iarmj
International Association of Refugee and Migration Judges

Established at Warsaw 18 September 1997

IARMJ JUDICIAL WELL-BEING AND RESILIENCE GUIDELINES

1. Well-being and resilience guidelines have been developed to support all judges doing refugee and/or migration work with well-being and resilience, and to assist them to work in environments that promote and provide access to strategies and tools for their enhancement. The guidelines can be read with the explanatory note, relevant passages are cross-referenced below.

2. The legal framework for refugee and migration determination often involves exposing judges to evidence of human rights abuses and serious harm. This includes consideration of sensitive and traumatic material, both of a personal nature and background material on countries of origin. In addition, the lawful determination of refugee and migration cases may expose judges to public criticism which in some cases amounts to vilification (Section 2).

3. Studies of judges establish that many are affected by stress and/or other work-related mental health difficulties and do not consider judicial well-being receives sufficient attention. Refugee and migration judges may be at enhanced risk of symptoms of vicarious trauma, burnout, and moral injury (Section 3).

4. Judicial leaders can promote judicial well-being and resilience by implementing initiatives and promoting participation in well-being programmes (subject to resourcing constraints), including through participation and role modelling. Their own well-being also requires consideration (Section 4).

5. It is recommended that judicial leaders ensure that there is a workplace well-being and resilience plan in place for refugee and migration judges, that suits the circumstances and requirements of each jurisdiction (Section 5). The following suggested elements may be included in any well-being and resilience plan for refugee and migration judges:

   - the provision of psychological support such as supervision and counselling;

   - resilience and well-being training and education for judges;

- the provision of a private intranet page for refugee and migration judges with access and links to well-being and resilience resources, advice and support;
- peer support and mentoring programmes;
- social activities in order to create supportive collegial environments;
- measures to promote physical health;
- a pastoral care protocol or procedure for responding to critical incidents;
- measures to ensure the physical security and safety of judges;
- clearly defined well-being leadership; and
- working practices that take into account the particular challenges faced by refugee and migration judges.

IARMJ JUDICIAL WELL-BEING AND RESILIENCE GUIDELINES EXPLANATORY NOTE

Section 1: Introduction

1.1 These Guidelines have been drafted collectively by the members of the IARMJ Judicial Well-being and Resilience Working Party.[1] Judicial working practices and workplaces should support well-being and resilience. Well-being and resilience are indispensable parts of judicial competence and should be goals for refugee and migration judges and judicial office-holders (hereafter: refugee and migration judges) and their workplaces.[2] The Guidelines have been developed to assist IARMJ members to support their well-being and resilience, and to work in environments that promote and provide access to strategies and tools for their enhancement.
The boxed text in this explanatory note summarises content and recommendations and forms the basis for much of the Guidelines.

1.2 The aims of the Guidelines are to:

- provide information about known risks to well-being and resilience faced by refugee and migration judges;
- recommend evidence-based strategies to mitigate these risks and to enhance judicial well-being and resilience;
- promote a culture of well-being and resilience that supports efficient and fair decision-making as well as working practices and environments conducive to such decision-making.

1.3 An important element in carrying out judicial duties effectively, and in line with the universally recognised Bangalore Principles of Judicial Conduct, is for judges to be able to maintain well-being and resilience.

1.4 There is little in published research addressing a working definition of judicial resilience. Judicial resilience can refer to the process by which

[1] These Guidelines have been formally endorsed as an IARMJ publication by the Association's Editorial Board which was established at the IARMJ world conference in the Hague in 2023. The Working Party which has produced the Guidelines and this accompanying explanatory note comprises the following members: Rapporteur, Martha Roche (New Zealand); Associate Rapporteur, Jade Murphy (Australia); Judge Camilla Wyssen (Switzerland); Majella Twomey (Ireland); Judge Marleen Maes Torres Loredo (Belgium); Judge Melanie Plimmer (United Kingdom); Judge Neil Froom (United Kingdom). The Working Party wishes to thank Dr Carly Schrever and members of the IARMJ Editorial Board for their comments on drafts. The Working Party acknowledges that published research in the area of judicial well-being and resilience is mostly from common law countries. However, the working party has sought to reflect the issues facing judges world-wide.

[2] The term 'refugee and migration judges' in these guidelines includes tribunal members and other quasi-judicial decision-makers.

resources are harnessed to sustain judicial well-being, or the individual judge's ability to react and recover in the face of difficulties.[3] Personal resilience is often discussed as a marker of well-being,[4] and associated with improved well-being.[5] However, while it is a support for well-being, it is not the only protective factor and is not, according to the empirical research, the most important protective factor.[6] The research demonstrates that it is the workplace or organisational protective factors that have the greatest impact on well-being.[7]

1.5 Judicial well-being has been has been characterised as:

> - a continuous process enabling judges to thrive across all aspects of their lives including occupational, physical, social, cognitive, emotional, and spiritual … It is essential for individual judges' occupational health and sustainability, for court-users' experience in court, for the quality of justice and ultimately for public confidence in the courts. As such, judicial well-being warrants attention and investment commensurate with other judicial priorities, such as access to justice, the upholding of judicial values, judicial training, and judicial efficiency.[8]

1.6 Refugee and migration cases have characteristics that demand close attention to supporting well-being and building resilience.[9] These include:

- exposure to traumatic events and personal stories, which can be emotionally taxing for judges;

[3] Antonella Sisto et al "Towards a Transversal Definition of Psychological Resilience: A Literature Review" (2019) 55(11) Medicina (Kaunas) 745.

[4] Shobhna Bag et al "Resilience, self-compassion, and indices of psychological wellbeing: a not so simple set of relationships" (2022) 57(4) Australian Psychologist 249.

[5] Ibid.

[6] Carly Schrever et al "Where stress presides: predictors and correlates of stress among Australian judges and magistrates" (2022) 29(2) *Psychiatry, Psychology and Law* 290 at 313–314. In a 2021 study of 152 judicial officers across five Australian courts, Dr Carly Schrever found that 'the only demographic variable found to be reliably associated with judicial stress was jurisdiction. The study found that judicial stress increases in the context of workplace features (such as lower levels of autonomy, lower levels of workplace support, level of control over manner and amount of work), in a way that it is not impacted by individual factors.

[7] Ibid.

[8] *Nauru Declaration on Judicial Well-being* adopted at Regional Judicial Conference on Integrity and Judicial Well-being (25 July 2024) at Principle 1.

[9] This has been clearly acknowledged in the chapter dealing with professional well-being in the European Union Agency for Asylum's forthcoming publication *A Practical Guide on Soft Skills for International Protection Judges* which refers to international protection judges facing the pressure of high-stakes decisions and daily exposure to trauma.

- decision-making underpinned by fundamental human rights that profoundly affects the lives of individuals and families and may result in distressing outcomes;
- where applicable, hearings that are likely to be a particularly stressful experience for the applicant, requiring sensitive handling and judge-craft;
- heightened public interest, scrutiny by politicians, and in higher courts, and media attention that sometimes includes distressing attacks;
- high workloads and significant backlogs.[10]

1.7 These characteristics can lead to an increased vulnerability to the mental health effects of judicial work including vicarious trauma, burnout, and moral injury.

Section 2: Refugee and Migration Decision-making Framework

2.1 Refugee and migration decision-making covers a wide range of subjects, but, to illustrate the challenges and stresses involved, the common refugee decision-making framework pursuant to the 1951 Refugee Convention[11] is highlighted. The challenges for refugee and migration judges involved in the determination of refugee claims include: the difficulty of assessing the validity of claims; the allegations of bias; the pressure of high caseloads; the emotional toll of hearing harrowing stories; and the need to balance international obligations with national interests. The key refugee definition[12] and the prohibition on *refoulement* and exclusions from refugee

[10] In the financial year ending April 2025 the First-tier Tribunal (Immigration and Asylum Chamber) open case load increased by 80 per cent: see Ministry of Justice (United Kingdom) "Tribunal Statistics Quarterly: January to March 2025" (12 June 2025) <https://www.gov.uk/government/statistics/tribunals-statistics-quarterly-january-to-march-2025/tribunal-statistics-quarterly-january-to-march-2025#immigration-and-asylum>. At the end of December 2024, the number of pending asylum cases in the European Union stood at 981,000 – more than double the number between 2017 and 2021 and among the highest on record, surpassed just once in 2024 and during the 2016 peak (EUAA "Latest Asylum Trends – Annual Analysis <https://euaa.europa.eu/latest-asylum-trends-annual-analysis#section5449-4>). The New Zealand Immigration and Protection Tribunal has experienced a doubling in monthly appeal filings over the past two years and the numbers of appeals on hand have increased by 42 per cent over the past year: Immigration and Protection Tribunal *Annual Report 2024 / 2025* (August 2025) at 4-5.

[11] Convention relating to the Status of Refugees 189 UNTS 137 (opened for signature 28 July 1951, entered into force 22 April 1954) and the Protocol relating to the Status of Refugees 606 UNTS 267 (opened for signature 31 January 1967, entered into force 4 October 1967) (the "Refugee Convention").

[12] Article 1A(2) of the Refugee Convention states that the term "refugee" shall apply to any person who: "…*owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it…*".

status,[13] also require refugee and migration judges to engage with difficult evidential issues and legal concepts.

2.2 Judges determining refugee status claims are required to address the highly emotive issues of fear, persecution, loss of protection and forced removal. When a case concerns the exclusion provisions, then issues such as the commission of war crimes, crimes against humanity or serious non-political crimes must be addressed. In most instances, by virtue of their circumstances, people seeking recognition as refugees will be extremely vulnerable. Many will: be displaced; be physically or psychologically traumatised; be experiencing separation from their families and community; face language barriers and lack familiarity with legal procedures and cultural/social norms in the host country; lack economic security and may face administrative detention while their claims are processed.

2.3 An examination of the key elements of the refugee definition highlights the potential impact on judicial well-being.

2.3.1 *Outside their country of nationality or former habitual residence*. The refugee definition requires an asylum seeker to present their claim in another country. Judges are often required to adapt their judge-craft techniques to take account of the fact that key witnesses and evidence may not be available or may emanate from an unfamiliar environment. Judges are also likely to have to apply unusual evidential concepts, such as the lower standard of proof as well as the shared burden on the parties. This is because applicants may be unable to support their assertions with documentary evidence, having arrived in the host country with the barest necessities and very frequently without personal documents.[14] Depending on the availability or otherwise of free legal advice and representation in the host country, the asylum seeker may be a litigant in person, requiring the judge to adjust procedures even further to enable the individual to participate fully. Because of their experiences, asylum applicants can feel apprehensive towards authorities, including in the host state. Accordingly, judges may be required to gain their confidence and thereby encourage them to speak openly, adding substantially to the demands of running a fair hearing. Credibility assessment in such circumstances can prove challenging.

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[13] The Refugee Convention sets out in Articles 2 to 32 the various rights and obligations attaching to refugee status. Article 33 contains another key provision, which is the prohibition on the expulsion or return ("*refoulement*") of refugees and those seeking asylum. After dealing with consideration of people who are included within the definition of refugee, the Refugee Convention sets out provisions defining people whose refugee status ceases because it is no longer needed (Article 1C) and people who have the characteristics of a refugee but who are nonetheless excluded from protection, either because they are already receiving or do not need protection (Articles 1D and 1E) or because they are deemed undeserving of protection (Article 1F). The concept of non-refoulement also arises under the Convention Against Torture and the International Covenant on Civil and Political Rights.

[14] The United Nations High Commissioner for Refugees (UNHCR) notes that the general legal principle that the burden of proof lies on the person submitting a claim applies to the establishing of facts in a refugee claim. The UNHCR suggests that the duty to ascertain relevant facts may be shared between the applicant and the examiner. See the United Nations High Commissioner for Refugees *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* HCR/1P/4/Eng/REV.2 (February 2019) at 43, para 196.

2.3.2 Most asylum seekers will require interpreters to assist them to present their evidence. This will place additional demands on judges hearing the cases to monitor the effectiveness of communication with hearings becoming longer than would otherwise be the case. Judges also need to be alert to the dangers of relying on verbatim records of the asylum seeker's claim, when these have been provided through interpreters, given the inherent risk of miscommunication, particularly in formal interviews or during cross-examination. This requires a careful enquiry and often slower pace of eliciting evidence, which can clash with the time provided for hearings or expectations to conduct hearings as efficiently as possible.

2.3.3 *Owing to a well-founded fear.* Judges must assess the evidence of people who are afraid or who are, at the very least, expressing fear of return to their country of origin or habitual residence. It is a potentially stressful experience for the judge to have to elicit evidence of an individual's past ill-treatment and/or prospective fear.

2.3.4 The well-founded test presents challenges for the judge examining the case. The asylum jurisdiction is sometimes described as a 'matter of life or death' given the nature of the risks of making a wrong judgement about the existence or otherwise of an objectively well-founded claim. To make an informed, rational decision on plausibility and well-foundedness, the judge is often required to read extensive background materials (including expert opinion evidence or primary source evidence of individual experiences) about the situation in the country of origin. These materials will not only include factual descriptions of the demographic, humanitarian, political, security and judicial landscapes in the country but will also include descriptions of human rights violations.

2.3.5 *Persecution.* To qualify for protection under the Refugee Convention, an applicant must successfully establish that what they fear reaches the threshold of persecution. The judge may therefore have to immerse themselves in the detail of past events to inform prospective risk. That often includes detailed medical evidence describing the nature and extent of claims of serious harm, torture and trauma and their physical and psychological impact, as well as oral examination of these issues. Where such accounts are disputed and evidence is to be tested by way of cross-examination, judges must take particular care not to allow an individual to become re-traumatised. There is also a risk that repeated exposure to accounts of torture and trauma can lead to judges experiencing vicarious trauma.

2.3.6 *Refugee Convention reason.* To show that an individual meets the definition of refugee under the Refugee Convention, they must establish that they have a well-founded fear of persecution for one of the five reasons mentioned in Article 1A(2) of the Refugee Convention. This can require consideration of extensive background information on distressing social and political country conditions including harrowing reports of detention, sexual violence, abuse and torture. In cases which concern eligibility under complementary or subsidiary protection regimes, very similar considerations will apply.

2.3.7 While the migration decision-making framework is more dependent upon the legal system of each state, judges are often required to apply fundamental human rights principles. These may require judges to engage with similarly difficult evidence found in asylum claims, involving trauma and serious harm. Additional duties and

obligations are therefore placed on refugee and migration judges which many other judges do not have.

2.3.8 In addition to the challenges posed by the applicable substantive law and evidence involved in the decision-making framework, refugee and migration judges often make decisions in the media and political spotlight and can be subject to inaccurate reporting and harsh public criticism. This can be sufficiently serious to constitute vilification and involve security concerns as a result of threats. Exposure to threats, traumatic events and vilification pose risks to the mental well-being of judges.[15]

The legal framework for refugee and migration determination often involves exposing judges to evidence of human rights abuses and serious harm. This includes consideration of sensitive and traumatic material, both of a personal nature and background material on countries of origin. In addition, the lawful determination of refugee and migration cases may expose judges to public vilification.

Section 3: Risks to Judicial Well-being

3.1 Judges are members of an occupational group often characterised by overwhelming caseloads, long working hours, considerable responsibility, and distorted borders between work and leisure time.[16] Given the characteristics of refugee and migration cases, and the relevant decision-making framework set out above, refugee and migration judges are exposed to the following well-being concerns:

Vicarious trauma

3.2 Post-traumatic stress disorder is characterised by a failure to recover after experiencing or witnessing a terrifying event. Symptoms can include flashbacks, nightmares, severe anxiety and depression, as well as intrusive thoughts about the event.[17]

3.3 Working with trauma victims can affect the professionals involved.[18] The phenomenon described variously as trauma exposure, vicarious trauma, and secondary traumatic stress reflects the effects of exposure to the trauma of others. It broadly refers to the psychological distress a person can experience as a result of the cumulative effect of exposure to the trauma

[15] Kevin O'Sullivan et al "Judicial Work and Traumatic Stress: Vilification, Threats, and Secondary Trauma on the Bench" (2022) 28(4) Psychology, Public Policy, and Law 532 (advance access copy referred to; The Bar Council (UK) "Vilifying lawyers puts them at risk" (13 October 2025).

[16] Elna Rossouw and Sebastiaan Rothman "Well-being of Judges: A Review of Quantitative and Qualitative Studies" (2020) 46(1) SA Journal of Industrial Psychology (online) at p6.

[17] World Health Organization "Post-traumatic Stress Disorder" (27 May 2024) <https://www.who.int/news-room/fact-sheets/detail/post-traumatic-stress-disorder>; and Donald Egan "What is Posttraumatic Stress Disorder (PTSD)?" (March 2025) American Psychiatric Association <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd>.

[18] Andrew P. Levin and Scott Greisberg "Vicarious Trauma in Attorneys" (2003) 24(1) Pace Law Review 245.

of others as part of everyday work.[19] The negative effects of secondary trauma are understood to be qualitatively similar to those of primary trauma.[20] Refugee and migration judges are required to listen to accounts of torture and trauma and to read extensive materials on social and political country conditions including harrowing reports of detention, sexual violence, abuse and torture. Repeated exposure to these accounts and materials may lead to refugee and migration judges experiencing vicarious trauma.

Burnout

3.4 Burnout refers to a pattern of emotional overload and exhaustion. It is linked to the work environment and is the cumulative effect of chronic everyday stress and chronic everyday strain, or a state of emotional, physical, and mental exhaustion caused by excessive and prolonged stress.[21] Its symptoms include fatigue, irritability, a sense of hopelessness, a decline in performance, or cynicism.[22] Burnout is associated with long working hours, high interpersonal demands, organisational failures, scrutiny, constant pressure to "produce" and limited resources to perform one's role effectively.[23]

Moral distress/Moral injury

3.5 Moral distress is the psychological unease generated where professionals identify an ethically correct action to take but are constrained in their ability to take it. More simply, it is the feeling of unease stemming from situations where institutionally required behaviour does not align with moral principles. It has also been described as a strong cognitive and emotional response that can occur following events that violate a person's moral or ethical code.[24] Another characterisation is that it is understood to arise when workers are faced with morally conflicting, high-stakes decision-making requiring them to take responsibility for resulting negative impacts on others.[25] Moral injury can arise when sustained moral distress leads to an impaired function or longer-term psychological harm.[26] The concepts of moral injury and moral distress have their origin in health care and armed

[19] Elna Rossouw and Sebastiaan Rothman, above n 16 at 7.
[20] Carly Schrever, Carol Hulbert and Tania Sourdin "The Psychological Impact of Judicial Work: Australia's First Empirical Research Measuring Judicial Stress and Wellbeing" (2019) 28(3) Journal of Judicial Administration 141 at 152.
[21] Ibid, at 150.
[22] Helen Baillot, Sharon Cowan and Vanessa E. Munro "Second-Hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context" (2013) 40(4) Journal of Law and Society 509 at 523.
[23] Lee Norton, Jennifer Johnson and George Woods "Burnout and Compassion Fatigue: What Lawyers Need to Know" [2016] 84(4) UMKC Law Review 987.
[24] Victoria Williamson et al "Moral injury: The Effect on Mental Health and Implications for Treatment" (2021) 8(6) Lancet Psychiatry 453.
[25] Carly Schrever, Carol Hulbert and Tania Sourdin "The Privilege and the Pressure: Judges' and Magistrates' Reflections on the Sources and Impacts of Stress in Judicial Work" (2024) 31(3) Psychiatry, Psychology and Law 327 at 365.
[26] British Medical Association "Moral Distress and Moral Injury: Recognising and Tackling it for UK Doctors" (2021) <www.bma.org.uk>.

combat settings where doctors, nurses and soldiers are required to comply with instructions that may challenge their personal moral or ethical codes and where they are required to make decisions that affect the survival of others.

3.6 Deciding the destiny of others can be a tremendous burden on the consciences of judges.[27] In the context of these guidelines, it is suggested that the difficult decisions judges make, and rules and precedents which require a result that the refugee and migration judge might not otherwise choose but for the legal framework they must apply (such as the separation of families, people being returned to countries where they will not be able to access life-saving medical care, and people who have committed serious criminal offences not being returned) can give rise to moral distress or moral injury for refugee and migration judges.

General well-being concerns including those raised by studies

3.7 Judges' impaired well-being has been linked to overall bad performance; procedural errors and errors in judgement; diminished cognitive abilities; lack of concentration; slowness; reduced reasoning skills and clarity of thought; lack of empathy; indifference to the rights of parties; tendency to be biased or resort to stereotyping; issuing a hastily written decision without appropriate scrutiny of the evidence; miscommunication; impatience; irritability; interpersonal problems; and anger. Conversely, positive well-being is linked to positive performance. [28]

3.8 Historically, there was little investigation into the psychological well-being of judges. In recent times, there has been more attention paid to this issue and increasing concern as to how judges can be supported in the demanding work that they do.[29] Psychological distress, anxiety, burnout, secondary trauma syndrome and alcohol use and dependence have been identified as occupational hazards of judicial office. Judges' rates of psychological distress are markedly higher than those reported for the general population and the barrister arm of the legal profession.[30] In a 2019 Australian study, the overwhelming majority of judges reported symptoms of secondary traumatic stress and almost a third scored in the range for which formal assessment for post-traumatic stress disorder may be

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[27] Elna Rossouw and Sebastiaan Rothman, above n 16 at 2.

[28] United Nations Office on Drugs and Crime *Exploring Linkages between Judicial Well-Being and Judicial Integrity: Report on the Global Survey Conducted by the Global Judicial Integrity Network* (March 2022) at 29; and Elron Elahie and Peter Jamadar "Exploring the Wellbeing of Caribbean Judicial Officers: A Matter of Judicial Integrity" (July 2021) 13 *CAJO News* 12.

[29] Carly Schrever et al, above n 25 at 372. In Australia and New Zealand, this increased concern has arisen in the context of judicial suicides: see "Coronial inquest into Auckland judge's suicide highlights pressures, isolation faced by judges" *Stuff* (20 June 2021). The psychiatrist's evidence at the coroner's inquest recommended mandatory supervision, mental health awareness training, and well-being conversation training. This led to the development of the Mauri Tū protocol for judicial resilience and well-being in the District Court. The New Zealand Immigration and Protection Tribunal plan, Tatau O Te Ora, is based on Mauri Tū.

[30] Carly Schrever et al, above n 20 at 163.

warranted.[31] Another study (also Australian) recorded that three quarters of judges reported suffering negative effects associated with vicarious trauma.[32]

3.9 In 2021, a global survey by the United Nations Office on Drugs and Crime, (hereafter UNODC study) of 758 members of the judiciary from 102 countries representing all geographical regions found that almost all indicated experiencing stress as the result of judicial work, that they knew of judicial colleagues who were experiencing stress or anxiety, and that the level of support available in their judiciary was not sufficient. Even in those judiciaries that have put in place measures aimed at promoting well-being, many participants found the available support inadequate or insufficient and that there was also stigma and stereotyping around mental health issues. Many of the UNODC study participants were of the view that stress, burnout, fatigue and anxiety undermined the impartiality, independence, efficiency and effectiveness of the judge and of the judicial system as a whole.[33] While this study is not specific to refugee and migration judges, it supports the view that if judges are not functioning optimally, both physically and mentally, it is unlikely their performance and relationships with colleagues and court users will be optimal.

3.10 It has been recognised that the asylum process can be traumatising for both asylum seeker and advocate.[34] It is logical that refugee and migration judges may be similarly affected. However, to date there has only been one study, done in the United States of America, looking specifically at stress and burnout amongst refugee and migration judges.[35] Judges were assessed for the presence of burnout and secondary traumatic stress using psychological assessment tools. It was found that the refugee and migration judges' burnout scores were higher than among all other professionals similarly assessed including physicians in busy hospitals and prison wardens. While the symptoms of secondary traumatic stress appeared less pronounced than burnout for refugee and migration judges, approximately half the sample had wondered how they would be able to continue working with asylum seekers. In addition, difficulty sleeping was reported by about a quarter of the sample.

[31] Carly Schrever et al, above n 6.

[32] Jill Hunter et al "A Fragile Bastion: UNSW Judicial Traumatic Stress Study" (February 2021) 33(1) Judicial Officers' Bulletin 1.

[33] United Nations Office on Drugs and Crime *Exploring Linkages between Judicial Well-Being and Judicial Integrity: Report on the Global Survey Conducted by the Global Judicial Integrity Network* (March 2022).

[34] Neil Graffin "The Emotional Impacts of Working as an Asylum Lawyer" (2019) 38(1) Refugee Survey Quarterly 30.

[35] Stuart Lustig et al "Inside the Judges' Chambers: Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey" (2008) 23(57) Georgetown Immigration Law Journal 57.

Studies of judges establish that the majority are affected by stress and other work-related mental health difficulties and do not consider judicial well-being receives sufficient attention. Refugee and migration judges may be at enhanced risk of symptoms of vicarious trauma, burnout, and moral injury.

Section 4: Principles Supporting Judicial Well-being and Resilience

4.1 Role of leadership

4.1.1 Relevant decision-makers and those leading judges should consider the particular characteristics of the refugee and migration jurisdiction, the potential mental health effects it has on its judges, and the need to ensure commensurate judicial well-being and resilience support.

4.1.2 Judicial well-being and resilience require both the individual and the relevant institution to take responsibility. Those in leadership positions have a particular role in promoting institutional wellness through helping to build resilience, supporting reasonable and effective systems of work and creating a working culture conducive to supporting well-being and resilience. Improving the well-being of the judiciary as a whole is not the sole responsibility of individual judicial officers, as individual and collective judicial well-being requires committed and pro-active leadership.[36]

4.1.3 Wherever practicable, relevant decision-makers and leaders of judges should create the conditions in which judicial resilience and well-being can flourish and role-model engagement with judicial well-being related initiatives[37], including promoting healthy cultural messages about judicial stress and well-being[38] and recognising the importance of tackling existing taboos.[39] To counter stigma, a workplace culture needs to be created in which judges are encouraged and supported by those in leadership to practice self-care and seek professional services and/or support for mental health challenges, where available.[40]

4.1.4 The UNODC study suggested that judicial leaders should be proactive in identifying existing risks in the judiciary and should be ready to provide prompt responses and modify strategies and policies in place with a view to guaranteeing the optimal physical, psychological and emotional well-being of all judges.[41]

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[36] David Swenson et al "Stress and Resiliency in the US Judiciary" [2020] Journal of the Professional Lawyer 1 at 18-19.

[37] Carly Schrever et al, above n 25 at 362.

[38] Nauru Declaration on Judicial Well-being, above n 8 at Principle 2.

[39] Carly Schrever et al, above n 25 at 361.

[40] United States of America Department of Justice *Department of Justice Report on Best Practices to Address Law Enforcement Officer Wellness: Practices to Foster a Culture of Wellness and Psychological Health and Well-being of Law Enforcement Agency Personnel* (May 2023) at 7.

[41] United Nations Office on Drugs and Crime, above n 33 at 36.

4.1.5 The challenges and responsibilities placed on judicial leaders with respect to well-being and resilience are acknowledged. These include resourcing constraints and changes to the legal and procedural frameworks. The well-being and resilience of judicial leaders also requires consideration given the substantial burdens they face with their own caseloads and management / leadership responsibilities, to which the expectation of leadership on resilience and well-being is added.

4.1.6 Judicial leaders play an important role in creating and developing the conditions necessary for increased resilience, and well-being to flourish, including:

- engagement in well-being programmes;[42]
- communicating and demonstrating by example that well-being is a priority. By prioritising self-care, judicial leaders set an example and send a message about the importance of well-being;
- monitoring workloads and working conditions;
- implementing appropriate initiatives and shaping organisational culture.[43]

Judicial leaders can promote judicial well-being and resilience by implementing initiatives and promoting participation in well-being programmes (subject to resourcing constraints), including through participation and role modelling. Their own well-being also requires consideration.

4.2 Workload issues

4.2.1 Working conditions must take into account judicial resilience and well-being.[44] Workload and backlogs have been identified as key stressors of the judicial role and obstacles to achieving optimal mental and physical well-being for judges.[45] Studies suggest stress due to the number of cases allocated as well as lack of opportunity for rest and recreation adversely affects well-being. Tight deadlines and excessive workloads ultimately have negative effects on the efficiency and quality of judicial work as well as on the perception of fairness.[46]

4.2.2 Judicial efficiency and the timeliness of justice are important institutional priorities for courts and tribunals. However, relevant decision-makers need to be mindful of the known workload issues and address these with good management and, where applicable, workload monitoring, equitable distribution of caseload, effective case scheduling/listing and

[42] Carly Schrever et al, above n 25 at 368–369.
[43] Ibid, at 371–372.
[44] Nauru Declaration on Judicial Well-being, above n 8 at Principle 3.
[45] Carly Schrever et al, above n 25 at 339; See also the UCL Judicial Institute *2024 UK Judicial Attitude Survey* (24 February 2025) <https://www.judiciary.uk/judicial-attitude-survey-2024/> at 111.
[46] United Nations' Office on Drugs and Crime, above n 33 at 15 and 29.

efficient working practices.[47] It has been recommended that courts should study whether caseloads are fairly divided by size and type of case, and whether judges and staffing are adequate within and across divisions.[48]

The efficient and fair distribution of cases includes being mindful of judicial well-being.

4.3 Workplace well-being and resilience plan

4.3.1 It is recommended that judicial leaders ensure that there is a workplace well-being and resilience plan in place for judges, that suits the circumstances and requirements of the jurisdiction.[49] The recommended content of the plan is set out in section 5 of this explanatory note. While this content addresses common areas of concern, the unique features of each court and tribunal are also acknowledged and it is recommended that those affected are consulted and have input into the design of the plan so that the sources of stress specific to their workplace are addressed.

The creation of workplace well-being and resilience plans to suit the needs of refugee and migration judges and their particular workplaces is recommended.

Section 5: Elements for Inclusion in Well-being and Resilience Plans

5.0 The following section describes elements that are intended to be a set of evidence-based options that may be included in well-being and resilience plans. It is recognised that there will be differences in resourcing and context and that not all workplaces will include all the elements identified below in their plans.

5.1 Welfare/mental health support and services

5.1.1 Some form of psychological support for the well-being of judges (counselling, supervision, therapy provided by psychologists) is provided by a significant proportion of judiciaries and has been noted by judges as useful for maintaining and improving their mental well-being. Psychologists and therapists involved ideally should have expertise on the specific stressors linked to judicial functions.[50]

Professional supervision

5.1.2 Professional supervision is standard practice in a number of professions (psychology, psychiatry, social work, counselling for example) whose work involves exposure to traumatic information. It is a process of

[47] Ibid, at 39.
[48] David Swenson et al, above n 36 at 20.
[49] Nauru Declaration on Judicial Well-being, above n 8 at Principle 6.
[50] United Nations Office on Drugs and Crime, above n 33 at 18, 19, and 36.

in-depth reflection by practitioners on their work in order that they continue to learn and develop from their experiences.

5.1.3 Supervision is distinct from counselling in that it is proactive rather than reactive. It provides a regular, proactive space for reflection on the human impact of the work and to learn strategies to manage stress and support thriving in the role. It can be utilised to focus on ways to improve resilience, reflect on exposure to traumatic information, reduce the impact of vicarious trauma and protect well-being. It can also be used for issues such as burnout, stress or other issues encountered at work.[51]

Barriers to accessing supervision

5.1.4 There are a number of factors or barriers which may hinder judges from seeking assistance with well-being and resilience, accessing supervision even when it is made available. These should be addressed in any well-being and resilience plan. They include:

- Lack of awareness about services available and how to access them.[52]
- Concerns about confidentiality: Services provided should be confidential as should the process of accessing them.[53]
- Stigma: Concerns about confidentiality are related to the issue of stigma which is another significant barrier that hinders psychological health and well-being and can prevent judges from seeking assistance. Judges have expressed concern that seeking help could be viewed as a sign of weakness and could have career repercussions. Positive messaging about attendance can assist to counter this.
- Lack of time: Another factor identified as a barrier to accessing psychological support is the lack of time to do so.[54] Best practice includes factoring time to access support into workloads to avoid those accessing well-being services perceiving this as an additional source of stress. Judicial well-being may require judicial time.[55]

Access to suitable and confidential psychological support in the form of well-being supervision supports judicial well-being and resilience. Steps should be taken to remove barriers to attendance within available resources.

[51] Marc Mason "From psychotherapy to legal practice: the use of clinical supervision by lawyers in England and Wales" (2024) Psychiatry, Psychology and Law (open access); Meribah Rose and Chris Maylea "The Case for implementing legal clinical supervision within legal practice, and recommendations for best practice" (2023) 32(3) Griffith Law Review 259.

[52] United Nations' Office on Drugs and Crime, above n 33 at 20; National Task Force on Lawyer Well-being "The Path to Lawyer Well-being: Practical Recommendations for Positive Change" (August 2017) <https://lawyerwellbeing.net>.

[53] United Nations Office on Drugs and Crime, above n 33 at 37.

[54] National Task Force on Lawyer Well-being, above n 52 at 13.

[55] Carly Schrever "Judicial Stress, The Unmentionable and the Undeniable: A Summary of Australia's First Empirical Research Measuring Stress in Judicial Work" (2023) 26 *Commonwealth Judicial Journal*.

Counselling

5.1.5 Counselling is a process whereby an individual meets with a trained professional counsellor to talk about issues and problems they are facing in their life. It is a form of 'talk therapy' that allows people to discuss their problems and explore their difficulties with a trained professional. Free access to counselling services (also known as EAP or Employee Assistance Programmes) are commonly provided in a variety of workplaces to assist employees with mental health support in order to promote their well-being. Where well-being supervision is in place within a jurisdiction, it is expected there will be less need for or reliance on counselling services, as concerns and issues can be attended to proactively. However, some judges may still find themselves acutely impacted by events in life and work, and so access to confidential counselling is important.

Access to confidential psychological support in the form of counselling or EAP also supports judicial well-being.

5.2 Resilience and well-being training and education for judges

5.2.1 Organisational well-being and resilience training supports a safe and healthy workplace.[56] Training to prepare for demanding caseloads and cases can be an effective tool in building resilience and protecting well-being.

5.2.2 As with any other type of workplace harm or injury, quality education programmes can minimise the risk factors.[57] Education programmes also offer the benefit of creating occasions for judicial colleagues to connect about the human dimension of the work, thereby fostering trust and relatedness which are key predictors of well-being in the judicial context.[58]

5.2.3 Easily accessible, specialised regular training can promote resilience and well-being[59] including:

- Education on risk factors such as vicarious trauma and burnout, with specific reference to the stressors linked to judicial functions and tailored to actual caseloads undertaken.[60]
- Resilience training (such as mindfulness, compassion, reflective practice, emotion regulation, and connection to meaning and purpose) to

[56] This approach has been adopted by the Judicial Appointments Board for Scotland, see Judicial Appointments Board for Scotland "Wellbeing Policy" (December 2022) at 2. See also the *2024 UK Judicial Attitude Survey*, above n 45 at 116.
[57] Ibid, at 2-3.
[58] Carly Schrever et al, above n 20.
[59] United Nations Office on Drugs and Crime, above n 33 at 7 and 37.
[60] Ibid, at 37.

strengthen the individual's capacity to implement well-being strategies for themselves.[61]

- Education for managers/leaders to encourage transparent and effective management practices, compassionate support for colleagues and access to well-being programmes offered.[62]
- Well-being training delivered as early as orientation and onboarding programmes to assist with prevention, early detection, and awareness.[63]
- Providing practical guidance materials such as well-being tips and recommendations.[64]

Well-being and resilience training initiatives that are easily accessible support the delivery of a safe and healthy workplace consistent with judicial well-being. Easily accessible, tailored, regular, and informative training on well-being and resilience related subjects delivered by experts in the field is recommended.

5.3 Judicial health and welfare intranet pages

5.3.1 Judicial health and welfare intranet pages where available, are a popular route for accessing welfare services and for many, their preferred way of accessing information. These could provide information specific to refugee and migration judges in relation to the protection of well-being and the prevention of burnout.

5.3.2 There is a wealth of online self-help materials available[65] to support well-being and resilience and it can be helpful for these to be summarised and explained in the relevant intranet page.

A specific private, well-being intranet page with access and links to well-being and resilience resources, advice and support, supports judicial well-being and resilience.

5.4 Peer support programmes and mentoring

5.4.1 Judges can benefit from the support and perspective of peers. Peer support programmes have been identified as a significant mechanism

[61] Anna Brafford and Robert Rebele "Judge's Wellbeing and the Importance of Meaningful Work" (2018) 54(4) Court Review 60; Jennie Cole-Mossman et al "Reducing Judicial Stress through Reflective Practice" (2018) 54(2) Court Review 90; Jeremy Fogel "Mindfulness and Judging" (2016) Federal Judicial Center <www.fjc.gov>; Jamey Heuston and Miriam Hutchins "The Power of Compassion in the Court: Healing on Both Sides of the Bench" (2018) 54(2) Court Review 96; David Prince "One Judge's Journey to Why: A Search for Meaning and Purpose" (2018) 54(2) Court Review 74; Judicial Appointments Board for Scotland, above n 56 at 37–38.

[62] Carly Schrever et al, above n 31; and United Nations Office on Drugs and Crime, above n 33 at 35–36.

[63] Judicial Appointments Board for Scotland, above n 56 at 38.

[64] Ibid, at 7 and 38.

[65] By way of example see the materials contained in the chapter dealing with professional well-being in the EUAA forthcoming publication *A Practical Guide on Soft Skills for International Protection Judges*.

for improving well-being and addressing judicial isolation.[66] These can take the form of small group sessions and support networks to speak informally about issues in a safe environment, and individual peer to peer conversations. Training can be provided to upskill senior judges to respond to and have effective conversations with struggling colleagues. The value of peer support is that other judges understand the specific nature of the judicial stress experienced by their colleagues.[67]

5.4.2 Peer support can also encompass mentoring, socialising and team building, including judicial dialogue and collaboration at judicial conferences and workshops.[68]

Peer support can be an important tool for promoting judicial well-being and increasing judicial resilience.

5.5 Social events and team-building activities aimed at promoting a culture of sharing and removing feelings of isolation

5.5.1 Collegial connection is a key predictor of judicial well-being and resilience.[69] Social activities outside judicial work can reinforce cooperation, solidarity, and togetherness. This can be beneficial to the well-being of judges as it can create camaraderie, emotional support and the creation of supportive collegial environments.[70] Similarly, team or group activities at work such as participating in group projects or hearing cases in panels can support this camaraderie.

Occasional social events and opportunities in the workplace to promote the creation of supportive collegial environments supports judicial well-being.

5.6 Promotion of physical health

5.6.1 The Commentary on the Bangalore Principles of Judicial Conduct acknowledges the impact of judicial well-being on judicial performance and emphasises that "*a judge should have sufficient time to permit the maintenance of physical and mental well-being* ..."[71]

5.6.2 Physical health forms an integral part of well-being and contributes to improving resilience. Judiciaries can promote the physical health of judges through:

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[66] United Nations Office on Drugs and Crime, above n 33 at 7 and 36.

[67] Interview with Dr Carly Schrever, 20 November 2024.

[68] The information exchange, collegiality and support provided amongst judges at IARMJ conferences is a good example of informal but effective peer support.

[69] Nauru Declaration on Judicial Well-being, above n 8 at Principle 4.

[70] United Nations Office Drugs and Crime, above n 33 at 37–38.

[71] United Nations Office on Drugs and Crime "Commentary on the Bangalore Principles of Judicial Conduct" (September 2007) at para 194.

- the provision of resources on various health related topics such as nutrition advice and the prevention of substance abuse;
- gym/fitness subsidies or facilities at work;
- regular health checks;
- ensuring more ergonomic workstations/adjustments and court rooms.[72]

Physical health measures can promote judicial well-being.

5.7 Pastoral care procedure for responding to critical incidents

5.7.1 Judges can be confronted with a variety of critical work-related incidents including security risks, such as violent protests, and online, verbal, and physical threats in response to their decisions. Attacks on members of the public by court users and distressing attacks on judges in the press and in social media, can also be viewed as "critical incidents".

5.7.2 Judges can also be impacted by emotional outbursts by court-users, and threats of suicide and self-harm. These threats are sometimes realised.

5.7.3 Guidance on preparing for and responding to critical incidents and other duty-related exposures to harm can support judges. Judicial leaders should make themselves familiar with research and best practices on effective responses to critical incidents.[73]

5.7.4 The following may be helpful to include in such guidance or policies:

- Prompt escalation to judicial leaders.
- Proactive contact on the part of judicial leaders with the affected judge/s to offer support and assistance and to encourage the judge to obtain psychological support.
- Multi-agency critical incident stress debriefings/management.
- Meetings with qualified mental health workers.

Guidance and pastoral care for judges involved in critical incidents and other exposures to harm are important for judicial well-being.

5.8 Physical security and safety

[72] United Nations Office Drugs and Crime , above n 33 at 16, 18-21, 23, and 33-42; *Department of Justice Report on Best Practices to Address Law Enforcement Officer Wellness*, above n 40 at 10, 42, 45-47, and 50.

[73] *Department of Justice Report on Best Practices to Address Law Enforcement Officer Wellness*, above n 40 at 36, 47-48.

5.8.1 Physical security at work is integral to judicial well-being and necessary to support judicial independence.[74] Conversely, safety concerns have a negative effect on judicial well-being and result in a sense of vulnerability and anxiety. Studies establish that judges have significant concerns about their safety both in and out of court.[75] Recently, Judicial leaders have raised these issues publicly.[76] Judicial leaders should take all reasonable steps to ensure to support safety both at work and outside work, including giving relevant information, training opportunities and skills.[77] Regular safety audits of court precincts and courtrooms by appropriate safety experts are also recommended.[78]

5.9 Clearly defined well-being leadership

5.9.1 The UNODC survey which preceded the Nauru Declaration on Judicial Well-being, highlights the importance of putting in place a well-being committee, whose role it is to promote the well-being and mental health of judges. [79] Clearly outlining and explaining the roles of those responsible for judicial well-being leadership supports judicial well-being.

5.10 ***Flexible approaches to doing work, fair distribution of work and fair timelines***

5.10.1 Workload has been earlier identified as a key stressor of the judicial role. The relevance of rest, relaxation and family life to judicial competence and diligence is recognised in the commentary on the Bangalore Principles of Judicial Conduct.[80] Judicial leaders should prevent avoidable sources of judicial stress[81] and help manage the inherent demands of refugee and migration work, bearing in mind the characteristics of this area of law. Stress arising from heavy workloads can be mitigated by carefully considering fair distribution of workloads; when to provide additional support to those who are experiencing difficulties complying with workload obligations; flexible approaches to judicial work; and initiatives to support healthy breaks from work at weekends and holiday time. [82]

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[74] Diego García-Sayán *Report of the Special Rapporteur on the Independence of Judges and Lawyers* A/74/176 (16 July 2019).

[75] Elna Rossouw and Sebastiaan Rothman, above n 16 at 1, 3, and 6; O'Sullivan et al, above n 15.

[76] M Fouzder "Judges have received death threats, LCJ reveals" (27 February 2025) Law Society Gazette<www.lawgazette.co.uk> "Chief Justice Koome Warns Threats to Judicial Independence from Online Attacks" <LawGuide www.lawguide.co.ke>.

[77] Elna Rossouw and Sebastiaan Rothman, above n 16 at 8, 10.

[78] O'Sullivan et al, above n 15 at 9.

[79] United Nations Office on Drugs and Crime, above n 33.

[80] United Nations Office on Drugs and Crime, above n 71 at para 194.

[81] Narau Declaration on Judicial Well-being, above n 8 at Principle 5.

[82] United Nations Office Drugs and Crime, above n 33 at 39.

Working practices and workloads must be carefully considered to avoid adverse impact on well-being. Working practices should take into account the particular challenges faced by refugee and migration judges.

5.10.2 These guidelines and this explanatory note are intended to be living documents that can be reviewed and further developed over time.
