



IN THE SUPREME COURT OF NAURU
AT YAREN

Appeal No. 23 of 2025

IN THE MATTER OF an appeal
against a decision of the Refugee Status
Review Tribunal brought pursuant to s
43 of the *Refugees Convention Act 2012*
(Nr)

BETWEEN: **AW25**

Appellant

AND: **REPUBLIC OF NAURU**

Respondent

Before: Brady J

Dates of Hearing: 13 August 2025

Date of Judgment: 15 August 2025

CITATION: *AW25 v Republic of Nauru*

CATCHWORDS:

APPEAL – Refugees – Refugee Status Review Tribunal – Whether the Tribunal failed to afford procedural fairness to Appellant – Whether Tribunal failed to put relevant country information to the Appellant – The Tribunal breached the requirements of procedural fairness – Appeal allowed, and matter remitted to the Tribunal for reconsideration

LEGISLATION:

Refugees Convention Act 2012 (Nr), Sections 43, 44

CASES CITED:

BRF 038 v Republic of Nauru [2017] HCA 44 at [58] – [60]; Minister for Immigration and Border Protection v SZSSJ (2016) 259 CLR 180; SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs (2006) 228 CLR 152; Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd (1994) 49 FCR 576

APPEARANCES:

Counsel for Appellant: Mr A Aleksov (instructed by Craddock Murray Neumann)

Counsel for Respondent: Mr R O’Shannessy (instructed by Republic of Nauru)

JUDGMENT

INTRODUCTION

1. The Appellant is a national of Pakistan. He arrived in Australia in February 2024. On 18 February 2024, he was transferred to Nauru pursuant to the terms of the Memorandum of Understanding between the governments of Australia and Nauru. By an application dated 11 March 2024, the Appellant made an application for Refugee Status Determination (**RSD**).
2. The Appellant is a member of Pakistan Tehrik-e-Insaf (**PTI**). The Appellant fears that if he is returned to Pakistan, he would be jailed or “disappeared” at the instance of the Pakistan Army as a result of his membership of PTI.
3. Pursuant to s 43 of the *Refugees Convention Act 2012 (Nr)* (**the Act**), the Appellant appeals from a decision of the Refugee Status Review Tribunal (**Tribunal**) dated 14 April 2025 (**Tribunal Decision**). The Tribunal affirmed a decision of the Secretary

of the Department of Multicultural Affairs (**Secretary**) dated 12 September 2024 (**Secretary's Decision**) not to recognise the Appellant as a refugee and the finding that the Appellant is not owed complementary protection under the Act.

4. By s 43(1) of the Act, the Appellant may appeal to this Court on a point of law.
5. By s 44(1) of this Act, this Court may make either of the two following orders:
 - (a) an order affirming the Tribunal Decision; or
 - (b) an order remitting the matter to the Tribunal for consideration in accordance with any directions of this Court.

GROUND OF APPEAL

6. In his amended Notice of Appeal dated 25 June 2025, the Appellant advances a single ground of appeal:

The Tribunal failed to afford procedural fairness to the Appellant by relying on country information referred to in footnotes 18, 19, 21, 22 and 24-25 of its reasons for decision, without putting that information to the Appellant.

SUMMARY OF CLAIMS

7. The Appellant makes the following claims in support of his application to be recognised as a refugee.
8. The Appellant joined PTI in 2016 or 2017. He involved himself actively in PTI activities, specifically setting up venues for PTI rallies and meetings. He has participated in demonstrations and rallies throughout his home district.
9. After Imran Khan was arrested, the Appellant participated in peaceful protests in his home district. Some of his friends started disappearing, being imprisoned, were abducted or went into hiding. The PTI advised members to take precautions for their own safety and the Appellant went into hiding.
10. The Appellant fears that if he is returned to Pakistan, he would be jailed or “disappeared” at the instance of the Pakistan Army. He contends that no part of Pakistan is safe as the army and intelligence service operate throughout the country.

PROCEDURAL HISTORY

11. The Appellant made his initial RSD application by an application dated 11 March 2024. The Secretary decided that he was not recognised as a refugee and was not owed complementary protection on 12 September 2024. The Appellant applied to the Tribunal for review of the Secretary's Decision on 19 September 2024.
12. The Tribunal held a hearing which the Appellant attended on 17 March 2025. The Tribunal delivered a decision affirming the Secretary's Decision on 14 April 2025.
13. An appeal to this Court was filed on 23 April 2025 and an Amended Notice of Appeal was filed on 27 June 2025. I heard argument on the appeal on 13 August 2025.

THE TRIBUNAL DECISION

14. The Tribunal, having set out the Appellant's essential claims, dealt with country information relevant to the Appellant's claim in paragraphs [14] to [20]. The Tribunal then turned to consider in detail the Appellant's claims starting at paragraph [21].
15. The Tribunal commenced dealing with the various integers of the Appellant's claim for refugee status starting at paragraph [41].
16. Starting at [48] of the Tribunal Decision, the Tribunal commenced assessing the Appellant's claims in relation to his membership of PTI.
17. The Tribunal made the following relevant findings:

[48] The Tribunal has accepted that the [Appellant] is a Pashtun who is in favour of PTI, has a membership card and favours [M]. It accepts that were he to return to...KPK, he would continue to vote in favour of the PTI and will attend PTI events in his area.

[49] In January 2025, the Pakistan Institute for Peace Studies (PIPS) released its report for 2024, which noted a 69% increase in terrorist incidents in KPK compared to the previous year, observing:

“Most of the terrorist activity in Khyber Pakhtunkhwa was concentrated in six southern districts...which collectively accounted for 171 attacks, or 58% of the total incidents in the province. Other significant hotspots included Bajaur, with 34 attacks largely attributed to the Islamic State Khorasan Province (IS-K), and the provincial capital, along with the neighbouring Khyber District, which together witnessed 36 attacks. Overall, terrorist activity was reported in 22 districts across Khyber Pakhtunkhwa in 2024. Security and law enforcement personnel, particularly from the army and police, were the primary targets, accounting for over 68% of the total reported attacks in the province.

Militants in Khyber Pakhtunkhwa have primarily targeted law enforcement personnel, tribal elders, and government officials, including judges. These attacks aim to weaken the administration by undermining government officials and tribal elders, while also crippling law enforcement by targeting police.” [Footnote 18]

[50] The PIPS assessment is not suggestive of politically motivated violence along party lines being a problem in KPK during 2024. It clearly indicates that most of the violence in that Province in the last year was conducted by non-state actors against security and law enforcement personal [sic]. The EUAA made a similar observation in respect of previous years. [Footnote 19]

[51] As noted in the representative's submissions, there has been violent responses to large scale PTI demonstrations in other parts of Pakistan in recent years. Some reports suggest that in response to PTI protests in Islamabad on 26 and 27 November 2024, as many as 4,000 PTI supporters were detained prior to

the protests and about 610 arrested during the protests. [Footnote 20] Media reports suggest at least six people died in the unrest, which included four security officers. [Footnote 21].

[52] According to the PTI website, the number of registered PTI members in Pakistan, such as the [Appellant], is the millions [sic]:

“The total registered membership of PTI is near about 10 million according to the data released in 2013. With these numbers, Tehreek Insaf is the largest party in Pakistan and it comes in the list of top 10 largest parties in the world.” [Footnote 22].

[53] Notably, those figures are from well prior to the PTI forming government and before Imran Khan Prime Ministership [sic].

[54] The [Appellant] notes in his RSD statement that the entire district strongly supports the PTI and country information before the Tribunal supports this position. In Pakistan’s general elections on 8 February 2024, the PTI and the former prime minister, Imran Khan, polled nearly 33 million votes. Despite Imran Khan’s convictions for corruption, systemic obstructions faced by PTI candidates, the strict repression of political activities, the party secured 101 seats in the 266-member national legislature and more than 85% of seats in the KPK. [Footnote 23]

[55] In 2018, [S] won the [identified] division in KPK with [identified number] votes, compared to the candidate who came second receiving less than have [sic] the amount of votes, with [number identified]. [Footnote 24]

[56] The Tribunal accepts that the PTI, Imran Khan, and [S] are popular in [the Appellant’s home district] and KPK. However, the evidence in the submissions presented by the [Appellant], and research undertaken by the Tribunal, is not suggestive of PTI members or supporters, including those affiliated with [S] and/or who attend events, being routinely targeted for harm from KPK in recent years. [Footnote 25].

[57] The Tribunal notes the very large number of registered PTI members across Pakistan, and the very high level of sustained support for the PTI and [S] in ... [the Appellant’s home district] and KPK broadly, documented above. This information is suggestive of there being many persons in [the Appellant’s home district] and across KPK, who like the [Appellant] are Pashtun PTI registered members, attended PTI events, and are in favour of [S]. However, the material before the Tribunal does not suggest that such persons have been routinely targeted or harmed due to their perceived or actual political opinions in recent years in either [the Appellant’s home district] or across the KPK. In his discussion with the Tribunal, the [Appellant] indicated he was not aware of any PTI events or demonstrations being subjected to attacks in KPK while he was there and participating in such events. The written submissions to the Tribunal, while commenting on incidences against the PTI in other province [sic] does not mention instances of PTI gatherings being targeted in KPK.

[58] On the totality of the material before it, the Tribunal does not accept that [the Appellant] faces a reasonable possibility of persecution in the foreseeable future for any reason, were he to return to [his home district], KPK in Pakistan. He does not face a reasonable possibility of persecution because he is a Pashtun, a PTI member and supporter who is affiliated with [S], or for any other reason.”

18. The references in the above extract to footnotes are relevant for the purposes of this judgment.
19. Footnote 18 is a reference to a report by the Pakistan Institute for Peace Studies titled “*Pakistan Security Report 2024*” dated January 2025 (**PIPS Report**).
20. Footnote 19 is a reference to the European Union Agency for Asylum report titled “*Pakistan-Country Focus: Country of Origin Information Report*” dated 17 December 2024 (**EUAA Report**).
21. Footnote 21 is a reference to a report by the BBC titled “*Imran Khan Supporters Pushed Back by Security Forces*” dated 27 November 2024. Footnote 22 references a report by Sania titled “*Pakistan Tehreek-e-Insaf*” dated 27 October 2021.
22. Footnote 24 is a reference to a full result candidate vote with the relevant reference to where that vote can be found on the Pakistan Elections website on the internet. Footnote 25 reads as follows:

From 2023 until present, the South Asia Terrorism Portal has documented eight instances of violence in KPK involving the PTI. Almost all of which occurred during the 2024 election, and were incidences targeting candidates or party leaders. None of these incidents occurred in [the Appellant’s home] district. The country information does not suggest that persons who are in favour of the PTI, and who take part in PTI events, rallies or demonstrations in KPK as an attendee, have been targeted in violent incidents in recent years.

THE APPELLANT’S SUBMISSIONS

23. Mr Aleksov for the Appellant argued that the Tribunal did not notify the Appellant of the country information which it relied upon and set out in footnotes 18, 19, 21, 22, 24 and 25 in the Tribunal Decision. There is no dispute between the parties that in fact, none of these items of country information (to the extent that the footnoted items were country information) were brought to the attention of the Appellant at any time prior to the Tribunal Decision being made. The Appellant was not given an opportunity to respond to the items of country information as set out in those footnotes.
24. In relation to the PIPS Report and EUAA Report noted at footnotes 18 and 19 (corresponding with paragraphs [49] and [50] of the Tribunal Decision), Mr Aleksov contended that the information was “credible, relevant and significant” to the decision. The reference to “credible, relevant and significant” is a reference to the description from the decision of the High Court of Australia when sitting as the final Court of Appeal from this jurisdiction in *BRF 038 v Republic of Nauru* [2017] HCA 44. There, Keane, Nettle and Edelman JJ said the following:

[58] In *Minister for Immigration and Border Protection v SZSSJ*, this Court held that procedural fairness requires that a person whose interest is apt to be affected by a decision be put on notice of “the nature and content of information that the repository of power undertaking the enquiry might take into account as a reason for coming to a conclusion adverse to the person”.

[59] In *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs*, Gleeson CJ, Kirby, Hayne, Callinan and Heydon JJ referred with evident approval to the following statement by the Full Court of the Federal Court in *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd*:

“Where the exercise of a statutory power attracts the requirement for procedural fairness, a person likely to be affected by the decision is entitled to put information and submissions to the decision maker in support of an outcome that supports his or her interests. That entitlement extends to the right to rebut or qualify by further information, and comment by way of submission, upon adverse material from other sources which is put before the decision-maker.”

[60] The respondent accepted, correctly, that procedural fairness requires a person to be given the opportunity to deal with all information that was “credible, relevant and significant” to the decision. The Respondent sought to argue that disclosure of such information was required only in relation to “the critical issue or factor on which the administrative decision is likely to turn”, and that the information as to the tribal composition of the Somaliland Police was not a factor on which the Tribunal’s decision was likely to turn. It was said to be apparent from the Tribunal’s reasons that the Tribunal had already made findings sufficient to dispose of the Appellant’s claim, namely, that he had no well-founded fear of persecution, before its reference to the tribal composition of the Somaliland Police.

[61] The respondent’s reading of the Tribunal’s reasons in this respect is unsustainable. It cannot be said that the Tribunal’s observation as to the composition of the Somaliland police force did not significantly affect its assessment of whether the appellant was likely to face persecution in Somaliland. On the contrary, that consideration was integral to the Tribunal’s reasons for its conclusion. [Footnotes omitted]

25. The Appellant contends that the PIPS Report and the EUAA Report clearly answered the description of “credible, relevant and significant” to the ultimate decision. That being so, the Appellant was entitled to be given the opportunity to deal with that information before the decision was made.

26. In relation to the references at footnotes 21, 22, 24 and 25, the Appellant accepted that his argument in respect of that country information was perhaps slightly less persuasive. However, as Mr Aleksov for the Appellant put it, footnotes 20 and 21 clearly related to the mathematical composition of the membership of PTI which was then used in paragraph [57] of the Tribunal Decision to the effect that despite a large number of persons in the Appellant’s district being Pashtun PTI registered members, the evidence did not suggest that such persons had been routinely targeted or harmed

due to their perceived or actual political opinions in recent years in the Appellant's home district or across the KPK. Thus, whilst the references to the BBC report concerning Imran Khan supporters and to the Sania report might seem, on their face, neutral and not particularly adverse to the Appellant's case, when understood that the information was being used in the manner that was in paragraph [57], this information also answered the description of being credible, relevant and significant to the decision.

27. In relation to the report at footnote 24, this was a report of the full vote account for a relevant district as recorded in the Pakistan elections website. Paragraph 25 is in fact not clearly an item of country information at all, although it effectively summarises such information from the South Asia Terrorism Portal.

THE REPUBLIC'S SUBMISSIONS

28. Mr O'Shannessy on behalf of the Republic submitted initially that the case now advanced by the Appellant was not one which fell within the terms of the Amended Notice of Appeal. However, Mr Aleksov explained that the position of the Appellant is not one that suggests that the Tribunal was under any obligation to draw to his attention the *manner* in which the country information might have been used. It is a complaint that the *content* of the information was not provided to the Appellant.
29. Having confirmed that matter, counsel for the Republic submitted that the country information identified in the relevant footnotes did not answer the description as set out in the decision in *Alphaone* extracted above. The entitlement only extends to the right to rebut or qualify by further information, and comment by way of submission, upon *adverse* material from other sources which is put before the decision maker.
30. The Republic submitted that the PIPS Report and the EUAA Report were considered by the Tribunal at [50] not to be "suggestive of politically motivated violence along party lines being a problem in [KPK] during 2024." The Tribunal was not obliged to put to the Appellant its subjective conclusion or appraisal of such information based as it was on the absence of evidence of the harm contended for by the Appellant, noting that the Appellant himself did not point to any evidence to the contrary.
31. As to the country information at footnotes 21 and 22, the Republic submitted that this information was in no way adverse to any aspect of the Appellant's claim to establish that he was a refugee. It was not "adverse material from other sources" referred to in the decision in *Alphaone* noted above. Similarly, footnote 24 was not something which was adverse to the Appellant. It was simply a statement of election results from the Appellant's local district obtained from the internet.
32. Accordingly, the Republic submitted that the information referred to in those footnotes was not information that was required to be provided to the Appellant prior to the Tribunal Decision being made.

CONSIDERATION

33. As the decision in *BRF038* makes clear, procedural fairness in this case required the Appellant to be given the opportunity to deal with all information that was "credible, relevant and significant" to the decision.

34. In my view, at least the PIPS Report and the EUAA Report each answered this description. Each was information which did not suggest politically motivated violence along party lines was a problem in KPK during 2024. This was information that was adverse to the case put by the Appellant. The Appellant was not given an opportunity to address the evidence prior to the Tribunal Decision. In that sense, it was credible and relevant to the Appellant's claims and was treated by the Tribunal as such.
35. The information was also significant to the Tribunal Decision when one considers the terms of paragraphs [57] and [58] of the Tribunal Decision. The Tribunal did not accept that the Appellant faces a reasonable possibility of persecution in the foreseeable future, in part because of the finding at [50] that did not suggest politically motivated violence was a problem in KPK during 2024.
36. Accordingly, I conclude that the PIPS Report and the EUAA Report were each credible, relevant and significant. They ought to have been provided to the Appellant prior to the Tribunal Decision and the Appellant given the opportunity to respond to their contents. That this did not occur was a breach of the requirements of procedural fairness.
37. Whether or not the information at footnotes 21, 22, 24 and 25 also amounted to information that answered that description is somewhat less clear. However, it is unnecessary for me to resolve that issue having found, as I have, that the information in the PIPS Report and the EUAA Report did answer the description of being credible, relevant and significant information to the Tribunal Decision and that the Appellant was deprived of the opportunity to respond to that material by evidence or submissions prior to the Tribunal Decision.
38. In those circumstances, I am satisfied that the Appellant was not afforded procedural fairness by the Tribunal.

CONCLUSION

39. I have found that the Appellant has established his ground of appeal. Accordingly, I quash the Tribunal Decision, and I order pursuant to s 44(1) of the Act that the matter be remitted to the Tribunal for reconsideration.
40. I make no order as to the costs of the Appeal.



JUSTICE MATTHEW BRADY



15 August 2025