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What Truth? Evidence as Politics in Human Rights Courts

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Afri, Obbie:

Climate Science on Trial: Evidence, Truth, and Politics in Regional Human Rights Courts

Climate change cases before international human rights bodies are turning climate science into a central, yet contested, evidentiary terrain. Applicants rely on IPCC reports, temperature pathways and attribution studies to show that State inaction exposes them to a “real and immediate risk” to life, health and home. States, in turn, question causation, uncertainty and the applicants’ “victim” status. This paper examines how regional human rights courts and UN treaty bodies construct “truth” about climate harm through their evidentiary practices—and how those practices are deeply political.

Focusing on leading climate-related proceedings before the European Court of Human Rights and the UN Human Rights Committee, the paper analyses how standards of proof, burden of proof, causation, and the margin of appreciation are mobilised to admit, weigh, or marginalise climate evidence. It asks when courts treat climate science as authoritative background knowledge that lowers evidentiary thresholds, and when they invoke uncertainty, procedural constraints, or standing requirements in ways that effectively suppress factual truth about State responsibility.

Methodologically, the paper combines close doctrinal reading of judgments and views with a sensitivity to extra-legal factors—geopolitics, North–South inequalities, generational claims, and institutional self-image. It argues that what counts as “true” climate harm in these fora is co-produced by legal concepts and broader struggles over expertise and authority.

By approaching evidence in climate cases as a regime of truth and falsity, the paper speaks directly to the conference’s concern with evidence as politics in human rights courts. It shows how different understandings of truth—scientific, experiential, procedural—interact and compete in climate proceedings and asks what this means for the emancipatory promise of human rights adjudication in a warming world.

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Bio: Obbie Afri is a PhD Student in Law and Political Sciences at the Faculty of Law, Károli Gáspár University, Budapest. His doctoral research explores how climate litigation and emerging ESG and due-diligence frameworks reshape corporate and State liability for climate-related harm, with a focus on evidentiary standards, causation and indirect emissions.

Before starting his PhD, he worked for more than a decade as a legal and policy analyst at the Indonesian Financial and Development Supervisory Board (BPKP), advising on corporate governance, mergers and acquisitions, risk management and sustainability issues in state-owned enterprises. He holds an LLM in Environmental Law from the University of Auckland and an MA in Development Studies (Governance and Development Policy) from the International Institute of Social Studies, Erasmus University Rotterdam. His broader research interests include international human rights law, climate justice and AI governance.

Aras, Melis:

(with Elisabeth Lambert) **What does evidence brought by applicants and civil society do to the implementation of ECtHR judgments?**

For decades, individuals who had successfully brought their case before the European Court of Human Rights (ECtHR), as well as NGOs, were not considered to have a role in monitoring the implementation of judgments. In the face of criticism from civil society, particularly regarding its lack of transparency, the system has therefore had to evolve. In May 2006, the Committee of Ministers (CoM) finally adopted the Rules for the Supervision of the Enforcement of Judgments and the Terms of Friendly Settlements, introducing Rule 9, 'Communications to the Committee of Ministers'. This rule allocates applicants, their representatives, NGOs and National Human Rights Institutions (NHRIs) the capacity to submit written communications to the Execution Department to complain about inadequate remedies. This practice has revealed the diversity of strategies adopted by these new actors and the importance of these notes as evidence.

Our research question is: What impact do communications submitted by applicants and civil society have on evidence relating to the implementation of ECtHR judgments?

This main question gives rise to sub-questions: has the use of Rule 9 succeeded in providing the Committee with more evidence? What type of evidence (factual, scientific or legal) is presented to the Committee? How does this additional evidence affect the monitoring of implementation and the implementation itself? What are the limits and risks of shifting more responsibility for evidence onto applicants and civil society? What other elements compete with evidence during the implementation phase?

The analysis will focus primarily on ECtHR judgments where evidence relating to environmental/climate and food issues is critical. The analysis combines desk research (using documents available on HUDOC Exec) with qualitative analysis based on semi-structured interviews.

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Bio: Dr. Melis Aras is a postdoctoral researcher at the DCS Laboratory (CNRS UMR 6297), Nantes Université, and an associate researcher at the SAGE Laboratory (CNRS UMR 7363), Université de Strasbourg. She holds a PhD in Public Law and Environmental Law and received the University of Haute-Alsace PhD Prize for her doctoral research on the public's right to environmental information in relation to industrial risks. Her research adopts a socio-legal and interdisciplinary approach to environmental governance, focusing on the right to a healthy environment, socio-ecological and digital transitions, citizen participation, and science-law interfaces. She has contributed to several European and international research initiatives on renewable energy transitions, environmental governance, and sustainable food systems.

Branda, Emīlija:

Historical Truth or Historical Fact? The European Court of Human Rights' Evidentiary Assessment of the Past

Since the 1980s, the European Court of Human Rights ('the Court') has treated the Holocaust as historical truth, and it remains the only historical event explicitly described as such in the Court's case law. When the Court was subsequently confronted with other histories, notably the Soviet occupation of the Baltic States, it introduced a factual distinction between "well-established historical truths" and "purely historical facts". This distinction also determines whether an evidentiary assessment is necessary; whereas "historical truth" requires no evidentiary assessment, "historical facts" demand a demonstrable factual basis. This paper examines how the Court approaches that evidentiary assessment in cases involving "historical facts". To do so, it analyses three landmark judgments against Latvia, concerning the micro- and macro-level questions of the Soviet occupation: *Ždanoka v. Latvia*, *Kononov v. Latvia*, and *Savickis v. Latvia*. The chosen cases span from 2004, with *Ždanoka v. Latvia* marking the introduction of the truth-fact distinction, to 2022, with *Savickis v. Latvia* being a precedent-setting judgment in the broader context of European recognition of the Soviet occupation of the Baltic States. While Latvia's position on the historical context never changed, the Court's manner of assessing that context did evolve. This suggests that the Court's evidentiary assessment is not merely confined to factual accuracy.

This paper pursues two aims. First, it seeks to problematise the truth-fact distinction, which has received insufficient attention in the existing literature. Second, it examines how the Court assesses the factuality of events long-gone, often involving narratives of the past that are central to the identities of States and communities and that are arguably also of interest to the Court.

Contact details: emilija.branda@eui.eu

Bio: My name is Emīlija Branda, and currently I am a PhD Researcher in the Department of Law at the European University Institute in Florence, Italy. I hold an LL.M. in International Human Rights Law from Lund University. My research focuses on the ways the European Court of Human Rights decides cases which concern historical narratives, including disputes over such narratives. More broadly, my research interests include international human rights law, the relationship between national and supra-national institutions, and questions of law and identity.

Burgorgue-Larsen, Laurence:

Keynote

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Bio: Laurence Burgorgue-Larsen is Professor of Public Law at the University of Paris 1 Panthéon-Sorbonne and one of Europe's leading scholars in international human rights law, comparative constitutional law, and regional human rights systems. Her research focuses on the interaction between domestic, regional, and international legal orders, with particular expertise in the jurisprudence of the Inter-American and European human rights courts. She has authored and edited numerous influential books and articles on constitutionalism, judicial dialogue, and the protection of fundamental rights. Professor Burgorgue-Larsen has served as a visiting professor at universities across Europe and the Americas and is a frequent participant in international academic and judicial forums. Her work is distinguished by its comparative perspective and commitment to understanding how courts contribute to the development of democratic governance and the rule of law. She is widely recognized for fostering dialogue between legal traditions and advancing scholarship on transnational justice.

Cagli, Pinar:

Truth under Suppression: Evidentiary Framework in Systematic Violations of Articles 2 and 3 ECHR

This paper analyses the evidentiary regime governing the systematic violations of ECHR Art.2 and 3. It argues that in contexts marked by widespread or systematic abuse—such as enforced disappearances, ill-treatment in custody— the obstruction of truth is not merely incidental but constitutes both a tool and an outcome of impunity. In such settings, material and procedural violations are inseparable: procedural failures actively prevent the establishment of facts/truth, while the absence of truth reinforces practice of violations. Accordingly, material and procedural dimensions of Art.2 and 3 cannot be assessed in isolation where violations occur as part of a broader pattern.

Drawing on the jurisprudence in cases with the most acute structural evidentiary challenges, ie. enforced disappearances, the paper explores while the ECtHR formally reiterates a “beyond reasonable doubt” standard, its practice reveals a patchwork of ad hoc adjustments

of evidentiary mechanisms as pragmatic responses to the “evidentiary asymmetry”. It also discusses how these mechanisms (such as shift of burden of proof, Art.38–based inferences, reliance on external fact-finding sources, etc.) are frequently insufficient or inconsistent.

A comparative analysis of inter-State and individual applications reveals critical inconsistencies in the Court’s approach, particularly regarding evidentiary weight accorded to prior cases, reports of monitoring bodies, and findings of systemic investigative failure. The evidentiary regime in inter-State applications—particularly in *Ukraine v. Russia* cases—assumes heightened importance not only for establishing the factual truth of armed conflict, but also because ECtHR’s factual findings here may acquire broader normative and evidentiary relevance for other national and international judicial bodies.

The central problem addressed is the doctrinal and practical impasse in the Court’s evidentiary framework which implicitly recognises the suppression of facts in systematic violations while refraining from adopting it explicitly as a constitutive element, and how to overcome it utilising the already-established evidentiary tools.

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Bio: Asst. Prof. Dr. Pinar Cagli is a faculty member at Istanbul Okan University, Faculty of Law, where she teaches international law and human rights law. She obtained her PhD in Public Law from Istanbul University with the dissertation “The Evidentiary Regime of the Right to Life and the Prohibition of Ill-Treatment in the Case Law of the European Court of Human Rights” (2023), currently under publication. She is presently pursuing a Master’s degree at Istanbul University, Institute of Forensic Medicine and Forensic Sciences. Her proposed Master’s thesis will focus on the use of the UN reporting and fact-finding mechanisms in the establishment of facts in the case law of the International Court of Justice. Her academic interests include international law, human rights law, international procedural law, and international supervisory mechanisms.

Cagol, Giulia:

CEDAW Inquiries and the Accountability Turn: Truth-Seeking, Due Process, and Evidentiary Methodologies in Comparative Perspective

This paper aims to examine inquiries into situations of grave and systematic violations of women’s rights initiated by the Committee on the Elimination of Discrimination against Women (CEDAW) under Article 8 of the Optional Protocol. It evaluates whether the Committee’s truth-seeking practices adhere to pure human rights fact-finding, or whether they exhibit features of the emerging “accountability turn” identified by scholars and States in relation to investigative mechanisms mandated by the UN Human Rights Council (HRC).

The paper compares the reports produced by CEDAW following its inquiry procedures with those issued by HRC commissions of inquiry and fact-finding missions. It assesses whether critiques commonly raised against HRC bodies – concerning evidentiary standards,

transparency, equality of arms, respect for State sovereignty, and methodological consistency – are also relevant to CEDAW inquiries, or whether the treaty-body framework provides a distinct institutional setting with different safeguards and constraints. By mapping the similarities and differences in mandates, working methods, institutional contexts, and powers, the paper analyses how these structural factors shape each body's approach to truth-seeking.

The paper further considers the composition of CEDAW and HRC commissions, exploring how differences in expertise – judicial, investigative, or thematic – affect the methodology and epistemic ambitions of their reports. It also compares States' reactions to CEDAW inquiry reports and HRC investigative reports to identify whether similar patterns of acceptance or rejection emerge and on what grounds.

Ultimately, the paper argues that understanding these tensions is essential to evaluating the evolving role of treaty bodies in contemporary truth-seeking and international human rights (quasi)adjudication.

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Bio: Giulia Cagol is a postdoctoral researcher at the School of International Studies of the University of Trento. She holds a Phd in Comparative and European Legal Studies from the Faculty of Law at the same university, where her dissertation examined the lawfulness of the increasing focus on criminal accountability by UN-mandated commissions of inquiry. During her doctoral studies, she was a visiting researcher at the Grotius Centre for International Legal Studies in Leiden and conducted a research stay at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. She published several articles on the Italian Yearbook of International Law, including:

Cagol G., The Hamas Attack of 7 October and Israel's Military Response The Italian Yearbook of International Law, vol. 33, 2024

Cagol G., Violations of International Humanitarian Law and Issues of Accountability in the Russia-Ukraine Conflict

The Italian Yearbook of International Law, vol. 32, 2023

Chimiak, Anna Karolina:

Keeping the Truth Alive: Grassroots Truth-Seeking by Families of the Disappeared and International Human Rights Mechanisms in the Mexican context

Mexico faces an unprecedented human rights crisis, with over 134,000 officially disappeared persons. Decades of state-criminal collusion, impunity and weak institutions have systematically undermined possibilities for accessing truth and accountability. While establishing the fate and whereabouts of the disappeared remains a central priority, grassroots truth-seeking initiatives also encompass thicker, collective forms of truth-seeking

that move beyond individual cases. Within this context, families of the disappeared and grassroots organizations have emerged as central justice actors, mobilizing to sustain truth-seeking processes and advance accountability through international human rights mechanisms. Within this context, families of the disappeared and grassroots organizations have emerged as central justice actors, as illustrated by the Ayotzinapa case, where truth-seeking involved challenging official narratives and asserting state responsibility. International human rights bodies, including the Inter-American Court of Human Rights and the UN Committee on Enforced Disappearances, have progressively addressed enforced disappearance in Mexico. This scrutiny has reinforced the central role of justice actors, whose documentation and advocacy make collective truth-seeking and accountability possible, recognizing disappearances as a potentially widespread or systematic practice, as signaled by the Committee's activation of Article 34. Drawing on a combination of literature review, doctrinal analysis and over ten years of practitioner experience providing legal accompaniment to relatives of disappeared persons, this paper examines how the documentation and mobilization efforts within international human rights mechanisms can shape, complement or reinforce different forms of truth and truth-seeking in contexts of ongoing violence, laying broader foundations for transitional justice in the future. By exploring the multidimensional understanding and practice of truth developed by families and organizations, particularly through engagement with international human rights avenues, this work contributes to key debates on enforced disappearances and grassroots participation in transitional justice in paradigmatic contexts marked by institutional denial and the absence of effective remedies.

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Bio: Anna Karolina Chimiak is a doctoral researcher at the Human Rights Centre at Ghent University, starting in October 2025. She is part of the ERC-funded GROUNDDOC project, which examines how grassroots actors in paradigmatic transitional justice contexts develop innovative practices of documentation. Her research focuses on Mexico, where families of the disappeared have become central agents in documenting abuses in contexts marked by the state-organized crime collusion and impunity.

She holds an Integrated Master's Degree in Law and a Master's Degree in Political Science from Adam Mickiewicz University in Poland. She has over thirteen years of professional experience in human rights, with expertise in enforced disappearances, torture, children's rights, and the protection of human rights defenders. Since 2016, she has worked at the Centro de Justicia para la Paz y el Desarrollo (CEPAD) in Mexico, where she became Co-Director in 2020, coordinating advocacy strategies and providing comprehensive accompaniment to victims.

Dehamers, Maja:

More sana than crítica: obscuring in situ evidence behind evidentiary concepts?

New forms of evidence have the potential to test the limits of an international court's evidentiary system. Especially when the context of a legal case is politically very sensitive. In the 2014 case *Cruz Sánchez e.a. v. Peru*, the Inter-American Court of Human Rights (IACtHR or Court) conducted its first – and last – reconstruction of the events as an evidentiary measure. This in situ re-enactment illustrated the government's version of the military's conduct during the 1996-1997 Japanese embassy hostage crisis in Lima. Despite repeated protests from both the Inter-American Commission on Human Rights and the representatives of the victims, the Court agreed on the reconstruction and admitted it as evidence, citing *sana crítica*. This Hispanic evidentiary concept has been used by the Court throughout the years, but a closer look reveals its application was lacking in the judgement of the *Cruz Sánchez* case. *Sana crítica* requires judges to assess evidence based on their experience and the rules of logic, without being bound to a system of legal proof. This insinuates a duty to motivate, which was not observed in *Cruz Sánchez*. Considering the polarized political background of this case, questions arise about the lack of transparency in the Court's evidentiary practice in this case. The dissection of this specific judgement also invites a more scrutinizing look at the Court's evidentiary practice around the seven other in situ visits conducted by the Court between the years 2012 and 2023. How does the IACtHR cite the in situ evidence to support its decision? What type of evidence is mentioned, and more importantly, which type is not? What does this mean in relation to the concept of *sana crítica* used throughout these cases? Through case studies, this understudied aspect of the Court's mysterious evidentiary practice will be critically analyzed.

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Bio: Maja Dehamers is an FWO-funded aspirant fundamental research. She studied Law in Ghent, finishing her Master with the highest distinction in 2024. Passionate about human rights research, she applied for an FWO grant in 2025. In this period, she also studied Spanish, took courses on the history of Latin-America and started as a volunteer at the anti-extractivism non-profit CATAPA. After having made it through the selection she started her PhD supervised by prof. dr. Yves Haeck at the Ghent University Human Rights Centre (Human Rights in Context Research Group) in November 2025. This research, building on her master's thesis, investigates the in situ visits of the Inter-American Court of Human Rights. The PhD focuses on the Indigenous Garífuna communities in Honduras and the communities of Lhaka Honhat (Our Land) in Argentina, both visited by the Court while dealing with territorial struggles.

Dembour, Marie-Bénédicte

DISSECT's PI, conference convenor and organiser

Introduction and keynote.

Paper: Rethinking the Application of the No-Fourth Instance in the Absence of Timely Legal Representation at Domestic Level: Lessons from the Operation of the Windrush Compensation Scheme (UK), co-authored and co-presented with Jo Wilding

In 2018, it emerged that people from the Commonwealth and former UK colonies, who had arrived in the UK prior to 1973 to work in the UK, and their children, were being treated as unlawfully present in the UK. Some were detained, deported or living in a state of destitution in UK streets, having lost their pension, right to work, housing and access to the National Health Service and other benefits, because they were unable to prove their immigration status. As the extent of the Windrush scandal (named after the vessel which first transported migrant workers from the Caribbean in 1948) became clearer, the Government was forced to put in place a compensation scheme to compensate the victims for their losses and sufferings. This Scheme has so far only entailed domestic proceedings. We nonetheless argue that its operation already contains lessons for international human rights proceedings.

Our paper documents how a lack of legal representation put the claimants to the Scheme at a huge evidentiary disadvantage, affecting negatively their chances of convincing the authorities to award them compensation. These observations are then used to reflect upon the operation of the no-fourth-instance principle, according to which an international human rights court should in principle refrain from reopening the examination of facts that have been established domestically. It is now largely accepted that this principle should be disregarded by the international court when no (proper) domestic investigation of the facts complained of was carried out. What our case study leads us to argue is that there will also often be cause to disregard the principle when domestic proceedings have taken place without the alleged human rights victim having been (properly) legally represented at domestic level.

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Bio: Marie-Bénédicte Dembour is Professor of Law and Anthropology at Ghent University and a leading scholar in the fields of human rights, migration, and socio-legal studies. Trained in law at Université Libre de Bruxelles and in social anthropology at University of Oxford, her work combines legal analysis with anthropological inquiry to examine how human rights are understood, claimed, and adjudicated in practice. She is the Principal Investigator of the ERC Advanced Grant project DISSECT: Evidence in International Human Rights Adjudication, which investigates evidentiary practices across international human rights bodies. Professor Dembour is the author of several influential books, including *Who Believes in Human Rights?* and the award-winning *When Humans Become Migrants*. Her widely cited article, "What Are

Human Rights? Four Schools of Thought,” has shaped debates across disciplines. A sought-after speaker, she has taught and lectured extensively around the world.

Desarda, Rahul:

The Standard of Proof as a Political Choice: Why “Beyond Reasonable Doubt” Means Something Different in Human Rights Adjudication

This paper examines the standard of proof in international human rights adjudication as a political and institutional choice rather than a neutral epistemic threshold. Focusing on the recurrent invocation of the “beyond reasonable doubt” standard, the paper argues that this formula operates in human rights proceedings in ways that diverge fundamentally from its criminal-law origins. While formally retained, the standard is substantively transformed through contextualised evidentiary reasoning, reliance on presumptions and inferences, and a flexible allocation of the burden of proof.

Through a close doctrinal analysis of selected judgments, the paper shows how adjudicatory bodies reconcile the rhetorical authority of “beyond reasonable doubt” with the structural constraints of human rights litigation, including evidentiary asymmetries, temporal distance from events, and systematic state non-cooperation. Rather than functioning as a rigid truth-finding benchmark, the standard becomes a malleable device that legitimises fact-finding under conditions of uncertainty. This flexibility, however, is neither accidental nor merely pragmatic: it reflects underlying normative commitments concerning state responsibility, victim protection, and institutional authority.

The paper further contends that the continued use of criminal-law language masks the political nature of evidentiary decision-making in human rights adjudication. Courts maintain an appearance of epistemic rigor while quietly recalibrating the relationship between proof, persuasion, and justice. This practice raises important questions about transparency, legitimacy, and the ethics of judicial truth-claims.

Ultimately, the paper situates the standard of proof within broader debates about truth-seeking in human rights adjudication. It argues that understanding “beyond reasonable doubt” as a political choice rather than a technical rule offers a clearer account of how human rights institutions construct authoritative truths in the face of persistent uncertainty, deception, and power imbalance.

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Bio: I am an Assistant Lecturer at Jindal Global Law School and Assistant Director at Mahatma Gandhi Centre for Peace Studies, O.P. Jindal Global University, India. I completed my Master of Laws (LL.M.) in International Law from The Fletcher School of Law and Diplomacy, Tufts University. My professional experiences include working with former President of Costa Rica, Carlos Alvarado Quesada, on climate and nuclear disarmament initiatives and my recent

publication is titled Tackling Existential Threats through the 'Nukes-for-Climate Swap Agreement', co-authored with President Quesada. It can be accessed [here](#).

Dezinavell, June Anindo:

Aggregated Truth in Mass Atrocity Adjudication

How do evidentiary tools facilitate the establishment of truth in mass atrocity cases? Through analysis of three African Commission decisions (Sudan Human Rights Organisation v. Sudan on extrajudicial killings, Mouvement Burkinabé v. Burkina Faso on mass graves, and Zimbabwe Human Rights NGO Forum v. Zimbabwe on torture camps) I show that evidentiary frameworks in resource-constrained human rights systems transform what counts as legal fact through what I call "aggregated truth": factual findings built by merging multiple pieces of evidence into collective patterns rather than proving facts through individual accounts.

The African Commission's evidentiary practices reveal dynamics that remain hidden in better-resourced regional systems. Operating under severe constraints (non-cooperating states, limited investigative capacity, inaccessible victims), the Commission uses three aggregation mechanisms. First, composite sourcing merges multiple NGO reports into single narratives, erasing boundaries between individual testimonies. Second, statistical substitution replaces detailed accounts with numerical patterns ("over 200 deaths"). Third, inference-based proof converts state non-cooperation into positive findings of violation.

These mechanisms both facilitate and suppress factual truth while redistributing epistemic authority. Aggregation makes atrocities visible that would otherwise remain legally unrecognizable, but it systematically favors institutional actors (international NGOs, state agencies) capable of producing pattern evidence while marginalizing individual victims whose testimony becomes untraceable within composite findings. Statistical patterns erase contextual details; adverse inferences risk treating silence as proof. The Commission's framework substitutes collective accountability for individual attribution, a transformation with direct political consequences: perpetrators face findings of systemic violation without individual responsibility; victims achieve recognition of mass atrocity without vindication of their specific suffering.

Existing scholarship frames such approaches as pragmatically necessary or dangerously lax. I show instead that aggregation represents a distinct epistemic regime where resource constraints and institutional weakness produce evidentiary innovations that may signal broader shifts in how human rights adjudication establishes truth under conditions of systemic non-cooperation and limited access, with implications for understanding evidentiary dynamics across the European, Inter-American, and African regional systems.

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Bio: I am a Teaching and Research Assistant at Strathmore University Law School, where I teach Human Rights Law to third-year students. My research examines evidentiary processes

and accountability mechanisms in international human rights adjudication, with particular focus on how institutional constraints shape fact-finding practices. In November 2024, I presented "Epistemic Hierarchies in Human Rights Accountability: Legitimizing Lived Experience as Knowledge" at the Thicker Notions of Accountability conference. I have publications forthcoming in the Strathmore Law Review and with Thicker Notions. Currently, I am conducting research for the Strathmore Institute of Advanced Criminal Justice on accountability of African leaders through the International Criminal Court. My work bridges doctrinal legal analysis with critical examination of how human rights institutions construct and validate knowledge claims, particularly in contexts where traditional evidentiary frameworks fail to capture victims' lived experiences.

Elsayed, Ahmed:

Asylum Adjudication: Can Credibility Assessments Ever Be Credible?

Credibility assessments in asylum adjudication masquerade as neutral truth-finding exercises while functioning as disciplinary technologies that determine whose suffering is legible within bureaucratic frameworks. Conceptualized through Foucault's regime of truth, these procedures don't simply separate truth from lies—they actively constitute what counts as a credible asylum narrative, embedding racialized, gendered, and cultural assumptions into ostensibly objective evaluations. Yet credibility regimes are paradoxically constituted by both truth and falsity: strategic deceptions, coached testimonies, and fabricated evidence don't undermine the regime but rather sustain it, providing the very material through which adjudicatory power operates. The production of the "fraudulent claimant" becomes as essential to the apparatus as the recognition of the "genuine refugee"—both categories disciplining asylum seekers into legible performances of persecution.

Drawing on European and international case law, this paper exposes how adjudicators police narrative consistency while dismissing the psychological effects of trauma, how they privilege Western epistemologies of evidence over non-Western modes of testimony, and how procedural fairness discourse obscures structural violence. The paper demonstrates that credibility assessment operates at the intersection of legal formalism, securitization imperatives, and "bureaucratic cruelty"—the administrative production of disbelief as a form of border control. The paper argues that deception and truth exist symbiotically within the regime: the documented presence of fraudulent claims doesn't reveal system failure but system function, as suspicion becomes the default hermeneutic through which all testimony is read, rendering even truthful accounts vulnerable to dismissal.

This raises a fundamental question: if every reform merely reconfigures rather than escapes the disciplinary apparatus—and if the regime requires falsity as much as truth to justify its existence—can resistance emerge only through refusal of the framework itself? While total escape may be impossible, micro-practices of adjudicatory dissent and testimonial counter-conduct reveal cracks in the regime where justice might still emerge—not through procedural

refinement or better lie-detection, but through radical attention to the irreducible alterity of asylum seekers' narratives. In this sense, justice remains always provisional and elusive, dependent on moments of humanist recognition rather than systemic overhaul.

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Bio: Ahmed Elsayed is a postdoctoral researcher within the Migration Law Research Group (MigrLaw) and the Human Rights Centre (HRC) at Ghent University. In line with the objectives of the MIGJUST Project (*Global Migration Justice: Beyond conflicting approaches to migration in international human rights law – MIGJUST project*), he pursues the project of editing a research handbook on global migration. The project aims to bring together a wide range of critical and diverse voices to reconstruct the realities of migration, expose its colonial foundations, and interrogate its racialized and gendered constraints. He is currently examining 'how dominant tools of normative constitutional analysis help in perpetuating the sovereignty deficit of post-colonial states.'

Ahmed Elsayed previously served as a criminal and family judge in Egypt. He holds a PhD in constitutional law from the University of Copenhagen and an LL.M. in human rights from SOAS, University of London. His research interests include Middle Eastern politics, constitutionalism, judicial politics, and Islamic law. He is a recipient of the Chevening Award (2008–09) and the Hubert H. Humphrey Fellowship (2012–13).

Fokkink, Nina:

Is the ECtHR Biting Its Tongue? The Conceptualization of Marriages of Convenience and the Scope of Article 8

The application of Article 8 ECHR in immigration cases has long been structured as a balancing exercise between the protection of individual human rights and the State's discretion to regulate migration (Thym 2008, Costello 2018). As a result, the case law reveals varying thresholds for engaging Article 8 in family reunification cases, prompting an expanding body of scholarship debating how this right ought to be interpreted in the migration context (Wray 2023; Halliday 2023).

An understudied element concerns the scope of Article 8 ECHR in cases involving relationships of convenience. Here, the ECtHR has declared complaints inadmissible *ratione materiae*, concluding that such relationships fall outside Article 8 altogether (Yavuz v Austria; Schembri v Malta). This creates an impossible burden of proof on applicants: they cannot challenge the credibility assessments underpinning these determinations or the Court's implicit claims about the 'truth' of their relationship unless the relationship is evidently real. At the same time, the Court acknowledges that measures targeting relationships of convenience cannot systematically obstruct the Convention right to marry (O'Donoghue and Others v United Kingdom; De Hart 2017)

By relocating these assessments from substantive review to questions of scope and admissibility, the ECtHR engages in a form of “judicialized politics” (Greenberg 2020). This tension is particularly visible in *Schembri*, where the couple’s lack of cohabitation is treated as evidence of disingenuousness, despite the Court’s earlier recognition that cohabitation is not a prerequisite for family life under Article 8 in non-migration contexts. Cases concerning contested relationships therefore require a normative assessment of what constitutes a relationship: a debate the Court appears to be unwilling to engage in. This article examines how evidentiary burdens and scope operate at the admissibility stage in Article 8 cases on relationships of convenience and how these cases relate to the ECtHR’s conceptualization of family life and truth.

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Bio: Nina Fokkink is a PhD-student at the Amsterdam Centre for Refugee and Migration Law. Her PhD centers on what are credible relationships in the context of Dutch and EU migration law by means of a socio-legal analysis.

Recent publications:

(2025). Is It a Strange Situation? Unsettling Norms and Judicial Interpretation in a Case on a Contested Relationship of Convenience. In H. Battjes, B. de Hart, L. Slingenberg, & M. Stronks (Eds.), *Critical Spijkerboer Studies: Liber Amicorum voor Thomas Spijkerboer* (pp. 135-142). Boom Juridische Uitgevers.

(2026/Forthcoming). How Long Have You Been Together? Time and Narrativity in Procedures on Relationships of Convenience in The Netherlands. In. P. Mindus, M. C. Stronks, R. Thorburn Stern, *Time and Temporalities of Migration Law*. Hart

(2024). Niet meer buiten het boekje? Verankering van nader onderzoek naar schijnrelaties in artikel 3.29 Vreemdelingenbesluit. *Asiel&Migrantenrecht*, 2024(7), 336-341.

Greenberg, Jessica:

Keynote

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Bio: Jessica Greenberg is Professor of Anthropology at the University of Illinois Urbana-Champaign and a leading scholar of political and legal anthropology. Her research explores democracy, social movements, human rights, and the rule of law, with a particular focus on post-socialist Europe, the Balkans, and transnational legal institutions. Combining ethnographic and legal approaches, she examines how democratic ideals, political transformation, and rights claims are experienced and contested in everyday life. Greenberg is the author of *Justice in the Balance: Democracy, Rule of Law, and the European Court of Human Rights* (2025) and *After the Revolution: Youth, Democracy, and the Politics of Disappointment in Serbia* (2014), both published by Stanford University Press. Her work has

appeared in leading journals in anthropology and socio-legal studies and has been supported by major grants, including Fulbright fellowships and funding from the U.S. National Science Foundation. She is widely recognized for her contributions to the anthropology of law, democracy, and political change.

Guichardaz, Héloïse:

Presumption of truth: a look at the way the Inter-American Commission on Human Rights interprets State silence

Article 38 of the rules of procedure of the Inter-American Commission on Human Rights contains a presumption that, in the absence of ‘responsive information’ by the State within a certain amount of time (usually within four months, barring exceptions) following the filing of a petition, the facts of such petition ‘shall be presumed to be true’. This presumption was used extensively throughout the Commission’s existence, particularly in decisions regarding forced disappearances.

This presumption has important consequences. Indeed, the facts of a petition contain not only the violation alleged (for instance, a kidnapping) but also, and more importantly, an allegation made by either the alleged victim or by witnesses of the identity of the perpetrators. As such, if a petitioner claims that the authors of a kidnapping were members of the State’s armed forces, and if those facts are presumed to be true in the absence of a response from the State at the prompting of the Commission, then the act in question can be attributed to the State as it would have been committed by its agents.

This procedural rule has therefore important ramifications for the competence of the Commission, as there must be a link between the perpetrators and the State to be considered a violation of the rights contained in the Inter-American Convention on Human Rights.

This piece examines what the use of this exemption by the Commission reveals about its relationship to truth, especially in that it grants heavy weight to the alleged aggrieved party’s interpretation of the facts, even with the risk of witnesses misremembering or even lying, as opposed to ‘factual’ truth gathered through further fact-seeking. While article 38 does add a caveat that the presumption stands ‘as long as other evidence does not lead to a different conclusion’, it has rarely been used.

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Bio: Héloïse is a recent graduate from the University of Glasgow, where she wrote her thesis on the United Nations’ absolute immunity supervised by Prof. James Devaney, Prof. Christian Tams and Prof. Charlie Peevers. She has written an article for the Brazilian Journal of International Law (2021) and a chapter in an upcoming edited collection on ‘Endless Conflicts’ (a project for which she was a research assistant for 4 years). She has presented at conferences in the UK and abroad, on topics ranging from international criminal law to human rights. She also taught Public International Law and European Law at the University of

Glasgow during her PhD. She currently works for the PA-X database (a project within PeaceRep) at the University of Edinburgh, coding peace agreements according to a detailed code book.

Ismayilova, Gunay:

Establishing Its Truth: The ECtHR's Flexibility as a Rationale for Effective Protection

The European Court of Human Rights pursues a distinctive notion of truth—one that focuses on establishing whether a violation occurred, rather than determining State guilt in a criminal sense. This truth is not absolute but conditional, constructed from evidence deemed valid under procedural rules and subject to revision if new material emerges. Despite its limitations, this qualified truth is central to the Court's mission of protecting human rights.

To achieve this, the ECtHR employs a procedural framework that prioritises truth-finding as a foundational principle of its adjudicatory function. Rigid evidentiary rules would obstruct access to crucial material, undermining comprehensive fact-finding. Instead, the Court adopts evidentiary flexibility, allowing it to weigh evidence proportionately, draw inferences where appropriate, and treat State non-cooperation as indicative of a violation. This approach mitigates structural imbalances between individuals and States and ensures that truth-seeking serves its ultimate purpose: the effective protection of Convention rights.

Far from being an abstract ideal, truth at the ECtHR operates as a procedural tool indispensable for guaranteeing the effective protection of rights. By embracing flexibility, the Court enhances its capacity to deliver meaningful protection, ensuring that Convention rights are not only recognised but effectively implemented across Europe.

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Bio: Gunay Ismayilova is a doctoral researcher at the University of Birmingham, focusing on the European Court of Human Rights' application of the "beyond reasonable doubt" standard in right-to-life cases. Her research critically examines how evidentiary thresholds influence accountability and truth-seeking in human rights adjudication. She actively contributes to scholarly and public debates through her publications, including "Hasani v. Sweden: A Narrow View of Risk with Broad Consequences" (Strasbourg Observers, June 2025) and "Infidelity as Immoral Social Conduct v. Custodial Rights" (The Baku Research Institute, January 2025).

Katsoni, Spyridoula:

Inequality of Arms as Epistemic Domination: Evidence and the Burden of Proof in Pushback Litigation

The proposed presentation explores the epistemic violence that has been inflicted upon asylum-seekers in litigation on alleged pushbacks, pullbacks and mass expulsions. Focusing on the relevant jurisprudence of the European Court of Human Rights ('ECtHR') and the Court of Justice of the European Union ('CJEU') and building on the concept of epistemic injustice

and violence, it argues that refoulement litigation has long functioned as a space in which asylum-seekers are formally heard yet structurally disbelieved.

Central to this dynamic is the role of evidence. Asylum-seekers have been routinely required to meet unattainable evidentiary standards considering the secrecy and the destruction, absence or inaccessibility of records surrounding refoulements. Their testimonies and supporting material have been frequently dismissed by courts without consideration of these parameters. Meanwhile, the respondent states or EU agencies – despite their incomparable access to relevant resources – have succeeded in rebutting allegations by merely discrediting the applicants' credibility or by relying on a complete denial of the facts, without presenting any evidence demonstrating the unfoundedness of the applicants' claims. This has preserved an entrenched inequality of arms and has resulted in the asylum-seekers' testimonial injustice and hermeneutical marginalisation.

The presentation then turns to the significant jurisprudential developments of 2025, whereby both the ECtHR and the CJEU clarified that once asylum-seekers establish prima facie evidence of refoulement, the burden of proof must shift to the respondent. This jurisprudential shift signals an emerging recognition of asylum-seekers as legitimate knowers of their own experiences and constitutes an initial step toward disrupting the pattern of epistemic violence. The presentation concludes by highlighting the importance of this development and the need for consideration of the disputant parties' inequality also in the assessment of when prima facie evidence has been established.

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Bio: Spyridoula Katsoni is a Postdoctoral Researcher at Ruhr-University Bochum. She holds a PhD in Law (summa cum laude) from Ruhr-University Bochum, an LL.B. and an LL.M. in Public International Law from the University of Athens, as well as an LL.M. in Public International Law from the University of Groningen. She is an Editor-in-Chief and Innovation Officer of the Völkerrechtsblog, a Legal Adviser at front-LEX and a Co-Convener of the ESIL Interest Group on Migration and Refugee Law.

- Spyridoula Katsoni and Mariana Gkliati, From Denial to Accountability: Systematic Pushbacks and Enforced Disappearances in Greece and the Future of EU Border Governance
<https://voelkerrechtsblog.org/from-denial-to-accountability/>.

Klocker Cornelia:

Conference convenor and organiser

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Dr Cornelia Klocker is a Senior Researcher at the Human Rights Centre, Faculty of Law and Criminology of Ghent University, Belgium and a member of the ERC project "DISSECT: Evidence in International Human Rights Adjudication". Cornelia holds a PhD in Law from

Birkbeck College, University of London. Her research centres on questions of non-discrimination and the intersections between human rights law and the law of armed conflict, including related evidentiary issues. Her publications in these fields include the edited volume together with Deborah Casalin and Marie-Bénédicte Dembour, *Questions of Evidence in the UN Human Rights Treaty Bodies' Individual Communications Procedure* (Cambridge University Press, 2026), articles and chapters such as 'Discriminatory practices in armed conflict contexts: exploring (parallel) proceedings under the European Convention on Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination,' in *The International Journal of Human Rights* (2023) together with Deborah Casalin, 'Compensating victims of armed conflict: Evidence from the European Court of Human Rights,' in *Human Rights and International Humanitarian Law: Challenges Ahead*, edited by Norman Weiß and Andreas Zimmermann (Edward Elgar, 2022) and her monograph *Collective punishment and international human rights law* (Routledge, 2020).

Kolowratnik, Nina Valerie:

Dreams as Testimony: Indigenous Dream Communication before the Inter-American Court

The Tagaeri and Taromenane are among the last Indigenous peoples living in isolation in the Ecuadorian Amazon. Because they remain in voluntary isolation, their appearance before the Inter-American Court of Human Rights in *Pueblos Indígenas Tagaeri y Taromenane v. Ecuador* (2024) raised a fundamental challenge: how can a court hear those who refuse contact and cannot appear before it directly?

This paper focuses on dreams as a medium through which the Tagaeri and Taromenane become present within the case. Drawing on testimonies by Waorani elders and on the pre-recorded oral testimony of Conta, a young Tagaeri woman in recent contact, I explore dreams as socially meaningful acts of communication through which kinship ties are sustained across isolation, messages are conveyed across human and more-than-human worlds, and political agency is expressed without direct speech. In Conta's testimony before the Court, a dream encounter with her family in isolation became a way of articulating her position on return, kinship, and life after contact. In other accounts, dreams and shamanic visions mediate communication between the Tagaeri-Taromenane, Waorani, jaguar spirits, and ancestors.

The paper argues that these dream accounts challenge dominant legal assumptions about voice, testimony, and evidence, which remain grounded in direct speech, physical presence, and stable individual subjecthood. Rather than private or symbolic experiences, dreams emerge here as relational spaces of communication, knowledge production, and political expression. By reading them as forms of testimony, the paper asks what it would mean for legal institutions to engage with Indigenous oneiric communication as a legitimate mode of presence and articulation.

Drawing on doctoral research and legal ethnography conducted in Ecuador between 2022 and 2026, including interviews with Waorani interlocutors, legal practitioners, and NGO

representatives involved in the case, the paper contributes to debates in legal anthropology, Indigenous studies, and critical legal theory on evidence, voice, and the limits of representation. It suggests that attending to dreams opens a space for rethinking how law might hear those who remain physically absent yet politically present.

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Bio: Nina Kolowratnik is an architect and PhD candidate in Law at the Human Rights Centre of Ghent University, Belgium, and part of the ERC Advanced Grant project DISSECT: Evidence in International Human Rights Adjudication. Her doctoral research focuses on Indigenous agency and evidentiary practices in *Pueblo Kichwa de Sarayaku v. Ecuador* and *Pueblos Indígenas Tagaeri y Taromenane v. Ecuador* before the Inter-American Court of Human Rights. Working across law, legal anthropology, and architecture, she examines how Indigenous engagements with Western legal institutions challenge and reshape the evidentiary and epistemic frameworks of human rights law. She is the author of *The Language of Secret Proof: Indigenous Truth and Representation* (Sternberg Press, 2019) and co-author of *Significant Impact: Contesting Surveillance Infrastructure on Tohono O’odham Je’ved* (Actar, 2026). From 2022 to 2023, she conducted fieldwork in Ecuador and was a research associate at the Universidad Andina Simón Bolívar, Quito. Previously she taught at Columbia University GSAPP and the Vienna University of Technology.

Lambert, Elisabeth:

(with Melis Aras) **What does evidence brought by applicants and civil society do to the implementation of ECtHR judgments?**

See abstract under Aras.

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Bio: Elisabeth Lambert, CNRS Research Professor in law, has developed a strong expertise in the implementation of ECtHR judgments adopting a comparative and a socio-legal approach. For the last 8 years, her research includes the human-rights-based approach to the right to a healthy environment and the right to healthy and sustainable food. More info and publications on: <https://dcs.univ-nantes.fr/fr/membres/elisabeth-lambert-3>

Lanckvrind, Luna:

When Does Procedural Deception Trigger Inadmissibility before the European Court of Human Rights? The “Sufficient Certainty” Standard in Proving Intent as a Condition for Abuse of the Right of Individual Application

At the European Court of Human Rights, abuse of the right to petition can lead to an application being declared inadmissible. The Court has repeatedly held, however, that conduct will be characterized as abusive only if it is intentional, and that intent must be established “with sufficient certainty”. This standard of proof is particularly important in

respect of the most prevalent type of abusive behaviour: misleading the Court by relying on untrue facts or false statements (misleading by commission), or by deliberately withholding essential information or documents, whether from the outset or when significant developments arise during the proceedings (misleading by omission). Some scholars have suggested that, because intent is difficult to prove, findings of abuse are rare in practice: the applicant's (or representative's) motives are hard to ascertain at such an early stage of the Court's assessment. This paper tests that claim through a case law analysis of cases from 2000-2026 in which procedural deception was raised by the respondent State or considered by the Court proprio motu. It examines how the "sufficient certainty" standard is applied and interpreted, and whether the Court sets different evidentiary demands depending on whether deception by commission or omission is alleged. It also asks whether the Court's approach has shifted over time, including whether it has become stricter in turning that standard into findings of abuse within this context. Finally, it examines whether the Court's approach serves truth-seeking in two distinct ways: first, by filtering out applications which deliberately present a distorted image of events which are of central importance to the determination of the case; and second, in case no intent was proven, by eliciting additional disclosure of important factors that help to complete the factual picture, so that the case can still proceed to the merits stage on a better-informed basis.

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Bio: Luna Lanckvrind is a PhD researcher in International Human Rights Law at the Programme for Studies on Human Rights in Context at Ghent University. Her doctoral research focuses on abuse of the right of individual application before the European Court of Human Rights. She is also an editorial assistant at the Law & Criminology Journal and serves as an editor at Strasbourg Observers and the Human Rights in Context Blog. Before starting her PhD, Luna was already connected to the Programme as a research project manager and researcher. In that role, she studied interim measures protecting persons deprived of liberty before the Human Rights Committee. Luna obtained both her Bachelor of Laws and Master of Laws degrees at Ghent University, Belgium.

Leroy, Isabella:

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Bio: Dr. Isabella Leroy is a postdoctoral researcher at the Human Rights Centre of Ghent University and a member of the ERC-funded DISSECT project on Evidence in International Human Rights Adjudication. Her current research examines evidentiary practices in international human rights law, as well as asylum law, encampment and migration law more generally. She previously completed a PhD at Vrije Universiteit Amsterdam on the legal regulation of refugee camps in Europe, drawing on empirical and interdisciplinary approaches to explore the relationship between law, space, and migration governance. Her work bridges

doctrinal, socio-legal, and critical legal geography perspectives. Before entering academia, she worked in migration and refugee advocacy and engaged in strategic litigation.

Mukaddam, Fatima:

Conference convenor and organiser

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Bio: Dr Fatima Mukaddam is a Senior Researcher at the Human Rights Centre of Ghent University and a member of the ERC-funded DISSECT project on Evidence in International Human Rights Adjudication. Trained as a political scientist with a strong interdisciplinary orientation, she brings insights from sociology, gender studies, and legal pluralism to the study of human rights institutions and adjudicative processes.

She completed her PhD, awarded *insigni cum laude*, at the University of Lucerne, Switzerland. Her doctoral research examined legal pluralism and Muslim women's access to marital rights and justice in South Africa and has since been published as a monograph by [Springer](#). Her scholarship focuses on Muslim women's lived experiences and their negotiation of rights across plural legal orders and social contexts, while engaging broader questions of human rights, identity, diversity, feminism, and gender justice.

Of South African–Pakistani heritage, Dr Mukaddam's research is informed by a longstanding commitment to understanding the social issues shaping the communities she studies. Her previous research has explored domestic violence, marriage, and community dynamics within Muslim communities. Alongside her research, she has taught Political Studies at university level and remains deeply committed to pedagogy and interdisciplinary scholarship.

Nikolova, Maria G.:

Custom, Credibility, and Competing Truths: Evidentiary Ambiguity in *M and Others v. Bulgaria and Italy*

This paper examines how culturally embedded evidence can generate radically divergent factual narratives in human rights adjudication, through a close reading of the European Court of Human Rights' judgment in *M and Others v. Bulgaria and Italy*. The case is marked by two irreconcilable accounts of the same events: one framing them as abduction, sexual violence, and exploitation of a minor; the other as a customary Roma marriage, corroborated by ritual practices such as bride price and wedding celebrations.

Focusing on witness statements, photographic material, and the interpretation of cultural practices, the paper argues that the evidentiary conflict in this case cannot be reduced to questions of credibility or proof alone. Rather, it reflects the interaction—and collision—of distinct normative and epistemic frameworks: formal criminal law and customary social norms. What appears as incriminating evidence within one framework may function as confirmation of legitimacy within another.

The Court's response—finding a procedural violation of Article 3 while refraining from endorsing either factual narrative in full—reveals an implicit negotiation between competing understandings of truth. By shifting the focus from substantive factual determination to the adequacy of the investigative process, the Court avoided resolving the cultural meaning of the evidence while still affirming the State's positive obligations toward vulnerable individuals.

The paper contends that culturally affected evidence is particularly elusive in human rights proceedings: when inadequately translated into legal categories, it risks distortion, premature closure of investigations, or epistemic injustice. The case thus illustrates how extra-legal cultural factors shape evidentiary processes and truth-seeking in subtle but decisive ways.

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Bio: A lawyer specializing in women's rights and sexual violence, member of the Sofia Bar Association (Bulgaria) since 2009, with experience as a 'filtering' lawyer at the ECHR. Currently, an Associate with the Max Planck Institute in Halle/ Saale and a contributor to the Institute's CURED project.

Doctoral research completed at the Department of Law & Anthropology, MPI (Halle). The study examined criminal trials stemming from disputes in customary child marriages among the Roma in Bulgaria, and focused on how the courts 'make sense' of the background story and 'translate' it into specific criminal charges (submitted August 2025).

Most relevant publication: Nikolova, Maria and Ana Chiritoiu. 2025. "Procedural pathways for cultural evidence in early marriage prosecutions." In: Foblets, Marie-Claire, et al. (eds.). Culture in the Courtroom. Judgments Addressing Diversity in a European Context: A Comparative Casebook for Judicial Practitioners (EJTN-MPI), Routledge. [in production]

O'Grady, Leannán:

When Truth Is Not the Point: Evidentiary Reasoning and Legitimacy in Human Rights Adjudication

Human rights adjudication is often understood as a process aimed at establishing factual truth in order to resolve violations. This paper opts for an entirely different perspective by arguing that the pursuit of factual truth is not the primary function of international human rights adjudication. Instead, adjudication operates within a structural condition of epistemic uncertainty and is oriented towards the production of legitimate and authoritative decisions under conditions where truth is often unavailable, contested, or inaccessible.

The argument proceeds conceptually by examining the evidentiary architecture of international human rights law. Core doctrinal features – such as lowered or flexible standards of proof, burden-shifting, presumptions, credibility-based reasoning, and risk-oriented tests – are shown to presuppose uncertainty rather than aim at factual verification. These

structures would be difficult to justify if adjudication were primarily truth-seeking; they instead reveal an institutional design that manages indeterminacy while maintaining legal authority.

Building on this, the paper demonstrates that evidentiary reasoning in human rights adjudication necessarily incorporates extra-legal considerations, including social context, political constraints, historical patterns, and institutional limitations. These factors do not operate as external distortions of an otherwise neutral fact-finding process, but as internal elements that shape how evidence is assessed, stabilised, and rendered legally meaningful. Facts are not simply discovered but constructed as authoritative through justificatory practices that balance uncertainty, risk, and normative commitment.

By reconceptualising evidence as part of a legitimacy-producing practice rather than a truth-discovery mechanism, the paper offers a framework that better explains how adjudication remains authoritative despite persistent factual ambiguity. It concludes that understanding reasoning in this way allows for a more accurate evaluation of human rights adjudication – one that accounts for its normative ambitions, institutional constraints, and enduring struggles over legitimacy without reducing them to failure.

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Bio: Mr Leannán O'Grady holds an LLM in International Human Rights Law and Public Policy from University College Cork and an MA in Philosophy and Japanese Studies from the University of Cologne, which included two years at Keiō University and Waseda University in Tōkyō, Japan. He is currently pursuing a PhD at Scuola Superiore Sant'Anna in Pisa, Italy, focusing on Freedom of Expression and the indeterminacy of International Human Rights Law.

He has two forthcoming articles. The first, "Freedom of Association in Germany", will appear in *Associational Life and Freedom: Insights from Philosophy and Law*, edited by Maria Cahill and Giulia Lasagni (Bloomsbury), already accessible at <https://hdl.handle.net/10468/17836>. The second, "Freedom of Expression", will be included in the second edition of the *International Encyclopedia of Civil Society*, edited by Regina A. List, Helmut K. Anheier, and Stefan Toepler (Springer).

Purmah, Raamandarsingh (Neel):

Truth, Empire and the Silencing of a People: The Chagos Advisory Opinion and the Politics of Evidence

For as long as I have studied human rights, I have been struck by the unsettling truth that the law is often most silent where injustice is most deafening. The Chagossian people have carried within them the weight of exile, dispossession as well as historical erasure for decades. Their truth was known by those who lived it, yet it remained peripheral to formal legal discourse. In 2019, the International Court of Justice delivered its Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago. Although not a human rights

court as such, the ICJ was compelled to confront what is unmistakably a human rights tragedy. The right to self determination of an entire people was denied under the shadow of colonial convenience, and the question that therefore arises is whether adjudication can serve as a vessel of truth for those who have long been unheard.

My paper seeks to explore how truth was constructed, filtered and validated in the Chagos Advisory Opinion. The ICJ placed significant weight on archival records, UN General Assembly resolutions and historic diplomatic exchanges. These were treated as authoritative conveyors of factual truth. Yet, the lived experiences of the Chagossians, their memories of forced displacement and the social and emotional ruptures that followed, received minimal space. In this sense, legal truth emerged as a carefully curated narrative, one that privileged state records over human pain. Evidentiary rules can, at times, reveal what happened, but they can also sterilise the human condition.

I wish to question whether the pursuit of truth should be confined to what institutions recognise as evidence. If truth has objective, subjective and collective facets, then it follows that human rights adjudication must account for them all. The Chagos case reminds us that law has the power both to acknowledge historical wrongs and to reinforce structures that keep victims in the periphery. In an era defined by contestation of facts and diminishing trust in institutions, the challenge is to ensure that international adjudication does not merely speak truth to power, but also hears the truth of the powerless.

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Bio: I am a Lecturer in Law at Middlesex University Mauritius, where I teach International Human Rights Law, Tort Law and related areas with a commitment to nurturing critical and compassionate legal thinking among students. My research centres on disability rights, inclusive education, AI and the broader intersections of law, marginalisation and social justice. In December 2025, I presented on the Chagos Dispute at the Beyond Development conference in Vienna: https://lawinafrica-rechtsgeschichte.univie.ac.at/fileadmin/user_upload/p_lawinafrica_rechtsgeschichte/Info_and_Program_Beyond_Development_Vienna_4-5_Dec_2025.pdf

Silva, Caroline L.:

Truth as Governance: Judicial Gatekeeping and the Production of Human Rights Evidence in the Inter-American System

In human rights adjudication, truth is not a fixed factual outcome but a political and contingent construction filtered through judicial agency. Drawing on a Foucauldian understanding of truth as a regime of knowledge and power, this paper argues that domestic judges act as gatekeepers who determine which international truth claims are translated into authoritative legal knowledge and which are strategically silenced or disregarded. Focusing

on the Inter-American Court of Human Rights (IACtHR), it explores the link between gatekeeping and truth-finding across multi-level governance.

Comparative case studies of Brazil, Argentina, Peru, and Uruguay combine citation and content analysis of domestic judgments with semi-structured interviews with domestic judges, as well as international judges and staff from the IACtHR Secretariat. The analysis demonstrates how domestic courts selectively engage with international jurisprudence on key human rights issues, producing divergent patterns of compliance and shaping the politics of evidence.

For example, in *Barrios Altos v. Peru*, forensic reports, witness testimonies, and military records revealed state-perpetrated killings, challenging domestic amnesty protections. In *Guerrilha do Araguaia* (Brazil), military archives and historical investigations were selectively acknowledged or disregarded, reflecting strategic gatekeeping. In *Gelman v. Uruguay*, scientific and documentary evidence—including DNA and civil registry records—had to be carefully incorporated or filtered to align domestic rulings with international obligations. These cases illustrate that evidence is not simply factual but politically mediated, with domestic courts determining which international truths acquire legal authority.

By emphasizing gatekeeping, this study reconceptualizes truth as a contested and relational outcome, highlighting the active role of domestic judges in stabilizing, negotiating, or neutralizing international evidence. It offers a Foucauldian perspective on how truth is produced and sustained through institutional practices, showing that the authority of international human rights law is contingent upon domestic judicial engagement.

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Bio: Caroline L. Silva is a postdoctoral researcher at the Department of International and European Law at the University of Amsterdam and a research fellow at <https://acil.uva.nl/>.

Most relevant publication: *The Ricochet Effect on Courts: Analyzing the Online Transition on the Supreme Federal Court of Brazil and the Inter-American Court of Human Rights* <https://www.boomportaal.nl/tijdschrift/ELR/ELR-D-24-00023>

Spatti, Monica:

Indirect Truth-Seeking: The CJEU's Multilevel Regime of Veridiction in Fundamental Rights Cases

Although the Court of Justice of the European Union (CJEU) is not formally a human rights court, it increasingly adjudicates cases where fundamental rights and contested factual conditions play a central role. Its procedural architecture (most notably the preliminary ruling mechanism) prevents the Court from directly establishing the facts or assessing evidence. Yet in areas such as asylum and migration, the European Arrest Warrant, restrictive measures, and threats to judicial independence, factual truth is indispensable to rights adjudication.

Whereas regional human rights courts retain limited but real fact-finding powers, the CJEU is structurally precluded from engaging in any form of direct evidentiary assessment. This has prompted the emergence of a uniquely indirect architecture of truth-seeking, in which the Court governs how facts must be produced by others rather than establishing them itself. This multilevel regime of veridiction built through judicial delegation, epistemic outsourcing, and strategic burden-shifting, distinguishes the CJEU from other supranational bodies and illuminates alternative pathways for constructing factual truth in rights-sensitive settings.

The contribution traces this evolution through landmark judgments such as *Kadi*, *N.S.*, *Aranyosi and Căldăraru*, *LM*, *Spetsializirana prokuratura*, and *KB*. Across these cases, the Court has (i) delegated fact-finding to national courts via heightened verification duties, (ii) relied on reports by international organisations and NGOs as privileged sources of factual knowledge, and (iii) shifted burdens of proof onto state authorities or EU institutions when *prima facie* evidence suggests rights-relevant risks.

Analysed through the lens of truth and veridiction, these techniques reveal a hybrid evidentiary model in which the CJEU does not determine truth directly but orchestrates its production within a multilevel judicial structure. This model sheds light on broader questions central to the conference: how supranational courts pursue factual truth despite institutional constraints, how extra-legal knowledge enters adjudication, and how evidentiary design can both reveal and obscure human-rights-relevant truth.

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Bio: Associate Professor of European Union Law at the Faculty of Political and Social Sciences, Catholic University of the Sacred Heart in Milan. I teach International Law, European Information Law and International Protection of Human Rights, and co-coordinate the Bachelor's programme in Political Science and International Relations. My research focuses on the protection of human rights, with particular attention to the European Union's external action and migration and asylum law. I have published extensively on these topics in national and international journals. My recent publications include analyses of the EU's potential use of the blocking statute to counter US sanctions against the International Criminal Court (2025); the concept of genocide and the role of international justice (2024); and several commentaries on the Court of Justice's recent case law on refugee status determination, including gender-based persecution and persecution linked to belief in gender equality (2024).

Stamenkovikj, Natasha:

Divergent Judicial Approaches to Truth-Seeking: The Right to Know the Truth in European and Inter-American Human Rights Systems

This paper examines how regional human rights institutions conceptualize and implement the right to truth, revealing divergent approaches rooted in distinct legal traditions and

transitional justice philosophies. Through a comparative analysis of the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR), it shows how differing understandings of truth shape both the scope of the right to truth and its beneficiaries. It argues that the right to truth operates as a site where legal authority determines which truths matter, and for whom.

The ECtHR has developed the right to truth primarily through procedural obligations under Articles 2 and 3 ECHR, framing truth-seeking as an individual entitlement of victims and their relatives to factual clarification through effective investigations. While central in cases of enforced disappearance and extrajudicial killing, this approach resists recognition of an autonomous or collective right to truth, confining truth to a procedural function within existing Convention rights. By contrast, the IACtHR has articulated an expansive conception of the right to truth, explicitly recognizing both individual and collective dimensions. In the Inter-American system, truth is understood as a societal right linked to democratic accountability, collective memory, and guarantees of non-repetition, shaped by the region's engagement with transitional justice mechanisms. This divergence is reflected in the evidentiary materials each court privileges, from state-produced investigative records before the ECtHR to truth commission findings, archival sources, and expert historical reports before the IACtHR.

These judicial divergences are selectively echoed in the Council of Europe's policies on post-conflict transitions, where institutional approaches to truth oscillate between narrow, family-centered models and broader collective frameworks, illustrating how legal conceptions of truth travel into governance practices. Together, these findings demonstrate that the scope of the right to truth is strategically calibrated to the role law is expected to play in post-conflict ordering through the management of memory, accountability, and political authority.

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Bio: Dr. Natasha Stamenkovikj is a Lecturer in European Law at the University of Amsterdam European Studies Group. She earned her PhD in Public Law and Governance from Tilburg University in 2019, followed by a publication of her book 'The Right to Know the Truth in Transitional Justice Processes' (Brill/Nijhoff, 2020). Her research examines how international courts and regional organizations shape truth-seeking in post-conflict societies, focusing particularly on the European and the Inter-American human rights systems. She has extensive experience in transitional justice, having worked with the Humanitarian Law Center Belgrade on ICTY case-law analysis and the Regional Commission for establishing facts about war crimes (RECOM). Her research explores human rights adjudication on human dignity, the politics of memory in post-conflict governance, and comparative approaches to truth-finding. She has held visiting positions at Brown University, King's College London, and was a Fulbright researcher at American University's Washington College of Law.

Wilding, Jo and Dembour, Marie-Bénédicte:

Rethinking the Application of the No-Fourth Instance in the Absence of Timely Legal Representation at Domestic Level: Lessons from the Operation of the Windrush Compensation Scheme (UK)

See abstract under Dembour.

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Bio: Dr Jo Wilding is Associate Professor of Law at Sussex University (UK) where she also co-leads the Migration Law Clinic. She researches access to legal advice and representation, particularly for social welfare and immigration law, with a focus on empirical work and the geographies of access to justice. Previously she was a barrister (advocate) specialising in immigration and asylum, trafficking and unlawful detention cases.

Wray, Helena:

‘It is a truth universally acknowledged’: Truisms, truth and evidence in article 8 ECHR family reunification cases

Article 8 ECHR protects the family life of all within a state’s jurisdiction, including that of citizens and residents whose family members would otherwise have no right of residence. There are limits inherent to article 8, including but not only the article 8(2) qualifications, but, even so, its potential scope of application to cross-border families is wide. This creates obvious tension with state immigration policies, and the Strasbourg Court must steer a careful path between ensuring article 8 is effective and not going beyond the boundaries of political acceptability.

In its efforts to provide limited but still meaningful protection, the Court relies on legal and factual assumptions on matters such as states’ legal authority, the significance of migration status, and the character of family life, which shape families’ legal rights and states’ obligations under article 8. This paper shows that many of these assumptions, while treated as ‘truisms’ - statements which are so obviously true that they barely need saying - do not correspond to empirical reality or only partially. In this way, the Court has been able to develop a set of doctrines that facilitate its difficult high wire act, but which do not, on close consideration, cohere. They also cause the separation of many families who might, if looked at from a different perspective or in a different context, attract more judicial sympathy.

The paper goes on to ask what happens when these truisms are challenged by empirical evidence before the Court. It addresses this question through analysis of an otherwise unremarked 2022 Chamber decision *Alleleh v Norway*. That case shows that, when such evidence intrudes, the Court can maintain a politically palatable position only by distancing itself from inconvenient facts and glossing over the incoherencies of its doctrinal position.

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Previous work includes *Regulating Marriage Migration into the UK: A Stranger in the Home* (Ashgate/Bloomsbury 2011) and a co-written 2015 report for the Children's Commissioner for England on the impact on children of financial requirements for partner migration. She led teams submitting expert evidence in two UK Supreme Court cases on pre-entry language testing and financial conditions for partners.