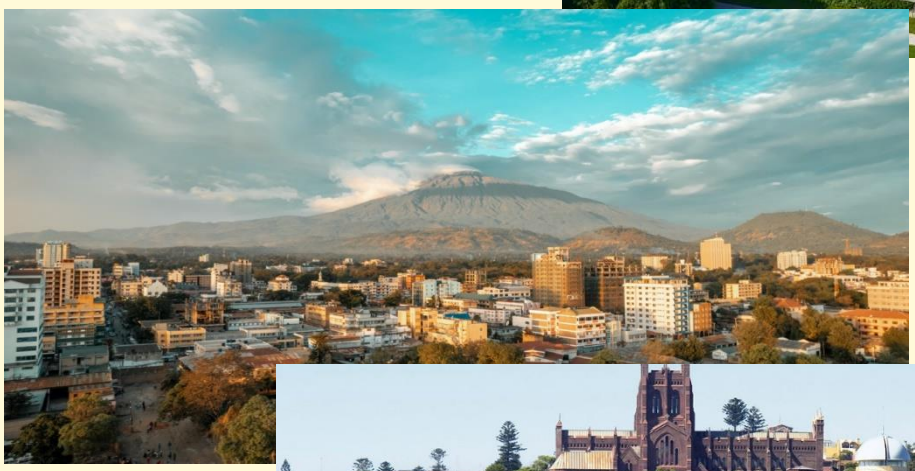
IARMJ report

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

Volume 2, No 2 www.iarmj.org **June 2022**



Four live conferences coming soon, at four fabulous venues

The Hague – Castle Brdo – Arusha – Newcastle

Dear colleagues and friends,

Martin Treadwell
Co-Editor

I write to you from a wintery New Zealand, where the famous Crown Range Road between Queenstown and Wanaka is closed by snow. Actually, it would be more honest to say that they had to close the road because they couldn't find it:

At least it is not raining.

It is Matariki here – the start of the new year in the **Māori** calendar, marked by the gathering of the cluster of nine stars known (in the western world) as the Pleiades. They appear here close to the shortest day of the year and signal the start of the slow path back to warmth and new life in spring.

This year, for the first time, Matariki has been recognised as a public holiday. It has taken 182 years for this cornerstone of Māori culture to be officially recognised. It makes me wonder why we are so keen to champion 'mainstream' rights yet so slow to care about other rights to which a minority might lay claim. It is as if the (small) effort required to understand a minority is often too much. Usually, the effort needed is just a speed bump in the road we travel but we treat it like the Crown Range Road above – too difficult to tackle.

So, for once, take a moment out of your day and let me educate you about Matariki and the nine stars:

1) **Matariki**: the mother of the eight other stars in the cluster and connected to health and wellbeing.
2) **Pōhutukawa**: Connected to those we have lost. When a person dies, the spirit travels Te Ara Wairua, the path to the tip of Te Ika a Maui (the North Island) at Te Rerenga Wairua, where an ancient pōhutukawa tree leans from a rocky ledge towards the ocean. The spirit descends through its roots to the underworld.
3) **Tupuānuku**: Associated with food from the ground.
4) **Tupuārangi**: Associated with food from the sky – birds, berries and fruits.
5) **Waitī**: Associated with fresh water and life in the rivers, streams, and lakes.
6) **Waitā**: Associated with the ocean and food gathered from the sea.
7) **Waipuna-ā-rangi**: Connected to the rain (it means "water that pools in the sky").
8) **Ururangi**: Connected to the wind and used to forecast the wind for the year to come.
9) **Hiwa-i-te-rangi**: Promising a prosperous season and used to set one's desires and dreams for the year.

Maybe this small piece of another culture will never intrude into your world again. But maybe it will set you thinking about a minority near you, and how you might navigate that small speed bump of understanding.

Tū whitia te hopo.[1]

Martin Treadwell

Co-Editor

[1] Feel the fear… and do it anyway.

HABARI KUTOKA NAIROBI

Update from the President…

Justice Isaac Lenaola
President, IARMJ

Greetings to you all,

I am excited at the fact that all the Chapters have made arrangements to hold physical conferences by the end of this year. The World Conference at The Hague, Netherlands in May 2023 is equally exciting. I look forward to seeing you all at one of these conferences.

My excitement has however been dampened by the April announcement in Britain that its Government would start deportations of asylum-seekers to Rwanda and, as I write this piece, the first plane-load of people is being arranged. What is the justification for this strange move, reminiscent of the Australia – Nauru asylum agreement? Priti Patel, Britain's Home Secretary, was quoted as saying that the intention was to break up *"the evil trade in human cargo"* and to reduce smuggling which she adjudged to be a repugnant activity.

Has the policy had any deterrent effect? Britain's Chief Inspector of Borders has stated that 658 people crossed the Channel in small boats between May 30th and June 5th. Indeed, the 210km stretch of coastline has been difficult to police and smugglers have mostly outwitted border guards.

The *Economist* has quoted one Mr Achilli who stated that the policy is driving people towards ingenious smugglers and avenues for genuine asylum seeking are being closed. Is it time that a legal route for asylum seeking is created and, as proposed by the *Economist*, *"a humanitarian visa scheme"* be established? The alternative is *"creating the very enemy that [Government] is fighting. It's like extinguishing a fire with oil"*.

Isaac Lenaola

President, IARMJ

Judges at the recent 2022 Migration Moot Court in Ghent, Belgium - many familiar faces there!

NEWS FROM THE CHAPTERS

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

AFRICA CHAPTER

Justice Mlambo
President,
Africa Chapter

Dear colleagues,

From the Chapter front we are focusing on preparations to host our long overdue continental conference. It has been confirmed to take place from 14 – 18 November 2022, in Arusha, Tanzania.

All our energies and efforts are directed at this important event and we are aided by a lively Local Organising Committee based in Tanzania. The conference will be fully in person with no virtual participation. We will ensure that the obligatory online streaming is enabled for anyone not in attendance to follow conference proceedings.

The Conference will focus more on continental trends regarding refugee and migration issues. We hope to draw a large contingent of African Judges and scholars as well as government decision makers. We also hope to receive a big contingent of reception and protection officers for our preconference programme.

As for our Centre of Excellence, we have finalized our training programme for the year. This is our first full year and we also aim to conduct country specific training programme based on requests we have received e.g. from the Rwanda Judiciary.

We have continued our cooperative engagement with the Regional Bureau of the UNHCR. This week we had our World Refugee Day activities which included a panel discussion on emerging trends in this region. I participated in the panel discussion. This was a very successful event, attended by refugees, academics, lawyers, NGOs as well as ambassadors and representatives of the corporate world.

On the jurisprudential front we feature elsewhere in this issue a case decided by the Kenya High Court regarding a Somali refugee who had refugee status, who was rescued by the court on the brink of deportation. In addition, we report on two other notable cases recently handed down in South Africa.

The African Court on Human and People's Rights, in Arusha

Mlambo JP
President, Africa Chapter

AMERICAS CHAPTER

Judge Esteban Lemus Laporte
President,
Americas Chapter

Dear friends and colleagues,

Kind regards from the Americas!

Two years after the most critical part of the pandemic and although some of our countries have alerts due to an increase in cases, the truth is that practically all borders have opened and migration, regular or irregular, has returned to the numbers from before March 2020.

Every day we see in the news and in our cities caravans of people moving throughout the Americas. The activation of asylum systems, as well as the work of the UNHCR, IOM and hundreds of NGOs take up the challenge of protection. In the case of judges and decision-makers in migration and refuge, the challenge is not minor.

The Chapter has been working hard on arrangements for the Americas Regional Conference, which will be held in November this year. The provisional programme with details will be communicated soon by email and on the website of the association. We want to follow up on the themes of our last conference in 2018 in Washington and update the reality of migration and refuge from the four realities of our continent: North America, Central America, South America and the Caribbean. Without a doubt, the effects of the pandemic will be a central theme of the debates.

We continue to work with the Regional Bureau on topics of interest and express our interest that more and more colleagues join our association.

I hope that work in your courts and offices will gradually return to normal conditions and that you will soon be able to join us virtually at our conference!

Esteban Lemus Laporte
President, Americas Chapter

Visiting the Inter-American Court of Human Rights, Costa Rica, February 2020 (our last Pre-Covid gathering!)

ASIA PACIFIC CHAPTER

Dear colleagues,

Sean Baker, President
Asia Pacific Chapter

The Chapter has been working hard on arrangements for the Asia Pacific regional conference, which will be held from 23-25 November this year, in Newcastle, New South Wales, with the conference title of "Culture and Cultural Constructs in Protection and Migration". The University of Newcastle will host the conference and will be an excellent venue. Very shortly, a provisional programme with details of the presenters will be introduced and early bird registration for the conference will commence. In addition to the conference proper, there will be a day of training, in both introductory and advanced concepts in protection and migration law. There will also be a winery tour on the Saturday for those able to stay for the weekend. Newcastle is a charming and vibrant city, easily accessed from Sydney or from other cities of Australia as well as internationally. I encourage all members from the region and further afield to attend!

COVID continues to impact the work we do in the region, as it does throughout the world. However, with appropriate safety measures, the appeal bodies and courts in the region are holding in-person hearings. This move is welcome as it provides access to review for applicants who were not able to access video or telephone hearings. However, we should also remember that the innovative solutions used during the earlier days of the pandemic, including new video platforms, telephone direction/initial hearings and case officer outreach to applicants can continue to be used where appropriate to drive greater applicant engagement and involvement in the process. The pandemic may, I hope, lead us to reflect that we can continue to innovate ways to meet our requirement to hear and decide cases on review fairly and justly.

Sean Baker

President, Asia Pacific Chapter

The magnificiant Hunter Valley – the Saturday tour destination at November's Asia Pacific conference

EUROPE CHAPTER

Judge Boštjan Zalar
President
Europe Chapter

Dear colleagues,

The dynamics between executives and courts (domestic and international) and the role of (independent) media and lawyers in the case of the UK/Rwanda plan on the externalisation of the UK's asylum processing:

During the House of Commons debate in April 2022 the Home Secretary, Priti Patel, stated that over 130.000 refugees have been resettled in Rwanda and that this is not just a safe country, but also a country where both UNHCR and the EU have resettled individuals. Later on, the Deputy Prime Minister and Secretary of State for Justice, Dominic Raab, told media that on 22 May 2022 only 50 people had received notification that the government intends to deport them to central African state.[1] In the context of the new Nationality and Borders Bill and Memorandum of Understanding (13 April 2022) signed between the UK and Rwanda in the days leading up to the flight, which was scheduled for 14 June 2022, several asylum seekers had asked for interim relief at the High Court in London and were denied, before some were also denied at the Court of Appeal and the UK Supreme Court refused to intervene.[2] The High Court granted permission to the claimants to appeal, suggesting that the Court of Appeal judges would hear the case on 13 June 2022.[3]

However, a request for interim measure under Rule 39 was also filed before the European Court of Human Rights (ECtHR) in the case of KN v the United Kingdom. In this 11th hour legal ruling,[4] the ECtHR decided that an Iraqi man should not be removed until the expiry of a period of three weeks following the delivery of the final domestic decision in the ongoing judicial review proceedings. The ECtHR took into account that, under the aforementioned agreement between the UK and Rwanda, asylum seekers whose claims were not being considered by the UK could be relocated to Rwanda. The applicant, KN, an Iraqi national, was born in 1968. He left Iraq in April 2022, travelled to Turkey and then across Europe before crossing the English Channel by boat. Alleging that he was in danger in Iraq, he claimed asylum upon arrival in the UK on 17 May 2022. On 24 May 2022, he was served with a "Notice of Intent", indicating that the authorities were considering deeming his asylum claim in the UK inadmissible and relocating him to Rwanda. On 27 May 2022 a medical doctor in the Immigration Removal Centre issued a report indicating that the applicant might have been a victim of torture. On 6 June 2022, KN was notified that his asylum claim had been deemed inadmissible. He was served with removal directions to Rwanda for 14 June 2022. The High Court

1 ECRE Weekly Bulletin, 25 May 2022, UK Confusion over (Raw)anda Deal.

2 Jess Glass and William Janes, PA, 20 June 2002, 7:13 pm: UK to ask European Court of Human Rights to reconsider Rwanda flight decision.

3 Judge Swift said there was a "material public interest" in allowing the secretary of state to be able to implement immigration control decisions. He also said that some of the risks of sending asylum seekers to Rwanda outlined by the claimants were very small and "in the realms of speculation. Judge Swift also denied interim relief to two people who face removal to Rwanda. "I accept that the fact of removal to Rwanda will be onerous," the judge said and he added that the points about the home secretary's decision being irrational or based on insufficient inquiry were arguable. However he said the claimants case was not 'conspicuously strong' (The Guardian, 10 June 2022, UK Deportation flight to Rwanda can go ahead High Court judge rules).

4 Ibid.

(in a single judge formation) refused to grant the applicant's request for interim relief, either by preventing the relocation of all asylum seekers to Rwanda under the asylum partnership agreement or by preventing the applicant's removal there. The High Court assumed that Rwanda would comply with the Memorandum of Understanding, even though it was not legally binding, but in any event it considered that the interim period was likely to be short (it plans to hear the judicial review in July) and it found that, if successful, he could be returned to the UK. It did, however, accept that the question whether the decision to treat Rwanda as a safe third country was irrational or based on insufficient enquiry gave rise to "serious triable issues" which would have to be considered by the court when it addressed the two merits of the applicant's challenge. An appeal was heard on 13 June 2022 and was dismissed. The Supreme Court refused permission to appeal on 14 June 2022.

In examining the request for an interim measure on 14 June 2022, the ECtHR decided that it is in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the UK Government, under Rule 39, that the applicant should not be removed until the expiry of a period of three weeks following the delivery of the final domestic decision in the ongoing judicial review proceedings. The parties are required to notify the ECtHR immediately of the delivery of that final domestic decision. The ECtHR had regard to the concerns identified in the material before it, in particular by the United Nations High Commissioner for Refugees (UNHCR), that asylum-seekers transferred from the United Kingdom to Rwanda will not have access to fair and efficient procedures for the determination of refugee status as well as the finding by the High Court that the question whether the decision to treat Rwanda as a safe third country was irrational or based on insufficient enquiry gave rise to "serious triable issues".

In light of the resulting risk of treatment contrary to the applicant's Convention rights as well as the fact that Rwanda is outside the Convention legal space (and is therefore not bound by the ECHR) and the absence of any legally enforceable mechanism for the applicant's return to the United Kingdom in the event of a successful merits challenge before the domestic courts, the ECtHR decided to grant an interim measure to prevent the applicant's removal until the domestic courts have had the opportunity to first consider those issues.[5]

Meanwhile, on the same day (14 June 2022), five other claimants who were due to be removed to Rwanda on the same flight, lodged applications with the ECtHR and requested interim measures to halt their removal. In two of the cases (*RM v United Kingdom* (application no 29080/22) and *HN v United Kingdom* (application no 29084/22)), the ECtHR decided to apply an interim measure under Rule 39, staying the applicants' removal until 18:00 CET on Monday 20 June 2022 in order to enable their requests to be considered in greater detail. In two applications (*Abdollahi v United Kingdom* (application no 29081/22) and *Shokri v United Kingdom* (application no 29082/22)), the requests for interim measures were rejected, as those applicants had not made use of the suspensive remedies available before the national courts. One request was withdrawn before the parties had been notified of any decision since, in the meantime, the Home Office had withdrawn the applicant's removal directions.[6]

5 Press release, *The European Court grants urgent interim measure in case concerning asylum seeker's imminent removal from the UK to Rwanda*, 197(2022), 14.6.2022.

6 Press release, *Further requests for interim measures in cases concerning asylum-seekers' imminent removal from the UK to Rwanda*, Registrar of the Court ECHR 199 (2022) 15.06.2022.

It is worth noting that the Court of Appeal also granted injunctions to three asylum seekers, with the court confirming that three judges held an urgent hearing at 9.50 pm on 14 June – just 40 minutes before the flight was due to take off. The full judicial review of the Rwanda relocation policy by the UK High Court is due to be heard in July 2022. In written submissions, Jack Anderson, for the department, said: "The defendant will resist any further application for a rule 39 indication and, further, the UK will be applying to the ECtHR to reconsider the rule 39 indication on an urgent basis. The UK has informed the ECtHR that it intends to submit representations imminently, and the ECtHR has informed the UK that such representations will be considered as a matter of urgency and a response will be received within a few days of receipt". Mr Anderson also said the Home Office will argue that the Court of Appeal wrongly granted interim relief "on the basis" of the European court's intervention.[7]

Finally, the following list records selected professional events in the past three months at which core members of the IARMJ-Europe acted as trainers or speakers:

- Lisbon (hybrid), 8 April 2022, EJTN Administrative Law Training: Migration Law, presentations of topics: "*In Search of Methodological Pattern(s) in Using Best Interests of a Child in Administrative and Civil Disputes under EU Law*" and "*Family Reunification.*"
- Brussels, 10 May 2022 (on-line), Final conference of Trial Project, Maastricht University: Panel II: "*Mutual Trust and Rule of Law - when in doubt about the rule of law in another MS's system*".
- Thessaloniki, 12-13 May 2022: 1st joint EUAA and Greek National School for Judiciary Conference: Between the refugee and pandemic crisis: A judicial understanding of key aspects of the CEAS; presentation of various topics on refugee law of 6 members of the IARMJ-Europe.
- Gdansk, University of Gdansk, 19 May 2022: National Conference and Training: "Being a Lawyer in Times of Constitutional Reckoning"; presentation of the topic: *"Theoretical Underpinnings of Mutual Trust in Action: Push-Backs at the Border between Slovenia and Croatia".*
- Brussels, 25 May 2022: FriCore Final Conference, Judicial Training Project; roundtable: "*The impact of judicial dialogue on fundamental rights in national legal system".*
- Skopje, 6-7 June 2022: OSCE and UNHCR training event for judges of Administrative Court and High Administrative Court on topics such as: *"Basic European Standards on the right to an oral hearing and effective legal remedy in asylum-related disputes", "Basic Conditions for the Rule of Law in Asylum-Related Detention Cases: From Magna Carta Libertatum towards European Law Institute's Checklists for Judges on Effective Judicial Protection in Detention Cases" and "Case study on detention".*
- Berlin, 13 June 2022, Bi-annual meeting of the IARMJ-Europe on the topic of national case law (case studies) on persecution by non-state actors and effective state protection.
- Trier (on-line), ERA, 14 June 2022: Protection of Migrant Workers in Irregular Situation in Europe; presentation of the topic: *"Recent ECtHR Case Law on Expulsion or Deportation and Regularisation of Legal Status: Sudita Keita v Hungary, Unuane v United Kingdom and Savran v Denmark".*

Boštjan Zalar

President, Europe Chapter

7 Jess Glass and William Janes, PA, 20 June 2002, 7:13 pm: "UK to ask European Court of Human Rights to Reconsider Rwanda Flight Decision".

IN THE LIBRARY

RECENT PUBLICATIONS

"**Serious International Crimes, Human Rights and Forced Migration**" – edited by James C Simeon (Routledge, London and New York, 2022).

With contributions by many members of the IARMJ and by judges and academics globally, the foreword by Sir Howard Morrison QC to this newly published book on the interface between refugee law and crime states:

> "It is an impressive work that should be in every law library, and indeed on the desk of every criminal, refugee, migration or environmental lawyer and judge. These are not easy topics. We are required to get out of our comfort zone and to examine more deeply, and with greater passion and compassion, these elemental problems."

RECENT COI REPORTS

A selection of in-depth reports covering topics of interest:

Pakistan - Situation of Afghan refugees
European Union Agency for Asylum (EUAA - formerly: European Asylum Support Office, EASO), May 2022
The socio-economic situation of Afghan refugees in Pakistan are covered, along with information on the Laws, and Policies towards Afghan refugees, and the Documentation of registered and unregistered Afghan refugees.

Safe Start, Fair Future: Refugee Equality
The Asylum Seekers Support Trust and the Centre for Asia Pacific Refugee Studies in NZ, 4 May 2022
This report shows the difference in eligibility and access to support between Quota and Convention refugees in New Zealand.

The State of the Global Climate 2021
World Meteorological Organization, 19 May 2022
This report provides a summary on the state of climate indicators in 2021, including global temperature trends. It also provides the most recent findings on climate-related risks and impacts, including (but not limited to) climate-related impacts on food security and population displacement.

The Impacts of COVID-19 on Migration and Migrants from a Gender Perspective
International Organization for Migration, 14 May 2022
This report explores and examines the short- and longer-term gender implications of the COVID-19 pandemic on migration and the wellbeing of migrants worldwide. It analyses the gender impacts of COVID-19 on different groups of migrants, including health-care workers, agricultural and domestic migrant workers, and other vulnerable populations.

Pushed to Extremes: Domestic Terrorism amid Polarization and Protest

Center for Strategic & International Studies, 17 May 2022

This report addresses the significant rise in the number of domestic terrorist attacks and plots at demonstrations within the United States. In 2021, over half of all domestic terrorist incidents occurred in the context of metropolitan demonstrations, with the most frequent targets being government, military, and law enforcement agencies.

Violence Against or Obstruction of Health Care in Myanmar (May 2022 update)

Insecurity Insight (Switzerland), 24 May 2022

This update to the one-year report published in February has been prepared by Insecurity Insight, as part of the Safeguarding Health in Conflict Coalition. It highlights reported incidents of violence against health workers, facilities, and transport in Myanmar between 1 January and 31 March 2022 to highlight the impact on the health system as a whole. It does not include information on violence against patients. It is drawn from information that is available in local, national, and international news outlets, online databases, and social media reports.

DFAT Country Information Report: Fiji

Australian Department of Foreign Affairs and Trade, 20 May 2022

This report covers topics related to protection status determination, including but not limited to: the country's political system, its human rights framework, its security situation, and groups of interest including women and the LGBTQI+ community.

Syria: Ruling over Aleppo's Ruins

International Crisis Group, 9 May 2022

Aleppo was devastated by bombing and shelling during the Syrian war. It remains unsafe, with residents subject to shakedowns by the regime's security forces and various militias. The authors argue that Damascus and its outside backers should curb this predation as a crucial first step toward the city's recovery.

IN THE MEDIA

A selection of media reports from the past month:

When War Crimes Evidence Disappears

Human Rights Watch, 25 May 2022

On May 12, four US legislators called on the chief executives of YouTube, TikTok, Twitter, and Meta (formerly Facebook) to preserve and archive content on their platforms that might be evidence of war crimes in Ukraine.

Philippine Election Marred by Violence, Vote-Buying: Monitoring Mission

The Diplomat, 20 May 2022

This month's presidential elections in the Philippines fell far short of "free and fair" due to rampant vote-buying, politically-motivated violence, and serious shortcomings in the electoral process, according to the

International Observer Mission (IOM). IOM said the polls "took place in the most repressive atmosphere seen since the time of dictator Ferdinand Marcos".

Twenty-five ethnic Pamiris killed by security forces in Tajikistan protests

The Guardian, 19 May 2022

The Guardian reports that, in the autonomous region of Gorno-Badakhshan of Tajikistan (GBAO), escalating tensions erupted into regime-backed violence against the Pamiri ethnic minority. At least 25 people were killed by security forces during a protest in the region.

For desperate Afghans, risky crossings into Iran are worth chancing

The New Humanitarian, 17 May 2022

Duniya Aslam Khan, a spokesperson in Iran for UNHCR noted that due to strict border controls, "most Afghans enter Iran in an irregular manner through unofficial channels" and that "many rely on smugglers or traffickers to leave Afghanistan and reported being exposed to serious protection risks, including extortion of funds from their relatives while on the journey, beatings, and other violence".

U.S. Government Issues Warning About Undercover North Koreans Working in the Crypto and IT Industries

OODALoop, 17 May 2022

The US government is alarmed about the thousands of North Korean tech workers that are being dispatched to American IT companies to earn revenue for North Korea, violating sanctions. The government claims that the workers sometimes use their access to provide backdoors for cyber attacks and often conceal their North Korean identities, in some cases pretending to be American remote gig workers by using VPNs.

Afghanistan: Taliban orders women to stay home; cover up in public

UN News, 7 May 2022

The United Nations Assistance Mission in Afghanistan (UNAMA) issued a **statement** of deep concern in response to the Taliban's announcement that "all women must cover their faces in public, that women should only leave their homes in cases of necessity, and that violations of this directive will lead to the punishment of their male relatives". The UNAMA in its statement says this "contradicts numerous assurances regarding respect for and protection of all Afghans' human rights, including those of women and girls, that had been provided to the international community by Taliban representatives during discussions and negotiations over the past decade".

Pakistan Rules Out Refugee Status for Afghan Asylum-Seekers

Voice of America, 6 May 2022

Voice of America (VOA) reports that Pakistan rules out refugee status for Afghan asylum-seekers. Many Afghan migrants are now facing multiple problems because of their extended stay in Pakistan.

Bangladesh shutters dozens of schools set up by Rohingya in camps

The New York Times, 2 May 2022

The New York Times article reports that Bangladeshi authorities closed more than 30 schools in refugee camps that teach tens of thousands of Rohingya students. According to the article, the Bangladeshi authorities said that "the schools have been closed because Rohingya community leaders failed to secure

permission to open them. The authorities have, however, granted permission to UNICEF and a few other agencies to operate schools for younger children in the camps".

Colombia's Democracy Under Threat? Legislative Elections End in Chaos
Global Risk Insights, 2 May 2022
Colombia's governing right was defeated in March's legislative elections. However, significant discrepancies between the preliminary and the final vote count have led to allegations of fraud and calls for a nation-wide recount.

German Briefing Notes - Country News Briefings / Federal Office for Migration and Refugees (BAMF)
21 March 2022
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.
Subscribe to Country News Briefings

OPEN SOURCE SEARCHING

Tools, techniques and talking points in the open source space:

If you need to search for a company overseas, there are a number of useful sites and free resources. **Open Corporates** claims to be the largest open database of companies in the world, with a searchable database of over 206 million companies from **global public registers**. For more in-depth information, try the individual country's companies register. The UK's **Companies House** and the **European Business Registry Association** provide links to registers worldwide.

Another useful resource is the **Catalogue of Research Databases** compiled by the **Organized Crime and Corruption Project (OCCRP)**. Find links to public registries for company, land, financial and court records from 181 countries.

Some sources can be searched for adverse information about a company. For example, the **Business & Human Rights Resource Centre** stores news and allegations relating to the human rights impact of over 20,000 companies, while **OpenSanctions** is an international database of persons and companies of political, criminal, or economic interest drawn from dozens of data sources around the world.

For help on geolocating images, see this **ten minute tip** from OSINTCurio.us.

Needless to say, the IARMJ does not endorse or have any relationship with any of these third party sources.

UPCOMING EVENTS

THE EUROPE CHAPTER REGIONAL CONFERENCE 11-13 SEPTEMBER 2022

Castle Brdo, Slovenia – the venue for the Europe Chapter conference

Registration is open

The last European Chapter Conference was held in 2018 in Catania. The pandemic has been the reason that a following Chapter Conference could not be organised since then.

The President of the European Chapter is happy now to be able to confirm that a new Chapter Conference will be held in Slovenia, at **Brdo Congress Centre** from Sunday (evening) 11 September 2022 to Tuesday 13 September 2022.

The (draft) programme is available on the **IARMJ website** but is subject to possible changes.

The conference fee is only **€295** and includes:

- welcome reception on Sunday 11 September at the venue
- conference dinner on Monday 12 September at Brdo Castle
- lunches on both conference days
- coffee/tea breaks on both conference days
- transport on arrival and departure from/to the airport (approx 10km) or train station to/from the conference venue

Hotel Elegans – at Brdo estate – has blocked rooms for this event. With a small contribution from IARMJ funds we can offer you the rooms at a rate of **€110**/night/single room. Additional nights in hotel Elegans can also be booked (at additional cost) through the registration form.

The registration form is available on the **IARMJ website**. For any questions you can contact the event manager, Liesbeth van de Meeberg at **info@iarmj.org** or call +31 6150 42782.

THE AFRICA CHAPTER REGIONAL CONFERENCE
14-18 November 2022

Arusha, Tanzania

Arusha is the venue for the next IARMJ Africa Chapter Biannual Conference, scheduled to take place on 14 to 18 November 2022. Arusha nestles below Mount Kilimanjaro and can justifiably boast to be the tourist destination of choice in Africa. It is the home of the African Court on Human and People's Rights as well as a number of continental Human Rights Public Benefit organizations.

Tanzania hosted the largest contingents of Southern African refugees from the early 1960s. These were so-called revolutionaries who spent a large part of their exile years in this beautiful country. These revolutionaries were later instrumental in overthrowing colonialist regimes in their countries. For Zimbabwe and South Africa in particular, the liberation forces from these countries found refuge in Tanzania and have never ceased to talk about the hospitality of the Tanzanian peoples.

It is apposite that our biannual conference as a Refugee and Migration Judges Association will congregate in Arusha, Tanzania, to discuss the current state of the refugee challenges in Africa.

Our programme will have a number of highlights including –

- A pre-conference training programme in the first two days comprising a beginner and advanced level programme, in English and French.
- An opening ceremony that will be graced by leaders from continental groupings, the Judiciary, Government, UNHCR to name a few.
- A mouthwatering conference programme that will focus on the current state of the refugee situation in Africa. We will also explore emerging trends in the implementation of global and regional conventions by African state parties.

We have invited speakers from diverse backgrounds in the continent and diaspora who will enrich our discussions.

Visit us at **www.iarmj.africa** **or** **www.iarmj.org** **or contact** **sarie.brits@dha.gov.za**

THE ASIA PACIFIC CHAPTER REGIONAL CONFERENCE

23-25 November 2022

CULTURE AND CULTURAL CONSTRUCTS IN PROTECTION AND MIGRATION

A CONFERENCE FOR JUDGES AND DECISION-MAKERS IN PROTECTION AND MIGRATION LAW

23-25 November 2022

Workshops (refresher and advanced) – 23 November 2022
Conference – 24-25 November 2022

Conference plenary:

Dealing with the applicant before us
Re-thinking fundamentals of protection
Differing perspectives
Rewriting jurisprudence: centring refugee and migrant lived experience
Vicarious trauma, resilience and good decision making
Language and Intermediaries
Contending analyses' in migration and refugee decision making

Enquiries: martin@cat22.co.nz

Visit us at
www.iarmj.org

Registration online from 31 July 2022

RECENT CASE-LAW OF INTEREST FROM AROUND THE WORLD

AFRICA

Republic v Khadija Abdikadir Hassan [2021] eKLR

Sometimes, it requires the intervention of the courts to prevent a great injustice.

In this case, a Somali woman left the Dadaab camp in Kenya, where she was registered as a refugee, to marry. Later, separated from her husband and with two small children, she was caught and was convicted of three charges - making a false document, uttering a false document and being unlawfully in Kenya. The Magistrate inquired into her background and acceded to her wish to be ordered back to the Dadaab camp.

The state, however, appealed to the High Court, claiming that the Magistrate should have ordered the accused to be expelled back to Somalia. After noting Kenya's obligations under the Refugee Convention, the Court found the accused not to be unlawfully in Kenya because she was a recognised refugee. It also found that she should not be refouled to Somalia, stating:

> "**12.** As it were, Kenya is under an obligation to protect and treat refugees humanely. It is not a secret that though Somalia as a nation is slowly returning to normalcy it is still volatile and hundreds of its nationals [are] still being held at the refugee camps.
>
> The accused did not tell the court that she wishes to return to Somalia in the current state of that country. She expressed her wish to go back to the refugee camp. On what basis would Kenya be repatriating her back to Somalia?
>
> **13.** This Court is totally in favour of the trial court's decision that the accused be returned to the [Dadaab] Camp where her family has been for years as that is the only human, prudent and reasonable thing to do in the circumstances."

It is greatly encouraging to see such insight into refugee law from both the trial Magistrate and the High Court judge, sitting in a wholly different jurisdiction.

Mahinga v Minister of Home Affairs and Another (1027/2020)[2021] ZASCA 179

This was an appeal against a Full Court judgement of the High Court of South Africa (Gauteng) which had upheld an appeal by the Minister of Home Affairs. The Minister had terminated the South African citizenship of Mr Mahinga on the basis that he had obtained an asylum seeker permit in South Africa on false pretenses. The Minister had also alleged that Mr Mahinga's marriage to a South African had been a marriage of convenience used to aid his application for naturalization.

The Supreme Court of Appeal dismissed the appeal by Mr Mahinga, based on a paucity of credible evidence from him about his entry into South Africa as an asylum seeker as well as his marriage.

Abore v Minister of Home Affairs [2012] ZACC 50

This was an appeal directly to the Constitutional Court wherein Mr Abore, an Ethiopian national, sought to interdict the Minister from deporting him to his country of origin until his refugee status had been determined under the refugee legislation applicable in South Africa. Mr Abore, who was at the time being detained at an immigration detention centre, also sought an order declaring his detention unlawful.

Ancillary to the relief he sought, Mr Abore also requested the court to declare that he was entitled to remain in South Africa for purposes of applying for refugee status and to remain in the country whilst his application was under consideration. Mr Abore asserted the *non refoulment* principle, alleging that his life would be imperiled were he to be deported to Ethiopia.

The Minister had presented evidence that the deportation decision was based on the fact that Mr Abore had contravened South Africa's immigration laws by illegally entering South Africa and failing to apply for refugee status until his arrest two years later. The Minister's view was that Mr Abore had clearly no intention of applying for refugee status, hence his arrest.

The Constitutional Court reiterated its decision in *Ruta* that, whenever an illegal immigrant expressed an interest at applying for refugee status, this was to be respected by the authorities, who had to assist the person to apply accordingly. The Court also needed to provide clarity regarding the applicability of its decision regarding the applicability of the *non refoulment* principle. The reason for this was that amendments had been passed, amending the Refugees Act 1998, and the Minister had argued that the amendments rendered the decision in *Ruta* no longer applicable. The Constitutional Court reasoned that its reasons in *Ruta* regarding the *non-refoulement* principle continue to apply, despite the amendments to the Refugees Act. It concluded that Mr Abore was equally protected by this principle.

The Court upheld the appeal and ordered Mr Abore's release from detention, which it declared to be unlawful.

AMERICAS

The THEMIS DIGEST

The Inter-American Court of Human Rights now has available the THEMIS DIGEST, a compilation of judicial rulings that implement the normative criteria of a particular article of the *American Convention on Human Rights* by means of interpretation through legal concepts. The general public may access the Themis Digest without charge.

As a tool, the Digest facilitates access to the Case Law of the Inter-American Court from a normative perspective. The rulings are ordered under the legal concepts developed in the Inter-American Court's Case Law, ranging from the most abstract to the most concrete.

At this time, the Court's decisions can be accessed in Spanish only. Click on the magnifying glass on the homepage to search for decisions.

ASIA PACIFIC

Refugee and Protection Officer v BA (Nigeria) [2022] NZIPT 801846

The claimant had been recognised as a refugee in New Zealand. The reasoning included a finding that he (being immuno-compromised) did not have an internal protection alternative (aka relocation or internal flight alternative) in Lagos because the high rate of COVID-19 there would force him to return to his local

area, where he was at risk of being persecuted. The New Zealand government sought to appeal the decision on the grounds that other possible sites of internal protection in Nigeria had not been considered.

In upholding the Tribunal's decision, the High Court found that COVID-19 was rampant throughout Nigeria and the finding in respect of Lagos would hold good for any other locality. At the same time, the Court made the following helpful observation:

> "Furthermore, case law shows that decision-makers have a broad discretion when considering an internal protection alternative, subject to natural justice obligations. They exercise this discretion in various different ways, specific to the facts of the case before them. The Court should not interfere with this discretion as given the variety in circumstances of claimants, any rule would be uncertain and impose an unreasonable burden on both decision-makers and claimants."

Plaintiff M1/2021 v Minister for Home Affairs [2022] HCA 17

The plaintiff, a citizen of South Sudan, came to Australia as the holder of a Humanitarian visa. His visa was cancelled after he was convicted and sentenced to a term of imprisonment. In seeking revocation of the cancellation of his visa he claimed that, if he were returned to South Sudan, he would face persecution, torture and death. The delegate of the Minister decided that it was unnecessary to determine whether *non-refoulement* obligations were owed because the applicant could make a valid application for a protection visa, at which point any non-*refoulement* obligations would be considered.

In answering the special case, the majority of the High Court of Australia stated that decision-makers must "read, identify, understand and evaluate the plaintiff's representations" which raise a potential breach of Australia's international *non-refoulment* obligations. The majority held that unenacted international *non-refoulment* obligations were not a mandatory relevant consideration under the law and Ministerial Direction. To the extent that Parliament had intended to give effect to Australia's international *non-refoulement* obligations in the Migration Act 1958, Australia (the Act), it was open to the decision-maker to defer assessment of whether the plaintiff was owed protection because the plaintiff was able to apply for a protection visa under the Act. It still may be necessary for a decision-maker to consider and take account of the alleged facts underpinning the claim where the facts are relied upon for another reason.

This case clarifies, to some extent, unsettled authority from the lower courts on this issue.

EUROPE

KN v the United Kingdom (application no 28774/22)

As Bostjan Zalar explains, in this issue's Europe Chapter Report, the European Court of Human Rights has decided to grant an urgent interim measure in the case of *KN v the United Kingdom* (application no 28774/22) (ECHR 197 (2022), an asylum-seeker facing imminent removal to Rwanda.

On 13 June 2022, the Court received a request to indicate an urgent interim measure to the UK Government, under Rule 39 of the Rules of Court, in relation to an Iraqi national who, having claimed asylum upon arrival in the UK on 17 May 2022, was facing removal to Rwanda on the evening of 14 June 2022.

The Court indicated to the UK Government that the applicant should not be removed to Rwanda until three weeks after the delivery of the final domestic decision in his ongoing judicial review proceedings.

CE 3 février 2022 OFPRA c. M. S. n° 445896 C

This recent decision from the *Conseil d'Éta*t in France addresses the question of the cancellation of refugee status of a person whose presence had constituted a serious threat to society when they committed serious crimes, after they have been imprisoned for a long period.

The offender, a Georgian national, had been recognised as a refugee in 2005. After his conviction for two murders, in 2013, he was sentenced to 25 years in prison. The *Office Français de Protection des Réfugiés et Apatrides* ended his refugee status, in 2017, on the grounds that his presence constituted a serious threat to the French society. His status was, however, restored on appeal by the *Cour Nationale du Droit d'Asile* in September 2020. The *Office* then appealed that decision in cassation.

The *Conseil d'État* held that, as well as a qualifying conviction, it is necessary to take into account, among other things, the nature of the offences which led to the conviction as well as the damage to the interests of society if the offences were repeated and the risk of such repetition. Here, it found that neither the assertion that he intended to cease all ties with his Chechen network, nor his claim to want to have a stable professional and family life nor his behaviour in prison were enough to establish that his presence in France no longer constituted, on the date of the Court's decision, a serious threat to French society. The cassation judge recalled, in this respect, that the man had been convicted on several occasions for acts of increasing seriousness and that he was serving a sentence of 25 years' imprisonment for two murders.

The circumstances of this case can be compared to those of *OFPRA c Mr Ahmadi*, in which the *Conseil d'État* ruled that the mere fact that the person abstained, after release, from any reprehensible behaviour did not imply, by itself (at least before the expiration of a certain period of time), that the threat had disappeared.

***Akkad v Turkey* ECtHR (Application no 1557/19) (21 June 2022)** (in French only)

This case concerned a Syrian national, living in Turkey since 2014 under a temporary protection status. In 2018, when trying to enter Greece, he was caught by the Turkish authorities and deported to Syria. He claimed that, during the 20 hour bus trip, he and 12 other Syrians were handcuffed in pairs. He also alleged that, in Syria, he was detained by two armed Al-Nusra militants, blindfolded, interrogated and beaten.

The applicant claimed that, at the Turkish/Syrian border, he was made to sign documents without being aware of their content. It later proved that one was a voluntary return form. He was not allowed to use the phone, was not provided with an interpreter and was not able to contact any lawyer or appeal authority. Turkey, in its turn, alleged that he had been told of his removal and wanted to return voluntarily to Syria.

The Court found the applicant was subjected to a forcible return and that there were two violations of Art. 3 of the Convention. The first was due to the applicant's return to Syria as it was common knowledge that the territory to which he was transferred was a war zone. There was sufficient evidence of a real risk that he would be subjected to treatment contrary to Art. 3 if he was returned to Syria. Further, the Court noted that Turkish legislation was also violated as it protects an alien who had been granted temporary protection

from expulsion, except in exceptional circumstances which did not apply here. Second, Art. 3 was breached by the handcuffing of the applicant as this was not in the context of lawful detention. Consequently, the Court considered that the applicant had been subjected to degrading treatment.

Art. 13 of the Convention was also assessed in conjunction with Art. 3. The Court held that the applicant's removal to Syria had breached the expulsion procedure and requirements of Turkish domestic law. In addition, the Court stated, he was returned without any possibility of accessing suspensive remedies or of appealing the decision before his removal.

The Court found violations of Article 5 (1), (2), (4) and (5). It held that the applicant was deprived of his liberty arbitrarily and legal safeguards had not been respected. First, he had not been informed of the reasons for his detention nor of the possibility of challenging the lawfulness of the detention order and, from the time of his arrest until his removal to Syria, he had been unable to access a lawyer or any outside person. This had led to the impossibility of obtaining judicial review of the lawfulness of his detention. Ultimately, in light of these violations, he had also been unable to obtain compensation from the domestic authorities.

WORKING PARTIES REPORT

Each issue, we bring you an update from one or more of the Association's Working Parties, This issue, the report is from the Working Party on Particular Social Groups.

The Refugee Convention Nexus of Membership of a Particular Social Group with a particular focus on LGBTI+ claims

By Hilkka Becker, Chairperson, International Protection Appeals Tribunal Ireland, Co-Rapporteur of the IARMJ Working Group on the Convention Nexus to Membership of a Particular Social Group

The refugee definition contained in Article 1A(2) of the Refugee Convention, as amended by its 1967 Protocol, defines the term refugee for the purposes of that treaty as someone, who, among other things,

> "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."

The UNHCR Handbook states in that regard that *"*[a] *'particular social group' normally comprises **persons of similar background, habits or social status**. A claim to fear of persecution under this heading may frequently overlap with a claim to fear of persecution on other grounds, i.e. race, religion or nationality"*.

In the short space I have available, I want to focus on so-called 'SOGI' claims, claims for refugee status based on an applicant's sexual orientation or gender identity.

It is well known that lesbian women, gay men, bisexuals, trans and intersex persons are at risk of persecution in many countries in the world. Assessing credibility in asylum claims based on sexual orientation or gender

identity involves specific challenges and requires special preparedness and sensitivity for advocates and decision makers.

Coming from the perspective of a quasi-judicial decision maker – as the head of what would be comparable with the Refugee Appeal Division of the Canadian IRB – I will focus on some case-law from the European and Irish courts.

So far, the seminal judgments from the Court of Justice of the European Union, whose jurisprudence is superior to that of the national constitutional courts, have been those in the cases of:

- ***X, Y and Z v Minister voor Immigratie en Asiel*** (C-199/12 to C-201/12, 7 November 2013) – interpretation of Article 10(1) (d) QD re: criminal laws targeting homosexuals – Dutch reference re: asylum seekers from Afghanistan, Gambia and Uganda – criminalisation *per se* does not constitute an act of persecution but a term of imprisonment which is actually applied must be regarded as a discriminatory or disproportionate punishment – further, applicant cannot reasonably be expected to conceal his homosexuality or to exercise reserve in the expression of his sexual orientation;

- ***A, B and C v Staatssecretaris van Veiligheid en Justitie*** (C-148/13 to C-150/13, 2 December 2014) – interpretation of Article 4 QD – an assessment founded on questions based only on stereotyped notions concerning homosexuals is precluded – detailed questioning as to the sexual practices of an applicant is precluded – the authorities are precluded from accepting evidence such as the performance by the applicant of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or the production of films of such acts – the authorities are precluded from finding that the applicant lacks credibility merely because the applicant did not rely on his declared sexual orientation on the first opportunity he was given to set out the ground for persecution;

- ***F v Bevándorlási és Állampolgársági Hivatal*** (C-473/16, 25 January 2018) – interpretation of Article 4, Recast QD – national authorities are *not* precluded from ordering an expert's report, provided that the procedures are consistent with EU Charter of Fundamental Rights (CFEU) and provided that the courts or tribunals do *not* base their decision solely on the conclusions of the expert's report and are not bound by those conclusions – however, national authorities are precluded from preparing and using a psychologist's expert report the purpose of which is to provide an indication of the sexual orientation of that applicant on the basis of projective personality tests.

The European Court of Human Rights and Fundamental Freedoms has had to deal with only two matters relating specifically to applicants for refugee status based on their sexual orientation:

- ***ME v Sweden*** (Application no 71398/12, 8 April 2015) – which concerned a Libyan national who had claimed refugee status in Sweden on, inter alia, the basis of a 'late' claim that he was gay and in a cohabiting relationship with another man after coming to Sweden, was struck out by the Court after ME had been granted a permanent residence permit in Sweden.

- In the more recent case of ***OM v Hungary*** (Application no 9912/15, 5 July 2016), concerning an Iranian national who applied for protection in Hungary on the basis that he had fled from Iran because of his homosexuality, the Court found that there had been a violation of Article 5 of the ECHR – the right to liberty and security – on the basis, inter alia that, "in the course of placement of asylum

seekers who claim to be a part of a vulnerable group in the country which they had to leave, the authorities should exercise particular care in order to avoid situations which may reproduce the plight that forced these persons to flee in the first place". And the Court found that, in the case of OM, the authorities had failed to do so when they ordered the applicant's detention without considering the extent to which vulnerable individuals – for instance, LGBT people like the applicant – were safe or unsafe in custody among other detained persons, many of whom had come from countries with widespread cultural or religious prejudice against such persons. The court found that "the decisions of the authorities did not contain any adequate reflection on the individual circumstances of the applicant, [a] member of a vulnerable group by virtue of belonging to a sexual minority in Iran".

Case-law from the Irish superior courts on international protection claims from persons who state that they are at risk of persecution or serious harm based on their sexual orientation or gender identity has largely focussed on the credibility assessments carried out by the International Protection Appeals Tribunal and, in that regard, reflects the difficulties decision-makers find themselves in when assessing SOGI claims.

Persecution in these cases is linked to very sensitive and intimate areas of private life, including sexuality, emotions, affections, love, companionship, etc. Sexual orientation and gender identity are strongly connected with most fundamental moral, religious and political values of a society and, as such, are often surrounded by taboos, stereotypes and prejudices. Often, those applying for international protection based on their sexual orientation or gender identity have been through traumatising experiences and/or have developed vast feelings of stigma, shame or even self-denial.

In contrast, persons at risk of persecution because of their religion, political opinion or ethnic or cultural identity may often find emotional, financial, and other support within their family or within their own (religious, political, ethnic, etc.) community. Those at risk because they are gay or trans may have been rejected, repudiated or even persecuted by their own family and community, which multiplies their vulnerability to harm and trauma. As is also common in gender-related forms of persecution, harm is frequently suffered in the private sphere, which may limit the availability of documentary evidence and country information, as compared to other cases.

- In ***LP v IPAT*** [2021] IEHC 35 (Burns J), a case concerning a Zimbabwean applicant who claimed to be gay, the Tribunal had rejected the claim on credibility grounds. The Tribunal's decision was challenged on an alleged failure to properly consider a medico-legal report. However, the High Court upheld the Tribunal's decision that there had been no evidence of memory loss or cognitive problems on the part of the appellant and that no claim had been made to the Tribunal regarding a future risk arising from photos taken at a Pride parade in Ireland. The High Court judge in that cases concluded:

  > "I do not accept that there was a requirement on the [Tribunal] to set out a set of reasons as to why it did not accept the Applicant's claim to be gay separate to the asserted attack. The First Respondent was required to consider the Applicant's claim as a whole, which it clearly did."

  Further, the Court found that there had been no error in not affording the benefit of the doubt to the appellant where the general credibility of his claim had not been established.

- In another recent decision from the Irish High Court, ***X v Minister for Justice*** [2021] IEHC 32, Barrett J made *obiter* observations in relation to a previous decision of the International Protection Appeals Tribunal, stating that:

> "Growing up in a 'straight' or strait-laced environment does not mean that a male of any age who is bisexual/homosexual is going to avoid expressing his natural sexuality. As a nation we ought surely to be particularly alive to this truth […]"

and further:

> "[I]f even the prospect of getting into trouble yielded the result that one would not commit a crime, then no crimes would ever be committed."

and also:

> "many LGBTI+ people doubtless go through life without ever becoming involved in rights organisations and the notion that a poor man seeking asylum would have money to throw about in bars/clubs speaks for itself" – "Quaere… whether… the State is at risk of falling short, in this case, of attaining that general moral ideal which it recognises in, and seeks to attain through, its asylum regime."

- On the question of the value of an applicant's self-identification, Keane J in ***WH v IPAT*** [2019] IEHC 297, clarified that the findings made by Mac Eochaidh J in *AP* [2013] IEHC 448 must be read in context. Accordingly:

> "… an applicant's self-identification as LGBT is not a given in any assessment, distinct from other statements or evidence the credibility of which will have to be assessed, but is instead a specific aspect of an applicant's evidence, the credibility of which must also be assessed in the absence of other supporting material."

In that particular case, the High Court also found that there had been no error in failing to have regard to suggested areas for useful questioning for interviewers in UNHCR Guidelines as "an appeal before the tribunal is not an interview", and the court found, further, that there had been no error in taking account of the applicant's inability to answer questions about gay rights groups where the applicant claimed to have been engaged in various seminars and campaigns as a gay rights activist. There had also been no error in the negative assessment of the credibility of the claim in this case, where a very wide range of omissions and inconsistencies were identified, each of which bore a relationship with the substantive basis for the claim.

- One case that did not centre around the issue of credibility was that of ***EG (Albania) v IPAT*** [2019] IEHC 474 (Humphreys J) concerning a gay Albanian applicant in which the credibility of his claim had been accepted by the Tribunal but where the Tribunal had found that, while the applicant had suffered in Albania, what he faced upon return was discrimination but not persecution. The High Court stated that:

> "For the tribunal to have taken the view that discrimination, prejudicial treatment and even isolated violence, harassment and ostracism does not amount to persecution is not of course to condone such treatment or to regard it as in any way acceptable. But it is simply not the

> function of the tribunal to hand out international protection on the basis of adverse treatment as such. The conferral of refugee or subsidiary protection status requires a level of severity to be reached".

- Also, in ***DU (Nigeria) v IPAT*** [2018] IEHC 630, Humphreys J held that:

> "There was no obligation to consider a future risk based on the applicant's orientation if the claim regarding an orientation was not accepted by the tribunal.… Where an applicant alleges a fact that could give rise to future risk and that fact is accepted, then there may be an obligation to consider any future risk based on that fact. Where such a fact is not accepted, the need to consider a future risk based on that alleged fact simply does not arise."

In conclusion – and this applies to both SO and GI claims – the test originally established by the UK Supreme Court in the case of ***HJ and HT*** should be applied when assessing a claim based on fear of persecution because of membership of a particular social group.

If a gay, lesbian, bi-sexual, transgender or intersex person chooses to live discreetly *solely* because they want to avoid embarrassment or distress to their family and friends, they will generally not be deemed to have a well-founded fear of persecution and will not qualify for international protection. This is because they have adopted a lifestyle to cope with social pressures, possibly to avoid discrimination, and not because they fear persecution due to their gender identity.

Conversely however, an individual who chooses or feels forced to live discreetly because they fear persecution if they were to live openly, may well be found to be in need of international protection. Each case must be determined in the light of its own facts and country of origin information. It is the task of the decision-maker to assess objectively whether there are reasonable grounds for believing that there would be a real risk of serious harm to an applicant, in their particular circumstances, if returned to the country from which they are seeking refuge.

The IARMJ Working Group on the Convention Nexus Membership of a Particular Social Group is looking to recruit new Members with a view to drafting a Working Paper on this topic – IARMJ Members who are interested in joining the Working Group are encouraged to contact Hilkka Becker at ***hcbecker@protectionappeals.ie***.

A closing word from James Simeon, the Convenor of Working Parties…

Dear colleagues,

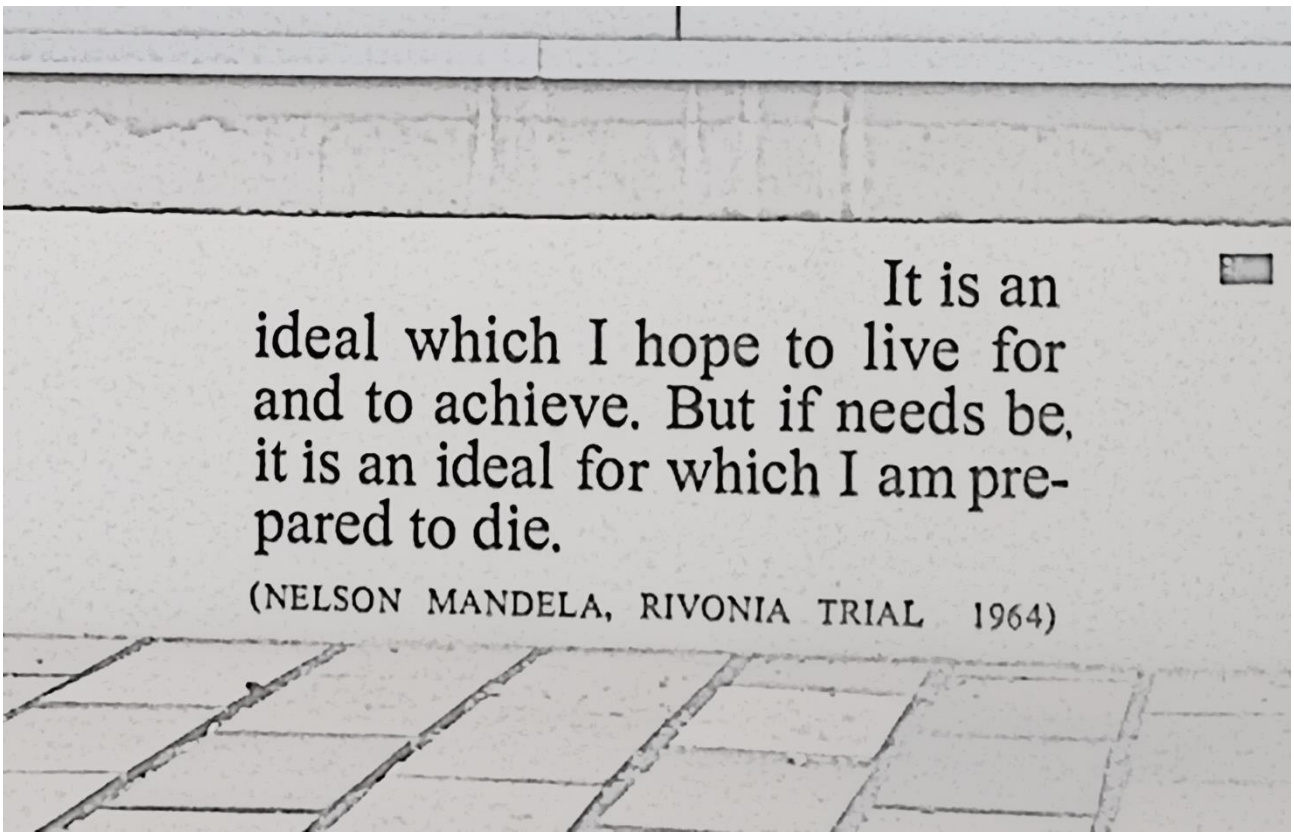
All members of the IARMJ are encouraged to join one of our ten Inter-Conference Working Parties that are examining important areas of International Refugee Law and International Migration Law with the aim of providing our members with advice and guidance on how best to approach and to address challenging substantive and procedural issues and concerns in refugee and migration law decision-making and practice. Our Working Parties have been part of our Association from its very founding in 1995 and have provided a wealth of conference papers, reports, and guidelines for our Association's members.

For those members who are unfamiliar with the various IARMJ Working Parties, please visit our website at **https://www.iarmj.org/working-parties/list-of-working-parties.**

You are most welcome to join the IARMJ Working Party of your choice. There is a particular need to cover the Rapporteur and Associate Rapporteur positions. These positions provide each of the Working Parties with the leadership necessary to sustain the members of the Working Party and its work. Each Working Party typically prepares a conference paper or report for our biennial World Conferences which is the culmination of their work between the last World Conference and the next scheduled to come. If you enjoy working with a small group of dedicated refugee and migration law decision makers on an important area of international refugee and migration law then this is the role for you.

At the moment, we are looking for a Rapporteur and Associate Rapporteur for the Vulnerable Persons Working Party and Associate Rapporteur for the Deportation Working Party. If you are interested in joining one of our Working Parties and/or filling any of these Rapporteur or Associate Rapporteur positions, then, please let me know by emailing me at **jamescsimeon@hotmail.com**. We very much look forward to hearing from you!

(See also the last page of this newsletter for details of the Working Parties and contact details for the Rapporteurs – ed.)



Immortalised on the wall at the Constitutional Court of South Africa, Johannesburg

WHO WE ARE AND WHAT WE DO

THE INTERNATIONAL ASSOCIATION OF REFUGEE AND MIGRATION JUDGES

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

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

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THE ASSOCIATION'S WORKING PARTIES

The Association maintains a number of Working Parties, for the advancement and exploration of developments in refugee and migration law. The Convenor of the Working Parties is **James Simeon**, who can be contacted at **jcsimeon@yorku.ca**. 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**	**Judge.Treadwell@courts.govt.nz**
Detention	**Julian Phillips**	**residentjudge.phillips@ejudiciary.net**
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