 Years’, *Balkan Insight*, 15 July 2013, available at www.balkaninsight.com/en/article/former-macedonian-former-police-minister-jailed-for-murder (all accessed 15 June 2015).

¹⁸ Politicians and fans welcomed him at the airport. He received an award from a Bosnian veteran organization and up to this day is a well-known politician running the Bosnian Rights Party (BSP). See the documentary by E. Lonić, ‘Generali: Sefer Halilovic7/7’, 18 May 2013, available at www.dailymotion.com/video/x10020m_generali-sefer-halilovic-7-7_news, at 46:00–50:00; N. Latić, ‘Priznanje Sefera Halilovića Za Suradnju Sa Kos-Om’, *Bošnjaci net*, 16 November 2013, available at www.bosnjaci.net/prilog.php?pid=50635; ‘Sefer Halilović za Predsjednika BiH’, *BPS*, available at [www.bps.ba/?mod=bps-vijest-015](http://bps.ba/?mod=bps-vijest-015) www.bps-seferhalilovic.ba/ (all accessed 15 June 2015).

¹⁹ Haradinaj was picked up by a Kosovo government plane, greeted by the Prime Minister and cheered by large crowds. He returned to politics. See M. Simons, ‘War Crimes Court Frees Former Leader of Kosovo’, *New York Times*, 29 November 2012, available at www.nytimes.com/2012/11/30/world/europe/un-court-frees-former-leader-of-kosovo.html?_r=0 (accessed 15 June 2015).

arrival in Serbia,²⁰ former Serbian President Milan Milutinović allegedly accepted the benefits of his rights as the former president, which entitle him to 80 per cent of his former salary including an office, advisor, secretary, and an official car.²¹ Former Chief of Staff Momčilo Perišić returned home in a government plane and was received by politicians, friends, and family. Arguing that his trial and acquittal removed the ‘curse of the Serbian people’, he said he planned to spend time with his family.²²

There are also examples of Rwandan acquitted persons who do not seem to have faced major reintegration issues. However, with the acquitted Rwandans the situation is incomparable, as they do not want to return to their home country, which is now ruled by their former adversary. They seek residence elsewhere. As will be discussed below, countries in general are not very eager to welcome those tried for genocide, even if acquitted. Nonetheless, the reintegration of Father Hormisdas Nsengimana, for example, who after trial continued his clerical life in an Italian monastery, illustrates that a relatively smooth transition to a post-trial life is also possible for some Rwandans.²³

By contrast, lower-level ICTY acquitted persons typically face some challenges in post-trial life, although it is not always obvious that these stem from the trial and subsequent acquittal. Dragan Papić, for example, used to be a forest ranger before he joined the Croatian Defence Council (HVO).²⁴ In 2010, ten years after his acquittal, he informed a journalist that he was unemployed and together with his wife and three children was living on the edge of existence.²⁵ This situation is not unusual since many more former soldiers not indicted by the ICTY are facing similar problems in finding a place in the relatively poor and corrupt post-war context of the former Yugoslavia.²⁶ At the same time, there are also acquitted persons who encountered problems which directly relate to their trials. Zejnil Delalić, for instance, claims that the almost two years he spent in detention at the ICTY resulted in the collapse of his

²⁰ C. Leviev-Sawyer, ‘Former Serbian President Acquitted of War Crimes Returns Home’, *The Sofia Echo*, 28 February 2009, available at sofiaecho.com/2009/02/28/682911_former-serbian-president-acquitted-of-war-crimes-returns (accessed 15 June 2015).

²¹ D.M., ‘Milutinović triput nedeljno do posla’, *Novosti*, 14 April 2011, available at www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:327111-Milutinovic-triput-nedeljno-do-posla (accessed 15 June 2015).

²² M. Ristić, ‘Freed Yugoslav General Perišić Arrives in Serbia’, *Balkan Insight*, 1 March 2013, available at www.balkaninsight.com/en/article/persic-arrives-to-belgrade (accessed 15 June 2015).

²³ ‘Nomine e Trasferimenti nel Clero Diocesano’, *Diocese of Vicenza*, July 2015, available at www.vicenza.chiesacattolica.it/pls/vicenza/v3_s2ew_consultazione.mostra_pagina?id_pagina=3096 (accessed 15 June 2015). Other acquitted individuals who did not seem to have serious problems with their reintegration are, for example, André Rwamakuba, Ignace Bagilishema, and Emmanuel Bagambiki. However, compared to Nsengimana, their relocation to a country willing to host them turned out to be more challenging (see Section 3).

²⁴ ‘Dragan Papić’, *Trial International*, 2 June 2016, available at trialinternational.org/latest-post/dragan-papic/ (accessed 3 May 2016).

²⁵ J. Žarko, ‘POTEZ OČAJNIKA Dragan Papić: Pomozite mi ili ću i ja, kao Grgić, s bombama na cisternul’, *Slobodna Dalmacija*, 13 November 2010, available at www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/121256/Default.aspx (accessed 15 June 2015).

²⁶ Cf. X. Bougarel, ‘The Shadow of Heroes: Former Combatants in Post-War Bosnia-Herzegovina’, (2006) 58(189) *International Social Science Journal* 479, at 484–5.

business.²⁷ A recurring issue is the stigma, which stems from having been prosecuted for war crimes. Former HVO member Mirjan Kupreškić, for example, returned to his Bosnian hometown, Vitez, where some townspeople still view him as a war criminal.²⁸ A former Captain in the Serb-dominated Yugoslav People's Army (JNA), Miroslav Radić, voiced similar complaints. Acquitted in 2007, he complained in a 2008 article that the world still saw him as a member of the notorious 'Vukovar Three', and that his two children continued to carry this burden.²⁹ The earlier mentioned Bosnian politician Sefer Halilović filed a lawsuit against a political opponent for calling him a 'war criminal' in 2013.³⁰ Although the stigma in the above cases may have affected the acquitted persons' wellbeing, it has not become apparent that this has seriously hampered their reintegration.

Finally, there are acquitted persons who have encountered challenges which directly relate to the unique nature of international crimes and the unique context in which international criminal trials take place. In particular, Rwandan acquitted persons can be considered 'international pariahs'. From the very first day after their 'not guilty' verdicts, they have been confronted with serious challenges in finding a country to reside in. The second problem that acquitted persons from all ICTs face is that they have been, or may in the future be, confronted with new indictments by domestic prosecutors. Finally, a number of acquitted persons have – so far in vain – requested compensation for the excessively long periods of time they spent in detention. In the remainder of the article, we will more elaborately discuss these three challenges.

3. INTERNATIONAL PARIAHS

The above section shows that the persons acquitted by the ICTY often face no major problems in returning to their country of origin and residing there in relative safety. Ever since the first ICTR acquittal, however, the ICTR Registrar has been heavily occupied with the task of relocating the acquitted individuals. The acquitted persons themselves do not want to return to Rwanda due to fears for their personal safety, and only a few countries have stepped forward to accept them.³¹ Most illustrative in this regard is the fate of André Ntagerura, the former Rwandan Minister for Transport,

²⁷ J.D. Michels, 'Compensating Acquitted Defendants for Detention before International Criminal Courts', (2010) 8(2) *Journal of International Criminal Justice* 407, at 408.

²⁸ According to the Sarajevo-based Center for Investigative Reporting 'Bosniak neighbors in Vitez remember those years he spent in a cell ... and see the 41-year-old Bosnian Croat still as a war criminal; one who had a good lawyer'. See Center for Investigative Reporting, 'Defense and Prosecution: A Tale of Two Sides', available at www.cin.ba/en/na-razlicitim-stranama-istog-zlocina/ (accessed 15 June 2015).

²⁹ G. Otašević 'Miroslav Radić sues Serbia', *Politika*, 2 November 2008, available at www.politika.rs/rubrike/Drustvo/Miroslav-Radic-tuzi-Srbiju.lt.html (accessed 15 June 2015).

³⁰ Fena, 'Sefer Halilović podnio tužbu protiv Nebojše Radmanovića' *ABC Portal*, 14 February 2013, available at www.abcportal.info/clanak/sefer-halilovic-podnio-tuzbu-protiv-nebojse-radmanovica (accessed 15 June 2015).

³¹ In 2008, the ICTR Appeals Chamber confirmed that the Registrar is responsible for the necessary diplomatic, logistical, and physical arrangements for release after an acquittal, 'taking into consideration, to the extent possible and as appropriate, the requests of the acquitted person'. See *Prosecutor v. André Ntagerura*, Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008, Case No. ICTR-99-46-A28, A.Ch., 18 November 2008, paras. 14–15.

who has been living in a safe house paid for by the UN in Arusha, Tanzania, since his acquittal in 2004. He claims that returning to Rwanda is impossible, while relocation to other, suitable countries is blocked because of legal or political obstacles.³²

The relocation of the first individual acquitted at the ICTR in 2001, Ignace Bagilishema, has led to problems. The Registry had approached a number of countries to temporarily host him during his appeal, but to no avail. France finally agreed to do so by stating that ‘this decision was taken in the spirit of cooperation, which France has always had towards the Tribunal, also in the superior interests of international criminal justice and its fundamental principles, which includes the presumption of innocence’.³³ Only a few countries – France included – seem to have deemed these interests and principles important enough to assist the Registry in hosting any of the 13 ICTR acquitted persons who were still to come. As of November 2015, eight acquitted persons were still living in a safe house in Tanzania because they had not been able to find a suitable country willing to host them.³⁴ Most of them wished to be reunited with their families, who often resided in Europe or in North America.³⁵ Therefore, it comes as no surprise that in his Final Report to the UN Security Council, the ICTR President noted that ‘the Registrar’s function of relocating [those acquitted and released] presented one of the most significant challenges’.³⁶

In practice, the acquitted persons themselves are responsible for finding a host country. Although the ICTR/MICT³⁷ and the UN provide logistical and diplomatic support whenever possible,³⁸ they cannot force countries to host acquitted individuals³⁹ or – the other way around – force the acquitted persons to go to certain

³² For more information, see, e.g., K.J. Heller, ‘What Happens to the Acquitted?’ (2008) 21(3) LJIL 663; and J. van Wijk, ‘When International Criminal Justice Collides with Principles of International Protection: Assessing the Consequences of ICC Witnesses Seeking Asylum, Defendants Being Acquitted, and Convicted Being Released’, (2013) 26(1) LJIL 173.

³³ The ICTR attached conditions to release which included that two persons of high moral standing were to guarantee that he would turn up in court again. Bagilishema furthermore had to hand in his passport and report regularly to the police. See ‘France Confirms it will take Acquitted Rwandan Mayor’, *Hirondelle News Agency*, 20 September 2001, available at www.hirondellenews.com/ict-rwanda/351-acquittals/bagilishema-ignace/18070-en-en-france-confirms-it-will-take-acquitted-rwandan-mayor7121712 (accessed 15 April 2015). France eventually continued to host him after the acquittal was confirmed in 2002.

³⁴ Judge T. Meron, Letter Dated 17 November 2015 from the President of the International Residual Mechanism for Criminal Tribunals Addressed to the President of the Security Council, UN Doc. S/2015/883 (2015), at 9, para. 50. Eight acquitted persons are sharing the safe house, together with three individuals who were released by the ICTR/MICT after serving their sentences.

³⁵ Bicamumpaka et al., ‘Memorandum to the UN Security Council; SOS for urgent relocation to third countries of ICTR acquitted persons and convicted persons having completed their sentences’, 22 February 2013. This 42-page document, which was signed by ten safe house residents, informed the UN about their situation and called for action. Memorandum is on file with the authors.

³⁶ Judge V. Joensen, Letter Dated 17 November 2015 from the President of the International Criminal Tribunal for Rwanda Addressed to the President of the Security Council, UN Doc. S/2015/884 (2015), at 21, para. 90.

³⁷ As noted, *supra* note 6, the MICT is now administering the duties of the ICTR after its closure. As our interviews were conducted with representatives of the ICTR, in the text we only refer to the ICTR. The discussion is, however, *mutatis mutandis* applicable to the MICT.

³⁸ For instance, the ICTR Registrar asked for assistance from the United Nations Security Council, which resulted in at least three resolutions requesting member states to host the acquitted persons on their territories: UN Security Council Resolution 2029, UN Doc. S/RES/2029 (2011), at 2, para. 5; UN Security Council Resolution 2054, UN Doc. S/RES/2054 (2012), at 2, para. 6; and UN Security Council Resolution 2080, UN Doc. S/RES/2080 (2012), at 2, para. 4. See also *supra* note 36, at 21, paras. 90 and 151; or *supra* note 34, at 9, paras. 50 and 51.

³⁹ *Prosecutor v. André Ntagerura*, Decision on Motion to Appeal the President’s Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008, Case No. ICTR-99-46-A28,

countries. Past invitations from African countries have been turned down by the acquitted persons themselves. Seventy-five-year old Justin Mugenzi, a former Minister of Trade and Industry, considered going to an African country to be akin to a deportation or a form of imprisonment: ‘How do you expect me to start life? Are you going to give me a hoe and a machete and send me to the forest of Ivory Coast?’⁴⁰ Since the acquitted individuals lack travel documents, they cannot move around freely. Only a few states accept asylum requests via their embassies.⁴¹ Even those countries can exclude them from refugee protection on the basis of Article 1(f) of the Refugee Convention when there are ‘serious reasons for considering’ that someone has committed serious crimes, war crimes, crimes against humanity and genocide.⁴² The ‘serious reasons’ threshold in refugee law is much lower than the ‘beyond reasonable doubt’ threshold in criminal law, which explains why acquitted individuals may still be excluded from refugee protection even after acquittal by an ICT.⁴³

The acquitted persons sometimes request family reunification instead. This strategy, however, has not always proven to be effective.⁴⁴ The French Embassy in Tanzania, for example, refused to grant a visa to Gratien Kabiligi when he wanted to visit his family in 2010. The French Minister of Foreign Affairs denied him a visa since, ‘M. Kabiligi’s presence in France would reinforce Rwandan authorities’ concern that France hosts “alleged *génocidaires*” and “Hutu power” members’, which would affect diplomatic relations with Rwanda and threaten the public order.⁴⁵ An ICTR official noted that another reason for France’s reluctance was that it felt it had already done its ‘duty’ by accepting one of the acquitted Rwandans.⁴⁶ In more diplomatic language, this was confirmed during a 2013 UN Security Council meeting, where the French representative pointed out that his country ‘had been one of the first to accept acquitted persons’ and that he hoped ‘other States would follow suit’.⁴⁷ The acquitted persons who eventually manage to find a host country will

A.Ch., 18 November 2008, at 6, para. 15, available at www.unmict.org/sites/default/files/acclrt/full-text-dec/2008/Ntagerura%20Decision%202008%20Relocation.pdf (accessed 7 November 2016)

⁴⁰ See the documentary by D. Alamouti, ‘No man’s land’ (Trailer), 6:50–7:10, available at vimeo.com/96845902 (accessed 17 June 2015).

⁴¹ See Heller, *supra* note 32, at 669–71.

⁴² Art. 1(f) of the 1951 Convention relating to the Status of Refugees, 189 UNTS 150.

⁴³ A 2011 expert meeting concluded that an ICTR indictment can no longer be relied upon to exclude a person who is acquitted on substantive grounds, but states have not acted in accordance with this conclusion. Given the fact that many of the acquitted persons occupied high-ranking positions and could, in theory, be indicted for a much broader array of crimes, the scope of their alleged criminal activities can often be considered as going beyond crimes they were acquitted of by the ICTs. See UN High Commissioner for Refugees (UNHCR), Expert Meeting on Complementarities between International Refugee Law, International Criminal Law and International Human Rights Law: Summary Conclusions, (2011), at 7, para. 41, available at www.refworld.org/docid/4e1729d52.html (accessed 15 April 2015).

⁴⁴ Memorandum, *supra* note 35.

⁴⁵ ‘ICTR/France - Gratien Kabiligi Should be Granted a French Visa’, *Hirondelle News Agency*, 9 June 2011, available at www.hirondellenews.com/ictr-rwanda/406-collaboration-with-states/collaboration-with-states-france/25211-en-en-090611-ictrfrance-gratien-kabiligi-should-be-granted-a-french-visa1426214262 (accessed 15 April 2015).

⁴⁶ Representative ICTR (E2), Zeeuw, *supra* note 5, at 16.

⁴⁷ UN Meetings Coverage and Press Releases SC11/031, UN Security Council meeting No. 6977, ‘Hague Branch of Global Mechanism to Assume Former Yugoslavia Tribunal Functions, Security Council Told’, (2013), available at www.un.org/press/en/2013/sc11031.doc.htm (accessed 7 November 2016).

often have spent years in the safe house before reuniting with family members because of lengthy legal procedures or diplomatic negotiations.⁴⁸

The ICTR had a duty to ensure the welfare of acquitted persons until their relocation⁴⁹ – a job which the Registry was taking seriously.⁵⁰ It rented a villa-like, two-storey building just outside Arusha, which the acquitted persons shared with ICTR convicts who could not – much for the same reasons as the acquitted persons – find a host country after having served their sentence.⁵¹ The house is fenced and two armed guards patrol the place.⁵² According to a representative of the Registry, the ICTR also provided the safe house residents with everything that is ‘needed and considered reasonable’.⁵³

In practice this means that the acquitted persons are provided with food, medical care, housing, and two staff members who act as cooks and cleaners. The safe house residents have Internet access, phones and phone credit, a television, access to language classes and the ICTR library. There is one driver and a car available for all of them. On occasion, the ICTR subsidized travel costs to Dar Es Salaam to visit embassies for visa applications.⁵⁴

At the same time, the acquitted men are also subject to many limitations. They have no right to work and cannot undertake studies.⁵⁵ As the Rwandan government has confiscated all their assets, they cannot afford legal representation to assist them in obtaining residence permits.⁵⁶ These men have no official status in Tanzania and consequently their freedom of movement is limited. As an ICTR official pointed out: ‘Their legal status is that they have no legal status.’⁵⁷ The only way in which the safe house residents can identify themselves is by showing their plastic ICTR identification cards, which they use for entering the ICTR library.

The question arises: why has Tanzania never attempted to deport the illegally residing acquitted persons to Rwanda? In their ‘SOS’ call to the UN, the acquitted persons themselves claim that the country is not safe to return to. Referring to street protests in reaction to their acquittals, criminal proceedings against political opponents, and plots to kill critics of the current regime, they fear mock trials or being targeted by victims or the Rwandan government.⁵⁸ At the same time, in 2011 the European Court of Human Rights (ECtHR) ruled that Sweden could extradite an alleged Rwandan *génocidaire* to be prosecuted in Rwanda. The Court held that there

⁴⁸ See, e.g., ‘ICTR/Belgium - Emmanuel Bagambiki May Achieve Family Reunion in Belgium’, *Hirondelle News Agency*, 1 July 2007, available at www.hirondellenews.com/ictr-rwanda/408-collaboration-with-states/collaboration-with-states-other-countries/20580-en-en-010707-ictrbelgium-emmanuel-bagambiki-may-achieve-family-reunion-in-belgium96319631 (accessed 15 April 2015).

⁴⁹ *Ntagerura*, *supra* note 39, at 6, paras. 14–15.

⁵⁰ R. Amoussouga, ‘The ICTR’s Challenges in the Relocation of Acquitted Persons, Released Prisoners and Protected Witnesses’, Roundtable on Cooperation between the International Criminal Tribunals and National Prosecuting Authorities, Arusha, 26–28 November 2008, at 8.

⁵¹ Van Wijk, *supra* note 32.

⁵² Zeeuw, *supra* note 5.

⁵³ Representative ICTR (E2), Zeeuw, *supra* note 5, at 18.

⁵⁴ *Ibid.*, at 18.

⁵⁵ Memorandum, *supra* note 35, at 39.

⁵⁶ Zeeuw, *supra* note 5, at 14.

⁵⁷ Representative ICTR (E2), Zeeuw, *supra* note 5, at 19.

⁵⁸ Memorandum, *supra* note 35.

was no reason to fear persecution or 'a flagrant denial of justice'.⁵⁹ Over recent years, Canada and a number of European countries have extradited alleged *génocidaires* to Rwanda and the ICTR also transferred a number of cases to Rwandan authorities.⁶⁰

Given these extraditions and case referrals of suspected *génocidaires* to Rwanda, it might be difficult for acquitted persons to uphold the claim that returning to Rwanda is not safe. Arguably, European states require more safeguards before extraditing Rwandan suspects to stand trial in Rwanda than would the Tanzanian government if it were to decide to deport the acquitted Rwandans. While European states can only deport or extradite an individual if this does not violate Article 3 of the European Convention for Human Rights (ECHR) (prohibition of torture, inhumane or degrading treatment) and, in exceptional circumstances, Article 6 of the ECHR (in case of a flagrant denial of a fair trial),⁶¹ Tanzania would be less constrained. Coupled with the fact that in April 2014 the Rwandan Minister of Justice invited the acquitted individuals to come back in the framework of the 'come and see' program, it may become even more difficult for the acquitted to claim that they are unable to return.⁶²

While Tanzania has, so far, not publicly shared any plans to deport the ICTR acquitted to their country of origin, the Netherlands – the host state of the ICC – has taken a more proactive approach in dealing with the individuals acquitted by the ICC. In December 2012, the ICC for the first time acquitted a defendant, the former militia leader Mathieu Ngudjolo Chui.⁶³ Immediately after his release, Ngudjolo requested asylum in the Netherlands.⁶⁴ Because he had made compromising state-

⁵⁹ *Ahorugeze v. Sweden*, Application No. 37075/09, Judgment of 27 October 2011, ECHR, paras. 113–29.

⁶⁰ Three ICTR cases of Jean-Bosco Uwinkindi (ICTR-01-75), Bernard Munyagishari (ICTR-05-89) and Ladislas Ntaganzwa (ICTR-96-9) and five fugitive cases were transferred to Rwanda. On 31 December 2015 Uwinkindi was sentenced to life imprisonment by the High Court in Kigali acting as a first instance court. The proceedings against Munyagishari and Ntaganzwa are ongoing and monitored for adherence to fair trial standards by MICT monitors. For discussion on extradition, see also M.P. Bolhuis, L. Middelkoop, and J. van Wijk, 'Refugee Exclusion and Extradition in the Netherlands: Rwanda as Precedent?' (2014) 12(5) JICJ 1115. It should, however, be mentioned that recently the tide of successful extradition requests by Rwanda has started turning as a Dutch court rejected extradition to Rwanda mainly due to the fact that the accused would arguably not receive an effective defence. See *The Government of the Republic of Rwanda v. Jean-Baptiste Mugimba and Jean-Claude Iyamuremye*, Rechtbank Den Haag [27 November 2015] C/09/494083 / KG ZA 15/1205. A similar decision was reached by the Westminster Magistrates Court in the UK in December 2015. See *The Government of the Republic of Rwanda v. Vincent Brown (aka Vincent Bajinya), Charles Munyaneza, Emmanuel Nteziryayo, Celestin Ugirashobuja and Celestin Mutabaruka*, Westminster Magistrates Court, 22 December 2015. Concerns over effective defence were periodically raised with regard to cases transferred from the ICTR. In the course of the proceedings, Munyagishari filed three requests with the MICT to revoke an order to transfer the case to Rwanda noting, in particular, problems with having his defence funded. In the decision dismissing the request, President Meron expressed his concern with 'the long delay in concluding an agreement on remuneration of Mr. Munyagishari's counsel' and noted that 'should such a delay continue for a significant period, it could give rise to fair trial concerns'. See *Prosecutor v. Bernard Munyagishari*, Decision on Third Request for Revocation of an Order Referring a Case to the Republic of Rwanda, Case No. MICT-12-20, The President of the Mechanism, 8 April 2015, at 4.

⁶¹ *Soering v. United Kingdom*, Application No. 14038/88, Judgment of 7 July 1989, paras. 88, 113.

⁶² 'Response of the ICTR acquitted persons and persons released after serving their sentences to a suggestion to return to Rwanda made by the ICTR Registrar during a meeting at the ICTR Headquarters on 17 April 2014', Letter by the ICTR acquitted persons and the ICTR persons released after serving their sentence, Arusha, 30 April 2014 (on file with the authors).

⁶³ See *Ngudjolo Chui* case, *supra* note 4.

⁶⁴ J. Easterday, 'Ngudjolo Released from Dutch Immigration Detention', *International Justice Monitor*, 5 June 2013, available at www.katangatrial.org/2013/06/ngudjolo-released-from-dutch-immigration-detention/ (accessed 15 April 2015).

ments about the President of the Democratic Republic of Congo (DRC), Joseph Kabila, he feared persecution upon return to the country. After Ngudjolo spent more than four months in an immigration detention centre, a Dutch court ruled that he was to be released and awarded him €2,160 in compensation for unlawful immigration detention.⁶⁵ However, in July 2013 the Dutch immigration authorities (*Immigratie-en naturalisatiedienst*, IND) excluded Ngudjolo from refugee protection on the basis of Article 1(f) of the Refugee Convention. In October 2014 the Council of State upheld this decision and held that Ngudjolo's deportation to the DRC would not violate Articles 3 and 6 of the ECHR.⁶⁶ During his appeal proceedings at the ICC, Ngudjolo stayed in a hotel in The Hague, where, according to his lawyer, he spent 'his days reading, praying, watching TV and following the news'.⁶⁷ In February 2015, the ICC Appeals Chamber confirmed the acquittal.⁶⁸ Thereafter, Ngudjolo unsuccessfully asked for a humanitarian visa to Switzerland and was expelled to the DRC in May 2015, where he has reportedly been living since in the capital Kinshasa.⁶⁹

The above discussion illustrates how the unique institutional context in which international criminal trials take place, as well as the unique nature of the alleged crimes and related political challenges can seriously complicate the reintegration process for acquitted persons. The vast majority of individuals tried by ICTs are detained during trial in a country in which the respective court is located. After an acquittal, returning to the country of origin may not be an option as long as it is ruled by their former adversaries with a questionable human rights track record. The serious nature of the alleged crimes allows third countries' governments to exclude them from refugee protection on the basis of Article 1(f) of the Refugee Convention. In addition, having been accused of committing international crimes in itself carries a stigma. The widely publicized international trials and at times the continuous negative propaganda⁷⁰ make the acquitted persons notorious individuals (allegedly) involved in gross human rights violations. Governments of third countries are hesitant to openly host such individuals. This would arguably not win votes from their electorates and could potentially worsen the relationship with the country of origin of the acquitted persons and cause negative reactions from the locally-based victims' groups. Although not found guilty, many persons acquitted by the ICTs can, as a consequence, be considered as 'international pariahs'.

⁶⁵ Rechtbank Den Haag [15 August 2014] ECLI:NL:RBDHA:2014:10289.

⁶⁶ Raad van State, 201405219/1/VI, 15 October 2014. See also Den Haag, zittingsplaats Amsterdam, 13/16949, 28 May 2014.

⁶⁷ T. Lingsma, 'Acquitted by the ICC, but Still Not Free', (2014) 156 *International Justice Tribune* 4.

⁶⁸ *Prosecutor v. Mathieu Ngudjolo Chui*, Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled 'Judgment pursuant to article 74 of the Statute', ICC-01/04-02/12, A Ch., 27 February 2015.

⁶⁹ B. Dürr, 'Q&A: Life Locked up at the International Criminal Court', *Al Jazeera*, 8 June 2015, available at www.aljazeera.com/indepth/features/2015/06/qa-life-locked-international-criminal-court-150608063005458.html (accessed 2 May 2016).

⁷⁰ For example, Gratién Kabiligi claims to be the subject of allegations and defamatory claims by the newspaper *News of Rwanda*, which has strong links to Rwandan government. This arguably undermines his already slim chances of finding a host country. See M. Kersten, 'Acquitted by Law, Prosecuted by Propaganda', *Justice in Conflict* blog, 31 March 2014, available at justiceinconflict.org/2014/03/31/acquitted-by-law-prosecuted-by-propaganda/ (accessed 15 April 2015).

4. SUBSEQUENT PROSECUTIONS

The impossibility of finding a country of residence is not the only challenge that the acquitted individuals may face. They may also experience, or be threatened with, subsequent prosecution for offences allegedly committed in the same period and territory over which the ICTs have jurisdiction. For example, after his acquittal by the ICTR, in 2007 the Court of First Instance of Rusizi tried *in absentia* the Rwandan former *préfète* Emmanuel Bagambiki and convicted him of rape during the genocide.⁷¹ Similarly, the persons acquitted by the ICTY have been indicted in the former adversary countries. For example, Croatia issued a request to extradite Miroslav Radić from Serbia,⁷² while Serbia asked Bosnia to extradite Naser Orić,⁷³ which also led to his recent arrest by Switzerland.⁷⁴ Orić was, in the end, extradited to Bosnia, where in September 2015 the State Court confirmed an indictment against him for war crimes against prisoners of war allegedly committed in the Srebrenica area in 1992.⁷⁵ Although the criminal investigation against Fatmir Limaj publicly announced by Serbia's War Crimes Prosecutor⁷⁶ never resulted in an extradition request, he was arrested pursuant to an order by the District Court of Pristina, operating under the European Union Rule of Law (EULEX) Mission in 2011.⁷⁷ Similarly, Kosovar Ramush Haradinaj, who had been tried, acquitted, retried, and again acquitted by the ICTY,⁷⁸ was in June 2015 arrested by Slovenian authorities acting upon a Serbian arrest warrant issued for war crimes during the 1998–99 Kosovo conflict. A few days after his arrest, Haradinaj was released because, according to the Slovenian

⁷¹ In 2008 Rwanda issued an extradition request, which as far as we know has not been executed. See 'Belgium investigates acquitted ex-Rwandan governor Bagambiki', *Hirondelle News Agency*, 3 June 2008, available at www.hirondellenews.com/ict-rwanda/352-acquittals/bagambiki-emmanuel/21992-en-en-030608-belgiumrwanda-belgium-investigates-acquitted-ex-rwandan-governor-bagambiki1104311043 (accessed 15 April 2015).

⁷² 'Croatia Charges Serb Whom UN Court Freed', *Agence France Presse*, 27 November 2007, available at listserv.buffalo.edu/cgi-bin/wa?A2=JUSTWATCH-L;53aa9fb9.0711 (accessed 15 April 2015).

⁷³ M. Ristić and D. Džidić, 'Serbia Probes Bosnian Army Commander Naser Orić', *Balkan Insight*, 29 January 2014, available at www.balkaninsight.com/en/article/serbia-investigates-bosniak-commander-naser-oric (accessed 15 April 2015).

⁷⁴ Justice Report, 'Bosnian Army Wartime Commander Naser Oric Arrested', *Balkan Insight*, 10 June 2015, available at www.balkaninsight.com/en/article/bosnian-army-wartime-commander-naser-oric-arrested?utm_source=feedburner&utm_medium=twitter&utm_campaign=Feed%3A+LatestHeadlinesFromBosniaAndHerzegovina+%28Bosnia+and+Herzegovina%3A+Latest+Headlines%29 (accessed 15 June 2015).

⁷⁵ See The Court of Bosnia and Herzegovina, 'S1 I K 014977 15 Kri- Naser Orić and others', available at www.sudbih.gov.ba/predmet/3473/show (accessed 2 May 2016).

⁷⁶ 'Fatmir Limaj', *Trial International*, available at trialinternational.org/latest-post/fatmir-limaj/ (accessed 22 November 2016).

⁷⁷ In May 2012 the EULEX Court acquitted Fatmir Limaj on all charges. This verdict was annulled by Kosovo's Supreme Court in November 2012, while the retrial, again, resulted in an acquittal in September 2013. See 'Defendants in Klecka Case Acquitted', *EULEX Press Release*, 17 September 2013, available at www.eulex-kosovo.eu/en/pressreleases/0485.php (accessed 15 April 2015).

⁷⁸ *Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Bramihaj*, Judgement, Case No. IT-04-84bis-T, T.Ch. II, 29 November 2012.

Minister of Foreign Affairs, 'all the charges in the arrest warrant have been addressed by the Hague Tribunal'.⁷⁹ With the recent establishment of a specialized court to prosecute Kosovar war criminals, however, it is not excluded that Haradinaj and possibly also other Kosovars acquitted at the ICTY will face subsequent prosecutions.⁸⁰ Finally, Ngudjolo Chui, who was acquitted by the ICC, also has reasons to fear new prosecution in the DRC. He claimed that a Congolese non-governmental organization had asked the DRC prosecutor to start a case against him.⁸¹ His fears are even more understandable if one takes into account that before he was transferred to The Hague, Ngudjolo had already been prosecuted by a Congolese court in 2004 for murder allegedly committed during the Congolese conflict.⁸² In addition, his former co-accused, Germain Katanga, who was convicted by the ICC and meanwhile completed his sentence, was ultimately not released from prison in Congo, where he was serving his ICC sentence. The Congolese authorities charged him with a number of offences, not adjudicated at the ICC, allegedly committed between 2002 and 2006.⁸³

Given all the above, it is not surprising that the Arusha safe house residents have expressed fears of facing future prosecutions in Rwanda. Former Rwandan businessman Protais Zigiranyirazo must remember the statement by Rwanda's Prosecutor General in reaction to his acquittal: 'Whatever procedural mistakes were made, the verdict is deeply disappointing. If "Monsieur Z" could be found innocent, how is anyone going to be found guilty? This decision attacks the very roots of trying to find justice for the genocide'.⁸⁴ Similarly, in reaction to the acquittal of Bagambiki and Ntagerura, Rwandan Prosecutor General Jean de Dieu Mucyo made clear that he still believed them to be guilty: 'There was clear evidence that the two were among the leaders of the genocide and that many people are dead because of their actions'.⁸⁵

This demonstrates that an ICT acquittal does not free someone from (the fear of) further prosecution. From a strictly legal perspective, such follow-up prosecutions often do not violate the 'double jeopardy' or *ne bis in idem* principle, which holds that no one shall be tried or punished again for an offence for which they have already

⁷⁹ U. Hajdari, 'Slovenia "Will Not Extradite" Kosovo Ex-PM to Serbia', *Balkan Insight*, 19 June 2015, available at www.balkaninsight.com/en/article/haradinaj-will-not-be-extradited-to-serbia-says-slovenian-minister (accessed 2 May 2016).

⁸⁰ Law No. 05/L053 on Specialist Chambers and Specialist Prosecutor's Office, Assembly of Republic of Kosovo, adopted on 3 August 2015, available at www.kuvendikosoves.org/common/docs/ligjet/05-L-053%20a.pdf (accessed 2 May 2016). See also 'Statement on the adoption of the constitutional amendments and the law by the Kosovo Assembly by Mr. David Schwendiman, Lead Prosecutor of the Special Investigative Task Force (SITF)', *Special Investigative Task Force*, 4 August 2015, available at sitf.eu/index.php/en/press-1/49-statement-on-kosovo-assembly-approval-vote (accessed 14 December 2015).

⁸¹ Raad van State, *supra* note 66, para. 4.1.

⁸² *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Evidence and Information Provided by the Prosecution for the Issuance of a Warrant Arrest for Mathieu Ngudjolo Chui, ICC-01/04-01/07-262, T.Ch. II, 6 July 2007, para.18. This case too, resulted in an acquittal.

⁸³ *Prosecutor v. Germain Katanga*, Decision pursuant to Article 108(1) of the Rome Statute, ICC-01/04-01/07, The Presidency, 7 April 2016, para. 4.

⁸⁴ D. Smith, 'Rwanda Genocide Conviction Quashed Leaving Monsieur Z free', *The Guardian*, 16 November 2009, available at www.theguardian.com/world/2009/nov/16/rwanda-genocide-conviction-quashed (accessed 15 April 2015).

⁸⁵ 'La Ville des acquittés du TPIR reste divisée', *Hirondelle*, 10 February 2006, cited in Human Rights Watch 'Law and Reality; Progress in Judicial Reform in Rwanda' (2008) at 71.

been convicted or acquitted.⁸⁶ *Ne bis in idem* is a concept based on fairness to the accused and a desire for finality in criminal cases.⁸⁷ In the international criminal justice system, where international and domestic criminal courts are working side by side prosecuting international crimes, the so-called ‘downward vertical effects’ of the principle, i.e., the possibility for domestic prosecution to take place *after* a final decision by an ICT, are of particular interest.⁸⁸ According to Carter, domestic prosecution for the same crime and the same underlying conduct is possible only and exclusively on the basis of new evidence.⁸⁹ In practice, it is not inconceivable that domestic prosecutors can identify new evidence related to the same conduct. Compared to their international counterparts, they are usually better equipped, in terms of institutional capacity, to obtain co-operation from their own state authorities and to gain access to potential new incriminating evidence. In addition, subsequent domestic prosecutions may relate to other incidents of international crimes committed during the same conflict or persecutory campaign than those prosecuted at the ICTs. Limited jurisdiction, limited resources, and the sheer scale of atrocities often do not allow ICT prosecutors to charge the entirety of the possible criminal behaviour. For that reason, and in order to secure ‘successful’ prosecutions, they often purposefully limit the temporal and spatial scope of their investigations. Ngudjolo’s case, in particular, is illustrative in this regard. The prosecutor charged him with crimes committed during a single incident on a single day: the attack on the village of Bogoro on 24 February 2003.⁹⁰ During his trial, no interest was taken in any other instances on which Ngudjolo may have committed crimes in the course of the extremely brutal and long civil war in the DRC. Taking this into account, it is quite understandable if a domestic prosecutor starts a criminal case based on relevant information about Ngudjolo’s alleged involvement in atrocities taking place days, weeks, months, or years before or after 24 February 2003.⁹¹ This is exactly what happened in the case of Naser Orić. Following his acquittal at the ICTY, which was based on a limited number of incidents charged in the ICTY indictment, his lawyers attempted to halt the prosecution of their client at the State Court in Sarajevo. They asked the MICT to order the Bosnian authorities to permanently discontinue the proceedings for being in breach of the *ne bis in idem* principle.⁹² The

⁸⁶ See Art. 14(7) 1966 International Covenant on Civil and Political Rights, 999 UNTS 171 (ICCPR): ‘No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.’

⁸⁷ L.E. Carter, ‘Complementarity and the International Criminal Court: The Role of *Ne Bis in Idem*’, (2010) 8(1) *Santa Clara Journal of International Law* 165, at 169.

⁸⁸ *Ibid.*, at 165, 172.

⁸⁹ *Ibid.*, at 180–4.

⁹⁰ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Confirmation of Charges, ICC-01/04-01/07, PTC I, 30 September 2008.

⁹¹ As noted above, in April 2016 the ICC ruled favourably on a request by the DRC pursuant to Art. 108(1) of the ICC Statute to approve prosecution of his former co-defendant Mr. Katanga. The ICC judges reiterated that subsequent domestic prosecutions will, in essence, be approved by the Court, unless fundamental principles or procedures of the Rome Statute, such as *ne bis in idem*, are undermined or the integrity of the Court is otherwise affected. The Congolese authorities reassured the Court that new charges relate ‘to crimes other than those for which he has been convicted and acquitted by the Court’ and do not include the Bogoro attack committed on 24 February 2003. See *Katanga*, *supra* note 83, paras. 20–5.

⁹² *Prosecutor v. Naser Orić*, Decision on Second Motion Regarding a Breach of Non Bis In Idem, MICT-14-79, Single Judge Decision of Judge Liu Daqun, 10 December 2015, para. 4.

MICT president dismissed the motion arguing that ‘the murder charges in the BiH Indictment fundamentally differ from the murder charges contained in the ICTY Indictment with respect to the alleged victims and the nature, time, and location of Orić’s alleged criminal conduct’.⁹³ The defence argued for a broader interpretation of the *ne bis in idem* principle so that the principle be expanded to, ‘situations where the acts alleged form part of the same alleged course of conduct’, or the ‘same military activities’.⁹⁴ The broader interpretation of the *ne bis in idem* principle was rejected and the subsequent domestic prosecutions were given a green light.

Following a strictly legal line of reasoning, one could argue that as long as fundamental legal principles relating to fairness, presumption of innocence, and *ne bis in idem* are taken into account, successive prosecutions of suspected war criminals or *génocidaires* are not problematic and even desirable. Given the heinous nature of the crimes committed and the importance of fighting against impunity, the international community and domestic states should try to take every necessary step to hold alleged perpetrators accountable. At the same time, however, the situation raises some thorny political and normative issues. Under the current system of international criminal justice, it is perfectly possible that every ICT acquittal (or conviction, for that matter) is directly followed by an investigation and/or an extradition request from a domestic prosecutor who fervently wishes to ‘complement’ the job of an ICT prosecutor. This is, in particular, problematic if domestic war crimes prosecutors use their position and resources for politically motivated prosecutions of individuals who have already been acquitted by ICTs, as a means to ‘settle accounts’ with their former adversaries. It is certainly very difficult to ascertain whether the issuance of an indictment is politically motivated. The fact of the matter, however, remains that war crimes indictments, prosecutions, trials and verdicts are regularly discussed and often knowingly misinterpreted by local politicians to serve their political agendas. For example, when Bosnian war hero Naser Orić was acquitted by the ICTY, thousands of fans received him at Sarajevo Airport.⁹⁵ However, Serbia’s National Council for Cooperation with the ICTY issued a statement that the verdict ‘cannot contribute to either achieving justice and truth or to regional reconciliation’.⁹⁶ Serbia’s War Prosecutor’s arrest warrant, which followed in 2014, caused significant tension in the already-uneasy relationship between Serbia and Bosnia. While Orić argued that the Serbs, ‘hope to find a way to balance the crimes committed in 1992–1995’, Bosnian President Izetbegović added that Serbia, ‘should reconsider its actions towards Bosnian citizens’ if it, ‘hopes to become an EU member’.⁹⁷ The fact that Serbia and Bosnia did not have an extradition agreement

⁹³ Ibid., para. 9.

⁹⁴ Ibid. para. 10. Similarly, in *Katanga*, *supra* note 83, para. 21, the defence advocated for a broader interpretation of the scope of the *ne bis in idem* principle by arguing that subsequent prosecutions can be allowed only with respect to ‘offences, which did not fall within the temporal and geographical ambit of the ICC investigation’.

⁹⁵ O. Šimić, ‘Bringing “Justice” Home? Bosnians, War Criminals and the Interaction between the Cosmopolitan and the Local’, (2011) 12(7) *German Law Journal* 1388, at 1392.

⁹⁶ Ristić and Džidić, *supra* note 73.

⁹⁷ ‘Serbia to prosecute Bosnian war hero Naser Orić’, *World Bulletin*, 31 January 2014, available at www.worldbulletin.net/news/127979/serbia-to-prosecute-bosnian-war-hero-naser-oric (accessed 15 April 2015).

for international crimes⁹⁸ may only strengthen the perception of the arrest warrant as a politically motivated move by the Serbian prosecutor to ‘make things even’ among the former warring parties, in particular considering that the population in Serbia typically sees the ICTY as a court biased against Serbs.⁹⁹ The fact that the recent indictment against Orić, confirmed at the State Court in Sarajevo, ignited opposing emotions from among the former warring parties is further evidence of the problematic context in which war crimes prosecutions by domestic courts take place.¹⁰⁰ The large-scale character of international crimes, combined with an often very restricted focus of international prosecutors on a limited number of incidents, might theoretically result in a never-ending cycle of prosecutions. Given the volatile, politically and emotionally charged environment in many post-conflict societies, such prosecutions in the name of fighting impunity and achieving justice might, in practice, serve as a cloak to pursue other, less noble, aims. If politically motivated, the subsequent prosecutions might arguably bring more harm than good and further fuel the already existing tensions among the former adversaries.

5. COMPENSATION

Individuals acquitted by the ICTs often spend extremely long periods in detention during the pre-trial and trial stages. The average time spent in detention at the ICTs (i.e., time between the transfer to a Tribunal and the release of a defendant from Tribunal custody) is six and a half years (78 months).¹⁰¹ During this period, the defendants are subject to the stress of criminal proceedings, cannot work, and have limited contact with their family members. As Sznadger argues, ‘those defendants that are not ultimately convicted pay a high price for the Tribunal’s detention policy during trial’.¹⁰² For these reasons, some of the acquitted persons feel that they deserve some form of compensation. As one of the Rwandan acquitted persons living in the Arusha safe house stated:

How much do you compensate a person you deprived of his freedom for fourteen years, you cut off from his family life, you prevented to educate his children? How much do you compensate for personality assassination when you call me a *génocidaire* without

⁹⁸ Ristić and Džidić, *supra* note 73.

⁹⁹ See ‘Public Opinion Poll: Attitudes towards War Crimes Issues, ICTY and the National Judiciary’, *OSCE, Beogradski Centar za Ljudska Prava*, October 2011, at 16.

¹⁰⁰ Cf. D. Džidić, ‘Srebrenica Commander Naser Orić Charged with War Crimes’, *Balkan Insight*, 27 August 2015, available at www.balkaninsight.com/en/article/srebrenica-commander-oric-charged-with-war-crimes-08-27-2015 (accessed 3 May 2016); D. Džidić, ‘Bosnian Serb Leader Slams Naser Orić Indictment’, *Balkan Insight*, 31 August 2015, available at www.balkaninsight.com/en/article/bosnian-serb-president-criticizes-naser-oric-s-indictment-08-31-2015 (accessed 3 May 2016); or D. Džidić, ‘Naser Orić Indictment Wins No Applause in Bosnia’, *Balkan Insight*, 4 September 2015, available at www.balkaninsight.com/en/article/naser-oric-charges-win-no-applause-in-bosnia-09-03-2015 (accessed 3 May 2016).

¹⁰¹ According to our estimate, at the ICTY, the average time spent in detention is almost five years (59 months) (minimum: 27 months, maximum: 104 months); at the ICTR, the period in custody doubles and amounts to almost ten years (117 months) (minimum: 31 months, maximum: 165 months). Ngudjolo, the only person acquitted by the ICC so far, spent around five years (58 months) in detention. The data are on file with authors.

¹⁰² R. Sznadger, ‘Provisional Release at the ICTY: Rights of the Accused and the Debate that Amended a Rule’, (2013) 11(3) *Northwestern Journal of International Human Rights* 109, at 121

any ground, how much do you compensate for making me bear the responsibility of organizing genocide by convicting me wrongly to a heavy punishment of . . . years in jail?¹⁰³

A number of scholars have already examined the implications of the right to compensation at the *ad hoc* tribunals.¹⁰⁴ They all conclude that while many countries accept that acquitted individuals should generally be compensated for the deprivation of liberty and economic loss suffered as a direct result of the proceedings against them, no such right is provided for in the ICTs' Statutes or Rules of Procedure and Evidence (RPE).¹⁰⁵ The only exception is Article 85(3) of the Rome Statute, which is unprecedented in international criminal law and international human rights law,¹⁰⁶ in that it provides for a right to compensation for the acquitted accused. According to the ICC Statute, however, the compensation award still remains a discretionary decision, insofar as Article 85(3) does not stipulate an enforceable right for compensation for an acquitted individual. The language of the provision suggests that under normal circumstances no compensation will be paid to acquitted persons. It is only in exceptional circumstances, where there has been 'a grave and manifest' miscarriage of justice, that the ICC judges might decide to award compensation. The rejection of Ngudjolo's compensation request based on Article 85(3) points to the likelihood that the ICC judges will use a very high threshold as part of the 'grave and manifest miscarriage of justice' test for awarding compensation.¹⁰⁷

The lack of formal compensation schemes at the ICTY and ICTR has not prevented acquitted persons from trying to obtain compensation at the tribunals or elsewhere. In 2001, the former Bosnian army commander Zejnir Delalić requested that the ICTY compensate him for the defence expenses he incurred, while Zoran and Mirjan Kupreškić unsuccessfully demanded compensation for the mental and physical harm they suffered while in detention, financial losses (specifically, loss of earnings, reduced possibility of career advancement, and costs associated with travel by their family to The Hague), and for the damage to their reputations as a result of detention.¹⁰⁸ In 2012, the ICTR turned down a compensation claim by Protais

¹⁰³ Acquitted individual (R1), Zeeuw, *supra* note 5, at 21.

¹⁰⁴ See, e.g., Michels, *supra* note 27, 407–24; D. Naymark, 'Violations of Rights of the Accused at International Criminal Tribunals: The Problem of Remedy', (2008) 4(2) *Journal of International Law and International Relations* 1; W.A. Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (2006) 537–9; S. Beresford, 'Redressing the Wrongs of the International Justice System: Compensating for Persons Erroneously Detained, Prosecuted, or Convicted by the Ad Hoc Tribunals', (2002) 96(3) *American Journal of International Law* 628.

¹⁰⁵ In 2000, the presidents of the ICTY and ICTR asked the UN Security Council to consider amending the Statutes to enable the Tribunals to award compensation, but this proposal was never followed up on. Schabas, *ibid.*, at 537 in footnote 186.

¹⁰⁶ W. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2010) 968.

¹⁰⁷ Trial Chamber II of the ICC declined Ngudjolo's request for compensation arguing that, 'a grave and manifest miscarriage of justice' requires a clear violation of fundamental rights and must have caused a serious prejudice to the applicant: '*L'erreur doit avoir engendré une violation claire des droits fondamentaux du requérant et doit avoir causé un préjudice sérieux au requérant.*' See *Prosecutor v. Matthieu Ngudjolo Chui*, Décision sur la Requête en indemnisation en application des dispositions de l'article 85 (1) et (3) du Statut de Rome, ICC-01/04-02/12-301, T.Ch. II, 16 December 2015, para. 45.

¹⁰⁸ Beresford, *supra* note 104, at 644 in footnote 111.

Zigiranyirazo.¹⁰⁹ Despite the fact that the Trial Chamber acknowledged that the trial judgement contained grave errors of fact and law, the compensation was to be granted only in cases of grave and manifest miscarriage of justice. In making this conclusion, the Trial Chamber referred to Article 85(3) of the Rome Statute as reflecting customary international law. As grave miscarriage of justice was not demonstrated in Zigiranyirazo's case, the Chamber decided not to award him compensation, since this might 'open the floodgates to an unmanageable host of compensation claims'.¹¹⁰

With the ICTs providing no compensation at all, some ICTY acquitted persons submitted compensation claims to their own governments. In essence, their argument was that the compensation should be borne by their respective governments since trials at the ICTY had been enabled by their co-operation with the Tribunal. For example, Delalić claimed in 2004 to have sued the state of Bosnia and Herzegovina.¹¹¹ We were unable to find out whether this has led to any results. In 2010, a former Croatian Defence Council (HVO) member, Dragan Papić, who stayed for over two years in the ICTY detention after he voluntarily surrendered in 1997, publicly complained that ten years after the trial, he had not received any form of compensation from the Croatian government.¹¹² He explained how, in the interest of the new Croatian state, he voluntarily surrendered to the ICTY after an advisor of President Tuđman told him that Croatian co-operation with the ICTY would generate two loans of hundreds of millions of US dollars for Croatia. He was promised that the Croatian government would take care of him and his family members and he felt cheated that the government had not kept its word. His complaints, however, generated some action. A local politician organized a charity concert in the Split Arena of which the revenues of 10,000 Kunas (€1,250) went to Papić.¹¹³ Similarly, former Serbian army officer Miroslav Radić, who voluntarily surrendered to the ICTY in 2002 and spent more than four years in detention before being acquitted, has even more fervently tried to obtain compensation. In 2011 the Belgrade High Court rejected his 50 million Dinars (€400,000) claim.¹¹⁴

A convicted individual is, in a way, 'compensated' for the time spent in pre-trial and trial detention by reducing the sentence to be served by the period he/she has already spent in detention during trial,¹¹⁵ but the acquitted individuals do not have access to any sort of financial compensation. Similar to the challenges identified

¹⁰⁹ *Protais Zigiranyirazo v. Prosecutor*, Decision on Protais Zigiranyirazo's motion for damages, Case No. ICTR-2001-01-073, T. Ch. III, 18 June 2012. See also *Prosecutor v. Rwamakuba*, Decision on Appropriate Remedy, ICTR-98-44C-T, T.Ch. III, 31 January 2007, para. 28. Rwamakuba was, however, awarded compensation of US\$ 2,000 for the violation of his right to legal representation.

¹¹⁰ See *Protais Zigiranyirazo* case, *supra* note 109, para. 21.

¹¹¹ A. Pavlović, 'Srbi, ne predajte se!', *Novosti*, 8 December 2004, available at www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:164580-Srbi-ne-predajte-se (accessed 15 April 2015).

¹¹² J. Žarko, 'Dragan Papić: Pomozite mi ili ću i ja, kao Grgić, s bombama na cisternu', *Slobodna Dalmacija*, 13 November 2010, available at www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/121256/Default.aspx (accessed 15 April 2015); V. Urukalo, 'Dragan Papić: Sačić me otpremio u Haag, a danas je glavni buntovnik', *Slobodna Dalmacija*, 17 April 2011, available at www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/135287/Default.aspx (accessed 15 April 2015).

¹¹³ *Ibid.*

¹¹⁴ See G. Otašević, *supra* note 29; 'Serbia will not pay compensation to Radić', *Vaseljenska*, 5 December 2011, available at www.vaseljenska.com/drustvo/srbija-nece-platiti-odstetu-radicu/ (accessed 2 May 2016).

¹¹⁵ Michels, *supra* note 27, at 416.

above, the fact that persons acquitted by ICTs are detained for such lengthy periods and not compensated afterwards can be explained to a large extent by the special nature of the crimes and the context in which the trials take place. The complexity of the cases causes lengthy trials. In practice, a vast majority of defendants remain in detention during trial. Since ICTs have no police force of their own, they have no direct means to re-arrest individuals in case they are granted provisional release and do not want to voluntarily return to attend their trials.¹¹⁶ The reluctance of the ICTs to provide compensation might be explained not only by their inability to do so given the lack of any legal basis for compensation in their statutes, but also by other factors such as budgetary constraints and the criticism that the Tribunals are already too costly. The idea that, in the case of the ICTY and ICTR, the UN would have to ask its member states for additional funds to cater for any compensation claims is not realistic. In addition, lack of oversight by a human rights body, making the ICTs the ultimate arbiters on these matters, is arguably also one of the peculiarities of the international criminal justice system that explains the absence of any meaningful compensation schemes at the *ad hoc* Tribunals.

6. NO EASY SOLUTIONS

It has been argued that the international community, by creating institutions with the power to interfere with the human rights of individuals, has a positive obligation to help acquitted individuals in some respect.¹¹⁷ There are, however, no easy solutions to overcome the above-described challenges. When it comes to compensation, Michels shared a specific proposal in 2010 on how to compensate the individuals acquitted by the ICTY for the time spent in detention.¹¹⁸ Under this scheme, compensation would be awarded, in the interests of justice, to a person who has been released from detention following a final acquittal by the ICTY. In determining the amount of compensation, judges may consider the actions of the acquitted person that causally contributed to the length of detention, provided that it was reasonably foreseeable that their actions could lead to or prolong detention. In line with the amount awarded in the Netherlands in similar circumstances, Michels suggested compensation of €70 a day.¹¹⁹ He argued that the costs would be relatively low. A retroactively implemented scheme to compensate all individuals acquitted by the ICTY before 2010 would cost approximately 0.34 per cent of the ICTY's 2008–2009 budget.¹²⁰ That said, however, it should be taken into account that the individuals acquitted by the ICTR (and also by the ICC) typically spent much longer periods in detention. Granting compensation of €70 per day spent in detention would mean that persons who spent ten years in detention, which was not exceptional at the

¹¹⁶ *Ibid.*, at 421–2.

¹¹⁷ See, e.g., the discussion in response to Emma Irving's blog post. E. Irving, 'Guest Post: The End of the Road for Ngudjolo and the Stacked Odds Against ICC Acquitted', *Opinio Juris*, 15 May 2015, available at [opiniojuris.org/2015/05/15/guest-post-the-end-of-the-road-for-ngudjolo-and-the-stacked-odds-against-icc-acquitted/](https://www.opiniojuris.org/2015/05/15/guest-post-the-end-of-the-road-for-ngudjolo-and-the-stacked-odds-against-icc-acquitted/) (accessed 15 June 2015).

¹¹⁸ Michels, *supra* note 27, at 423.

¹¹⁹ *Ibid.*, at 423.

¹²⁰ *Ibid.*, at 424.

ICTR, would have to receive €255,000. Given the current concerns about the costs of international criminal trials, this is a very substantial amount. In addition, victim interest groups would most likely criticize such an amount as being disproportionately high. In order to come up with a just compensation scheme, the interests of the acquitted person, the interests of justice, as well as the pragmatic considerations of what is realistically possible and desirable should be taken into account.

In any case, it will be much more difficult to think of a system which promotes the relocation of non-returnable acquitted individuals. Translating political will into the provision of financial means for a compensation scheme is arguably much easier than opening one's border to acquitted defendants, who might be still regarded as war criminals or *génocidaires*, irrespective of the acquittals. In particular, providing the right of residence or asylum to former government officials or high-ranking generals cleared of international crimes charges, who may still be viewed as most responsible for the past atrocities in their country of origin, could damage diplomatic relations between that state and receiving countries. Minor improvements to the system might, however, improve the position of such individuals.

For example, ICTs could continue offering legal aid to the acquitted persons who face problems finding a host country, for the purpose of facilitating their efforts to obtain visa or residence permits. Secondly, similarly to sentence-enforcement agreements, states could be asked to sign 'acquittal agreements' expressing their commitment to hosting non-returnable acquitted individuals. In 2009 Xavier-Jean Keïta, Principal Counsel of the ICC's Office of Public Counsel for Defence, warned that the ICC should not be faced with the 'Rwandan syndrome'.¹²¹ At the most recent Assembly of States Parties in November 2015, the ICC Registry reported that it had drafted a framework agreement (similar to framework agreements governing the enforcement of sentences) that will be applicable to the relocation of individuals fully acquitted by the ICC, who are unable to return to their home country. The Registry invited states to consider the agreement and contact the ICC, if interested.¹²²

The problem of subsequent domestic prosecution could, theoretically, be alleviated if ICT prosecutors investigated and charged *all* of the possible crimes the accused may have committed. From a practical point of view, however, such an approach would hardly be feasible. The courts are already criticized for being too expensive and slow. Given the problematic political context, in which subsequent domestic prosecutions take place, it is even questionable whether such an approach would result in workable solutions in practice. The recent developments in the *Katanga* case illustrate that the issue of subsequent prosecutions is not limited to acquittals.¹²³ The possibility of endless prosecutions, or the threat thereof, may simply be inherent to any system of international criminal justice.

¹²¹ X.J. Keita, 'Safeguarding Defence Rights at the ICC', (2009) 3 *Equality of Arms Review* 16, at 17.

¹²² Report of the Bureau on Cooperation, ICC Assembly of State parties, ICC-ASP/14/26/Rev.1, Fourteenth Session, 17 November 2015, para. 20.

¹²³ See *Germain Katanga* case, *supra* note 83.

7. CONCLUSION

Whereas a conviction by an ICT confirms that atrocities have been committed and that a defendant is responsible, an acquittal sends a much more ambivalent message. It means that the court has *not* established beyond reasonable doubt that the accused is responsible for the crimes he has been charged with. However, this means neither that no crimes have been committed, *nor* that the acquitted person is necessarily innocent. While ICTY President Meron stated that acquittals show the health of the international criminal justice system, this article argues that the way in which the international community deals with, or rather neglects, acquitted individuals shows the chronic ailment of that very system.

Approximately one out of five accused before the ICTY, ICTR and the ICC has been found not guilty on all charges and has been set free. Whereas acquittals by national courts often bring some sort of closure and compensation schemes put in place serve to assist the acquitted defendants in resuming a normal life, defendants acquitted by the ICTs regularly encounter serious reintegration challenges. Some of the persons acquitted by the ICTY may benefit from their status as former defendants, but for a considerable number of persons acquitted by the ICTY and the ICTR the opposite is true. They continue to carry the stigma of having been tried by an ICT and often face problems with relocation after trial because of that. Given the large-scale character of international crimes and the typically limited focus of international prosecutions, they can, in principle, be confronted with new prosecutions anytime and anywhere, which may be instituted by regular or specialized domestic war crimes prosecutors. Due to the complexity of their cases and the gravity of crimes alleged, defendants have often spent very lengthy periods in detention with no way to acquire compensation for their economic and personal losses. In contrast to the *ad hoc* tribunals, the ICC Statute contains a provision on compensation in cases involving grave and manifest miscarriage of justice. However, given the narrow scope and the intended exceptionality of this provision, it remains to be seen how it will be applied in practice.

Consequently, taking all these challenges together, for many individuals being acquitted by an international criminal tribunal means winning a Pyrrhic victory. Individuals acquitted in domestic systems, who are prosecuted for crimes other than international crimes, may face similar problems. For example, in the case of organized crime prosecutions, acquitted individuals are often also confronted with subsequent investigations and trials. Individuals tried, and acquitted of, paedosexual acts typically also carry a stigma, which complicates reintegration. Likewise, many countries detain suspects for years before and during trials without providing them any compensation. However, this article suggests that the unique nature of international crimes, and the institutional context in which international criminal trials take place, make acquitted persons particularly susceptible to such predicaments. By definition, ICT acquittals mark the end of complex, often very lengthy, widely-broadcasted, and politically sensitive trials, in which defendants stand accused of committing the most heinous crimes known to mankind. The verdicts of not guilty issued by a remote court with little legitimacy among the local

community are bound to be heavily criticized by victim groups. One could argue that the post-acquittal challenges for the individuals concerned are not problematic in legal terms. As long as they operate in line with their national legislation and international legal standards, states are free to deny entry to the acquitted international defendants. Similarly, as long as this does not violate the *ne bis in idem* principle and other human rights standards and is in accordance with the applicable criminal law, domestic prosecutors are free to start subsequent prosecutions against them. In the absence of oversight by any human rights body, the ICTs are free to decide that long periods of pre-trial detention are acceptable without granting any compensation. That said, the combined effects of the actions of these different actors could lead to very questionable outcomes. In theory, it is possible that an accused who has never been convicted spends 20 or more years in detention without having been compensated, as a result of consecutive international and domestic prosecutions, after which (s)he ends up in a safe house for another ten years or more, without being able to work, enjoy family life or be politically active. It is another reminder that what is legally possible may not necessarily be just, fair, or even reasonable.