Credit :
UTokyo Online Education, Refugees and Migrants - International and Japanese Comparisons 2019 Allan Mackey

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Comparisons 4 with Japanese jurisprudence

(Ethiopia 1) Tokyo District Ct **& (Ethiopia 2)** Tokyo High Ct

Ethiopia 1 : She claimed: Amharic, supporter ANDM, EPRDC & CUD and various sur place activities.

Comparatively, beyond the serious misdirections mentioned on: the definition of a refugee, Arts 31 & 33, burden and standard of proof, ***the retrospective assessment of item by item evidence carried out by the judge in the appeal is also flawed:...***

4. (Ethiopia 1) Tokyo District Ct **& (Ethiopia 2)** Tokyo High Ct

...The Court rejected her claims , with statements like:

***"It is difficult to consider**… Provides a basis for RS eligibility.*

***Doesn't see this provides…that** she has actually been subjected…the occurrence of an incident.. there is not any strong evidence etc*

This credibility &/or fact finding exercise is random and often confused, with risk assessment .

4. (Ethiopia 1) Tokyo District Ct **& (Ethiopia 2)** Tokyo High Ct

There is thus no assessment of what ,taken in the round/totality, are objectively, on the facts as found, that the appellant has (as of now) a real chance (wff) of being persecuted on return.

Understandably there was and appeal to the High Court.

The findings of the High Court in **Ethiopia II** did not assist and again are comparatively inconsistent.

(Ethiopia 2) Tokyo High Ct

Here the comparative issues are:

- As a high level Court it would be expected to deal with material error of law issues only – not to do a further reassessment of the facts.
- The fact findings then made appear to be done without hearing the "other side" *(audi alteram partem*). AND…
- The conclusion that: "it is impossible to find" whether the PTSD was linked to the rapes would be considered as a serious error of law, as prima facie the judge is claiming medical/ psychiatric expertise and should have called for such evidence, if needed.

Case 5. *(P3 & 4 Syria)* Tokyo D Ct, 20 March 2018.

P3 & P4 husband & wife with :RS was refused at MOJ in 2013, and on "Objection" by RECs 2015. P3 claimed he was at risk from Assad's "security forces" and thus fled. Two brothers have RS in UK. At Court :"no dispute that no evidence presented".

The issues are stated as : Whether P3 &4 "are refugees"?

And the legality of a mandamus claim. (ie direction to grant RS).

After outlining the claims of both parties the Court then in Part IV: Determines on the meaning of refugees after setting out Art 2(3) ICRRA--Art 1A(2)…

Case 5. *(P3 & 4 Syria)* Tokyo D Ct, 20 March 2018

"And it is appropriate to construe " being persecuted .. means as attack or oppression" etc in similar manner to Ethiopia I and many other cases.

And in respect to evidence presented by claimants:-

"since those recognised are "given favourable legal status" such as being able to acquire permanent residence.. Therefore RS is a "profit making" disposition" and as such bears burden of proof about fulfilling this And for eligibility! Comparatively…

Case 5. *(P3 & 4 Syria)* Tokyo D Ct, 20 March 2018

Comparatively the whole “profit making” logic behindd this is an amazing one given the whole humanitarian and surrogate protection nature of the CSR (as in Preamble etc). Whilst , as discussed BofP is always basically on the claimant, however the “shared nature” of the burden is the international standard. This is “profit element” is certainly not part international refugee law .

Again this appears to arise through inappropriate use of domestic law standards instead of recognising the unique difference we discussed in Course1 .

Case 5. *(P3 & 4 Syria)* Tokyo D Ct, 20 March 2018

This case does cover the COI and evidence in some depth up to 2014 *(but the hearing was in March 2018!)*

It includes a statement from a Oct 2014 UNHCR report on Syria of "worsening security, human rights" etc and that the majority are likely to meet the CSR requirements." + Brothers in UK got RS.

Yet it is declined!

Simply put this decision is vastly out of step on any international comparison.

*Case 6.(UD Myanmar)*Tokyo D Ct,23 Feb 2018)

This is a 20 year tragedy of unending dysfunction(UD) and shows what can happen when a RSD and immigration systems are so dysfunctional that they serve the interests of nobody! Not the claimants, the states, the lawyers or the General public.

BUT it serves to show that when RSD and migration law/policies cannot yet resolve whether this man is actually a refugee or not ***it really is time to change*** .

*Case 6.(UD Myanmar)*Tokyo D Ct,23 Feb 2018)

Again a case where even after a massive revisit of evidence collected over 13 years 2004 to 2016 (including some postdating the last (Feb 2015) MOJ decline) does still not determine prospectively assessed whether he is a refugee as at the time of the decision in 2017/18!

Conclusions (again item by item and in summary sections)like: 'no reason to believe', 'difficult to think would likely', 'difficult to recognise' ,impossible assume, impossible to find" etc show the appeal has not been viewed in the round and with any consistency at all. Comparatively it would overturned as such.

*Case 6.(UD Myanmar)*Tokyo D Ct,23 Feb 2018)

Finally again the revisiting of credibility issues by the Court shows many basic fairness issues as set out of the IARMJ "Structured approach & Judicial Guidance paper" in Part III on Credibility at: A1-A3, A5-A9,A12-14, A18,23 & 25.

University of Tokyo, Graduate Program on Human Security. The International Refugee, Complementary Protection, Migration - *Course 2 - November 2019*

7. *X v Japan (RFT Sri Lanka)* Nagoya D Court . 30 July 2019. (And summary by Attorney Ogawa)

This right to fair trial- suspensory effect case is covered by
Martin Treadwell and Yukari Ando

The final question therefore on how, if at all, international refugee law, practices and norms can assist Japan in the future and if so how, when and where?

This we can debate, suggest, and imagine now and in our final seminar on Sunday 17th

Thank you and *Oyasumi nasai*

