

## CRITERIA FOR IARLJ WORKING PARTIES

**RECOMMENDATIONS** to the July 2009 IARLJ Council Meeting from ad hoc working group<sup>1</sup> set up at the request of President Sebastiaan de Groot and chaired by Hugo Storey

1. "That the Council adopt the following **CRITERIA FOR IARLJ WORKING PARTY PUBLICATIONS**"

2. That the Council reconstitute the Publications Committee and its membership and add to its responsibilities the oversight of Working Party publications.

### **"CRITERIA FOR IARLJ WORKING PARTY PUBLICATIONS**

These criteria apply to all Working Party materials intended for publication.

#### **A. Context**

The arrangements governing the setting up and running of IARLJ Working Parties are long-standing and, through the Working Party Co-ordinator, there exists a regular point of contact between them and the Council and Executive. This recommendation does not deal with these general arrangements, but only with the criteria that should govern Working Party publications. Hitherto the Association has dealt with such matters on an informal basis without any clear points of reference or criteria.

#### **B. Purposes and Auspices.**

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<sup>1</sup> This Committee has seen its only function as being to prepare criteria and will cease to exist as soon as the Council has reached a decision on whether to adopt those recommended. Its members are: Hugo Storey (chair), James Simeon (co-ordinator of the Working Parties), Geoffrey Care, Jacek Chlebny, Bostjan Zalar, Peter Showler, Esme Chombo, Sophia Akuffo, Irene O'Connell and James Silva. The above draft is the product of six months of discussion and exchange of views. In addition to the contribution made by members of the committee, we sought the views of Working Party Rapporteurs. We are grateful to Catriona Jarvis and Syd Bolton, both members of the IARLJ Working Party on Vulnerable Categories, for their comments.

Working Parties are widely recognised as one of the Association's main strengths and are intended to provide a forum for discussion and analysis, not just to fellow-judges but to others involved in the refugee law process, through small transnational groups of judges. Working parties operate with considerable autonomy and are active between IARLJ world conferences as well as at IARLJ conferences, including world conferences. Working parties now regularly produce papers for world conferences that are then published in the world conference book, which increases their value.

The materials produced by Working Parties are varied. Some are intended purely for internal circulation between members of the Working Party. Sometimes one or more Working Party members may write a note or paper for a conference or training event. It is only when Working Party materials are intended for publication that the need for clearer criteria arises.

It is appropriate from time to time for Working Parties to publish guidelines or opinions on matters within their subject-area. That is because many look to international bodies of judges in this and other fields of law for guidance.

It is also appropriate that Working Party publications, whether in the form of a paper or guidelines or an opinion, can go out in the name of the Association as “IARLJ Working Party” guidelines, opinion etc. That does not mean, and is not to be taken as meaning, that such publications reflect the official views of the Association or the views of the Association’s membership as a whole. But it does mean that the Association, through its Council and Executive, accepts that they reflect the best endeavours of those who have turned their mind to the topics they address, on widely shared problems.

The notion of IARLJ auspices conveys that they have the approval of an international organisation but without that being seen as necessarily reflecting the views of all of the membership, except at the level of broad principles.

It is important therefore that wherever possible the finalised version of a Working Party’s intended publication should not have to await approval by a World Conference meeting; their publication requires a more flexible system.

### **C. Oversight**

In order to ensure that Working Party publications are suitable to go out under IARLJ auspices some system of oversight is needed.

The most appropriate mechanism for achieving oversight is through a Publications Committee, tasked with reporting periodically to Council. The basic reason for making provision for a Publications Committee to have oversight of Working Party publications is to ensure respect for views expressed to be those going out in the name of the IARLJ and to avoid as far as possible later disagreement either within or outside the IARLJ.

The Association already has a Publications Committee, so adopting the recommendations made here would only have the effect of adding to that Committee's remit. However, given that the above two recommendations propose a more formal system than before (and a new responsibility), it would be appropriate for the membership of this committee to be reconstituted, in accordance with the current wishes of Council and the Executive.

However, the oversight envisaged is not intended to interfere with the substance of a Working Party's intended publication, unless it were thought it could embarrass the reputation or good standing of the Association. Rather it is intended to be facilitative and so, if for example the Committee saw points of substance which they had doubts about or which they thought might need wider consultation or further thought, they would go back first to the Working Party for reconsideration and if the doubts remained the committee would refer the matter to the President for his decision on wider consultation or action.

It is in this spirit that the following guidance is given with the approval of Council and the President and his Executive.

### **D. Criteria for Guidelines**

As part of its job of keeping under review all publications made or to be made with regard to the IARLJ, the Publications Committee should ensure that the work of the Working Parties is done transparently and in close co-operation with the Working Parties' Co-ordinator and the Publications Committee. By doing this, it is hoped to create the best

conditions for IARLJ Working Party publications to have legitimacy and professional persuasiveness as well.

All Working Party publications should adhere as far as possible to the following guidelines:

- i. Working Parties are intended to provide a forum for a cross-section of judges from different countries to discuss common problems and issues. The need for Working Parties to include judges from several different countries is all the more important when they decide to publish guidelines or opinions. However, Working Parties are open to judges as well as non-judges and it has been found enriching to involve academics, UNHCR and other experts from the relevant field;
- ii. Publications should be presented in a simple, clear, user friendly, easily digestible form;
- iii. Publications should be accompanied by a list of the persons in the group who prepared them giving their position/title/profession, e.g. judge (with their country in brackets), academic, NGO member;
- iv. Where there are guidelines the methodology by which guidelines have been deliberated should be stated, including when consultation took place and in what form (e.g. e-mail, face-to-face meetings, workshops).
- v. There should be a bibliography or list of authorities consulted;
- vi. Publications should reflect best judicial practice or principles;
- vii. Guidelines, if given, should be applicable to all jurisdictions. If there are any limitation in guidelines due to differences in jurisdictions and legal traditions, reservation(s) to this effect respect should be stated. This is one of the main reasons why it is highly desirable that the membership of Working Parties contain a cross-section of judges from different regions.
- viii. In deciding whether to produce guidelines or an opinion, the Working Party should pay attention to the question of which issues of refugee law are suitable and which are not suitable for judicial guidelines or an opinion, for example because the issues are not

regulated in statutes and it is unlikely they will be in the near future.

- ix. Working Parties should not establish guidelines directed to an issue which has been already adjudicated and settled by relevant international judicial authority;
- x. Close care should be taken not to approve guidelines that might eventually be overturned by a supra national court or tribunal.