

THE HIGH COURT

[2012 No. 767 J.R.]

BETWEEN

I.A AND

N.A AND

H.A (A MINOR SUING BY HER FATHER AND NEXT FRIEND I.A.),

J.A. (A MINOR SUING BY HER FATHER AND NEXT FRIEND I.A.),

S.A.A (A MINOR SUING BY HIS FATHER AND NEXT FRIEND I.A.),

A.A. (A MINOR SUING BY HIS FATHER AND NEXT FRIEND I.A)

S.F. (A MINOR SUING BY HIS FATHER AND NEXT FRIEND I.A)

APPLICANTS

AND

THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, ATTORNEY GENERAL AND IRELAND

RESPONDENTS

THE HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice Robert Eagar delivered on the 21st day of May, 2015

1. This is a telescoped hearing of an application seeking orders of *certiorari* in respect of the decisions of the respondent to refuse a grant of subsidiary protection to the applicants and to make deportation orders in respect of them.

2. The reliefs sought in the statement of grounds have been reduced by the applicants to the following:-

a) An order of *certiorari* by way of an application for judicial review quashing the decision of the respondent Minister for Justice and Equality (hereinafter referred to as "the Minister") making deportation orders in respect of the applicants.

b) An order of *certiorari* by way of application for judicial review quashing the decisions of the respondent Minister to refuse the applicant's subsidiary protection.

3. MacEochaidh J. allowed the case to proceed in this manner when medical evidence relating to the first named applicant was opened to the court. The grounds upon which the relief is sought are as follows:-

1) Without prejudice to the foregoing (other grounds) the subsidiary protection and deportation decisions are irrational when viewed in the light of the country of origin reports placed before the Minister and the evidence of the applicants. Such reports provide evidence that the rule of law is not available to the applicants in Waziristan or in any part of Pakistan.

2) The Minister erred in law in finding that the applicants had not been subjected to previous persecution and serious harm in circumstances where case specific documents were placed before him.

3) In making the deportation order in respect of the first named applicant in the light of his medical condition, the Minister acted in breach of Article 40.3.2 of the Constitution in failing to protect the person of the said applicant, acted in breach of the Preamble to the Constitution in failing to assure the dignity of the said applicant and acted in breach of Article 1 of the European Charter of Fundamental Rights and Freedoms.

4. The first named applicant (otherwise described herein as "the applicant") is the husband of the second named applicant (hereinafter known as "wife of the applicant") and father of the minor applicants (hereinafter described as "the children"). The applicant was born in Wana, Waziristan, Pakistan on the 23rd January 1966. The territory is now known as "the Islamic Emirate of Waziristan" and Pakistan according to the applicant, has effectively abandoned the territory to Al-Qaeda/the Taliban. The applicant's wife was born on the 25th December 1975, the children were respectively born on the 10th February 1997, the 2nd June 1998, the 3rd August 1999, the 9th October 2011 and the 5th December 2005. The applicant said that he lived in Wana, the headquarters of the Taliban until he went to live in Islamabad in 1983. His brother was very active with the Taliban according to the applicant and was an associate of Mullah Mohammad Omar. Following his graduation in 1998, the applicantsaid he established his permanent residence in Islamabad, returning only to Wana for significant family or business matters.

5. He said that his brother's activities resulted in the Pakistani authorities viewing him with suspicion.

6. He said he was arrested and tortured on the 5th September 2007. He was again arrested on the 13th July 2008 and detained until the 19th July 2008. His wife was kept under strict watch in a camp from the 29th July 2008 until the 3rd August 2008.

7. Their eldest daughter was subjected to a Vani (a child marriage custom). According to the country of origin information no-one knows how widespread Vani is in Pakistan. This followed a Jirga meeting as a result of killings committed by the applicant's brother before he himself was killed. The applicant did not agree to the Vani and his eldest son S.A.A was kidnapped on the 9th May 2008. He was returned unharmed the following day with a note stating that if he did not comply with the Jirga that he might receive his dead body on the next occasion. It was in these circumstances that the family fled to Ireland.

8. Following their arrival in Ireland on the 24th November, 2008, the family applied for asylum and the family were refused refugee status initially by the Refugee Applications Commissioner and subsequently by the Refugee Appeals Tribunal. Following the refusal of

the application for refugee status the applicant and his family were sent the "three options letters". The third option is to apply for subsidiary protection and/or submit representations to Minister under s. 3 of the Immigration Act 1999 (as amended) setting out the reasons why a deportation order should not be made against the applicant.

9. The letter further continues:-

"1. The Minister will make a decision on your eligibility for subsidiary protection first. If your application for subsidiary protection is successful you will be allowed to remain in this State for three years (this will be reviewed at the end of three years).

2. If your application is not successful or if you have not made an application for subsidiary protection, your representations under s. 3 of the Immigration Act 1999 (as amended) will be considered.

3. If the Minister decides to refuse your representations under s. 3 of the Immigration Act 1999 (as amended) you will be made the subject of a deportation order."

10. A similar letter was received by his wife on behalf of his wife and the children. An application was made by the Refugee Legal Service on behalf of all the applicants by separate letters on the 9th June 2011 seeking an application for leave to remain and on the 13th June 2011 applications were made on behalf of the applicant and his wife and family were made for subsidiary protection. By letters dated the 31st July 2012 the applicants were notified that they were refused subsidiary protection. Attached to each of the refusals were the determinations of the application pursuant to the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006). By letters dated the 10th August 2012 the applicants were notified that deportation orders relating to them had been made and attached to each of these two documents were summaries of the grounds in which the Minister decided to make the deportation order.

11. Also attached to the papers is an affidavit of Chris Cahill, an officer of the Repatriation Unit, Irish Naturalisation and Immigration Service at the Department of Justice indicating that the respondents had fully, properly and adequately considered all the information pertaining to the applicant's applications and properly considered all the information furnished to the respondents on behalf of the applicants in respect of the application.

12. Before dealing with the Minister's decisions I would like to state that the country of origin information comes in various forms and it would have been very helpful to have put all the information together and to identify portions of the Country of Origin Information which would be relied upon in accordance with Practice Direction 56. It would have meant that this court would have had access to each of the relevant correspondence and attachments and the country of origin information should have been separated out of these papers and added by way of a second folder.

Basis of the application for subsidiary protection

13. The applicant in his ASY1 form and questionnaire outlined how his brother had "friendly relations with Mullah Mohammad Omar. He was involved to some extent in all acts of terrorism". As a result of the brother's actions the third named applicant then 12, was to be subject to a child marriage as a punishment and the fifth named applicant was kidnapped in an effort to enforce compliance. The applicant stated he was introduced to Mullah Omar at his father's funeral in 1988 but declined the Mullah's invitation to join the Taliban.

14. Following an attack on President Pervez Musharraf in December 2003, the applicant was summoned by the army and questioned for six or seven hours and he stated that people started to sever their relations with him. He was again arrested and subjected to mental torture on the 5th September 2007 following a Taliban bomb attack on Rawalpindi. The applicant's brother was killed by an Afghan tribe on the 23rd April 2008, a revenge for killing a girl from that tribe who was seen with a boy from his own Wasir tribe following which both tribes called a Jirga meeting on the 4th May 2004. In the Jirga meeting the Afghan tribe expressed their anger and grief and make abusive remarks about his brother and his brother's family. It was decided that the applicant's 12 year old daughter should marry the 65 year old father of the murdered girl's father. The applicant opposed the decision but his eldest son was kidnapped on the 9th May 2008 and then returned on the following day with a note stating that if the applicant did not bow to the Jirga's decision he might receive his son's dead body. The applicant and his family immediately fled from Wana. He reported to the police on the 25th June 2008 but he himself was arrested on the 13th July 2008 and handed over to the army who detained him until the 19th July 2008. His wife was taken by the police on the 29th July 2008 and detained until the 3rd August 2008. The applicant sold his house on the 8th August 2008 and contacted an agent to assist them in fleeing from Pakistan.

15. The applicant submitted original birth certificates of all the applicants, his marriage certificate, a death certificate for his brother, a copy of his driving licence, medical reports, a complaint letter to the police and a report on the Vani incidents. When asked about his passport the applicant stated "the people in Wana, Waziristan do not have nationality but it comes under Pakistan. They don't give nationality as it is between Pakistan and Afghanistan". He stated that whenever he went to the police station "they looked at me suspiciously."

16. The Commissioner had rejected the applicant's claim saying it was put to the applicant why did he bring the family of his brother on the 23rd April 2008 to Wana considering that "it would be a dangerous and potentially volatile situation and the prudent thing would have been not to go to the funeral or to travel alone and exercise extreme caution". His actions therefore were inconsistent with his fear of being harmed. Further the Refugee Applications Commissioner indicated that it was reasonable to presume that if the applicant did not accept the verdict of the Jirga he would have left the area without delay. The Commissioner also indicated that it did not seem unreasonable for the police in Pakistan to question the people who claimed to have a brother in the Taliban and who recently returned from the Taliban controlled area territory of Wana, Waziristan. There were substantial country of origin information reports on both sides and I will address these later.

17. The Commissioner's decision was appealed to the Refugee Appeals Tribunal and detailed grounds of appeal supported by further country reports were made in the notice of appeal. The Tribunal Member rejected the appeal of the applicant and his family on the basis of findings related to credibility but including findings relating to State protection and internal relocation. The documents submitted by the applicant were considered by the Tribunal as having no weight in the circumstances and did not advance his claim in any material respect.

18. The same Tribunal Member determined the appeals of the applicant and his wife and children and his decisions were dated the 29th March 2011.

The decision on subsidiary protection

19. Among the documents lodged by the application by the solicitors on behalf of the applicants is a medical report from a Dr Patrick Noone of Ballyhaunis indicating the ill health of the applicant. The report indicates that he was suffering from ischaemic heart disease and investigations at the Cardiology Department, St Vincent's Hospital, Dublin indicates that he requires coronary by-pass surgery. He is currently waiting for this procedure but had not been given a date. He was also suffering from diabetes mellitus which complicates the heart problems and increases his risk of a heart attack. Further documents from Dr Patrick Noone were also admitted including a letter from the senior registrar to Professor Ken McDonnell, Consultant Cardiologist indicating that the Consultant Cardiologist wanted to carry out the surgery as soon as possible but the applicant was declined for surgery in the Blackrock Clinic.

20. A determination was made by the respondent department. The report of the executive officer made on the 10th July 2012 was reviewed by the higher executive officer in the Department on the 31st July 2012 determining that the applicant was not eligible for subsidiary protection. A similar decision was taken in respect of his wife and children on the same date.

21. The executive officer indicated at the commencement of her report that the applicant claimed a fear of serious harm in Pakistan for reasons of death penalty or execution, torture or inhuman or degrading treatment or punishment of an applicant in the country of origin and violence and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. He reviewed the claim and posed the question "whether substantial grounds have been shown for believing that the applicant if returned to Pakistan faces a risk of 'death penalty or execution' torture, or inhuman or degrading treatment or punishment" and "serious and individual threat to his civilian's life for reason of indiscriminate violence in situations of international or armed conflict."

22. The executive officer of the respondent department dealt with first the applicant's credibility. She cites Regulation 5(3) of the European Communities (Eligibility for Protection) Regulations 2006. This reads as follows:-

"Where aspects of the protection Applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met—

(a) the Applicant has made a genuine effort to substantiate his or her application;

(b) all relevant elements at the Applicant's disposal have been submitted and a

satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the Applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the Applicant's case;

(d) the Applicant has applied for protection at the earliest possible time, (except where an Applicant demonstrates good reason for not having done so); and

(e) the general credibility of the Applicant has been established.

23. The executive officer quotes the member of the Tribunal which was not generally satisfied as to the applicant's credibility in relation to the particular claim for asylum advanced by him. The examples he cites are:-

"1. It strikes the Tribunal as inherently implausible in his contention that he took all of his family with him to Waziristan from Islamabad for his brother's funeral in circumstances where according to his own evidence he knew beforehand the situation there was extremely volatile and dangerous and that he would be willing to expose his children to such potential danger.

2. The Applicant's actions in remaining in Waziristan area with his family for about a month after the Jirga delivered its verdict that the Applicant's daughter was to be married off against their will to a victim of his brother's alleged activities and after his son had allegedly been abducted, returned safely is inconsistent with his claim of fear of persecution emanating from that area and the people there.

3. Given the country of origin information on the issue of the outline of Jirga cancelled by the Pakistani state, even if one were to accept that such a Jirga did exist and was effective in Waziristan the Tribunal was not satisfied that their decision could be upheld outside of its immediate area of influence. Furthermore the evidence of both the Applicant and his wife was that the Jirga did not trouble them when they returned to Islamabad.

4. Accordingly the Tribunal is not satisfied that the Applicant would face a real risk of persecution from the Jirga council or if acolytes were to remain in Islamabad or another part of Pakistan outside of Waziristan."

24. The executive officer decided that the core elements of the applicant's account were not capable of being believed. In those circumstances the executive officer said that it was reasonable to consider that the applicant's statement in relation to his claimed fear of returning to Pakistan were not credible.

25. The next elements relate to "relevant facts relating to country of origin including laws and regulations and the manner in which they are applied (Regulation 5(1)(a) including the availability of protection against serious harm as defined in Regulation 2(1)." She dealt with the three headings of death penalty of execution, torture or inhuman and degrading treatment and noted that the applicant had been found not to be credible under both headings.

26. She then reviewed some country of origin information in relation to Pakistan. There seemed to be some contradictory issues. The Immigration and Refugee Board of Canada noted United Press International (UPI) reports that in August 2002 a Pakistani man detained on immigration charges in the US was married to an American woman and who was deported to Pakistan was "detained for many days at an unknown location". In April 2004 UPI reported that "detainees had been arrested upon arrival by Pakistani immigration officials". However according to 2005 correspondence from the Human Rights Commission of Pakistan noted that "failed Pakistani refugee claimants are not usually detained". In effect the contradictions were whether or not persons who are failed asylum seekers were detained and there is certainly documentation in the report of the executive officer that "all deportations are enquired into".

27. There are also sources stating "no punitive measures taken against failed asylum claimants unless FIA (Federal Investigative Agency) officials are able to find some lapse or default on the part of the returning national's documentation. When reviewing the documentation the executive officer found that the applicant would not be at serious risk of serious harm in Pakistan by virtue of

being a failed asylum seeker.

28. The next heading which the executive officer considered was a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict". She identified the criteria for determining whether an applicant runs a real risk of serious and individual threat as:-

- 1) Is the situation an armed conflict?
- 2) Is the applicant a civilian?
- 3) Is the threat of indiscriminate violence serious and individual?

29. The executive officer quotes from a UK Home Office Country of Origin Information Report dated the 7th June 2012 as saying "the last half of the year of 2011 was a period of comparative peace in Pakistan in terms of internal armed conflict, acts of terrorism and consequent casualties. This is contradicted in a Human Rights Watch document covering 2011 events that "suicide bombings, armed attacks and killings by the Taliban, Al-Qaeda and their affiliates targeted nearly every section of Pakistani society, including journalists and religious minorities resulting in hundreds of deaths".

30. A further report from PIPS, the Pakistani Institute for Peace Studies stated "as many as 1,966 terrorist attacks perpetrated by militants, national insurgents as well as sectarian related violence claimed the lives of 2,391 people and injured another 4,389 across Pakistan in 2011. The highest number of terrorist attacks for any region in the country in 2011 was from the federally administrated tribal areas of which Waziristan is part".

31. However in her summation the executive officer said the above country of origin information states that the second half of 2011 was a period of comparative peace in Pakistan in terms of internal armed conflict, acts of terrorism and consequent casualties. Having regard to all the facts on the file she felt that there were not substantial grounds for believing that the applicant would be at risk of serious harm by death penalty of execution, torture or inhuman or degrading treatment and/or serious and individual harm to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict in Pakistan.

32. In relation to the applicant's individual position there seems to be no identification of his medical situation and the executive officer concluded that she was not satisfied as to the credibility of the applicant's claim nor was she satisfied that a situation of international or internal armed conflict existed in Pakistan and this determination was copper fastened by the decision of the higher executive officer. Similar findings were made in relation to the applicant's wife and children.

33. Also attached to the documentation was an examination of the file under s. 3 of the Immigration Act 1999 (as amended) and in this document the applicant's medical issues were considered. Further country of origin information was used by the first named respondent as was used by the same executive officer so it is not surprising that her conclusions were similar in relation to the claim although she identifies further contradictory country of origin information report. Finally she considered the applicant's medical condition under Article 3 of the European Convention on Human Rights and stated that consideration be given to all the medical documentation on file and suggested that the Human Rights Commissioner in Pakistan identified the health budget as low as 0.23% of the federal budget, the lowest in 10 years and in her opinion the health sector was a cause of much of the waste. The executive officer concludes that while it was accepted there was plenty of room for improvement in Pakistan's health service the country of origin states that there is one doctor for every 1,222 people in the country, one dentist for every 16,854 people and one hospital bed to 1,701 people and that the National Institute of Cardiovascular Diseases (NICVD) was established to meet the increasing demand for the diagnosis, management and prevention of cardiovascular diseases. In all the circumstances she recommended that the applicant's case was considered and a recommendation made that the Minister make a deportation order in respect of the applicant. A similar decision was taken in respect of the applicant's wife and children by the same executive officer.

Submissions on behalf of the parties

34. Counsel on behalf of the applicant having set out the background to the application quoted from substantial country of origin information and submitted that the country of origin information relied upon by the respondents overlooked substantial issues which was contained in other country of origin information.

35. He further argued that the failure of the Minister to consider substantial elements of the applicant's claim and significant parts of the evidence and country reports were a clear breach of natural and constitutional justice and the findings that there was no need to consider Regulation 5(1) (a) was a dereliction of duty when he also argued that the country of origin information reports in respect of the return of failed asylum seekers was again irrational on the basis of the country of origin information.

36. Counsel on behalf of the respondent argued that the Minister did not err in law in relying on any Tribunal findings made but the Minister did in fact consider and determine the core claims of the applicants. She submitted that the Minister was entitled to find on the basis of the evidence by virtue of being a failed asylum seeker that there was no risk.

37. She also argued that the subsidiary protection decision-maker reasonably found that it is not accepted that the situations of indiscriminate violence which may arise in certain parts of Pakistan amount to a situation of internal/international armed conflicts. It was also submitted that the Minister considered all the country of origin information to include the schooling of female children in Pakistan and quoted from *Agbonlahor v. Minister for Justice Equality and Law Reform* [2007] 4 I.R. 309 where Feeney J. referred to a case of *N. v. The Home Secretary* [2005] 2 AC 296 as follows:-

"The House of Lords concluded that it was bound by the principles to be derived from the jurisprudence of the European Court of Human Rights to the effect that article 3 of the Convention did not impose an obligation on a contracting state to provide aliens indefinitely with medical treatment which was unavailable in their home countries, even if the absence of such treatment would significantly shorten their lives and that article 3 could be extended to apply only in exceptional circumstances where the present state of health of the person who was subject to expulsion was such that, on compelling humanitarian grounds he ought not to be expelled unless it could be shown that the medical and social facilities that he would need to prevent acute suffering while he was dying were available to him in the receiving state."

Decision of the Court

38. In the context of the country of origin information the Regulation 5 of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006) provides:-

"5. (1) The following matters shall be taken into account by a protection decision-maker for the purposes of making a protection decision:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of

the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the protection Applicant including information on whether he or she has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the protection Applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the Applicant's personal circumstances, the acts to which the Applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the protection Applicant's activities since leaving his or her country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for protection as a refugee or a person eligible for subsidiary protection, so as to assess whether these activities will expose the Applicant to persecution or serious harm if returned to that country;

(e) whether the Applicant could reasonably be expected to avail himself of the

protection of another country where he or she could assert citizenship."

39. Thus there is clearly a duty on a protection decision-maker to consider all relevant facts as they relate to the country of origin at the time of taking of a decision on the application for protection. In considering the country of origin information the respondent considered the following information:-

- 1) The Immigration and Refugee Board of Canada (IRB) Report of the 2nd December 2008 – In a response to information request (RIR).
- 2) She also referred to undated but appears to relate to 2010.
- 3) In relation to the security situation the executive officer of the first named respondent refers to the Pakistan Institute for Peace Studies (PIPS) in its Pakistan Security Report dated 2012
- 4) The Human Rights Commission of Pakistan Report 2011
- 5) The United States Department of State (USSD) Country Reports on Terrorism 2010) published on the 18th August 2011
- 6) The United States Department of State Country Report on Human Practices 2011 (USSD Report 2011)
- 7) Jane's Executive Summary dated the 10th October 2011

40. Counsel on behalf of the respondent has pointed to this court extracts from the Guardian newspaper dated the 21st March 2006 relating to militants being strongest in the north and south in Waziristan, the US being impatient to catch more senior Al-Qaeda figures and used unmanned predator drones now armed with hellfire missiles sweeping over tribal areas in surveillance missions. A document which is unclear is the source in relation to Vani – a compensatory marriage. If a man has committed a crime and a Muslim Village Court can order his female relatives be given away in marriage. The unnamed document said that "girls can be treated so cheaply as bargaining chips but the Jirgas and Panchayats are above the law". A quotation from the Ayatollah Homeini who said "a man can have sexual pleasure from a child as young as a baby. However he should not penetrate. If he penetrates and the child is harmed then he should be responsible for subsistence all her life. The girl however could not count as one of his four permanent wives. The man will not be eligible to marry the girl's sister."

41. There is a further extract from the Guardian newspaper dated the 14th May 2008 the final part of which relates to anti-coalition bases in Wana.

42. There is a report from the BBC news regarding the South Waziristan tribal districts stating that 12 tribal fighters were killed in a gun attack.

43. There is a reference in the BBC news where tension is reported from the tribal region of South Waziristan, the stronghold of a particular militant and that the road connecting the towns of Wana and Dera was blocked. There is a report from Qatar's English daily newspaper "The Peninsula" in relation to Wana and the involvement of Al-Qaeda. There is a reference to a space war which refers to an attack in north Waziristan and there is a report from the BBC News about Vani and there is a reference to Al-Ahram Weekly in relation to Vani. There are further references to articles in the Guardian in May 2008 and in the Human Rights Report of 2006 in relation to the conditions of women being most deplorable in Pakistan and confirming that corruption within the police was rampant.

44. Refugee Documentation Centre of Ireland dated the 12th May 2009 has information in relation to Pakistan and in relation to a Jirga and a quotation as follows:-

"However in Pakistan, Jirga systems still run parallel with the state judiciary system despite a ban imposed on it by the Sindh High Court. Jirga are not only conducted by feudal lords and tribunal elders but also by known parliamentarians and district legislatures. It is the Jirgas who play the most critical and still does in the perpetuation of these cruel and brutal traditional practices in Pakistan."

These refer to Tribal Courts and quotes:-

"However the Government had no problem with Jirgas and Panchayets across the country which deliver judgments in all kinds of criminal cases".

45. On the 13th June 2011 in relation to the application on behalf of the applicant to the Acknowledgments Unit, Irish Naturalisation

and Immigration Service for an application for subsidiary protection some further country of origin information is enclosed. The following are notable inclusions:-

A 2010 country reports in human rights practices – Pakistan 8th April 2011: "There were several reports that the government or its agents committed arbitrary or unlawful killings". Under the heading "Arbitrary or unlawful deprivation of life".. "there were reports of extra judicial killings in connection with conflicts in the federally administered tribal areas and Khyber Paktunkhwa".

46. Further:- "Some killings of individuals accused of crimes allegedly resulting in some extreme physical abuse while in official custody. During the year the non-governmental organisation (Society for Human Rights and Prisoners' Aid (SHARP) reported 72 civilian deaths after encounters with the police and 168 deaths in jails, an increase from the previous year."

47. It is notable that the applicant and his wife were both detained by the police, the applicant on two occasions and his wife one occasion."

48. The above article continues: "The police stated that these deaths occurred when suspects attempted to escape, resisted arrest or committed suicide".

49. Further documentation was submitted with this application for subsidiary protection and included further documentation from the Refugee Documentation Centre of Ireland quoting an Amnesty International Report under the heading "The Process of the Jirga". The report states that:- "A Jirga can be initiated by a Sardar who is aware of a feud and calls on the persons involved to submit to a Jirga or by a complainant who approaches the Sardar. On some cases the Sardar alone will decide issues but major conflicts are brought before an assembly of elders. Both the complainant and the accused have agreed to appear before the Jirga and to submit to their decision. Proponents of the system have described it as democratic". While there is suggestion that it is in decline there is a quotation from a US Department of State Country Report under the heading "Denial of Fair Public Trial":- "Feudal landlords in Sindh and Punjab and tribal leaders in Pashtun and Baloch areas continue to hold local council meetings at times in defiance of the established leaders (known as Panchayats or Jirgas) at times in defiance of the established legal system. Such councils are particularly prevalent in rural areas, settled feuds and imposed tribal penalties and perceived wrongdoers."

50. From the same source under the heading "Children": - "Feudal landlords and tribal elders throughout Pakistan adjudicate some disputes and impose punishments in unsanctioned parallel courts called Jirga. In 2004 responding to growing concern over the potential for abuse in this practice, the Sindh High Court banned all trials conducted under the Jirga system in the province. However, such proceedings continue to take place."

51. There is also quotation from the Society for the Protection of the Rights of the Child Report – The state of Pakistan's children 2007 released in May 2008:- "However in Pakistan Jirga systems still run parallel with the state judiciary system despite a ban imposed on it by the Sindh High Court. Jirgas are not only conducted by feudal landlords and tribal elders but also by known parliamentarians and district legislatures. It is the Jirgas that have played the most critical part and still does in the perpetuation of these cruel and brutal traditional practices in Pakistan".

52. There is also a report carried with the same letter seeking subsidiary protection of an Amnesty International Report 2010 stating:- "Millions of Pakistanis suffer abuses as a result of sharp escalation in armed conflict between the government and armed groups. Pakistani Taliban and other anti-government troops targeted civilians throughout the country. While security forces used indiscriminate and disproportionate force in carrying out suspected extra judicial executions."

53. There is also a report from the UK Home Office - Country of Origin Information Report on Pakistan produced in April 2009 in relation to the treatment of failed asylum seekers.

54. The jurisprudence in relation to country of origin information was dealt with in *D.V.T.S v. Minister for Justice Equality and Law Reform & Ors* [2008] 3 I.R. 476. This was a decision of Edwards J. The applicant in this case was a national of Cameroon and, *inter alia*, one of the complaints related to the country of origin information. Edwards J. said it was clear from a reading of the documentation that it was widely known that political opponents of the government in Cameroon have in the relatively recent past been subject to arrests, detention and torture. He also stated that there was anecdotal evidence which he said "is very difficult to quantify of some improvement in the situation."

55. Country of origin information was also submitted by the applicant including an Amnesty International Release, a Human Rights Watch Report, a Medical Foundation for the Care of Victims of Torture Report and some other reports.

56. In giving his decision Edwards J. said:-

"The second ground on which the decision of the second Respondent must be criticised is that there does not seem to have been any meaningful attempt on the part of the second Respondent to assess the Applicant's claim of having been tortured in the context of the background information of the country of origin. The second Respondent only alludes to country of origin information in the context of attempting to address the well foundedness of the Applicant's stated fear of persecution. I will address this separately in a moment. However, there does not seem to have been an engagement on the part of the second Respondent with the overwhelming evidence from the country of origin that in recent years the torturing of political dissenters by the police and security services in Cameroon was both endemic and systematic."

57. He continued at paragraph 39:-

"39 The third ground on foot of which I would criticise the decision of the second Respondent is with respect to his assessment of the well foundedness or otherwise of the Applicant's stated fear of persecution. Having read the entirety of the country of origin information that was before the second Respondent, I regret to say that I agree with the Applicant that the second Respondent appears to have been selective in the material that he relied upon in arriving at the conclusion that the objective element for a well founded fear as defined in the United Nations Convention relating to the Status of Refugees, as amended by the Protocol of 1967, and as further outlined in the Refugee Act 1996, as amended, had not been established by the Applicant. I cannot accept the Respondent's submission that the second Respondent was entitled to select the information that he did select on the basis that that was the most up to date country of origin information that was before him at the time of the decision. There was a significant body of other information before him, submitted by the Applicant, that was neither so old nor so out of date as to justify him in failing to take it into account."

58. At paragraph 43 Edwards J. said:-

"The court's attention was drawn to the decision of the High Court in O.A.A. v. Refugee Appeals Tribunal [2007] IEHC 169, (Unreported, High Court, Feeney J., 9th February, 2007) wherein it stated:-

'As pointed out by the High Court (Herbert J.) in Kvaratskhelia v. Refugee Appeals Tribunal [2006] IEHC 132, (Unreported, High Court, Herbert J., 5th May, 2006) it is the function of the Refugee Appeals Tribunal and not of this court in a judicial review application, to determine the weight, if any, to be attached to country of origin information and other evidence proffered by or on behalf of an Applicant. The tribunal member correctly identified that the obligation was on the Applicant to provide clear and convincing evidence of his state's inability to protect. This was not a situation of a complete breakdown of law and order and therefore the correct approach was that it must be presumed that the state was capable of protecting its citizens. It was recognised that such presumption could be rebutted but such rebuttal required clear and convincing evidence'."

59. Edwards J. continued:-

"In this particular case the Applicant did provide evidence to the second Respondent of the state's inability to protect. I have just rehearsed some of it. The second Respondent asserts in his ruling that he had regard to all of the relevant facts. However, the country of origin information before him contained conflicting information. He gives no indication as to how, or on what basis, he resolved the conflicts in the information before him. Moreover, he gives no indication as to the basis on which he elected to prefer the apparently anecdotal accounts of certain interviewees quoted in the United States State Department report on Cameroon, 2004 and the United Kingdom fact finding mission report on Cameroon, 2004. While this court accepts that it was entirely up to the second Respondent to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the second Respondent to arbitrarily prefer one piece of country of origin information over another. In the case of conflicting information, it was incumbent on the second Respondent to engage in a rational analysis of the conflict and to justify its preferment of one view over another on the basis of that analysis. The difficulty in the present case is that the second Respondent firstly, does not allude to the fact that the information is conflicting and secondly, does not give any indication as to why he was inclined to prefer the information contained in the United States State Department report on Cameroon, 2004 and the United Kingdom fact finding mission Report 2004 to that contained in the reports submitted by or on behalf of the Applicant."

60. The executive officer assessing the applicants' applications for subsidiary protection cited some documentation but did not engage in a rational analysis of the conflict between the different country of origin information nor did it engage in a rational analysis of the conflict between the pieces of country of origin information and justify her preferment of one view over another on the basis of that analysis.

61. The role of an officer of the second named respondent is of course a difficult one. Nevertheless in this case I am satisfied that the applicants have established an entitlement to relief on the grounds that the subsidiary protection decision was irrational when viewed in the light of the country of origin information placed before the Minister.

62. I grant an order of *certiorari* quashing the decision of the second named respondent in respect of subsidiary protection.