

## Important!

1. You are allowed to hand in two mock exams in total.
2. You must hand in the mock exam within the dead-line **March 22** at the Information centre (for some courses there is a different date which will be announced on the message board) Please put your name(block letters and date of birth ) on top of the examination paper, and remember to give room for the Professor's comments by dividing each sheet of paper in two equal parts in the length of the sheet. If possible, please hand in a type written mock exam.
3. Please confirm on the top of the paper whether you are registered on the Bachelor level (Jur1000- level) or the Master Level (Jur 5000- level). The assessment is different for the two levels (please see the note below)
4. The mock exams will be returned to the students approx **16 . April** , please check the course web page for further information (or contact the Information Centre, DA, )

Yours sincerely,

Elisabeth Reien

### IMPORTANT!

The Faculty of Law changed the course codes in the spring semester 2006 and offers the same courses both on Bachelor's and Master's levels. The lectures and the exam will be the same, but there are different achievement requirements:

Master's level (15 ECTS credits): a good understanding is required: (5000- level)

Assessment: 4 hour written exam, grades from A-E for passes and F for fail

Bachelor's level (10 ECTS credits): a general understanding is required:(1000-level)

Assessment: 4 hour written exam grades: pass/fail

Law students on the Erasmus programme/bi-lateral agreements and Nord-Plus students and students on other Masterprogrammes at the UIO are supposed to register for exams at 5000- level. Other exchange students may only register for courses at bachelor's level.

NB! The following courses are only offered at Master's level: Criminology, International Economic Law, and Petroleum Law.

# Previous Exams for JUR1530 and JUR5530 - Refugee and Asylum Law

## Spring 2009

Please answer the question, making reference to your readings, cases, and guidelines. Good Luck!

Abdulkadil is 16 years old and was born in Somalia. At the age of 13 he was kidnapped and forced to serve a warlord in Mogadishu. The warlord told him that his entire family had been killed. Abdulkadil engaged in fierce battles as a soldier, but after two years he ran away to the coast in the Puntland region of Somalia. He kept his gun with him for protection, but he never used it. He found work with a fisherman. The fisherman was worried because the fish in the Gulf of Aden was growing scarce. Many blamed the illegal fishing operations and dumping by foreign companies. Abdulkadil was forced to go hungry for some time. One night the fisherman told him that they had an opportunity to become rich beyond their dreams. The fisherman had been approached by a group seeking to raid a Norwegian flag ship tanker scheduled to sail through the Gulf of Aden within the next couple of days. The plan was to hold the crew hostage for a 2 million USD ransom. "You will be rich, you will have your own house, a car, and a beautiful wife!" insisted the fisherman. "Bring your gun and we will board the ship at night! We will not hurt anyone, the companies always pay the ransom and we will set them free! . . . They give us no choice, they take our fish!" Abdulkadil was worried that they could suffer harm or hurt someone else, but the fisherman assured him that this was a routine, relatively safe action. Indeed, most of the pirates in Puntland seemed to have adopted a comfortable lifestyle and he had not seen any suffering serious injuries from their actions. Abdulkadil went to the mosque to pray. The imam spoke of the evils of piracy, warning that those who engage in such action would be punished by Allah. Abdulkadil was worried, but his hunger proved overwhelming.

The next night, they met Abshir, the leader of the pirate gang who said that he had tracked the ship via a GPS machine. They used the fishing boat to approach the tanker in international waters and boarded it, threatening to fire an anti-tank weapon if they were not permitted aboard. Once on the ship, the gang rounded up the captain and the crew under threat of assassination. They forced the captain to contact the shipping company and inform them of the situation. Abdulkadil's job was to guard the crew, holding an AK-47. The shipping company contacted EU Frontex, which sent a patrol boat that had picked up irregular migrants at sea to follow the tanker. The shipping company also contacted a private corporation to commence negotiations with the pirates. Two days passed as Abshir haggled over demands to lower the ransom amount. Abdulkadil grew tired and concerned over the well-being of the crew. He brought them water and told them not to worry. One of the crew members addressed him "Why are you doing this? You seem so young! Don't you see that these criminals are manipulating you? Let us go and we will ask our government to help you!" At that moment, French special forces sent by a joint EU-NATO operation boarded the ship. Abdulkadil immediately dropped the AK-47 and held his hands up. Abshir fired his gun and French special forces fired back, killing both Abshir and the fisherman on the spot. The captain of the ship and the crew were unharmed. They thanked the French special forces profusely and contacted the shipping company to announce the news. Abdulkadil began crying and turned to the captain, exclaiming "I am so sorry. Please, I am afraid! Don't send me back to Puntland, they will kill me! I renounce piracy! Please, I need asylum in Norway! Can you send me there!" The French special forces inform the captain that they cannot take Abdulkadil with them because their operation will not permit detention. They mention that some states have turned pirates over to Kenya's new counter-terror proceedings, noting that pirates are *hostis humani generis* (enemies of humanity) acting in violation of *jus cogens*. In the alternative, the captain of the EU Frontex boat states that they can deliver Abdulkadil to a base in Libya for processing along

with the irregular migrants they have on board. Libya has not ratified the 1951 Convention on the Status of Refugees and its Protocol; both Norway and Kenya have done so.

You are a legal advisor in the Norwegian Ministry of Foreign Affairs. You have been asked to prepare a memo discussing options as to what to do with Abulkadil. The Minister of Foreign Affairs wants you to address the legal consequences (in particular human rights law/refugee law) of the following:

- A) What is Abulkadil's status according to the 1951 Convention on the Status of Refugees? Is he entitled to protection under international law?
- B) What if they instruct the captain to return Abulkadil to Somalia?
- C) What if they deliver Abulkadil for prosecution in Kenya?
- D) What if they release Abulkadil in the fishing boat in international waters?
- E) What if they turn Abulkadil over to the EU Frontex boat for delivery to the base in Libya for migration processing?
- F) Should they transfer Abulkadil back to Norway for processing of the asylum claim?

Please consult the following instruments:

1) 1951 Convention on the Status of Refugees:  
<http://www1.umn.edu/humanrts/instree/v1crs.htm>

2) ICCPR: <http://www1.umn.edu/humanrts/instree/b3ccpr.htm>

3) Excerpt from the Law of the Sea Convention:

### **3) Excerpt from the Law of the Sea Convention:**

**Article 100: All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.**

**Article 101 "maritime piracy" consists of:**

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:**
  - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;**
  - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;**
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;**
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).**

**Human Rights Watch Report on Somalia:**

*An increasingly brutal conflict pits a deeply fragmented insurgency against Somalia's weak Transitional Federal Government (TFG) and Ethiopian military forces that are in Somalia to support it. All sides to this conflict have regularly committed serious violations of international humanitarian law amounting to war crimes with complete impunity and with devastating impact on Somalia's civilian population. The human rights and humanitarian situation in Somalia deteriorated to levels perhaps unseen since the collapse of the country's last unified central government in 1991.*

*Since the beginning of 2007 more than 870,000 civilians have fled war-torn Mogadishu alone and more than 6,000 civilians have been killed in the fighting. Untold numbers of Somalis bear the scars of seeing family members killed or raped. Several key international players—most notably Ethiopia, Eritrea, and the United States—have exacerbated the crisis through their policies and actions.*

*In 2008 violence escalated in scale and brutality while internationally supported peace talks struggled to get traction. Even traditional systems of clan protection have broken down in many areas. Key civil society activists whose talents are essential to hopes of rebuilding were killed or driven out of the country. The number of Somalis in need of humanitarian assistance surpassed 3 million, even as criminal violence, rampant piracy off the northern coasts, and targeted attacks on humanitarian workers impeded the flow of aid. Somalis attempting to flee this chaos faced brutal attacks by freelance militias along the roads.*

### **Abuses by TFG Security Forces and Militias**

*TFG police, military personnel, and militias linked to leading TFG figures such as former Mogadishu mayor Mohammed Dheere are implicated in widespread abuses against Somali civilians. Throughout 2008 these forces carried out killings, murder, rape, and looting during operations across many Mogadishu neighborhoods. Following an insurgent mortar attack launched from near the Al-Mathal school in Mogadishu in June, TFG police sacked the school, smashing and burning educational materials, and shooting one child in the leg.*

*TFG forces repeatedly killed and wounded civilians during fighting against insurgent forces. In March, following an insurgent ambush, TFG police forces indiscriminately fired their weapons, killing four passengers in a passing minibus and injuring its driver.*

*TFG police and intelligence officials carried out widespread arbitrary arrests, often for the purpose of extracting ransom payments from detainees and their families. Intelligence operatives under the command of TFG National Security Agency head Mohammed Warsame 'Darwish' maintain a dungeon-like detention facility in southern Mogadishu. Conditions in this facility are appalling and intelligence personnel subject many detainees to torture during interrogation.*

### **Abuses by Ethiopian Military Forces**

*Ethiopian National Defense Force (ENDF) personnel in Mogadishu have continued to use mortars, artillery, and "Katyusha" rockets indiscriminately in response to insurgent attacks, devastating entire neighborhoods of the city. Ethiopian bombardments regularly fall on*

*civilian homes and public spaces, sometimes killing entire families. In July ENDF forces bombarded part of the strategic town of Beletweyne after coming under attack by insurgent forces based there, displacing 75,000 people.*

*In 2008 ENDF personnel were implicated in numerous acts of murder, rape, and looting of Somali civilians, often alongside TFG forces. In an April raid on a Mogadishu mosque, ENDF soldiers reportedly killed 21 people; seven of the dead had their throats cut.*

*Since late 2007 ENDF discipline has eroded. Ethiopian soldiers frequently react to insurgent attacks by firing indiscriminately into crowds of civilians. In August a group of ENDF soldiers hit by a roadside bomb near the town of Afgooye responded by firing wildly and killing up to 60 civilians, including the passengers of two minibuses.*

### **Abuses by Insurgent Forces**

*Insurgent forces have kept TFG and Ethiopian forces pinned down in heavy fighting in Mogadishu for nearly two years, gaining ground in 2008. The insurgents are deeply fragmented, but many of the worst abuses have been committed by groups linked to Al-Shabaab ("Youth" in Arabic), a militant Islamist group.*

*Insurgents in Mogadishu routinely fire mortar shells from populated areas towards TFG and Ethiopian installations without adequate spotting, indiscriminately killing and wounding civilians, and placing civilians under their control at risk from Ethiopian and TFG counter-battery fire. Insurgent groups, some of which are illegally recruiting-sometimes by force-under 18-year-olds, also use landmines and remote-detonated explosive devices along roads in populated areas. In August a roadside bomb in southern Mogadishu killed 21 women working as street-cleaners and wounded more than 40 other civilians.*

*Insurgent forces have also carried out targeted killings of civilian TFG officials, perceived TFG collaborators, and individuals the insurgents view as un-Islamic. In January a man working as a messenger among different TFG offices was shot outside of his home in Mogadishu after receiving several death threats ordering him to stop his work. In April Al-Shabaab fighters killed four foreign national teachers in the town of Beletweyne.*

*In October a simultaneous wave of bomb attacks struck a government office in Puntland as well as government, UN, and Ethiopian consular offices in Hargeisa. At least 28 people died in the attacks.*

### **Key International Actors**

*The US, the United Kingdom, the European Commission and other key donors have failed to condemn ENDF or TFG abuses or address the scale of the Somali crisis. Instead, they have sought to support the TFG even where this risks empowering abusive TFG actors and institutions. In 2008 several donors, including the European Commission, pressured UNDP to pay the salaries of 4,000 Ethiopian-trained TFG security personnel without adequate monitoring.*

*US policy on Somalia is dominated by counterterrorism concerns and tends towards unwavering support for the TFG and for Ethiopian policy in Somalia. The US military has continued its practice of targeted air strikes on alleged terrorist suspects, launching two attacks on Somali soil in 2008. One attack in March injured six civilians but did not hit any suspected terrorist targets, while another in April killed Al-Shabaab's commander, Aden Hashi Ayrow, as well as several civilians.*

*Somalia's neighbors have played mixed roles in the ongoing crisis. Eritrea uses Somalia as a convenient theater in its proxy war against Ethiopia. Eritrea hosts a breakaway faction of the opposition Alliance for the Re-Liberation of Somalia (ARS) and actively stokes the violence. Kenya closed its border with Somalia in January 2007, but continues to accommodate nearly 7,000 new Somali refugees each month in the sprawling refugee camps around the northern town of Dadaab.*

*The African Union has authorized a force of 8,000 peacekeepers for Somalia, but thus far only 2,450 Ugandan and Burundian troops have been deployed. Those troops are largely limited to protecting a few key installations in Mogadishu.*

*The United Nations' Special Representative of the Secretary-General for Somalia, Ahmedou Ould-Abdallah, has successfully brought together the Djibouti-based ARS with TFG representatives for peace talks. The talks, hosted by the government of Djibouti, currently represent the best hope for a negotiated end to the armed conflict in Somalia. However, thus far there has been a lack of concrete progress and they have been hobbled by the fact that some factions within the TFG, along with Al-Shabaab and other powerful opposition groups, have rejected the process altogether.*

## **A report in the New York Times provides the following update on the Puntland:**

*“For the first time . . . some of the very communities that had been flourishing with pirate dollars — supplying these well-known criminals with sanctuary, support, brides, respect and even government help — are now trying to push them out. Grass-roots, antipirate militias are forming. Sheiks and government leaders are embarking on a campaign to excommunicate the pirates, telling them to get out of town and preaching at mosques for women not to marry these un-Islamic, thieving “burcad badeed,” which in Somali translates as sea bandit. There is even a new sign at a parking lot in Garoowe, the sun-blasted capital of the semiautonomous region of [Puntland](#), that may be the only one of its kind in the world. The thick red letters say: No pirates allowed. »*

## **Amnesty International Report on Kenya:**

### **Refugees and asylum-seekers**

*The Kenyan government announced the closure of the Kenya-Somalia border on 3 January, following the resurgence of armed conflict between the Ethiopia-backed Somali Transitional Federal Government and the Council of Somali Islamic Courts (COSIC). The Kenyan government announced that it had closed the border in order to stop the movement of COSIC fighters into Kenya.*

*The government forcibly returned hundreds of asylum-seekers to Somalia after the border closure. Following the border closure, thousands of people attempting to flee the conflict in Somalia were unable to cross into Kenya, and were highly vulnerable to human rights abuses by parties to the Somali conflict. The border closure also restricted humanitarian access to internally displaced people on the Somali side of the border.*

### **'War on terror'**

*At least 140 people (nationals of at least 17 different countries, including Kenya) were arrested by Kenyan authorities between December 2006 and February 2007 as they tried to enter Kenya from Somalia. They were detained in several police stations in Nairobi and in Jomo Kenyatta International Airport in Nairobi. Most detainees were held for weeks without charge and some were reportedly tortured or otherwise ill-treated. Some were allegedly beaten by the Kenyan police and forced to undress before being photographed. They were not allowed any contact with their relatives. They were not allowed to claim asylum and were denied access to UNHCR.*

*In January and February, at least 85 detainees were unlawfully transferred – without recourse to any legal process – to Somalia and then on to Ethiopia, along with other people detained by Ethiopian troops in Somalia. More than 40 were still detained incommunicado and in secret in Ethiopia at the end of 2007. The Kenyan government maintained at the end of the year that no Kenyan citizen was unlawfully transferred.*

- *Abdi Mohammed Abdillahi, a Kenyan citizen of Somali heritage whose family is in Kenya, was arrested at Liboi in north-eastern Kenya on the Somalia border in early January after fleeing from Mogadishu. He was detained at Garissa police station and later at various police stations in Nairobi. His family said that in mid-January they visited him at Karen police station in Nairobi and were assured by police that he would be released following interrogation. On 20 January he was transferred by the Kenyan government on a chartered flight to Somalia. He was reportedly held at Mogadishu International Airport in Somalia in late January and in a detention facility in Ethiopia in February. By the end of 2007 he was still believed to be in detention in Ethiopia.*

### **Death penalty**

*Courts continued to impose the death penalty, although no executions were reported. There was no progress towards the abolition of the death penalty. On 1 August Parliament defeated a motion seeking to abolish the death penalty.*

### **Human Rights Watch Report on Libya:**

*Human Rights Watch researchers are currently in Sicily, after visiting Malta and Libya, to assess the treatment of migrants and asylum seekers. All undocumented migrants interviewed by Human Rights Watch who had been apprehended after earlier unsuccessfully trying to leave Libya testified to having been mistreated and subjected to indefinite detention, often in inhuman and degrading conditions, by Libyan authorities.*

*"I was arrested when I tried to leave Libya by boat," an asylum seeker who wanted to remain anonymous told Human Rights Watch. "The steering wheel on our boat broke and the waves carried us back to land. Then the police caught us and beat me on the head and on the arms and then took us to prison."*

*Migrants consistently told Human Rights Watch researchers of overcrowded dirty conditions, mistreatment by guards and indefinite lengths of detention in Libyan migrant detention centers.*