



# IARMJ report

The quarterly newsletter of the  
INTERNATIONAL ASSOCIATION OF REFUGEE AND MIGRATION JUDGES

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*The International Criminal Court, The Hague*

## **THE 13<sup>TH</sup> IARMJ WORLD CONFERENCE**

**“ENHANCING JUDICIAL ACUMEN IN INTERNATIONAL REFUGEE AND  
MIGRATION LAW: FROM THE COURTROOM TO THE PEOPLE”**

**The Hague  
The Netherlands  
8-12 May 2023**

## From the Editors,

We begin this newsletter with details of the 13<sup>th</sup> World Conference to be held in The Hague in May 2023, the first time we shall all have been together since the 12<sup>th</sup> World conference in Costa Rica in February 2020. So much has changed since that meeting, just two years ago.

IARMJ Members around the world have continued to grapple with the restrictions caused by the global Covid-19 pandemic, which is now in its third year. Virtual and hybrid meetings have become the norm, but there is finally hope that we may be able to see judicial colleagues in person, sooner rather than later, to continue the global conversation that we all value so much.



**Judith Gleeson**  
Co-Editor

Under '*Upcoming Events*', you will find details of regional chapter meetings to be held in 2022 in the four IARMJ Chapters: the Asia-Pacific Conference from 23-25 November 2022, and the upcoming European Chapter Berlin meeting from 12-14 June 2022. The Africa Chapter plans to meet in Tanzania from 21-25 November 2022, and further details will be included in our next Newsletter, as well as information about any meeting in the Americas, and the European Chapter's biennial meeting (currently planned to be in Odessa, though that may change).

Old and new conflicts around the world, climate change, poverty and disease continue to generate mass migrations and the protection of the Refugee Convention and regional instruments remains vital.

The pandemic has presented its own particular problems. The World Health Organization has identified a shadow pandemic of domestic abuse which will be a factor in protection applications made both during and after the pandemic. Due to the global closure of borders during the pandemic, many will have become overstayers, and there will be more children born into statelessness. Many governments have backlogs of applications for protection and hearings, due to the practical difficulties of having staff working from home or isolating, and other technical obstacles.

Following the Taliban coup on 15 August 2021, a huge effort by governments and civil society around the world succeeded in helping many of those at risk in Afghanistan to leave and remake their lives abroad. In particular, of the 270 women judges there before the coup, almost 200 have now left Afghanistan. Under '*Afghanistan 2021 – Judges in Peril*' you will find an account of the lived experiences of two of those judges, with grateful thanks to the Bolch Law Institute at Duke Law School, where an interview was first published.

The global conversation, training, and fellowship, which the IARMJ provides has never been more relevant. The World Conference in 2023 will be held in The Hague and all our IARMJ members will be very welcome, in person and virtually. Start planning now!

We look forward to meeting all of you again soon, somewhere on the planet; till then, keep safe and well.

*Judith Gleeson*  
Co-Editor

## HABARI KUTOKA NAIROBI

### Update from the President...

Greetings to you all,

May 2022 bring joy and good findings to you and your loved ones.

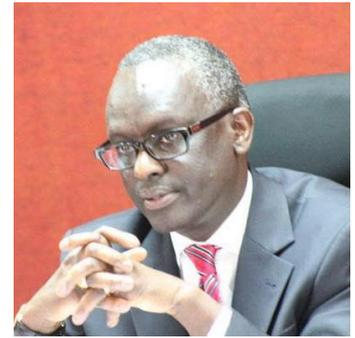
Despite the pandemic, 2021 was not a lost year and our Chapter reports show continued activity.

In March, I intend to visit The Hague, Netherlands, where we have resolved to hold our first Annual General meeting and World Conference since the San Jose, Costa Rica Conference. Together with immediate past President, Katelijne Declerck, Former President, Sebaastian de Groot, Treasurer, John Bouwman and Melany Cadogan of our Secretariat, we intend to visit the intended venue and selected hotels to ensure that they meet your expectations.

The Management Committee and the Local Organizing Committee have agreed that the Conference would be held in May, 2023 on the theme; *“Enhancing Judicial Acumen in International Refugee and Migration Law: from the court room to the People”*. We think that the theme will resonate with current refugee and migration conversations around the world. Any members with proposals for papers to be presented should please get in touch with Judge Martin Treadwell, our indefatigable Secretary at [Judge.treadwell@courts.govt.nz](mailto:Judge.treadwell@courts.govt.nz).

Meanwhile, I would like to welcome Sean Baker, senior member of AAT in Australia as the new Asia-Pacific Chapter President in place of Martin Treadwell. It would also be remiss of me not to thank Martin for his immense sacrifice and contribution to that Chapter as President since 2016.

Stay safe and best wishes.



**Justice Isaac Lenaola**  
**President**  
**IARMJ**

*Isaac Lenaola*

**President, IARMJ**

## NEWS FROM THE CHAPTERS

In each issue, we report on developments and issues affecting the four chapters of the IARMJ

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### AFRICA CHAPTER

It is the beginning of a new year. This provides us with an opportunity to reflect on the affairs of the Chapter. The ongoing Covid 19 pandemic continue to be with us and contributed to the ongoing slowing down of business on several fronts. This was the situation as well in the refugee processing front continentally. I'm not aware if any African state meaningfully opened their refugee processing facilities. This, even though the whole continent ended the year operating on the lowest restriction levels. We continue to watch this space, however. I can also report that the only major flare up that could have heightened refugee out flows was in Ethiopia and Tigray. I imagine the impact of these outflows were felt more by the countries neighbouring Ethiopia and Tigray.



**Justice Mlambo  
President,  
Africa Chapter**

#### Chapter activities

Training was the dominant activity on the Chapter front in 2021. A number of these training activities were reported in previous reports. I must, however and with a sense of pride, mention the conclusion and signing of the tripartite MoU involving the IARMJ Africa Chapter, the UNHCR and JIFA (Judicial Institute for Africa). An important development on this front is the creation of a fully fledged Africa Chapter website and I invite you to visit us at <https://iarmj.africa/>

Through this initiative I was given a platform during the 2021 Conference of the Southern African Chief Justices Forum (SACJF) which was held on the banks of the majestic Zambezi in Zimbabwe. I used the opportunity to highlight the importance of refugee law as well as also imploring the Chief Justices present to encourage Judges in their domestic jurisdictions to embrace the Chapter and enlist as members.

I can also confirm that the first weeklong training programme under the MoU took place in November and December involving Judges from twelve African countries. This was a certificated training programme and was well received by the respective Judges. I'll also be continuing preparatory discussions with the Rwanda Judiciary for an in-person training programme planned for Rwanda sometime this year.

Our biennial Chapter conference could not be held due to Covid 19 as we were unable to receive the required responses from the relevant authorities. A firm resolution has now been adopted by the Chapter to hold the Conference in the United Republic of Tanzania. I can confirm that our request has been well received from the relevant authorities and discussions are now happening in earnest to formulate and finalise the conference programme and related issues. The conference is scheduled to take place during the period 21 – 25 November 2022.

*Mlambo JP*  
President, Africa Chapter

## AMERICAS CHAPTER

Dear Colleagues:

We begin the year 2022 with the hope that our judicial and administrative systems return to normality in dealing with cases of migrants and refugees, as it was before the pandemic. We recognize the effort of the judges and adjudicators in our region, who have made important efforts to "maintain the system" through virtuality or remote attendance.

During the pandemic, many migrants and refugee claimants who had postponed their decision to migrate have begun to do so at great risk. We present in this edition an IOM regional report for the year 2021 on the subject.



**Americas Chapter**



We take this opportunity to inform with joy that Costa Rican Judge Nancy Hernández, who accompanied us as a participant in the last World Conference in Costa Rica 2020, has been appointed as Judge of the Inter-American Court of Human Rights.

We are sure that the knowledge acquired in our workshops and plenary sessions will be very useful in her new mandate. Congratulations!

**Judge Nancy Hernández**  
**Inter-American Court of Human Rights**

Finally, we hope to hold our Virtual Chapter Conference in the second half of this year. We will keep you informed in our next letter or through our social networks.

Keep safe, and best regards from Costa Rica!

*Esteban Lemus Laporte*

**President, Americas Chapter**

## ASIA PACIFIC CHAPTER

Dear colleagues,

Since our last newsletter, we have been overjoyed to hear of Martin's appointment as a District Court Judge and the Chairperson of the New Zealand Immigration and Protection Tribunal. He was sworn in on 18 November 2021. Congratulations Martin!

In this period there has also been some changing of the roles in the Chapter. With the agreement of the chapter executive, I have become the President, and Sue Zelinka has taken on the role of Secretary. To introduce myself to those colleagues who do not know me, I have held appointments as a review decision maker on several Tribunals and Boards since 2011, prior to that I was a lawyer specialising in protection, migration, administrative and international law. I am currently a member of the Administrative Appeals Tribunal, the Australian body which reviews protection and migration matters.



**Sean Baker**  
**President,**  
**Asia Pacific Chapter**

COVID has continued to dominate our working and personal lives in the Asia-Pacific region. Our ability to adapt to the pandemic and continue the vital work of reviewing administrative decisions which affect some of the most vulnerable people in our societies was the topic of our December webinar. The webinar was well attended with excellent presentations on the adaptations made by decision making bodies in the region to continue to hear and decide matters as well as how Covid may have an impact on cases pleaded before us.

Thanks to Judge Torres we have been made aware that the Philippines' Supreme Court this month has approved a rule to facilitate the naturalization of refugees and stateless persons, which, it is said, is the first judicially led initiative of its kind, facilitating the processes for refugees and stateless persons to gain citizenship of the Philippines. The rule also demonstrates the intent of the Philippines judiciary to provide access to justice for vulnerable and marginalised groups as well as addressing the Philippines' Sustainable Development Goal ambition to provide access to justice for all and a legal identity for all. This wonderful result is the culmination of the hard work and dedication to improve the situation for refugees and stateless persons in the Philippines by judges, public servants, and civil society groups. You can read more about the Supreme Court's ruling [here](#).

Planning is ongoing for the Asia Pacific regional conference on 23-25 November this year, in Newcastle, New South Wales, which will tackle vital and topical themes under the conference title of Culture and Cultural Constructs in Protection and Migration. A flyer for the conference appears elsewhere in this newsletter. I hope that all our colleagues from the Asia Pacific region, and perhaps further afield, can join us in November.

*Sean Baker*

**President, Asia Pacific Chapter**

## EUROPE CHAPTER

Dear colleagues,

This time, I want to share with you a speech I made as President of IARMJ-Europe during a panel discussion entitled "Coming Futures of International Refugee and Migration Law", on the occasion of the conference of the Canadian Association of Refugee and Forced Migration Studies (CARFMS, 27-29 October 2021).

The theme of the Conference was "Utopias as Practices". I will seek assistance from two famous philosophers in considering that title: Slavoj Žižek and Voltaire (the pseudonym of Francois-Marie Arouet).



**Bostjan Zalar,**  
**President, European**  
**Chapter**

But, before that, let me say that while speaking about refugee and migration law in Europe through the provocative lenses of "utopia" and "coming futures", we must be careful. European asylum and migration law is very extensive, detailed and certainly very real. The first wave of European Union (EU) legislation on asylum and returns was adopted between 2003 and 2008. The second wave came in 2013 - not to mention the relevant case law of the European Court of Human Rights (ECtHR) which started back in 1989 and, of course, there are national legislations aiming to transpose the European legal sources into daily practice.

Furthermore, a lot of professional development activity has been going on since the first wave of EU law on asylum. In 2017, for example, the European Chapter of the IARMJ started a huge project with the European Asylum Support Office (now the EU Asylum Agency) to develop common training materials for judges of the Member States, consisting of judicial analysis, which are sort of comprehensive commentaries of EU law and case law of the ECtHR, accompanied by the Judicial Trainer's Guidance Notes (JTGN). These training materials all together have probably more than 2000 pages and are available for free in different languages on the official website of the EASO. They are produced by us – by judges for judges. Training based on those materials is undertaken at the European transnational level.

So, in this sense, it would be wrong to talk about "utopia". In this respect, I need to point out the problem of bad transposition of existing rules on access to asylum procedure, particularly because bilateral agreements signed by the Member States of the EU also with the third countries are often used as a by-pass to the rules of the Common European Asylum System. At the moment, there are pending cases before the ECtHR on issues related to push-back policies at our borders against at least 10 European States. A low level of transposition of EU law in certain areas of refugee protection can be related to a crisis of the rule of law, or to bad management or mismanagement of quality of services provided by administrative authorities and courts. We experienced also a lack of political will and mechanisms within the EU institutions to enact the rule of law.

Just this week, on the initiative of the EU Commission, the Vice-President of the Court of Justice of the EU (CJEU) confirmed the lawfulness of a fine imposed on Poland by the Commission at the rate of 1 million EUR per day. The Polish Government had failed to comply with the interim measure ordered by the CJEU on 14 July 2021 which was necessary in order to avoid serious and irreparable harm to the legal order of the EU, that is to the values of rule of law and judicial independence. Such an act of the European judiciary is not a reflection of "utopia", but rather as an act of utopia in action - "utopia as practice".

Nevertheless, instead of putting more incentives and funds behind establishing a sophisticated system of management of the quality of decision making processes and adjudication at the level of the Member States,

the EU is already moving towards a new, third wave of the EU regulatory framework in the field of asylum and migration. In September 2020, a new Pact on Migration and Asylum was adopted. The pact (only) sets which regulations and directives are to be adopted in the near future by the EU.

For this occasion, I will briefly follow the money in order to identify where the futures of European refugee law goes. This new pact is accompanied by the Multi-Annual Financial Framework, until 2027. It is somehow clear that – broadly speaking - the financial means and the legislative proposals are directed at the external dimension of refugee law: border procedures, border and coast guard management, detention facilities, and return of illegally resident non-EU nationals. A significant amount of money will be given to the Neighbourhood Development and International Cooperation Instrument, to finance cooperation with third countries in order to reduce migration flows and enhance return and readmission.

The aim of the EU funding is to address three pressing challenges in the EU: first, solidarity and cost-sharing between the EU and its Member States; for example: relocation of asylum seekers and refugees. Secondly, EU funds tend to address the challenge of flexibility in order to respond to emergencies. And the third challenge to be addressed is a coherence of the external and internal dimension.

Here, I see a strong moral dilemma, which actually should not be a dilemma at all. Combating irregular migration and border management and cooperation with third countries should not interfere with or contradict the rights of refugees to access asylum procedures, which is one of the fundamentals legal premises of the internal dimension of EU law on asylum and migration. This is crucial, because power is legitimate as long as it is exercised in accordance with the values proclaimed to be the foundation of the given society.

Professor Iris Goldner Lang from the University of Zagreb recently presented an analysis of three major legal proposals from the New Pact on Migration and Asylum from the perspective of funding that is envisaged for these three proposals. Her analysis shows that funding to cover the costs of relocation might be sufficient, but there are serious doubts that funds will be sufficient for the additional tasks of the Member States in relation to screening procedures and border procedures. This will be particularly relevant for front line countries, such as: Italy, Greece, Spain, Malta and Cyprus.

Thus, it seems, that the concept of famous Slovenian philosopher Slavoj Žižek indeed comes into play, when we discuss the New Pact on Migration and Asylum. Žižek already back in 2004 spoke about “utopia as a practice” - in general, not just for the future of Europe. He said we must dare to enact the impossible, we should rediscover how to, not just imagine, but to enact utopia. For him, the future will be utopian or there will be none. Well, as a judge I am not so sure ... that this will work and I certainly cannot speculate, whether this third wave of legislative framework will in fact be adopted and enacted or not and whether it will be financially feasible or not.

However, what I do know for sure, is that instead of finding “my refuge” in those (perhaps) useful provocations of Slavoj Žižek, I will rather follow French philosophical tradition of enlightenment. For this occasion I picked up Voltaire and his novel “Candide ou l'optimisme”. In his concluding words against exaggerated optimism he (Candide) says: “Il faut cultiver notre jardin.”

We do cultivate our garden in the European Chapter of the IARMJ. And our garden is the rule of law in asylum and migration disputes. We will continue to cultivate that garden. After concluding some fundamental chapters on very sophisticated legal issues on material and procedural refugee law in the aforementioned professional development series for judges, we will most likely focus our future attention also to the challenging issues of access to procedures, because EU policy and its funding and policies of the Member States are clearly directing towards this very early stage or even pre-stage of access to protection.

It might be the case that our garden has expanded recently, so that we will have to step out from our classical judicial isolation (self-restraint) more often in order more openly to help ensure that thoughtful words, arguments, verified facts and constructive exchanges of views about the basic values of our societies will find their way back to a meaningful public discourse.

*Bostjan Zalar*

**President, Europe Chapter**

## Afghanistan 2021 – Judges in Peril



Aug. 15, 2021, marked the end of a nearly 20-year effort to build a democracy in Afghanistan. As Taliban forces took control in Kabul, it became clear that the people who worked hardest to create that democracy now faced the most danger. Among them were hundreds of Afghan women judges who not only feared reprisal from a new regime eager to stamp out the old judicial and legal system but also the re-imposition of strict rules forbidding girls and women to go to school, to work, or to participate in the cultural and economic lives of their communities.

These women judges had worked hard to become and excel as judges; many pursued continuing education and served in cultural and civic roles. And they had sat in judgment of men. Now they feared that the work they loved would be justification for punishment or even execution.

Western forces generally did not include women judges in evacuations. That effort was left to civil society — the international organizations that had built connections to the Afghan bar and judiciary during those 20 years and now feel a deep responsibility to aid “their sisters.” Thanks to their efforts, some women judges have been safely evacuated and are rebuilding their lives away from Afghanistan.

### **JUDGE TAYEBA PARSA:**

When I started working as a judge, I observed there were obvious violations of laws and rules for the reason of corruption. And I had the ability, even the authority, to prevent it, to protect people and implement the rule of law and justice. That was my ambition.

As you know, for the Taliban, simply being a government judge is enough reason to be killed without a trial. Two male judges were murdered by the Taliban the moment the Taliban discovered both men were judges. But for women judges, the danger is much greater. The Taliban believe that women judges are forbidden by the rules and regulations of Islam. So it was common to receive multiple letters from the national security agency, warning us against imminent risks. We also received threatening phone calls from the parties themselves. Threats against woman judges were always more acute and came from those who were against women being judges, and, even worse, from those who were not wanting women to be a part of the workforce at all.

And the threats sometimes went beyond letters and calls. A group of attackers took over the entire courthouse and massacred every single employee in a suicide attack in front of the Supreme Court in Kabul. Two female Afghan judges were killed. We are still grieving the loss of two of our sister judges who were killed in January [2021]. Some women judges used leave at that time because the Taliban had changed the forms of their attacks and started shooting at the governmental judges and putting mines under their cars. Most continued their duties despite their family’s angst, knowing that when they left each morning, they might not come home. And we were issued guns to protect ourselves. We got training to use the guns.

A problem I personally encountered might be recognized by woman judges the world over, of not being taken seriously, of being humiliated. And also I was passed over when there was an opening for a new head of my court, although I was clearly the best qualified. A young male judge was appointed instead, and then I was asked to help him. Woman were appointed as head of Family and Elimination of Violence against Women courts, symbolically. More threatening, I was pressured to change my decision by some judges tainted by corruption, and I feared that if I did not, I would be relocated to the provinces as had happened to other colleagues. Despite feeling intimidated, I held my ground. In Afghanistan, a panel of three judges makes the decision in a case. Once there was a judge who shouted at me and insulted me only because I disagreed with him in a court case.

When the provinces were falling, one by one, we decided to leave and escape. My mother and my sister could get visas for Iran. One day before, my fiancé and I conducted our religious ceremony of marriage without a wedding party. Because we wanted to leave Afghanistan, we had to marry in a hurry. We wanted to join my mother and my sister, but we needed to receive our marriage document.

My mother and my sister had a flight, and at that day [as we were taking them to the airport] we observed that all the roads became closed. We found out that the Taliban took Kabul. My father called me and told me, "Do not come home for now, because there are Taliban in the checkpoints. They may search your car and discover your identity." He said, "Do not drive yourself because even if they do not search your car your driving [as a woman] may make them angry." I asked my mother to not miss the flight, [saying], "At least you can save my sister." My mother and my sister ran on foot to the airport. I was watching them running. I thought it [might be] the last time I saw my mother, and it made me cry. Their flight had 12 hours delay, but finally they could fly. I was in the car until that night. I saw that soldiers and police took off their uniforms to hide their identity and job. I felt I was trapped, and I was afraid of not only the Taliban but also criminals and thieves who may abuse the situation.

A judge from the International Association of Women Judges called me and tried to make me calm, but she said, "Be careful, the Taliban opened the prisons and released all the prisoners." Finally, my husband drove me home, and we did not come out until three days. I was collecting my documents to hide them and destroying case notes to hide my identity. I was the first judge who received a call from a Polish lawyer about evacuation, because of an interview I gave against the Taliban. I never had wanted to leave the country and my job, but I was a female judge from the minority of Hazaras and the minority of Shia community, and I had been in touch with foreigners, which Taliban would consider an unforgivable crime. If I remained, I am certain I would have been killed.

But leaving was painful. I felt I had lost all I had achieved. We didn't want the Taliban to find out we were leaving. So we would not carry packages. I only picked my documents and some legal books that I love and could not leave. There was a crowd behind the gate at the airport, and the Taliban were shooting and beating people. I was standing up behind the gate without food and sleep for 24 hours. Finally, I entered in the airport and caught the flight to Poland. My father and husband waited for their flights, 24 more hours. They didn't eat or sleep for 48 hours. My husband and father came in different, separated flights.

The first day the Taliban took Kabul, I was receiving many, many messages from judges who were in Afghanistan, who were worried about their lives. They were afraid of [Taliban] searching their homes. They were trying to hide their identities, they were changing their homes, and they were so worried. They were asking for good news about evacuation. I couldn't answer all the messages. It wasn't safe for them to be in touch with someone who is out of Afghanistan, and I must regard the security concerns. And they're really in danger. Some of them whose husbands were judges as well, their houses were searched and some of the male judges were arrested. They were so worried. I hope they can believe. I hope, one day, in Afghanistan, again democracy will govern.

One day, Afghans will take back their country, and again, democracy will govern. And I want to get prepared for that day by learning and studying to build our society. I believe all the adversities in Afghanistan come from lack of knowledge.

I love to work in law. It is my profession. We have many years of judicial experiences and worked on serious cases. We do not want to lose our career. We hope to get a scholarship and be able to study and work in legal areas and use other countries' experiences for rebuilding our country. But I need to be in an English-speaking country. I want to study, and I would lose too many years if I had to learn a new language.

### **JUDGE ZOHAL NOORI RAHIQ:**

I grew up in Afghanistan, in Kabul province. I also graduated from Sharia law school. Judge Parsa and I were classmates, actually. I finished two years of judicial law, practical law. I finished high school in Pakistan, during [the first period of] Taliban government.

I came back to Afghanistan by the time the Taliban government overall had ended. I was working with an organization working for women's rights and the rule of law, as a shelter network assistant for one year approximately. Because I was involved in the legal system, and I saw myself that women were suffering from different kinds of violence, different kinds of injustice and inequality, I didn't want to be a doctor anymore. I changed my mind and joined Sharia school, and then I decided to become a judge to support these women, because mostly in Afghanistan, it is patriarchy.

Women didn't have access to justice. They didn't have access to education. So these factors made me change my decision and to be a protector of women and to defend their rights. So that is why I became a judge.

There were so many concerns: security threats, unpleasant events, loss of colleagues and friends. I was so glad for what I had. I was doing my duty with enthusiasm. But of course it was Afghanistan. It is a country which was involved in battle and security problems, for centuries. I was trying to become a very strong judge, being aware of all Afghan laws and having a full understanding of jurisprudence, to respect the rule of law and human rights.

Because there was not gender equality in assigning to higher positions, [people with connections might be appointed] whether they were qualified to that rank or not. The rest of judges, like me, were working for many years, but their actual positions were in the provinces, and they were working as volunteers in Kabul. Mostly there was no matter of having experiences in a relevant field. Suddenly a criminal judge with no experience of working in civil and financial issues was assigned in a court that heard civil, public rights, and taxation proceedings.

On that day, I was aware that most of the provinces were captured by the Taliban. And I had a lot of guests in my house because they just escaped, because of Taliban in the other provinces. They were in my house, and I was supporting them at home. I was not aware that Kabul was also captured.

I went to the court because that last week I had made a decision, and I wanted to finalize that decision. I wanted to print it and sign it. When I went to the court, the situation was completely different, and I was a bit shocked. But I didn't pay attention to this situation. I went directly to the division, and there were only my head of the department, and also one cleaner. They asked me, "Why did you come to the court, Judge Zohal?" I said, "Because of my cases, because of this judgment, because I want to finalize this..." My department head said, "No, please go home, because the situation is very bad. Women will face such problems. Go back home."

I went to the court to collect some of my documents, legal documents, and law books, but I was really crying, and it was very difficult. And after a few minutes, my colleagues came and entered the room, and they were crying. We said goodbye to each other and collected our equipment and went back home. It was really difficult. I was thinking that I die now because everything was finished — all of our effort, all of our struggle — that in 20 years we were struggling, and we were trying our best to become a judge. Everything was zero. Nothing was left. It was so difficult.

I was thinking that I die now because everything was finished — all of our effort, all of our struggle — that in 20 years we were struggling, and we were trying our best to become a judge. Everything was zero.

The traffic was so bad on that day. All the people were running to go home. We could not find any taxi. On that day, I had planned to go to the bank and receive my salary. I went to the bank, but it was locked. There were a lot of people standing at the door of the bank, but the bank was blocked, and no one was responding to them.

Again, I went on my way. The distance that I was passing was usually about 10 minutes. On that day, it took one hour because the traffic was so bad and the driver just was changing the way until he dropped me home. And when I got home, everyone was surprised. "Why did you come back? What is happening?" I said, "I'm also like you now. I'm no more a judge, and I'll be at home like you because everything is finished."

For one week, I was in Kabul. I was afraid to go out at all. I couldn't go to the bank to receive some money because I was very afraid. And all the time, me and my husband, we were applying for visas to many countries. I was working with German organizations, with German government and French people, with United States organizations. I was trying to send as many letters, as many documents to as many countries as I can. All the night, all the day, we couldn't sleep. At night, we were awake. We had a WhatsApp group among the judges. All the time, our hope was only that WhatsApp group — what will happen to that group, and when we will receive a good news, and we will be out of this situation.

It was the 15th of August when the Taliban captured Kabul Province. And on the 21st of August, I received a phone call from the Ministry of Foreign Affairs of the UK. They asked me for my passport and all of my family passports. And after one day, I received the invitation letter from the UK. They told me to arrive in 12 hours to the airport.

So, we left our house. Everyone had a small bag or a back sack. We went to the airport. The situation was very terrible. The Taliban really were dangerous, and they were beating people. When we went to the gate that was specified where we should go, they told us that the people who have UK passports can come and enter this gate, but the people who have received emails, you are not allowed to come. "Go back to your house and come after four days." But we didn't accept that, and we went to another place.



There was another way as well, there was a river. It was not a river — it is like a small river, but [it was] pollution and the water coming from toilets, used water, which is very bad conditions. We had to cross that water, with three children and my husband. It was so difficult. But we spent three nights [outside] the airport of Afghanistan. We never went back to home. We spent day and night on the dust, on the pollution. It was a really tough situation, but we tolerated, and we tried to just reach the airport, because it was a one-way street. There was no choice to go back home. At the end of third night, we succeeded in entering the airport.

At the time, there was a bus to go into the airport, but there was an explosion inside the airport. Again, they took us off from the bus, and we just sat down for long time behind the walls because of the security. Every street in the airport was empty because it was not certain what was going on. They were thinking that maybe Taliban or this group are attacking inside the airport. All the people were very shocked and they had to wait for a long time until the situation got back to normal.

Then, we moved, and we finally got to the airport and to the plane. We went to Dubai first, and after that, we came to England.

Still, I dream of those situations all the time. When I dream, I think that that I'm in the same situation, and I really cannot control my senses. I mostly try not to visit social media like Facebook, Twitter, because all the time, they're about the news of murdering, killing, kidnapping, and people who are in Afghanistan, my families who are behind there. I am really upset about them and about my colleagues, the judges still in

Afghanistan, and I'm trying to do my best. We will never forget those situations. It was the awful trip of my life. It was like hell.

I really love to work in my field. I really love being a judge. I would still love to work at the same position if there is a possibility. And if there is no possibility, of course, in another part of the judicial system, or at least to enter into a law society or any other department related to the law and the legal system. I will be very helpful and very happy to succeed and to support people. We should be active, not inactive, to support the countries [that we move to]. Of course, while we are living in a new country, we could be lecturers in university in Islamic law. If we build our skill and do a master degree and receive a scholarship to [continue our studies], we will have a very good impact in the future.

I really wish and pray for God that one day, our country will be in peace and security, and that we can go back to hold our home, our homeland, and support our poor and needy people. I'm really seeking to support those people. But we're here now, so I want to improve my English knowledge, my English skill.

Our colleague judges are really in danger, and they are hiding themselves — not even in their houses, they are going to their friends' house, relatives' houses, neighbor houses. So it is really dangerous. And besides the women who are at high risk, the male judges also are at risk.

*These abridged interviews are republished with the kind agreement of Judges Parsa and Noori, and of the Bolch Law Institute, Duke Law School.*

## WORKING PARTY UPDATES

### FROM THE WORKING PARTY COORDINATOR

Despite the pandemic and the inability to meet in-person at IARMJ World and Regional Conferences, the Inter-Conference Working Party Process, that was revamped and revised following our last wonderful World Conference that was held in San Jose, Costa Rica, has continued strong. There are ten vibrant and active IARMJ Working Parties that meet collectively for quarterly meetings to discuss relevant issues in international refugee and migration law and to prepare for the upcoming Regional and World Conferences. If you are interested in having an impact on a particular relevant issue(s) in international refugee and migration law, then we would be interested in hearing from you. We are especially looking for refugee and migration law judges who might be interested in a leadership role for any of our following IARMJ Working Parties: Vulnerable Persons; Asylum and Migration Procedures; Deportation; and Judicial Resilience and Well-Being. For those who are interested in exploring such possibilities or simply participating in one of our IARMJ Working Parties, please contact James C. Simeon, WP Coordinator, at [jcsimeon@yorku.ca](mailto:jcsimeon@yorku.ca).

### WORKING PARTY ON COI INFORMATION, EXPERT EVIDENCE AND SOCIAL MEDIA

#### *Assessing Social Media Evidence in Refugee Appeals*

**The IARMJ Working Party on Country of Origin Information, Expert Evidence and Social Media is looking to develop guidelines on assessing social media evidence.**

This proved itself to be a topic of significant interest at the conference in Athens and was again discussed informally in Costa Rica. Indeed the UK's Upper Tribunal has recently promulgated a decision on the issue, addressing various issues arising from Facebook: see *XX (PJAK - sur place activities - Facebook) Iran CG* [2022] UKUT 23 (IAC).

The Working Party aspires to gather information and ideas as widely as possible from across the world's refugee law jurisdictions. If you are interested in joining the group, or simply assisting by pointing the Working Party towards an interesting case or procedure, please contact the group's convenor, Mark Symes (of the UK's Upper Tribunal), via the email address [dutjudge.symes@ejudiciary.net](mailto:dutjudge.symes@ejudiciary.net).

## IN THE LIBRARY

### RECENT PUBLICATIONS

Country Policy and Information Note **Afghanistan: Unaccompanied Children** (October 2021) United Kingdom Home Office. This note provides updated country of origin information (COI) and analysis of COI

A Nolan: “**Children’s Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and the Principle in *Sacchi v Argentina***” (20 October 2021) EJIL Talk!

G Goodwin-Gill and J McAdam: “**The Refugee in International Law**” (Oxford University Press, 2021).

J Simeon: “**Serious International Crimes, Human Rights, and Forced Migration**” (Routledge Research in Asylum, Migration and Refugee Law, 11 February 2022). This volume elucidates and explores the interrelationships and direct causal connection between serious international crimes, serious breaches to fundamental human rights, and gross affronts to human dignity that lead to mass forced migration. Forced migration most often occurs in the context of protracted armed conflict of a non-international nature where terrorism, fierce fighting, deep animosity, tit-for-tat retaliation, and “rapid dominance” doctrine all lead to the commission of atrocity crimes.

### LINKS TO A SELECTION OF IN-DEPTH REPORTS COVERING TOPICS OF INTEREST

#### **UNHCR: Guidance note on the international protection needs of people fleeing Afghanistan**

*UNHCR, 9 February 2022*

Summarises developments in Afghanistan from August 2021 and how host countries should respond in order to provide effective protection. UNHCR calls on States to guarantee access to their territories and to asylum, to suspend decision-making except in cases where refugee status can be determined, to allow rejected asylum seekers to use the changed circumstances as grounds for a fresh claim, to facilitate and expedite family reunification procedures and to suspend forcible returns to Afghanistan.

<https://www.refworld.org/docid/61d851cd4.html>

#### **CANADA: Interpretation of the Convention Refugee Definition in the Case Law: Updated 2020**

*Immigration and Refugee Board (IRB), 31 December 2020*

As part of its ongoing commitment to meaningful access to justice and to continuous improvement in the quality and consistency of our decision-making, the Immigration and Refugee Board of Canada (IRB) has published an updated version of its paper, Interpretation of the Convention Refugee Definition in the Case Law. The paper has been expanded to include a new chapter on the definition of “person in need of protection” and has been retitled Interpretation of Convention Refugee and Person in Need of Protection in the Case Law. This paper discusses key legal concepts as well as relevant case law. It replaces the 2019 version and references case law published on or before December 31, 2020.

<https://irb.gc.ca/en/legal-policy/legal-concepts/Pages/RefDef.aspx>

#### **EASO: COI Research Guide on LGBTIQ**

*European Asylum Support Office (EASO), November 2021*

The European Asylum Support Office has published a guide on researching the situation of lesbian, gay, bisexual, intersex, transgender and queer persons (LGBTIQ) in countries of origin.

#### **COI Report: Iraq - Key socio-economic indicators for Baghdad, Basrah and Sulaymaniyah**

*European Asylum Support Office (EASO), November 2021*

This report updates the EASO COI Report: *Iraq Key Socio-economic Indicators*, published in September 2020. Its purpose is to provide relevant information for the assessment of international protection status determination, including refugee status and subsidiary protection.

### **Syria: Shoring Up Raqqa's Shaky Recovery**

*International Crisis Group (ICG), 18 November 2021*

After suffering under Islamic State, and during the battles to defeat it, Raqqa is being rebuilt. The calm is tenuous, however. According to the report, the US and partners should work toward long-term stability in Syria's north east, via investment and talks about sustainable governance and security arrangements.

### **A Broken Canopy: Deforestation and Conflict in Colombia**

*International Crisis Group (ICG), 4 November 2021*

Colombia's vast forest is fast receding, partly because guerrillas and criminals are clearing land for farming, ranching and other pursuits. These unregulated activities cause environmental harm and deadly conflict.

### **Global Corruption Barometer: Pacific 2021**

*Transparency International, 15 November 2021*

This presents an extensive set of public opinion data on perceptions and experiences of corruption in 10 Pacific countries: the Federated States of Micronesia, Fiji, French Polynesia, Kiribati, New Caledonia, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu.

### **Killings of women and girls by their intimate partner or other family members – Global estimates 2020**

*United Nations Office on Drugs and Crime, 25 November 2021*

This report examines gender-related killings globally, including information as to the impact of COVID-19 on gender-related killings. While women and girls are only one tenth of all homicide victims perpetrated in the public sphere, they reportedly bear a disproportionate burden of lethal violence in the home.

### **Collaborative and agile. Intelligence community collaboration insights from the United Kingdom and the United States**

*Australian Strategic Policy Institute (ASPI), 25 November 2021*

The aim of this report is to generate insights from the US and UK intelligence communities' collaboration efforts. It is intended these insights will inform members of Australia's national intelligence community.

### **Myanmar's coup, ASEAN's crisis: And the implications for Australia**

*Australian Strategic Policy Institute (ASPI), 11 November 2021*

This report assesses the security situation in Myanmar, the Association of Southeast Asian Nations' collective response and the individual roles of key ASEAN member states in the mediating process.

### **Large Movements of Highly Vulnerable Migrants in the Americas from the Caribbean, Latin America and other Regions 2021**

*International Organization for Migration (IOM), 26 November 2021*

At least 30,000 children, most under the age of five, are among the more than 125,000 people who have risked their lives crossing the Darien Gap during 2021, one of the world's most dangerous irregular routes for migrants heading to North America, according to report about regional migratory movements in the Americas released today by the International Organization for Migration. The IOM report highlights that transit from South America of migrants from the Caribbean, Asia, Africa and the Americas has been developing for around a decade, but has increased dramatically due to the socioeconomic, health and political impact of the COVID-19 pandemic. According to the report, many of the vulnerable migrants in

transit are Haitian, as well as nationals from other countries in the Caribbean, Asia, Africa, and the Americas.

<https://publications.iom.int/books/large-movements-highly-vulnerable-migrants-americas-caribbean-latin-america-and-other-regions>

## ARTICLES OF INTEREST IN THE MEDIA

### **Central African Republic: Detain War Crimes Suspect Now**

*Human Rights Watch, 28 November 2021*

Hassan Bouba, a minister and former rebel group leader in the Central African Republic, was arrested on 19 November on war crimes and crimes against humanity charges brought by the country's war crimes court. On 26 November, national gendarmes escorted Bouba out of prison and took him home. He was scheduled to appear before the court for a custody hearing but did not do so. Human Rights Watch is calling on the CAR to coordinate with UN peacekeepers to ensure he is returned to custody.

### **Violent Protests Unsettle Solomon Islands**

*The Diplomat, 26 November 2021*

Solomon Islands has been rocked by days of violent protests, with dozens of buildings, including a building at Parliament House and a major police station, burned down. The protests began when hundreds of protestors marched on the parliamentary precinct in the capital Honiara, demanding the prime minister resign over his decision to switch diplomatic allegiance from Taiwan to China in 2019.

### **Bangladesh begins moving Rohingya to remote island amid criticism**

*Al Jazeera, 25 November 2021*

Bangladesh has resumed moving Rohingya refugees to a remote, flood-prone island in the Bay of Bengal, despite criticism from human rights and aid groups who say some have been relocated against their will.

### **Return to the refugee camp: Malawi orders thousands back to 'congested' Dzaleka**

*The Guardian, 25 November 2021*

As cost of living and anti-refugee sentiment rises, people who have integrated into Malawian society are expected to return to the country's oldest refugee camp – Dzaleka, Malawi's first refugee camp, built 25 years ago to host people who fled genocide and wars in Burundi, Rwanda and the DRC. It now houses more than 48,000 people from east and southern countries (four times more than its initial capacity).

### **Five years after 'peace', the Colombian communities living in forced confinement**

*The New Humanitarian, 25 November 2021*

According to OCHA, escalating violence between guerrillas and paramilitary groups caused the total number of people confined to peak at more than 70,000 known cases in 2020. "The COVID-19 pandemic exacerbated the situation, suspending many law enforcement and humanitarian operations that could have brought supplies to these confined communities". This week, Colombia marked five years since the deal that ended decades of conflict between the state and FARC guerrillas, but groups like the National Liberation Army (ELN) and a range of other non-state actors are fighting as much as ever.

### **Hong Kong jails 20-year-old activist under national security law**

*CNN, 24 November 2021*

The former leader of Hong Kong pro-independence group Studentlocalism has been sentenced to 43 months in prison for trying to separate the city from China, and for money laundering. Tony Chung, 20, was charged with secession under a sweeping national security law, and money laundering in October 2020 and was denied bail.

### **'The war crushed our dreams': Displaced again and again in Yemen's Marib**

*The New Humanitarian, 24 November 2021*

On 24 November, IOM said in a statement that "45,000 people have been forcibly displaced by the conflict around Marib since the beginning of September, shortly after a Houthi rebel offensive on the government-held city intensified. The figure includes 15,000 people in November alone. The government's Executive Unit for Internally Displaced Persons puts the total number at more than 93,000".

### **Thailand refugee deportations trigger condemnation, defiance**

*Al Jazeera, 24 November 2021*

Thailand has deported three Cambodian political activists (who had been recognised as refugees by UNHCR) back to Cambodia. All three were members of the banned opposition political party, the Cambodia National Rescue Party (CNRP).

### **DR Congo data leak: Millions transferred to Joseph Kabila allies**

*BBC, 19 November 2021*

Companies owned by family and friends of former DRC President Joseph Kabila had millions of dollars of public funds funnelled through their bank accounts, according to Africa's biggest data leak.

### **India's Prime Minister Modi to repeal controversial farm laws following more than a year of protests**

*CNN, 19 November 2021*

India's Prime Minister Narendra Modi has agreed to repeal all three of the agricultural laws that sparked over a year of protests. This decision was made ahead of pivotal state elections.

### **They Warned Their Names Were on a Hit List. They Were Killed.**

*The New York Times, 14 November 2021*

Assassins killed at least eight people in the Rohingya refugee camps of Bangladesh, silencing those who spoke out against violent gangs.

### **ICC to probe Venezuela over alleged crimes against humanity**

*BBC, 4 November 2021*

Venezuela will be investigated by the ICC to determine if crimes against humanity were committed in 2017 during crackdowns on anti-government protests. Venezuelan president Nicolas Maduro said the country respects the decision to investigate. More than 100 people died during the crackdown.

## UPCOMING EVENTS

The Asia Pacific Chapter of the IARMJ welcomes you to its biennial conference

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## IARMJ EUROPEAN CHAPTER BI-ANNUAL WORKSHOP



### **The European Academy Berlin**

The next IARMJ European Chapter Workshop is scheduled to take place from **12 - 14 June 2022** at the European Academy Berlin, at the Bismarckallee 46/48 14193 in Berlin, Germany. The Workshop capacity is limited to 40 participants, so a "first come first served" policy is applicable. Online registration will be available from early 2022.

If you wish, you can preliminarily indicate your interest by sending an e-mail to Melany at [office@iarmj.org](mailto:office@iarmj.org). Please do not make any travel arrangements before having received a final confirmation.

## RECENT CASE-LAW OF INTEREST FROM AROUND THE WORLD

### AFRICA

#### **NAMIBIA: same-sex relationships and immigration**

***Digashu and Others v GRN and Others; Seiler-Lilles v GRN and Others (HC-MD-CIV-MOT-REV 447 of 2017, HC-MD-CIV-MOT-GEN 427 of 2018) [2022] NAHCMD 11 (20 January 2022)***

In a most unusual judgment, a full bench of Namibia's high court has spelled out its strong disagreement with a decision made 21 years ago by that country's highest court – and has urged the presently constituted Supreme Court to reconsider its views on the matter. The case, crucial for the country's LGBT+ community, and for human rights more broadly, concerned two same-sex couples (both couples involved one Namibian and one non-Namibian partner) ranged against the immigration authorities. The majority in a 2001 supreme court judgment had held that same-sex relationships were deliberately not recognised by the Constitution, but the High Court has now said while it was bound by this decision, it could not agree with it, and urged that the Supreme Court reconsider the matter.

#### **BOTSWANA: decriminalisation of gay sex**

***Attorney General v Motshidiemang & anor Civil Appeal No CACGB-157-16 (Court of Appeal)***

Botswana's apex court has upheld a high court decision decriminalising gay sex. And the country's attorney general has issued a special media release on the subject, saying that Botswana has an impressive post-independence record of observing human rights and the rule of law. Against this background, the government will ensure the new decision in the court of appeal's judgment is implemented. *Gays, Lesbians and Bisexuals of Botswana (LEGABIBO)* appeared as *amicus curiae*.

### AMERICAS

**MÉXICO: Protection of migrants during the pandemic, *locus standi* of civil society organisations to file *amparo* proceedings.**

Decision of the Second District Judge in Chihuahua (Mexico), who decided the *amparo* 570/2020. The judgment recognizes the legitimacy of civil society organizations to file for *amparo* proceedings for the failure to create specific protection measures for migrants as a vulnerable group in the context of the pandemic. The judge ordered the General Health Council to issue the necessary actions for the prevention, containment and treatment of COVID-19 for the benefit of the migrant population throughout the territory, as well as the development of a protocol to facilitate family reunification of unaccompanied child and adolescent migrants.

(Only in Spanish. Decision available on request)

### ASIA PACIFIC

**NEW ZEALAND: 'Right not to be deprived of life' in section 8 of the New Zealand Bill of Rights Act 1990**

**AR (India) v Attorney General [2021] NZCA 291**

In the course of a complex series of applications and appeals AR sought recognition as a refugee or protected person in New Zealand. In 2017, he was granted a temporary visa, on which an immigration officer noted that AR was entitled to stay in New Zealand "for the express purpose of awaiting High Court decision on refugee appeal status". This appeared to breach the confidentiality provisions of s 151 of the Immigration Act 2009. When immigration officers realised this, they tried to remedy it by blocking out the notation and stamping "CANCELLED WITHOUT PREJUDICE" over the visa. This provided grounds for a further (unsuccessful) refugee claim, after which AR filed proceedings in the

High Court, claiming breaches of, inter alia, s8 of the Bill of Rights Act, which provides for the right not to be deprived of life.

Holding that “deprived of life” in s8 refers to actual loss of life, or an increase in the likelihood of death, the Court of Appeal traversed case law and academic commentary before concluding that the suggestion that AR was at risk of losing his life or even being physically harmed on being deported to India had already been rejected by the Immigration and Protection Tribunal, which had relevantly found that there was no evidence to suggest AR would even be detained in India because of the notations in his passport. The Court of Appeal also noted that he would, in any event, be able to obtain a new passport in the near future, as his old one expired.

Notwithstanding the failure of AR’s argument, the case raises important considerations generally about the manner in which unsuccessful refugee claimants are returned to their home countries and the need for vigilance in not exposing them to harm.

## EUROPE

### ***Finland (exclusion clause and fair trial):***

*KHO:2022.15 (Supreme Administrative Court) (20.1.2022/H153)*

The applicant arrived in Finland as an asylum applicant in February 2014 and was granted refugee status on the grounds that he could be arrested or killed for his refusal to join the army and conscript to military service. In 2019, it came to light that the applicant had been sentenced to death in his country of origin, because he had been found guilty of murder in 2004. The Finnish Immigration Service found that the applicant had knowingly provided false information which materially affected the asylum proceedings and thereby revoked his refugee status. His application for subsidiary protection was subsequently rejected due to the exclusion clause applied if an applicant has committed a serious crime. The applicant pleaded that he was innocent of the murder he was accused of, and that he did not have the opportunity for a fair trial in his home country. The Supreme Administrative Court examined whether the exclusion clause was applicable to the applicant, in response to his claim that he was found guilty without having the right to a fair trial. In its reasoning, after considering the international and national legal framework for the exclusion clause, the Court assessed i) the case-law of the European Court of Human Rights as regards the right to a fair trial (see *Öcalan v. Turkey*), ii) views by the United Nations Human Rights Committee (see *Reid v. Jamaica*), and ii) national jurisprudence of the other European countries (see decision 201302787/1/V1 of the Raad van Staat). In light of this examination, the Supreme Administrative Court found that the decision of the Immigration Service did not assess the issues raised by the applicant that his trial was not fair. Based on this finding, the Court decided to annul the decisions of the Immigration Service and the Administrative Court, and to refer the case back to the Immigration Service for reconsideration.

### ***Belgium (access to asylum procedure and reception):***

*Tribunal de première instance francophone de Bruxelles, Section civile, 2021/164/C*

On the 19 January 2022, the Civil Division of the Court of First Instance of Brussels ordered i) the Belgian State to take all necessary measures to put an end to the impossibility for an indeterminate number of applicants of international protection to make and register their asylum applications, subject to a penalty of 5,000 euros per day, from the date of the judgment, should at least one person wishing to lodge an asylum application be deprived of this right; and ii) the Federal Agency for the Reception of Asylum Seekers (Fedasil) to grant the necessary material aid to any applicant for international protection as soon as the application is submitted, subject to a penalty of 5,000 euros per day, from the date of the judgment, should the benefit of this right be denied to at least one person who has lodged their asylum application and wishes to exercise their right to reception. The problem recognised by the Belgian court in this case was that since the end of October 2021, the number of persons allowed to enter the arrival centre each day in order to submit their application for international protection (and then register it), became dependent on the number of places available inside the centre. As regards the right to access to asylum procedure the Belgium court referred to the judgment of the CJEU in the case of *Commission v. Hungary* (C-808/18), while in respect of the issue of reception, the court referred to the judgments of the CJEU in cases *Saciri* (C-79/13) and *Haqbin* (C-233/18).

### ***Slovenia (push-back at the border between Slovenia and Croatia):***

*Vrhovno sodišče, I Up 23/2021 on appeal from Upravno sodišče, I U 1686/2021, 7. December 2020*

On 9 April 2021 the Supreme Court in appeal procedure confirmed the judgment of the Administrative Court on push back policy at the border between Slovenia and Croatia. The Administrative Court held that the Ministry of Interior (based on bilateral agreement with Croatia) by handing over the applicant to Croatian police at the border line, while the Croatian police after that pushed back the applicant immediately to BiH, violated the following rights of the applicant: the prohibition against collective expulsion (Article 19(1) Charter of Fundamental Rights of the EU), procedural dimension of the right to prohibition against inhuman treatment from Article 4 of the Charter of Fundamental Rights of the EU and the right to asylum from Article 18 of the Charter of Fundamental Rights of the EU. The Administrative Court also decided that the Ministry of Interior must issue to the applicant a permission to enter Slovenia so that the applicant will be able to file an asylum application in Slovenia. Several months after the judgment became final, the applicant again came to Slovenia and now has the status of asylum seeker.

The Administrative Court based its judgment on three (judicial) check-lists that were developed for the purpose of this and eventual other similar cases and which identified basic criteria and standards under existing EU law and international law (case law of the ECtHR) in relation to the rights from Articles 4, 19(1) and 18 of the Charter of Fundamental Rights of the EU. The aforementioned three check-list will be published under the title "Prohibition of collective expulsion and its interplay with non-refoulement and access to asylum – basic judicial checklist(s) under European Law" in the book edited by the Council of State of the Netherlands "Europeanization of Migration Law", which will be launched in 2022 at the occasion of 20 years of the Asylum Act in the Netherlands.

### ***France (persecution based on gender and religion of women in Afghanistan):***

*Mme M et ses enfants mineurs, CNDA 8 Décembre 2021, No 21022972C*

*(<http://www.cnda.fr/Media/TACAA/CNDA/Documents-CNDA/Decisions-grande-formation-et-sections-reunies/CNDA-8-decembre-2021-Mmes-M.-Mrs-M.-n-21022972-C>)*

On 8 December 2021, the French National Court of Asylum Law (Cour nationale du droit d'asile) dealt with the interplay between religious ground and gender as a basis for persecution and decided to annul the administrative decision by OFPRA of 27 April 2021.

The applicant was particularly targeted by the Taliban since she had behaved in a manner contrary to the role assigned to her gender by society, by refusing to submit to the practice of levirate and by maintaining a relationship outside the marital framework.

### ***Italy (assessment of credibility in case of sexual orientation) Nigeria:***

*La corte suprema di cassazione, Terza sezione civile, R.G.N. 3 322/2019*

The Supreme Court quashed the judgment of the Tribunal of Venice after setting out its disagreement with the Tribunal's finding against the applicant's credibility concerning alleged persecution in Nigeria based on sexual orientation. The Supreme Court referred to the CJEU joined cases *A B C* (C-148/13 to C-150/13) and the principles set out therein, concerning the assessment of sexual orientation, as well as human dignity under the EU Charter of Fundamental Rights. The Supreme Court determined that the Tribunal had failed to take these principles into account and had not carried out an investigation into the situation for homosexuals in Nigeria, thereby failing in its duty to cooperate in the investigation.

### ***United Kingdom (age assessment and detention):***

*R. (on the application of MA) v Coventry City Council [2022] EWHC 98 (Admin) (19 January 2022)*

*(<https://www.bailii.org/ew/cases/EWHC/Admin/2022/98.html>)*

The Kent Intake Unit (KIU) Social Worker Guidance pursuant to which the applicants' ages were assessed, the age assessment decisions taken in respect of the applicants and their prolonged detention were unlawful. Age assessments

of the applicants *MA (Kuwait)* and *HT (Iran)* were conducted on the day of arrival, without the opportunity to have an independent appropriate adult, or to provide clarification, correction or further information about their age. The interviews lasted between forty minutes and one hour, after which it was concluded that the applicants were 20 and 21 years old. The court had regard to the applicants' arduous journey in the last 24 hours before arrival, which was likely to have impacted their ability to respond to questions about family history, education, and life narrative. To assess age in a non-obvious case where an individual has just arrived in the UK and has been detained, without the support of an appropriate adult, was inconsistent with the principles set out in the case-law and such short form assessment cannot be qualitatively equated to the *Merton* compliant age assessment as set out in *R (B) v London Borough of Merton* [2003] EWHC 1689 (Admin).

### ***United Kingdom (non-gendered passports):***

*Elan-Cane, R (on the application of) v Secretary of State for the Home Department* [2021] UKSC 56 (15 December 2021) (<https://www.bailii.org/uk/cases/UKSC/2021/56.html>)

It was not contrary to Article 8 ECHR, either in isolation or read with Article 14, nor to the Human Rights Act 1998, for the Secretary of State to refuse to issue a person identifying as non-gendered with an 'X' passport.

### ***United Kingdom (Surveillance, Facebook, social media):***

*XX (PJAK - sur place activities - Facebook) Iran CG* [2022] UKUT 23 (IAC) (20 January 2022) (<https://www.bailii.org/uk/cases/UKUT/IAC/2022/23.html>)

#### *Surveillance*

- 1) There is a disparity between, on the one hand, the Iranian state's claims as to what it has been, or is, able to do to control or access the electronic data of its citizens who are in Iran or outside it; and on the other, its actual capabilities and extent of its actions. There is a stark gap in the evidence, beyond assertions by the Iranian government that Facebook accounts have been hacked and are being monitored. The evidence fails to show it is reasonably likely that the Iranian authorities are able to monitor, on a large scale, Facebook accounts. More focussed, ad hoc searches will necessarily be more labour-intensive and are therefore confined to individuals who are of significant adverse interest. The risk that an individual is targeted will be a nuanced one. Whose Facebook accounts will be targeted, before they are deleted, will depend on a person's existing profile and where they fit onto a "social graph;" and the extent to which they or their social network may have their Facebook material accessed.
- 2) The likelihood of Facebook material being available to the Iranian authorities is affected by whether the person is or has been at any material time a person of significant interest, because if so, they are, in general, reasonably likely to have been the subject of targeted Facebook surveillance. In the case of such a person, this would mean that any additional risks that have arisen by creating a Facebook account containing material critical of, or otherwise inimical to, the Iranian authorities would not be mitigated by the closure of that account, as there is a real risk that the person would already have been the subject of targeted on-line surveillance, which is likely to have made the material known.
- 3) Where an Iranian national of any age returns to Iran, the fact of them not having a Facebook account, or having deleted an account, will not as such raise suspicions or concerns on the part of Iranian authorities.
- 4) A returnee from the UK to Iran who requires a laissez-passer or an emergency travel document (ETD) needs to complete an application form and submit it to the Iranian embassy in London. They are required to provide their address and telephone number, but not an email address or details of a social media account. While social media details are not asked for, the point of applying for an ETD is likely to be the first potential "pinch point," referred to in *AB and Others (internet activity - state of evidence) Iran* [2015] UKUT 257 (IAC). It is not realistic to assume that internet searches will not be carried out until a person's arrival in Iran. Those applicants for ETDs provide an obvious pool of people, in respect of whom basic searches (such as open internet searches) are likely to be carried out.

*Guidance on Facebook more generally*

- 5) There are several barriers to monitoring, as opposed to ad hoc searches of someone's Facebook material. There is no evidence before us that the Facebook website itself has been "hacked," whether by the Iranian or any other government. The effectiveness of website "crawler" software, such as Google, is limited, when interacting with Facebook. Someone's name and some details may crop up on a Google search, if they still have a live Facebook account, or one that has only very recently been closed; and provided that their Facebook settings or those of their friends or groups with whom they have interactions, have public settings. Without the person's password, those seeking to monitor Facebook accounts cannot "scrape" them in the same unautomated way as other websites allow automated data extraction. A person's email account or computer may be compromised, but it does not necessarily follow that their Facebook password account has been accessed.
- 6) The timely closure of an account neutralises the risk consequential on having had a "critical" Facebook account, provided that someone's Facebook account was not specifically monitored prior to closure.

*Guidance on social media evidence generally*

- 7) Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed.
- 8) It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value.
- 9) In deciding the issue of risk on return involving a Facebook account, a decision maker may legitimately consider whether a person will close a Facebook account and not volunteer the fact of a previously closed Facebook account, prior to application for an ETD: *HJ (Iran) v SSHD* [2011] AC 596. Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. It is difficult to see circumstances in which the deletion of a Facebook account could equate to persecution, as there is no fundamental right protected by the Refugee Convention to have access to a particular social media platform, as opposed to the right to political neutrality. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis.

***United Kingdom (Economic conditions in Somalia and Article 3 ECHR after Paposhvili):***

*OA (Somalia) (CG)* [2022] UKUT 33 (IAC) (2 February 2022) (<http://www.bailii.org/uk/cases/UKUT/IAC/2022/33.html>)

Country guidance in *MOJ & Ors (Return to Mogadishu) Somalia CG* [2014] UKUT 442 remains relevant. Additional guidance on status of Reer Hamar clan in Mogadishu, Somali culture in general, and the assistance available from a returnee's clan or network.

Internally displaced person camps, rental in the city, availability of casual and day labour positions considered.

In particular:

"12. There will need to be a careful assessment of all the circumstances of the particular individual in order to ascertain the Article 3, humanitarian protection or internal relocation implications of an individual's return.

13. If there are particular features of an individual returnee's circumstances or characteristics that mean that there are substantial grounds to conclude that there will be a real risk that, notwithstanding the availability of the Facilitated Returns Scheme and the other means available to a returnee of establishing themselves in Mogadishu, residence in an IDP camp or informal settlement will be reasonably likely, a careful consideration of all the circumstances will be required in order to determine whether their return will entail a

real risk of Article 3 being breached. Such cases are likely to be rare, in light of the evidence that very few, if any, returning members of the diaspora are forced to resort to IDP camps.

14. It will only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which would be reasonable for internal relocation purposes.

15. There is some mental health provision in Mogadishu. Means-tested anti-psychotic medication is available.

16. Hard drugs are not readily available in Mogadishu, and the focus of substance abuse is khat, cannabis, alcohol and tobacco. It is not reasonably likely that an ordinary returnee, without significant means or pre-existing connections to criminal elements in Mogadishu, would be able to procure hard drugs, such as heroin and cocaine, upon their return.”

## WHO WE ARE AND WHAT WE DO

### THE INTERNATIONAL ASSOCIATION OF REFUGEE AND MIGRATION JUDGES

The IARMJ is an organisation for judges and decision-makers interested in refugee law and migration law. In particular, it fosters recognition that refugee status is an individual right established under international law, and that the determination of refugee status and its cessation should be subject to the rule of law.

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Membership is open to judges and appellate decision-makers, and Associate Membership to interested academics by invitation.

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#### THE ASSOCIATION'S WORKING PARTIES

The Association maintains a number of Working Parties, for the advancement and exploration of developments in refugee and migration law. The Convenor of the Working Parties is **James Simeon**, who can be contacted at [jcsimeon@yorku.ca](mailto:jcsimeon@yorku.ca). The Working Parties' Rapporteurs are:

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