

Large movements of refugees and migrants: the role of judges and lawyers

7th annual Geneva Forum of Judges & Lawyers 17-18 November 2016

The seventh annual Geneva Forum of Judges & Lawyers, 17-18 November 2016, will bring together judges, lawyers, and refugee and migration experts from around the world, as well as relevant UN agencies in Geneva, to discuss the role of judges and lawyers in situations of large-scale movement of refugees and migrants.

Participants will reflect on practical, policy, and legal challenges posed by contemporary movements of refugees and migrants, perceived as exceptional in terms of their scale and speed. Particular situations to be considered include those in Europe (with people coming primarily from and through North Africa and the Middle East, including from Syria, Eritrea, Iraq and Afghanistan); in the Americas (including people coming to the United States of America from Central and South America); in Asia (including in relation to the Rohingya across Southeast Asia, and in relation to practices involving Australia and the Pacific); and within and from parts of Sub-Saharan Africa.

In most of these situations, the legal protections available and the respective roles of the executive, legislative and judicial branches of government in securing these protections has been a matter of debate. Authorities world-wide have faced the challenge of ensuring that in all circumstances people have access to fair and effective procedures in relation to key decisions about their rights and interests, such as: determinations of a person's entitlement to international protection, including determinations as to refugee status; decisions about detention or criminal proceedings based on one's entry or presence in the country; and decisions about expulsion or onward transfer.

In some cases governments have departed radically from ordinary procedures. The framework of "crisis" or "emergency" has been increasingly invoked, sometimes to reduce judicial protections and guarantees and access to justice.

The Forum is intended to focus particularly on the role of judges and lawyers in securing individuals' procedural rights in such situations, and in reviewing the constitutionality and international legality of relevant national legislation, policies, and practices.

Forum participants will be invited to analyze relevant legal and policy frameworks and practices at the national, regional and universal levels, and to make recommendations about the particular role of judges and lawyers in such situations, including relative to the executive and legislative branches of government.

The main output of the Forum will be a set of Principles on the role of judges and lawyers in situations of large-scale movement of refugees and migrants. The Principles will complement ICJ's 2011 Practitioners' Guide No 6 on Migration and International Human Rights Law.

The 2016 Geneva Forum of Judges & Lawyers is made possible with the support of the Republic and Canton of Geneva, Switzerland.



The ICJ is also grateful to the Swiss Confederation, and the Centre d'Accueil Genève Internationale (CAGI), for their in-kind support.

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Salle 18, Level -1, Centre International de Conférences Genève (CICG)
Geneva, Switzerland

Programme

Thursday, 17 November

- 8:20** **Shuttle bus leaves from hotel**
- 8:30 – 9:00** **Registration and welcome at Conference Centre**
- 9:00 - 9:30** **Welcome remarks** by Ian Seiderman, Legal and Policy Director, ICJ
Introduction of the Forum by Matt Pollard, Senior Legal Adviser, Centre for the Independence of Judges & Lawyers, ICJ
- 9:30 - 11:00** **Introduction of Participants**
- General roundtable, participants briefly present their relevant experiences and perspectives, by way of introduction.
- 11:00 -12:20** **Determinations of entitlement to international protection**
- Moderated by Matt Pollard, Senior Legal Adviser, Centre for the Independence of Judges & Lawyers, ICJ*
- Introductions: Ms Maya Sahli-Fadel, African Commission Special Rapporteur on Refugees, Asylum Seekers, Migrants and IDPs (general introduction); Judge Martina Flamini, Court of Milan, Italy (on duty of cooperation)*
- Discussion of relevant international law and practical challenges in "exceptional" situations of large-scale movement of refugees and migrants.
 - Role of judges, including relative to executive and legislature; role of lawyers.

- Discussion of particular practices:
 - Accelerated procedures with potential for negative decision based on "safe country" or other presumptions.
 - Prima facie / group status recognition.
 - Accelerated procedures on other grounds.
 - Procedural restrictions on grounds of national security, public order, etc.
 - Legislative imposition of mandatory adverse credibility findings.
- The situation of women migrants and refugees
- The situation of child migrants and refugees

12:20 - 13:50 **Lunch**

13:50 - 15:30 **Determinations of entitlement (continued)**

Moderated by Judge Sanji Monageng, Appeals Division International Criminal Court & ICJ Commissioner

Introductions: Judge Susana Medina, President of the International Association of Women Judges (on situation of women migrants); Judge Angeliki Papapanagiotou-Leza (on International Protection Institutions in time of emergency: Hotspots in Greece)

15:30 - 15:45 **Coffee-break**

15:45 - 18:00 **Administrative detention and criminal proceedings in relation to "irregular" entry and/or stay**

Moderated by Livio Zilli, Senior Legal Adviser, Legal & Policy Office, ICJ

Introductions: Prof. Guy Goodwin-Gill, Barrister & Emeritus Professor of International Refugee Law, University of Oxford (international legal aspects); Judge Seong Soo Kim, Seoul Central District Court, Republic of Korea

- Discussion of international law and practices in "exceptional" circumstances of large-scale movement of refugees and migrants.
- Role of judges, including relative to executive and legislature; role of lawyers.

18:00 – 19:30 **Reception with representatives of the international community in Geneva** (at Conference Centre, outside meeting room)

Remarks:

Judge Sanji Monageng, Appeals Division of the International Criminal Court & Commissioner of the International Commission of Jurists

Mr Olivier Coutau, delegate to International Geneva (Le délégué à la Genève internationale), the Republic and Canton of Geneva

His Excellency Mr Jorge Lomónaco, Ambassador, Permanent Mission of Mexico

Ms Mona Rishmawi, Chief of the Rule of Law, Equality and Non-Discrimination Branch, Office of the UN High Commissioner For Human Rights

19:45 **Shuttle bus to hotel**

Friday, 18 November

8:40 Shuttle bus from hotel

9:00 – 12:20 Removal decisions

Moderated by Ian Seiderman, Legal and Policy Director, ICJ

Introduction: Judge Dana Marks, President, National Association of Immigration Judges, United States of America

- Discussion of international law and practices in situations of large-scale movement of refugees and migrants, relating to enforced removals, take-back and onward transfer.
 - Decisions concerning persons seeking or having obtained international protection.
 - Decisions concerning persons resisting removal on other grounds;
 - Procedural rights of all migrants.
- Role of judges, including relative to executive and legislature; role of lawyers.
- Judicial supervision of execution of removal decisions.
- Post-removal proceedings.
- Procedural restrictions on grounds of national security, public order, etc.
- Particular practices:
 - Collective expulsions.
 - Accelerated procedures.
 - Non-suspensive appeals.

12:20 – 13:50 Lunch

13:50 – 15:30 General reflections on separation of powers and the special role of the judiciary in the rule of law

Moderated by Judge Sanji Monageng, Appeals Division International Criminal Court & ICJ Commissioner

Introduction: Judge Marina Josefina Torres, 4th Judicial Region, Philippines

- Judicial review of the constitutionality and international legality of relevant national legislation, policies, and practices.

15:30 – 15:45 Coffee Break

15:45 – 16:45 Further general discussion of the role of judiciary and lawyers in situations of large-scale movement of refugees and migrants

Moderated by Matt Pollard, Senior Legal Adviser, Centre for the Independence of Judges & Lawyers, ICJ

16:45 - 17:30 Conclusions and Next Steps

17:45-18:45 Scenic walk alongside the Lake to Place de la Navigation (weather permitting)

19:00 Dinner for participants visiting from outside Geneva, at Restaurant Edelweiss, place de la Navigation 2