



IARMJ report

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

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October 2021



The Legislative Building, Regina, Saskatchewan, Canada¹

CARFMS21 Conference

UTOPIAS AS PRACTICES: REFUGEE PROTECTION AND THE COMING FUTURES

October 27, 2021 - October 29, 2021

[Visit the conference website here](#)

¹ Sadly, the CARFMS conference being virtual, this is as close as most of us can get to being there.

From the Editors,

In about 10BC (Before Covid, so I'm talking about 2010), decision-makers in some countries (notably those with inquisitorial systems) began to find the digital age intruding into their hearings. It began with the new, internet-based 'voice call' apps such as Viber replacing expensive toll calls by ordinary telephone. Suddenly, we were being asked to hear evidence by voice calls from witnesses overseas. In time, as the tech market blossomed, other media such as WhatsApp appeared and improvements in connectivity and data speed meant that voice calls began to give way to video calls. Soon, it was unusual to hear a matter without one or more video calls to a witness overseas. This has undoubtedly been beneficial for some claimants. It has enabled them to bring someone close to the seat of persecution right into the hearing room. But these advances (if they *are* advances) need careful thought.



Martin Treadwell
Co-Editor

Refugee law has always accepted that there are evidentiary voids. As Sir Stephen Sedley once put it, in his succinct way, RSD involves making "a possible life-and-death decision extracted from shreds of evidence and subjective impressions". We have always accepted the existence of the voids between those shreds of evidence. Before the digital age, we recognised that claimants usually could not produce corroborative evidence from their country of origin. Requests to family and friends for information could put them at risk. Disclosure of a refugee claim could put the claimant at risk. And such evidence as *did* emerge could not, itself, be tested. Instead, we assessed claimants on the basis of what they told us, bolstered by what little corroboration there was, and we gave the benefit of the doubt where, all else being credible, there was an absence of supporting evidence. Even the increasing introduction of statutory provisions, putting the responsibility for establishing a claim onto the claimant, had to be read subject to this.

But perhaps the fine balancing of the competing interests is shifting. The availability of an overseas witness, at the push of a button, creates a dilemma for claimants and for lawyers. There is a subtle, but growing, pressure to produce such a witness because of the perception (valid or not) that cases without corroboration may fail. There can be a fear that *not* calling them may jeopardise the claim if the judge considers that available evidence is not being called. And so, whatever the risk, the witness is called. Long before the judge can have any input, the decision has been made and the witness briefed. If that contact is to put a person in harm's way, it has likely happened well before the hearing. And so, the die already being cast, we proceed to hear the evidence.

But what role now for the application of the benefit of the doubt? Has new technology moved the claimant to a point closer to the "responsibility for establishing the claim" end of the spectrum? 15 years ago, we accepted that claimants could not be expected to risk harm by contacting others for information. What has changed, so that claimants seem no longer to assume this to be an abiding principle? Is WhatsApp/Viber/Messenger more secure than the telephone used to be? How do we balance the fact that country X now has a squillion calls a day going out via voice calling (a number which *might* make surveillance much harder) against the reality that software and algorithms can monitor calls at a sophistication and speed unimagined 15 years ago?

I worry that, without us having any real conversation about it, a foundational principle of refugee law is being affected by a significant societal change, in a way that may be harmful. Perhaps it is inevitable. Perhaps 'giving the benefit of the doubt' is coming to mean something different. If it is, I think we ought to be talking about it.

Martin Treadwell Co-Editor

HABARI KUTOKA NAIROBI

Update from the President...



Justice Isaac Lenaola
President
IARMJ

Greetings to you all,

I am pleased to report that progress is being made with the preparations for the next IARMJ World Conference. The Executive has been ably assisted by a Planning Committee on the ground in the Netherlands and neighbouring countries, who have identified a fine venue, close to the heart of the Hague and accessible by train from Schiphol airport in only 20 minutes. It has good (and reasonably priced) accommodation in adjacent hotels and the venue itself will allow us the ability to meet in plenary, and to hold both workshop and break-out sessions in smaller rooms. Much praise needs to go to our office manager, Melany Cadogan, and to Sebastiaan de Groot and John Bouwman for their efforts. I hope to be able to visit the Hague in November, with other members of the Executive, to see the venue for myself and to meet with the relevant people.

In the meantime, the Programme Committee has been very much assisted by James Simeon in developing a theme for the conference (and the core structure of the programme), which will be made public early next year.

The World Conference will be held in May 2023, to enable the regional chapters to hold their own (long delayed) regional conferences in 2022. I am hopeful that the World Conference will be able to be held entirely face-to-face but we must plan for the possibility that we may need to offer a hybrid model, with online attendance also being possible. Indeed, in this uncertain world, even the possibility of an entirely online conference cannot be discounted at this early point. However, with vaccinations being rolled out across the globe, we think that 18 months will be enough time for regular travel to become possible once more. We must live in hope!

In the meantime, I commend to you the 2021 CARFMS conference, being held online from Canada on 27-29 October 2021. The IARMJ will host both a plenary session and a workshop on the work of some of the Working Parties. Registration details for the CARFMS conference are elsewhere in this issue.

Finally, I ask you to remember that our own suffering and hardship during this long COVID winter must not harden us to the predicament of others, particularly the vulnerable and the poor. A large portion of humankind has no access to social welfare support, reticulated water or electricity. For them, and many millions of other impoverished people, lockdowns mean hunger and thirst to a degree that those of us in urban environments are never called upon to suffer. It serves us well to remember them when we are grappling with the burdens of not seeing family for a while and not being able to move around freely as we used to. It is timely to remind ourselves of the old adage: I complained because I had no shoes, until I met a man who had no feet.

Keep safe. Look after yourselves, your families, and your friends and colleagues. We are all in this together and will come out of it together.

Isaac Lenaola

President, IARMJ

NEWS FROM THE CHAPTERS

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

AFRICA CHAPTER

I welcome this opportunity to pen a brief report about developments in the African Chapter. Whilst Europe has had a successful vaccination programme, we haven't had marked success in our efforts and Covid-19 continues to be a real issue in this continent. However despite this reality the infection and death rates have drastically reduced. In South Africa we are on level one and things are gradually going back to normal. The unfortunate part however is that in most countries the regulatory authorities remain closed and refugee status applications are not receiving any attention. In South Africa even though the offices remain closed they have opened up an online application platform and in person meetings are allowed only by appointment. The Refugee Appeal Board (RAB) has also however started to deal with its backlog, having received some welcome funding to increase its adjudicatory capacity. The refugee related litigation in the High Courts however continue as the High Courts remain operational.



Justice Mlambo
President, Africa Chapter

It is with a sense of pride that I take this opportunity to formally report that the discussions between the African Chapter, UNHCR and JIFA have finally borne fruit. We have now signed a tripartite Memorandum of Understanding ("MOU") that details our cooperative relationships. The main objectives are to establish a Centre of Excellence for English speaking countries whose main focus will be the training of Judges and other Judicial Officers on refugee law. The other objective is to formally track refugee related jurisprudence on the continent using the AfricanLii platform. This will greatly enhance the jurisprudence developmental objective of the Chapter and will ensure that chapter members, wherever they are on the continent, will have access to and be aware of Decisions and Judgements in other parts of the continent. The third objective is to create and maintain a website for the Chapter which will have all relevant information about the Chapter, members and Chapter activities. The launch of the website is imminent.

On the training front we aim to commence in November and discussions have already started with some countries such as Liberia and Rwanda, regarding areas of interest in the training programme that we offer through the Centre of Excellence. We have yet to finalise discussion as a chapter regarding the holding of our next Chapter conference. Our hopes of holding this conference in French speaking West Africa seem to be fading and we are exploring alternative options to hold the conference in either Nairobi in East Africa or in Tunis in North Africa. We should be able to finalise this by the end of the year. We have continued to conduct training webinars in fulfilment of the pledge made in Geneva two years ago. In this regard we have had a number of training webinars in South Africa, in Kenya and in North Africa. On 22 July 2021 we had a very successful continent wide training webinar that hosted over a hundred participants from all corners of the continent that was held in collaboration with the UNHCR. We will continue with the training sessions to ensure that we fully honour our pledge.

From the Courts, this issue already covers the most recent decisions in this continent. The most recent case was issued by our Supreme Court of Appeal and reaffirmed the proper approach by refugee status determination officers to the treatment and handling of refugee status applications. This decision is to be welcomed as it provides necessary guidance to refugee status officers, the Refugee Appeal Board as well as the High Courts on how to approach such matters.

Lastly, as a Chapter we have been engaged in a number of virtual meetings, the most recent being the celebration of the 70-year anniversary of the 1951 Convention. We have also been involved in a conference that considered the impact of climate change in the refugee and asylum context. I end where I started, that we are now in level 1 and the rate of vaccination continues to grow and it is our hope that the anticipated fourth wave of covid-19 will not materialise because by then we would have hopefully reached the necessary population immunity.

Mlambo JP
President, Africa Chapter

AMERICAS CHAPTER

Dear Colleagues:

The complex social, economic, humanitarian and political situation that some Latin American countries are experiencing with greater impact, has been generating a considerable increase in internal displacement, forced migration and requests for international protection in other countries. For example, South América, México and Central America are facing unprecedented pressure as the number of people seeking international protection rises at a time when access is being limited through troubling border restrictions derived from the pandemic.



Judge Esteban Laporte
President,
Americas Chapter

In the same way the situation in Haiti is difficult. The United Nations and its partners encourage countries in the Americas to engage in a comprehensive regional approach to ensure the protection of Haitian men, women and children moving throughout the region. This reality invites us from the judicial, administrative and academic aspects to continue reflecting on the search for better protection approaches and better compliance with the law.

The restrictions of the pandemic have also generated some positive aspects, among them the possibility of virtualizing our presence at events and conferences where we can contribute by giving presence to the association. Last June we had a magnificent conference from Peru with more than a thousand participants, where a case study on the migrant and refugee population was presented (Available in this newsletter).

As always, we thank UNHCR and IOM for their closeness and support with our chapter, courts and members. We are sure that this support is vital to improve the quality of our work.

I note that one of the biggest events on the horizon for the Americas Chapter is the online CARFMS conference in Canada. Details are as follows:

October: CARFMS21 York University. "Utopias as Practices: Refugee Protection and The Coming Futures". October 27 -29. [Click here to enquire and register.](#)

Other important events coming up are:

November: Presentation by the Administrative Immigration Court of Costa Rica and UNHCR On the Status of International Protection in the Region. 18 November, at 11:00am San José time. English interpretation will be available. People interested in participating can write to: elemus@mgp.go.cr or tam@mgp.go.cr

December: Presentation by the IARMJ Caribbean Members on migration and status of international protection in the region. Date and time to be announced.

Finally, we respectfully remind members of the payment of the annual membership fee. For more details, contact our treasurer at the email address: gaetan.cousineau@sympatico.ca.

Esteban Lemus Laporte

President, Americas Chapter

ASIA PACIFIC CHAPTER

Dear colleagues,

Across the Asia Pacific region, COVID continues to dominate the headlines and to affect our lives in many ways. Even countries such as Vietnam and Singapore, which had been highly successful in controlling the spread of the virus, are now struggling to control numbers which threaten to overwhelm health services. New Zealand is finding itself in a similar position now, with an outbreak in Auckland which has spread to other parts of Te Ika a Maui, the North Island. The 'R' rate of the Delta variant is 6 (the common flu is 1.5), which means that, on average, every person with COVID gives it to six other people. It is easy to see why it is so difficult to contain. It also means that vaccination is really the only way to control it and to keep people safe from serious harm.



Martin Treadwell
President,
Asia Pacific Chapter

If they have not already done so, there is an urgent need for courts and tribunals right across the Asia Pacific region to establish rules for the conduct of hearings in ways which are safe for all parties and which enable refugee and protection processes to continue functioning. Hearings by video link provide some of the answer, but not all hearings can be done that way. Thought needs to be given to the safety of administrative staff, interpreters, claimants and lawyers (and, of course, judges and decision-makers).

On **Thursday, 2 December 2021, at 5pm (Sydney time)**, the Chapter will be holding a free webinar for members on the impact of COVID on our work. It will be the first of two 1 hour webinars (the other will be in February). The first, in December, will address the issue of COVID as it is raised as a ground of claim in both refugee/protection and migration claims. The second, in February, will be on its impact on our administrative processes and solutions for some of the issues which arise in running hearings. Please register your interest in attending by clicking [here](#).

As to the Asia Pacific regional conference, plans are still in place for it to be held in Newcastle, NSW, in November 2022. A decision about the shape of the conference will be made early in the new year and will, of course, take into account the ability of people to travel, in deciding whether it will be 'in person', 'online' or a combination of both. We will be able to provide more information in the February newsletter about this.

Finally, I record the retirement on 31 July 2021 of Judge Peter Spiller as Chair of the New Zealand Immigration and Protection Tribunal after seven years at the helm. Many of you would have met Judge Spiller at the IARMJ World Conference in Costa Rica in early 2020. He leaves the Tribunal in excellent shape as he retires, with all streams of work, including refugee and protection work, operating 'at flow' which means that appeals are able to be set down for hearing almost as soon as they are lodged, subject only to the preparation time needed by the legal profession. Speaking personally, it has been an enormous privilege to have worked closely with the Judge over the past seven years. His legacy is a Tribunal in robust shape, with a strong international reputation and the ability to provide quick and well-reasoned decisions for those who appear before it. We wish him the very best for the future.

Martin Treadwell

President, Asia Pacific Chapter

EUROPE CHAPTER

By Harald Doerig, Vice President of the Europe Chapter

There has been a drop-down in the number of asylum seekers to Europe in the Covid19-pandemia. In 2019 we had 716,000 asylum applications, in 2020 only 465,000. But in 2021 the numbers are rising again.

There has been pressure on neighbouring countries of Belarus, a European country west of Russia. The Belarus dictator Lukaschenko uses refugees to exercise pressure on Poland, Lithuania and Latvia not to support the Belarus opposition. He organizes tours for thousands of immigrants from Syria, Afghanistan etc to the borders of those neighbouring countries. According to Polish authorities, more than 8,000 migrants and asylum seekers have made attempts to cross the Belarussian border this year, including 3,800 since 1 September. Poland, Lithuania and Latvia have each declared a state of emergency, introduced legal changes restricting the right to seek asylum, and reinforced border guards, barbed wire fences, and deployed soldiers. More than 5,000 persons are kept in a transit zone to Poland without support of food and shelter. Lithuania has proposed a change of EU law to legalise pushbacks, the practice of expelling people without allowing them to apply for asylum. On the other side of the border, the Belarussian parliament voted on 4 October to suspend an agreement with the European Union from 2020 to take back migrants.



Harald Doerig, Vice-President,
European Chapter

The European Union has agreed to develop the European Asylum Support Office (EASO) to an Asylum Agency with advanced powers to support Mediterranean countries in the administration of asylum applications. In future, courts will be obliged to consider (not to follow) the COI edited by EASO. IARMJ Europe cooperated with EASO in the field of training for judges and enacting judicial analysis on core subjects of refugee law. In 2021 the IARMJ-Europe, under the contract with EASO, has completed the review of the Judicial Analyses on "Asylum Procedures and the Principle of Non-Refoulement" and on "Ending International Protection" and is currently updating Judicial Analysis on "Qualification for International Protection" and is now reviewing Judicial Analysis on "Evidence and Credibility Assessment".

The European Union encourages the immigration of qualified immigrants. It has just agreed to change its Blue Card Directive by opening the entry to Europe not only for academics but also for professionally qualified immigrants. The salary threshold will be reduced to between 1 and 1.6 times the average gross annual salary, making it more accessible to more people. The minimum duration for a contract of employment will also be reduced from 12 to 6 months. Germany has already changed its law to facilitate immigration in the labour market and it allows immigrants without residence permit to stay in the country if they fulfil specific integration requirements.

Our Chapter President, Bostjan Zalar, and other members of the IARMJ-Europe are or have been actively engaged in the conceptualisation of training programmes and in providing (online) training services for judges and lawyers on the subjects/events, such as:

- European Network of Statelessness, Online debate 15 July 2021: "Using Litigation to End Statelessness".
- Hungarian Helsinki Committee/ECRE/EPIM, 16 September 2021: Right to know – access to classified data in immigration cases: "Challenges for courts in national security cases".

- EASO Professional Development Webinar Series on Access to Asylum Procedures and Non-Refoulement, 16-17 September 2021.
- European Law Academy (ERA): "The use of Art. 47(2) of the Charter on the right to an oral (public) hearing: five-steps methodological approach" and "Privilege against self-incrimination in administrative disputes (including exclusion clause in asylum cases)", Ljubljana, 27-28 September 2021.
- EASO Professional Development Webinar Series on Detention of Applicants for International Protection, Malta, 19-20 October 2021.

In May 2021 Johan Berg and I delivered a two days online-training for Greek judges on the Common European Asylum System and the core elements of the refugee definition as well as subsidiary protection. This was organized by EASO. Two additional training events for our Greek colleagues followed, the last one face to face.

In June 2021, IARMJ Europe organized, together with UNHCR, an online training programme for judges from Eastern Europe on the preliminary reference procedure to the European Court of Justice. This training started with two online lectures given by Hugo Storey and me and was followed by a workshop where presentations were given, including a discussion. Speakers were Bostjan Zalar and Judge Lars Bay Larsen from the Court of Justice.

On 18 November 2021, EASO/IARMJ-Europe will organize a High Level Expert Panel with participation of judges from CJEU, ECtHR and IARMJ-Europe: "Protection against persecution/serious harm - are there divergent concepts of effective protection?" and "Judicial test(s) in the field of asylum-related disputes for assessing deficiencies in another Member State affecting the fundamental rights on an individual under the principles of mutual trust (EU law) and presumption of equivalent protection (ECHR)". Information on this event will soon be circulated among the members of the IARMJ.

The European Chapter is preparing its bi-annual Workshop in Berlin for 12 to 14 June 2022. The rooms of the Berlin Academy have already been booked. We ask our members to propose topics to be discussed on this occasion.

Our member Dr Stephanie Gamp has been elected to the German Supreme Administrative Court. Congratulations.

Harald Doerig
Vice-President, Europe Chapter

IN THE LIBRARY

A SELECTION OF IN-DEPTH REPORTS COVERING TOPICS OF INTEREST

[Afghanistan Security Situation Update: Country of Origin Information Report](#)

European Asylum Support Office (EASO), September 2021

The purpose of this report is to provide security related information relevant for international protection status determination. The report contains information on the general security situation in Afghanistan, as well as information on security related events on regional, provincial, or district level in September 2021.

[Asylum Research Centre updates their analysis of USDOS human rights reports](#)

European Country of Origin Network (ECOI), September 2021

This study looks for systematic changes in these reports across the Obama and Trump administrations. It does so by analysing the USDOS reports on 5 countries with a high number of asylum applications in Europe (Eritrea, Iran, Iraq, Pakistan, and Sudan).

[DFAT Country Information Report: The Philippines](#)

Australian Department of Foreign Affairs and Trade, 23 August 2021

This report covers topics related to protection status determination, including but not limited to: the political system, the human rights framework, the security situation, race, religion, political opinion, extrajudicial killings, the 'War on Drugs', arbitrary arrest and the death penalty in the Philippines.

[Economic Coercion in Indo-Pacific Island States: Building Resilience](#)

Australian Strategic Policy Institute (ASPI), 28 September 2021

In this report, the authors examine four perceived examples of economic coercion within the region that challenge the 'Quad's' vision of a free and open Indo-Pacific ['Quad' is the Quadrilateral Security Dialogue; a strategic dialogue between the United States, Japan, India and Australia]. The report claims China's increasing interest in the island states of the Indo-Pacific has led to concern that the imbalance in those relationships is so large that both domestic and broader regional stability are at risk.

[Equality of Opportunity for Sexual and Gender Minorities](#)

World Bank Group, 28 September 2021

This report highlights the current legal situation of sexual and gender minorities in the following 16 countries: Bangladesh, Canada, Costa Rica, India, Indonesia, Jamaica, Japan, Kosovo, Lebanon, Mexico, Mozambique, Nigeria, South Africa, Tunisia, Ukraine, and Uruguay.

[Global Organized Crime Index 2021](#)

Global Initiative Against Transnational Organized Crime, 28 September 2021

This Index seeks to provide a consolidated hub of data and baseline evidence of organised crime in countries across the world and in so doing, aims to be a catalyst for further debate on transnational organised crime. It includes all 193 UN member states and is reportedly the first tool of its kind designed to assess levels of organised crime and resilience to organised criminal activity.

From the Inter-American Commission on Human Rights:

The IACHR has published its Final Report on Nicaragua: [here](#) and Venezuela: [here](#)

[Newsletters of the Centre for Migration Law of Radboud University Nijmegen, The Netherlands.](#)

These Newsletters, published by the Centre for Migration Law, are made for judges in particular. They are available free, as a service to judges who have limited time to search for relevant data and come highly recommended. All three newsletters can be found at the one address, as above. They are:

- NEMIS: Newsletter on European Migration Issues
- NEAIS: Newsletter on European Asylum Issues
- NEFIS: Newsletter on European Free Movement Issues

Our thanks to Dr Carolus Grütters of the Centre for Migration Law for bringing these to our attention.

ARTICLES OF INTEREST IN THE MEDIA

[Refugees in fear as sentiment turns against them in Turkey](#)

ABC News, 26 September 2021

Syrian refugees were once welcomed with sympathy and compassion in neighbouring Turkey. However, this report shows attitudes have gradually hardened as the number of newcomers swelled during the past decade.

[UK's planned asylum overhaul would break international law: UNHCR](#)

Al Jazeera, 23 September 2021

In this article, UNHCR warns that the UK's [Nationality and Borders Bill](#) would create an "unfair two-tier system" and "penalise most refugees seeking asylum in the country via damaging and unjustified penalties if it comes into force".

[The Biden administration will raise the cap on refugee admissions to 125,000](#)

The New York Times, 20 September 2021

President Biden intends to increase the cap beginning 1 October. See also [UNHCR welcomes US plan to increase refugee resettlement](#).

[Burundi: Allegations of Killings, Disappearances, Torture](#)

Human Rights Watch (HRW), 17 September 2021

HRW asserts that grave human rights violations have persisted in a context of insecurity in the 15 months since Évariste Ndayishimiye became president of Burundi. HRW believes that until Burundian authorities address the root causes of the 2015 crisis and continuing impunity, the UNHRC should ensure investigations into the human rights situation in Burundi continue.

[ICC Authorizes Investigation Into Philippines' 'Drug War' Killings](#)

The Diplomat, 16 September 2021

Judges at the International Criminal Court have authorised an investigation into the Philippines' deadly "war on drugs" campaign, describing it as a "widespread and systematic attack against the civilian population".

[DR Congo: Massacres Persist Despite Martial Law](#)

Human Rights Watch, 15 September 2021

Attacks on civilians by armed groups have continued in two provinces of the eastern Democratic Republic of Congo since the government imposed martial law in May 2021. Various armed groups, some unidentified, have killed at least 672 civilians, while Congolese security forces have killed 67 civilians.

[Myanmar: Southeast Asia's Next Frontline of Jihadism?](#)

Global Risk Insights, 14 September 2021

This article reports that Myanmar's spiralling violence and the presence of over a million Rohingya refugees in Bangladesh has created a fertile ground for radicalisation, raising the prospect of a new jihadist front at the crossroads of South and Southeast Asia. In November 2020, Katibah al-Mahdi fi Bilad al-Arakan, a new pro-Rohingya insurgent group, emerged, espousing an explicitly jihadist ideology and pledging allegiance to Islamic State.

[UNHCR: Cameroon Refugee Needs Increasing, Means Limited](#)

VoA, 11 September 2021

UNHCR says that Cameroon continues to be one of the world's most neglected displacement crises, with refugee needs increasing far more quickly than are available resources. Cameroon is home to about 500,000 refugees, most of them having fled the troubled Central African Republic and Boko Haram terrorism in Nigeria.

[Colombia faces new humanitarian crisis as thousands of migrants stuck in beach town](#)

AA News, 10 September 2021

Colombia is facing a new humanitarian crisis triggered by more than 14,000 migrants who are held up in Necocli. The undocumented migrants, most of them from Haiti and Cuba, are stuck in the beach town in Antioquia department, waiting to cross the Darien Gap, which is controlled by illegal groups.

[The Afghan Taliban Tries Moderation](#)

Geopolitical Monitor, 6 September 2021

For the time being it seems likely that the Taliban will initially adopt a more "moderate" line of government for reasons of internal consolidation, monetary pressure from the West, and at the request of its neighbouring states, thus consolidating its claim to power in the initial phase. This moderate stance will, however, still be strictly Sharia-oriented.

[German Briefing Notes - Country News Briefings / Federal Office for Migration and Refugees \(BAMF\)](#)

27 September 2021

These briefings provide an update on recent developments in selected countries (including, but not limited to: China, India, Iran, Iraq, Russia) in respect to security, politics and economic issues.

FORTHCOMING ELECTIONS

A select list of forthcoming elections worldwide

COUNTRY	ELECTION TYPE	SCHEDULED DATE
Republic of Iraq	Council of Representatives	10 October 2021
Japan	House of Representatives	22 October 2021
Republic of Chad	National Assembly	24 October 2021
Bosnia and Herzegovina	House of Representatives	31 October 2021

UPCOMING EVENTS



CARFMS21: Utopias as Practices

October 27 - 29, 2021



REFUGEE PROTECTION AND THE COMING FUTURES

October 27, 2021 - October 29, 2021

Regina, Saskatchewan, Canada

Hosted virtually in collaboration with the
Johnson-Shoyama Graduate School of Public Policy,
University of Regina and University of Saskatchewan

The current refugee protection regime embodies legacies, aspirations, and compromises inherited from post-Second World War geopolitics and law. Increasing recognition of its Eurocentrism, state, local, and translocal resistances and growing fragmentation at multiple scales is spurring new understandings of belonging, community, and membership outside of the mainstream legal framework. People in situations of forced migration are also forging autonomous collectives, bargaining units, mutual aid collectives, and other local utopic communities. Some observers consider the UN Global Compacts on Refugees and Migration or the 2019 Call to Action of the CIGI World Refugee Council as key steps towards increasing available pathways to safety.

The CARFMS 2021 Organizing Committee wishes to invite you to explore utopias and new visions of the future. Scholars, practitioners, and experts with lived experience will come together to reflect on the transformative potential of utopic thinking and practices in forced migration studies.

Access the conference website [here](#)



RECENT CASE-LAW OF INTEREST FROM AROUND THE WORLD

AFRICA

Somali Association of South Africa & ors v Refugee Appeal Board & ors (585/2020) [2021] **ZASCA 124 (23 September 2021)**

This important, recent decision from the Supreme Court of Appeal of South Africa considers the processes of the Refugee Appeal Board (now the Refugee Appeals Authority). It makes findings in regard to the claimant's responsibility to establish the claim and the duty of the decision-maker to enquire further. It also considers the application of section 3(b) of the Refugees Act 130 of 1998 (derived from the OAU Convention), which provides for protection where there are events in the country of origin "seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality", compelling the claimant/s to seek refuge elsewhere. It is a far-reaching decision which will no doubt be welcomed by all as providing guidance, both as to process and as to substance.

Kwai & ors v Council of Legal Education & ors [2021] eKLR (Petition 393 of 2018) **(20 May 2021)**

The applicants were South Sudanese nationals who had been recognised as refugees in Kenya. Having completed the professional qualifications to be admitted to the bar as advocates, they had been denied access to the results of the bar examinations because they were not Kenyan nationals. The court resolved the matter in favour of the applicants in part because of the issue of comity between East African nations (of which South Sudan was one, albeit that the Kenyan Constitution needed updating to this effect). The decision is important, however, for the discussion of the rights of recognised refugees, notably the right to education. It is a rare decision in this field of Convention rights after recognition and makes a valuable contribution.

Muluk Seid & ors v Republic [2021] eKLR (4 August 2021)

In this case from the High Court of Kenya, the court set aside convictions for illegal entry by three Ethiopian appellants who had, they said, fled the current unrest in the Tigray region of Ethiopia and had come to Kenya to seek recognition as refugees. The court found that the legitimacy of their presence in Kenya turned on whether they were refugees and held that the men should have been afforded the opportunity to put their cases for refugee status, as the appropriate means of establishing their claims. Convictions should not have been entered against them without that determination having been made in each case. The court set aside the convictions and referred the matter back to the Magistrate's Court, to be dealt with by a different magistrate.

AMERICAS

<https://cdn01.pucp.education/idehpucp/wp-content/uploads/2021/06/16210303/ACNUR-CUADERNO-ARCHIVO-FINAL-Version-Web.pdf>

Notebook of emblematic jurisprudence on the protection and guarantee of the rights of refugees and migrants in South America (Argentina, Chile, Colombia, Ecuador and Peru). This publication of the Institute of Democracy and Human Rights of the Pontifical Catholic University of Peru (IDEHPUCP) and the United

Nations High Commissioner for Refugees (UNHCR) also raises, based on emblematic cases, a reflection on the rule of law of refugees and migrants (in Spanish only).

ASIA PACIFIC

***AL (Thailand) v Immigration and Protection Tribunal* [2021] NZHC 810**

In an inquisitorial system, where does the duty to establish the case lie? At what point can an applicant reasonably ask that the benefit of the doubt be applied? The point is a simple one, but is not often raised before the courts.

This issue was recently considered by the New Zealand High Court, in *AL (Thailand) v Immigration and Protection Tribunal*. The claimant (facing charges in his home country) argued, inter alia, that he would be the subject of an unfair criminal charge and that he would be unable to access essential heart medication if imprisoned. His appeal having been declined by the Tribunal, the appellant argued before the High Court (among other things) that the Tribunal erred in finding that he would likely be able to access prescription medication in prison with no evidence to that effect and that it failed to apply the “benefit of the doubt” when assessing whether there was a real risk of serious harm arising from him potentially being denied his medication.

The High Court considered past authority and held that it was for the appellant to provide evidence to support his claim that he would be unable to access medication in a Thai prison. As to the application of the benefit of the doubt, he had provided no evidence that Thai prisons would prevent access to medication where it was required and funded by him. In these circumstances the “benefit of the doubt” principle did not step in to fix the deficiencies in the evidence.

EUROPE

In two judgments from 19 November 2020 (**no. 18054661** and **no. 19009476**, les deux en français seulement), the Grand Chamber of the Cour Nationale du Droit d’Asile (CNDA) defined the approach, where an applicant has not established a risk of persecution under the Refugee Convention, to appraising the level of indiscriminate violence needed in circumstances of serious risk to the applicant on return to his/her country of origin, where there is ‘generalised violence’, for the purpose of subsidiary protection (regulated by Article 15c of the European Union Qualification Directive 2011/95).

The cases concerned applicants from the provinces of Panshjer and Herat in Afghanistan. After explaining the interpretation of the CJEU in such cases as regards standards of evidence (no. 18054661: para. 9; no.19009476: para. 10), and methodological issues of using country of origin information under EU secondary law (no. 18054661; para. 11; no.19009476: para. 12), the CNDA then explained that, for the appraisal of the necessary level of violence, both quantitative and qualitative indicators need to be taken into account (no. 18054661: paras. 9, 12; no. 19009476: paras. 11, 13). In these cases, the level of violence was not so high in the provinces of origin that the applicants should be granted automatic protection (for one of them there was no violence at all). The Court also considered the situation in Kabul, which would be the point of entry to the country for both applicants, and the route for the applicants to reach their respective provinces. In every appraisal, when the level of violence is not so high (including in Kabul and on the route to the province of origin), the applicants must demonstrate elements specific to their situation to be granted subsidiary protection.

It is worth comparing the approach of the CNDA in evaluating the necessary level of generalised violence based on quantitative and qualitative indicators with the approach of the German Federal Supreme Administrative Court in the case BverwG 1 C 11.19 ([here](#) in English and [here](#) in German) from 20 May 2020 (paras. 17, 20-22, 26), which concerned the situation in Somalia (to understand the judgment it needs to be explained that findings of fact by the lower administrative court - the so-called 'judge of fact' – are binding on the Federal Supreme Administrative Court). In addition to the identification of indicators for the appraisal of the necessary level of indiscriminate violence, the judgment of the German Supreme Administrative Court also explains the difference between protection against serious harm (subsidiary protection) in cases of acts of inhuman or degrading treatment under Article 15b of the EU Qualification Directive (paras. 10-15) and in cases of indiscriminate (generalised) violence under Article 15c of the Qualification Directive (paras. 16-22).

The Bulletin d'Information Juridique

The *Bulletin d'Information Juridique* is a monthly legal bulletin published by the Centre for research and documentation (CEREDOC) of the CNDA. It is a French-language resource aimed primarily at informing magistrates and rapporteurs of the Court of all significant jurisprudential developments in the field of international protection determination and asylum broadly speaking in France and Europe.

The CNDA judgments appearing in the BIJ are those chosen by the Court as reflecting its jurisprudence: they also appear in the "actualité jurisprudentielle" section of the website. This means that, sometimes, unnoticed or unorthodox judgments from the CNDA may be found on other resources (Refworld or others) without appearing on our website. All Conseil d'Etat judgments dealing with international protection appear in the BIJ, as well as judgments from other courts (Cour de Cassation, Conseil constitutionnel) when they have a bearing on matters connected with asylum.

There is also an international section in which are reported ECtHR cases concerning return and asylum related cases, as well as CJEU judgments, which are binding for all national asylum judges within the EU (also opinions of advocate generals). There are sometimes also judgments of foreign Courts reported at the end of the bulletin.

All judgments are, in principle, accessible through a link embedded in the reference of the judgment. They all are briefly commented by a note underlining the outcome and the interest of the case.

Our thanks to Dominique Kimmerlin, Présidente de la Cour Nationale du Droit d'Asile, for her kind permission to include here this link to the *Bulletins*.

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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Contact:

Melany Cadogan, Office Manager, IARMJ
office@iarmj.org or +31 6 1401 2935

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THE SUPERVISORY COUNCIL

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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. The Working Parties' Rapporteurs are:

Rapporteurs

Artificial Intelligence	John Keith	uppertribunaljudge.keith@ejudiciary.net
Asylum Procedures	Michael Hoppe	Michael.Hoppe@vgkarlsruhe.justiz.bwl.de
Deportation	Martin Treadwell	Martin.Treadwell@justice.govt.nz
Detention	Julian Phillips	residentjudge.phillips@ejudiciary.net
Exclusion, Cessation and Deprivation of Citizenship	Johan Berg	jbe@une.no
COI, Expert Evidence and Social media	Mark Symes	marks@gclaw.co.uk
Human Rights Nexus	Judith Gleeson	UpperTribunalJudge.Gleeson@ejudiciary.net
Judicial Resilience and Well-Being	Martha Roche	Martha.Roche@justice.govt.nz
Particular Social Group	Hilkka Becker	hcbecker@protectionappeals.ie
Vulnerable Persons	Kyrie James	kyrie@ibnetworks.net

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