



## THE EVOLVING ROLE OF COURTS IN ADJUDICATING BARRIERS TO ACCESSING ASYLUM

Kick-off workshop of the project

### *Gatekeepers to International Refugee Law? – The Role of Courts in Shaping Access to Asylum (ACCESS)*

19-20 September 2024, University of Bologna and online

[Registration link](#)

### Background and Objective

In an era marked by intensifying factors compelling individuals to migrate, States are increasingly erecting physical and legal barriers to keep refugees out and prevent their access to mechanisms of international protection (e.g. pushbacks, walls, detention measures, externalization of asylum proceedings and AI-based procedures). This realm is governed by an increasingly complex and fragmented regulatory framework, encompassing the Refugee Convention (RC), international law of the sea, international humanitarian law, and numerous national and supranational human rights regimes. Courts can wield significant influence on the development of international refugee law (IRL) and migration governance policies, including due to their role as creators of customary international norms. However, we lack comprehensive data that would allow a better understanding of global adjudicatory patterns on the legality of barriers to accessing asylum, the impact of socio-legal factors on asylum adjudication, and the respective effect on the evolution of IRL, migration and judicialization scholarship.

[ACCESS](#) aims to develop an empirically driven theoretical model of how domestic and supranational courts develop IRL and advance the executive-driven model of migration governance in response to State-developed barriers. More specifically, it will investigate: 1) How do judges apply the same legal treaty (RC) and related international norms in different political and socio-legal contexts? 2) To what extent are there any discernible patterns in the courts' decisions related to barriers to asylum (restricting or expanding access to asylum)? 3) What are the socio-legal factors influencing adjudication? Attention will be paid, among others, to the following socio-legal and institutional factors: the executive's role in both individual and policy-level determinations; the dual nature of judicial discretion in asylum proceedings; and the heterogenous models of judicial review of executive decision-making. Moreover, the impact of the rule of law, migration and COVID-19 crises will be investigated, as the ensuing socio-legal developments have further complicated courts' role as uniform and independent interpreters of relevant law. Notably, courts have faced mounting political and social pressures when adjudicating the legality of state-imposed barriers, fuelled by political efforts to discredit the judiciary as undermining states' migration policies. Consequently, a comprehensive study on jurisprudential convergence or divergence in this highly politicized arena necessitates an examination of factors extending beyond legal text and doctrinal approaches, encompassing the socio-legal and political dimensions.

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Gatekeepers to International Refugee Law? – The Role of Courts in Shaping Access to Asylum (ACCESS)

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The ACCESS Kick-off Workshop endeavours to initiate an interdisciplinary discussion on identifying the main global practices of legal and physical barriers to accessing asylum, and the pivotal role of courts in shaping global asylum access. It aims to foster discourse and knowledge exchange among scholars and legal practitioners to explore the intricacies surrounding judicial processes pertaining to asylum access and the socio-legal factors influencing asylum adjudication.

## **THURSDAY, 19 SEPTEMBER**

Location: Aula Poeti, Department of Political Science, University of Bologna (Palazzo Hercolani, str Maggiore 45)

### **9.15 Welcoming remarks**

Alberto Credi, Vice-Rector for Research, University of Bologna

Raffaella Campaner, Vice-Rector for International Relations, University of Bologna (online)

Francesco Moro, Head of Department of Political and Social Sciences, University of Bologna

Project Officer, European Commission, *tbc*

### **9.40 – 10.00 Welcome and Introduction to the [ACCESS](#) Project and the Conference**

Madalina Moraru, PI ACCESS Project (University of Bologna)

### **10.00 – 11.30 Roundtable 1: Theory Building on Asylum Adjudication**

This roundtable aims to explore the main pillars of a future theory on asylum adjudication, with a particular focus on the theoretical foundations of asylum adjudication, the power dynamics in asylum adjudication, legal formalism vs. legal realism, the role of judicial discretion, the role of normative frameworks and human rights, and the socio-legal perspectives on access to justice.

*Moderator:* Madalina Moraru (University of Bologna)

*Speakers:* Cristina Dallara (University of Bologna), Katarína Šipulová (Masaryk University), Boštjan Zalar (Judge, President of the European Chapter IARMJ), Thomas Gammeltoft-Hansen (University of Copenhagen), Marco Balboni (University of Bologna)

*11.30 – 12.00 Coffee break (by invitation)*

### **12.00 – 13.30 Panel 1: Mapping and Defining Barriers to Accessing Asylum**

This panel aims to identify the main legal and physical barriers to accessing asylum worldwide, paying particular attention to regions in the Global South. It will assess the state of the research on barriers that have received significant consideration from scholarship in recent years – e.g., detention practices, walls



and fences, push and pull back operations, and the externalisation of asylum processing. Beyond these, however, the panel also advances understanding of less explored or emerging barriers.

*Chair:* Marco Borraccetti (University of Bologna)

*Panellists:* Maja Janmyr (University of Oslo): Barriers to accessing asylum in the Middle East and South Asia; Thomas Spijkerboer (Vrije Universiteit Amsterdam): Barriers to accessing asylum in Australia; Iris Goldner Lang (University of Zagreb): The Legality of Border Fortifications; Lila Garcia (University of Mar del Plata): Barriers to accessing asylum in Latin America.

13.30 – 15.00 *Lunch break (by invitation)*

### **15.00 – 17.00 Panel 2: Comparative Perspectives on Asylum Adjudication Systems**

This panel aims to map different national asylum systems, focusing on their adjudication approaches, including procedural rules, evidentiary standards, decision-making criteria, and judicial review mechanisms. By offering an overview of asylum adjudication models in different countries from Global South and Global North, this panel seeks to advance understanding of how asylum adjudication works across diverse jurisdictions. Moreover, it aims to develop a set of analytical tools for comparing asylum systems across the globe.

*Chair:* Alice Lacchei (University of Bologna)

*Panellists:* Hamsa Vijayaraghavan (Migration and Asylum Project): The asylum adjudication model in India and its regional influence; Caroline de Silva (Columbia University): The asylum adjudication model in Latin America; Solomon Momoh (UNHCR): The asylum adjudication models in Nigeria and Kenya; Nick Gill (University of Exeter): Inside Asylum Appeals: A constellation of asylum adjudication models in the EU; Rebecca Hamlin (University of Massachusetts): The asylum adjudication models in US, Canada, and Australia: insights from comparative research

## **FRIDAY, 20 SEPTEMBER**

Location: Aula Poeti, Department of Political Science, University of Bologna (Palazzo Hercolani, str Maggiore 45)

### **9.30 – 11.00 Panel 3: Research Methodologies**

This panel explores research methodologies relevant to investigating asylum adjudication regarding barriers to asylum from an interdisciplinary perspective. Asylum adjudication, situated at the nexus of law, politics, sociology, and other disciplines, presents complex challenges that necessitate a multidimensional approach to research. By bringing together scholars and practitioners from diverse fields, this panel seeks to facilitate dialogue and knowledge exchange on innovative methodological approaches that can enhance our understanding of asylum decision-making processes and outcomes. Moreover, to grasp what happens in courts, it is also necessary to look outside these institutions. Thus, the panel aims to offer insights into theoretical approaches and connected methodologies to investigate barriers to asylum, focusing particularly on what happens at the border.

*Chair:* Chiara Scissa (University of Bologna)



*Panellists:* Dan Fisher (University of Glasgow): The added value of Qualitative Research: Studying asylum adjudication through interviews and ethnography; Thomas Gammeltoft-Hansen (University of Copenhagen): The added value of Quantitative Analysis: Studying asylum adjudication through statistics and machine learning models; Daniel Ghezelbash and Keyvan Dorostkar (University of New South Wales): Social biases in judicial decision-making in relation to the case management and resourcing of courts. Methodological insights tbc.

*11.00 – 11.30 Coffee break*

### **11.30 – 13.00 Roundtable 2: Understanding the Role, Interaction, and Perspective of Actors Involved in Asylum Adjudication**

Several key actors and their interactions influence the case law of courts on barriers to accessing asylum. Among them are, in addition to the judges themselves and other court personnel, asylum seekers and their legal advisors or lawyers, state representatives, country experts, international organizations and agencies, and researchers. This roundtable is dedicated to advancing understanding of the role they each have assumed in impacting case law on access to asylum, including their interrelationship, as well as on the perspective of practitioners on the processes and dynamics that shape jurisprudence. The roundtable is particularly interested in exploring how actors who do not directly participate in proceedings influence jurisprudence through providing training or other support and interventions.

*Chair:* Federico Casolari (University of Bologna)

*Speakers:* Dunstan Mlambo (president of the African Chapter IARMJ), Nicolas Jacobs (EUAA), Anna Brambilla (ASGI), Devota Nuwe (Refugee Law Project, Makerere University), Riccardo Viviani (UNHCR).

*13.00 – 14.30 Lunch break*

### **14.30 – 16.30 Roundtable 3: Discussing the ACCESS Questionnaire and Exploring Synergies between Projects (closed session, hybrid)**

The roundtable aims to discuss the ACCESS questionnaire for collecting data from national jurisdictions and explore potential synergies between different research endeavours, together with the members of the ACCESS Advisory Board and PIs of related projects.

*Chair:* Cristina Dallara (University of Bologna)

*Speakers:* ACCESS Team (University of Bologna)

*Discussants:* Boštjan Zalar (University of Ljubljana); Violeta Moreno-Lax (Queen Mary University of London); Hugo Storey (Former judge and former president of the IARMLJ); Marina Sharpe (Canada's Royal Military College Saint-Jean); Iris Goldner Lang (University of Zagreb); Rebecca Hamlin (University of Massachusetts); Andreas Føllesdal (University of Oslo); Katarína Šipulová (University of Masaryk); Paul McDonough (Cardiff University); Maja Janmyr (University of Oslo); Thomas Gammeltoft-Hansen (University of Copenhagen); Nick Gill (University of Exeter); Paula García Andrade (Universidad Autónoma de Madrid); Witold Klaus (Polish Academy of Sciences); Meltem Ineli Ciger (Suleyman Demirel



University); Lila Garcia (University of Mar del Plata); Caroline de Silva (Columbia University); Solomon Momoh (UNHCR); Nicolas Jacobs (EUAA), Anna Brambilla (ASGI), Devota Nuwe (Refugee Law Project); Thekli Anastasiou (University of Surrey); Dan Fisher (University of Glasgow); Hubert Bekisz (European University Institute); Marco Borracetti (University of Bologna); Marco Balboni (University of Bologna); Dunstan Mlambo (president of the African Chapter IARMJ).