



**IN THE NAURU COURT OF APPEAL
CIVIL APPELLATE JURISDICTION
AT YAREN**

Civil Appeal Number 24 of 2025
Supreme Court Civil Case Number
45 of 2025

BETWEEN: BS25 Appellant

AND: Republic of Nauru Respondent

BEFORE: Khan P
 Palmer JA
 Coates JA

Date of Hearing: 12 May 2026
Date of Judgement: 22 May 2026

Case may be cited as: BS25 v The Republic

CATCHWORDS: Procedural fairness – Whether the appellant was afforded procedural fairness – Information was provided by the Tribunal at the hearing – The actual document or its identity was not provided – Whether the Tribunal failed to provide procedural fairness.

APPEARANCES:

Counsel for the appellant: A Aleksov (instructed by International Crossover Pty Ltd)
Counsel for the respondent: R O’Shannessy (instructed by the Republic of Nauru)

JUDGMENT

1. **BY THE COURT:** This appeal is on a narrow point in that the Tribunal failed to afford procedural fairness in relation to the International Crisis Group material for December 2024 and January 2025.(ICG report)

BACKGROUND

2. The appellant's relevant background is set out at [4] of the respondent's written submissions which is as follows:
 - a) The appellant is a citizen of Bangladesh. He claimed to fear persecution because he is a supporter of the Bangladesh Nationalist Party (BNP). He claimed to have assisted Torikul Islam Tushin, a BNP candidate, during elections. He claimed that the car he used to drive the candidate was vandalized by Awami League (AL) supporters and that his house was vandalized.
 - b) On 1 August 2024 the Secretary made a determination that he was not a refugee and was not owed complementary protection.
 - c) On 8 August 2024 he applied to the Tribunal (the first 'Tribunal', differently constituted) for review of the Secretary's determination.
 - d) On 5 November 2024 the first Tribunal affirmed the determination of the Secretary that the appellant was not recognised as a refugee and was not owed complementary protection. That decision was subsequently set aside by the Supreme Court of Nauru by consent.
 - e) On 31 July 2025 the Tribunal affirmed the determination of the Secretary.
 - f) The Tribunal accepted that the appellant is a supporter of the BNP, and characterized him as a low level supporter.
 - g) The Tribunal accepted that the appellant and his car were attacked during the 2018 elections, but considered that the attacks were targeted at Torikul.
 - h) The Tribunal considered on the basis of the general country information discussed at the hearing that the developments in Bangladesh since the collapse of Sheikh Hasina's government had generally been positive for low-level or ordinary BNP supporters throughout the country, and that AL supporters could not act with impunity. This reduced the likelihood of low-level supporters (such as the appellant) encountering violent reprisals and being unable to access police protection.
 - i) The Tribunal did not accept that the appellant had a genuine political conviction that would motivate him to engage political activities for the BNP if he returns to Bangladesh. Nor did the Tribunal consider that the appellant would be of interest to AL supporters if he returned to his village given his lack of political involvement for several years, the absence of Torikul and political changes in the country since 2024.

The Tribunal found that the appellant does not face a reasonability of being targeted by AL opponents if he returned to Bangladesh.

SUPREME COURT PROCEEDINGS

3. We reproduced [23], [24], [25] and [26] of the judgment of Brady J in the Court below as if outlines the background of the issue to be determined:

[23] By his amended notice of appeal filed 20 November 2025, the Appellant pursues the following single ground of appeal:

The Tribunal failed to afford procedural fairness in relation to the ICG material from December 2024 and January 2025.

[24] The relevant country information is dealt with at paragraph [117] of the Tribunal Decision as follows:

[117] The Tribunal considers, on the basis of general country [information] discussed at hearing, that developments in Bangladesh since the collapse of Shaikh Hasina's government have generally been positive for low level or ordinary BNP supporters throughout the country and that AL supporters cannot act with impunity. This reduces the likelihood of low-level BNP supporters (such as the applicant) encountering violent reprisals and being unable to access police protection. The Tribunal drew on information from (among other sources) the International Crisis Group (August and December 2024) and the United Kingdom Home Office's Guidance Country Policy and Information Note (December 2024).

[25] The International Crisis Group (ICG) information from paragraph [117] was footnoted in the Tribunal Decision to two documents titled "Crisiswatch – September 2024" and "Crisiswatch – December 2024 trends and January 2025 alerts".

[26] The Appellant accepts that he was aware of the existence of the United Kingdom Home Office Information Note (**UK Report**), noting that it is mentioned in his submissions to the Tribunal. He says however that he was not notified that the Tribunal might rely on material from the ICG dated September 2024, December 2024 or January 2025.

FIND OF THE SUPREME COURT

4. His Honour's finding is at [37], [38], [39] and [41] of the judgment where it is stated:

[37] I agree with the submission of the Republic that procedural fairness does not require that every detail of relevant country information be put to the person, or that the Appellant be provided a copy of every documentary source of country information: *AYX16* at [70]; *SZQHH* at [27]-[28]. Indeed, as I found in *AU25* at [62], the common law obligation of procedural fairness on the Tribunal was to provide the Appellant with notice of information adverse to the Appellant's case which was "credible, relevant and significant". It was not required to provide the relevant country information to the Appellant.

- [38] The question in this case is whether the failure of the Tribunal to put to the Appellant the relevant terms, and source, of the ICG December report, amounted to practical injustice.
- [39] By consent, the Republic tendered the CrisisWatch report of December 2024. It provides a global overview for December 2024 and an outlook for January 2025. The Appellant has not identified any relevant information in that report which was relied upon by the Tribunal in a manner which was inconsistent with the other reports that were relied upon by the Tribunal. Nor is any other particular adverse material identified.
- [41] Procedural fairness did not require that the Tribunal to identify for the Appellant the specific terms of the December 2024 ICG report. The Appellant was well aware of the relevance of the information dealt with in paragraph [117] of the Tribunal Decision. He addressed that information both before, and at, the Tribunal hearing. No practical injustice has been demonstrated.

GROUND OF APPEAL IN THIS COURT

5. The ground of appeal in this Court is that the primary judge erred by failing to find that:
- The Tribunal failed to afford procedural fairness in relation to the ICG material from December 2024 and January 2025.
6. It can be seen from [39] of His Honour’s judgment that the relevant ICG report of December 2024 was tendered before His Honour by consent.
7. Unfortunately the ICG report has not been included in the Appeal Record Book and therefore we are unable to examine or consider it. The counsel for the appellant accepts the findings made by His Honour in the Court below.
8. Mr Aleksov relying on the case of *BRF038 v Republic of Nauru*¹ submitted the case represents the law of Nauru and that nowhere in the judgment the word “adverse” was used by the High Court of Australia.
9. The appellant’s counsel referred to the case of *AU25 v Republic*² in which His Honour Brady J considered Australian cases which stated that requirement for the information to be adverse.
10. He submitted that AU25 was wrongly decided whereas Mr O’Shannessy submits that it was correctly decided. Since the judgment in that matter is reserved we refrain from making any comments about it.
11. Mr O’Shannessy that the ICG report is not part of the Appeal Record Book which was prepared by the appellant’s solicitors; and he does not concede that that document was adverse – he accepts that it was a document and the issue to be determined in this appeal is whether the information given to the appellant was sufficient or whether the actual

¹ [2017] NRHCA; [2017] HCA 24

² [2025] NRSC 69

document needed to be given to him or whether the document should have been identified.

12. Mr O'Shannessy further submitted that the information relating to the ICG report was put to the appellant during the Tribunal hearing and he referred to pages 247 and 249 where it is stated:

MS DA COSTA: In terms of your, the behaviour Awami League supporters, you would be aware that there has been a change in government in Bangladesh in the last year. And that Sheikh Hasina has left Bangladesh and the Awami League is not in government.

INTERPRETER: That applies in the city area but not in the village. In the village area Awami League is (indistinct) the same power and same authority. In Bangladesh the amount of murder happening it is in the media.

MS DA COSTA: Although the situation is still uncertain in Bangladesh, it seems to me that the Awami League is unlikely to be as powerful even in the village areas that it was when it was in national government.

INTERPRETER: Yes, you are right when the Awami League government was in power at the time the number of murders happen in my country. It increased now.

13. Mr O'Shannessy submitted that submissions were made to His Honour in the Court below to the effect:

"... procedural fairness does not necessarily require that every detail of the country information be put to the person, or that the person be provided with a copy of every documentary source of country information." - see *AYX 16 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*³; *Minister for Immigration and Citizenship v SZQHH*⁴; *MZYPY v Minister for Immigration and Border Protection*⁵.

14. Mr O'Shannessy submitted that the question in this case was whether the failure of the Tribunal to put the relevant chance and source of the ICG report amounted to practical injustice and he submitted that His Honour's finding was that the appellant had not identified any relevant information in that report which was relied upon by the Tribunal in a manner which was inconsistent with other reports that were relied upon by the Tribunal.
15. Mr O'Shannessy further submitted that His Honour's findings have been accepted by Mr Aleksov and in the absence of the actual ICG report we cannot make a different finding.
16. Mr Aleksov did not make any submissions to the contrary. We note that the ICG report was placed before His Honour by consent of the parties and no explanation has been offered as to why it has not been included in the Appeal Record Book and during the

³ (2020) 279 FCR 236

⁴ [2012] FCAFC 45; (2012) 200 FCR 233;

⁵ [2014] FCAFC 68

hearing no application was made by Mr Aleksov for the ICG report to form part of the Appeal Record Book and if such application had been made we would have favourably considered it.

17. In the circumstance the appeal is dismissed.

ORDER

1. The appeal is dismissed.

DATED this 22 day of May 2026



KHAN P
President of the Nauru Court of Appeal



Palmer JA
Justice of the Nauru Court of Appeal



Coates JA
Justice of the Nauru Court of Appeal

