

1210585 [2012] RRTA 844 (4 October 2012)

DECISION RECORD

RRT CASE NUMBER:	1210585
DIAC REFERENCE(S):	CLF2011/172233
COUNTRY OF REFERENCE:	Djibouti
TRIBUNAL MEMBER:	Filip Gelev
DATE:	4 October 2012
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Djibouti, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] October 2011.
3. The delegate refused to grant the visa [in] July 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Nomination letter signed by [Mr A]

20. On the overseas Tourist Visa file there is a letter ("certificat administratif") in French signed by [Mr A] and dated [in] June 2011, nominating [the applicant] for [a course] in Australia.

Statutory declaration of [a date in] October 2011

21. The applicant applied for a Protection Visa [in] October 2011. Together with his application he submitted a lengthy statutory declaration, dated [the previous day in] October 2011, setting out his claims in relation to a well-founded fear of persecution if he were to return to Djibouti. The applicant said that he is a member of the Movement for Democratic Renewal and Development (MRD) opposition party. The applicant said he was born in [Town 1] in the south of Djibouti. [A relative] was assassinated by the authorities because of his active support of the MRD. The applicant's wife and [children] moved from [Town 1] to [Village 2] because they feared for their safety after agents from the Documentation and Security

Department (Service de Documentation et de Sécurité or SDS in French) visited the house to question the applicant's wife.

22. The applicant provided a brief political history of the country and his own interest in politics and support for the opposition MRD, previously known as the Democratic Renewal Party (PRD). [Information regarding the applicant's education and early contact with the MRD deleted: s.431(2)]. Despite trying to get a [government job], it was not until [2007] that the applicant managed to do so. He was worried about employment prospects and for that reason did not join the MRD [until] 2008. In April 2008 he met [name deleted: s.431(2)], [a senior member] of the Djibouti City wing of the MRD.
23. In July 2008, President Guelleh banned the MRD. Since then MRD members including the applicant started meeting in secret. In early 2010, the applicant was "first assigned a specific role in the MRD". He became head of [District 3]. In this role he was responsible for [managing] MRD members and he was also engaged in recruiting new members and supporters.
24. In April 2010, President Guelleh changed the Constitution to enable him to stay on as president. Mass protests were held across the country and many protesters were imprisoned in the Gabod and Nagad gaols. The applicant did not suffer any harm at that time. In January 2011 students began protesting about the poor quality of university education in Djibouti. In the wake of the Arab Spring people in Djibouti were inspired to begin protesting against President Guelleh. The MRD in collaboration with other opposition parties planned a large-scale demonstration for 18 February 2011. The applicant was in charge of "agitating" the people of [District 3]. The demonstration officially began around 2 pm and by 4 pm people started to walk towards Hassam Guelleh Stadium. By the time the applicant reached the stadium there were about 40,000 people gathered there. At about 6 pm security forces surrounded the area and soon afterwards attacked the demonstrators. The applicant tried to escape and ran towards [District 3], but eventually he was caught, thrown into the back of a truck and driven to Nagad police station/prison. On the way to Nagad [details of injuries deleted: s.431(2)] in a violent assault.
25. At Nagad the applicant was assaulted again and even though he sought help for his [injury] he was ignored until about 3am when he was finally seen by a doctor. The prison doctor said he needed to be taken to hospital where he was admitted and remained for a week under police guard. While in hospital the applicant was questioned three times by police. The applicant was accused of being an MRD member but he denied everything. After a week he was taken back to Nagad prison and put back in the same overcrowded and filthy cell. While in prison the applicant was interrogated 3 more times, and assaulted, albeit not very seriously, because of his [injury].
26. [In] February 2011, the applicant, together with about 100 prisoners were taken to court. The presiding judge ordered the release of about 40 prisoners, including the applicant, for lack of evidence against them. Instead of being released they were taken back to Nagad prison. About three days later they were told that the Minister of Justice had appointed a new judge to hear the case. However, the applicant's case was not reheard and he was released [in] March 2011. Prior to his release the applicant was given a verbal warning not to continue his involvement with the MRD and in addition he was forced to sign a document to abide by a number of conditions. In his statutory declaration, the applicant expressed his belief that he was released because of his [injury] and because there was no sufficient evidence to prove that he was a member of the MRD.

27. The applicant felt that he had "escaped hell". Since then, and until now, he has been having difficulty sleeping and suffering from flashbacks. The applicant was too afraid to continue his political activities. He knew that he had to leave Djibouti and he kept a low profile. [In] May 2011, the applicant discovered that there was an opportunity to go to Australia for [a course]. While he was petrified that the government would stop him because of his membership of the MRD, the [ministry head] was not familiar with this history. The applicant applied for the [course] and was nominated to attend. He arrived in Australia [in] July 2011. After his arrival in Australia, the applicant contacted his wife and she advised him that SDS officers had visited the house and she was going to leave Djibouti city because she feared for her and the children's safety. About two weeks later the applicant spoke with his friend [name deleted: s.431(2)], told him that his wife had already left Djibouti city and his father had left the country and gone to [Country 4].
28. By cover letter dated [in] November 2011 the applicant's representatives submitted two medical reports. The first one, dated [in] October 2011, was from [Dr B]. The report stated that there were "heterogeneous bone changes" and "evidence of previous surgery", "likely to be related to previous trauma" The second one, dated, [in] November, was from [Dr C], a general practitioner. According to the report the applicant's "[injury] status would be entirely consistent with major trauma to his joint, resulting in bone fracture as well soft tissue damage as described in his statement." The report added that the applicant was suffering from post-traumatic stress disorder.

Departmental interview

29. The applicant was interviewed by a delegate of the Minister for Immigration and Citizenship [in] November 2011.
30. The applicant said he was married with [children] who currently live in [Town 1]; he then corrected himself and said they were living in [Village 2]. The applicant said he was [vocation deleted: s.431(2)] who since [2007] had been working [for a government department].
31. The applicant said that he came to Australia to complete a [course]. [Information regarding the application process deleted: s.431(2)].
32. The applicant said that he was seeking protection in Australia because he feared persecution as a member of the political party MRD. "The dictator", whose name the applicant did not mention, had banned the MRD in 2008 because it was becoming too powerful. Under the Constitution, the President was not to serve more than two terms. However, he changed the Constitution to stay as president for life. As a result there was an uprising which the President crushed. If the applicant returned to Djibouti, he would be at risk.
33. The applicant said he was living in a place called [District 3] and he was in charge of all opposition activities in that area.
34. The applicant talked at length about the problems of Djibouti under the "dictatorship" of President Ismail Omar Guelleh and the aspirations of the people of Djibouti and the MRD opposition.
35. The applicant was asked a series of questions about his involvement with the MRD. He said he joined the party [in] 2008. Prior to that date, since 1999, he had been following the MRD's

activities without joining the party. By 2008 he was satisfied that he should join and help overthrow “the dictator”.

36. When asked, the applicant said the MRD had previously been known as the PRD; and it had been banned on 9 July 2008.
37. The applicant said his [details of injury deleted: s.431(2)] and he was “thrown in gaol” [in] February 2011. The applicant was asked [for further details of the injury]. The applicant said it was [details of injury deleted: s.431(2)] and his representative handed up a medical report confirming that. The applicant said he was detained in Nagad and regularly beaten. He was arrested [in] February and released [in] March 2011. The applicant initially said about “300 [people] were there”, but then clarified that this was the total number of people “collected” from different areas on that day. He was detained in a group of about 30 people and the number of people in his gaol cell was about 20.
38. The applicant said he was arrested at his house, after participating in a demonstration, and beaten all the way to the gaol. It was during this assault that his [injury was sustained]. He did not receive medical treatment until 3am that night. The next day he [received] proper treatment. He was in hospital for a week. The applicant’s representative intervened at this point and asked the interpreter to make sure he interpreted everything correctly. She alluded to the statement that the applicant had been arrested at his house, rather than his neighbourhood, as a potential interpreting error.
39. On [a date in] February 2011 he had been taken to court and charged with being an organiser. He was charged in relation to the events that took place on 18 February, e.g., the burning of cars. The applicant was asked to clarify exactly what he was charged with. He said that people against whom the authorities had evidence were charged; there was no evidence against him. The applicant said his [injury] was evidence of his arrest and mistreatment. He had no other proof.
40. The applicant did not describe any other specific instances of past persecution.
41. The applicant was asked how it was possible for a member of a banned opposition group to be employed by a government department. The applicant said he went back in May and remained there until June 2011, and during that period he was “on and off” and “in and out of hospital”.
42. When he was asked how he was allowed to travel outside of Djibouti, the applicant said he had signed an undertaking not to engage in any anti-government political activities.
43. After a break, the applicant said he could not provide any proof of his detention and mistreatment because the authorities operated outside the legal framework. Secondly, the authorities had no proof of his involvement with the MRD. Thirdly, after coming to Australia the applicant was informed by his wife that the security services visited his home. His family left their home and moved to another area. His father left the country and moved to [Country 4], because he did not want to be visited by the security services. Fourthly, the day before the interview the applicant was in contact with the MRD leader in Belgium and was told that the MRD leader in Djibouti had been re-arrested (after being released on 19 June) on 16 September. Others were arrested as well. Some were sentenced to one year in prison and on 4 and 5 October they started a hunger strike.

44. The [applicant's representative], made oral submissions. She submitted that the applicant feared serious harm for reasons of his political opinion against the Djibouti government and pro-opposition (MRD) support as well as for reasons of membership of a particular social group – the MRD. [The representative] referred to the alleged harm suffered by the applicant in the past and the harm suffered by other members of his family such as the death of [a relative] who was killed by the authorities in 2005 because of his involvement with the MRD.
45. [The representative] referred to a Human Rights Watch report from April 2011 and an Immigration and Refugee Board of Canada's report dated 19 November 2010 as corroborative of his claims. She noted that a month after the applicant departed Djibouti, the authorities visited his house and asked his wife why he had not returned to Djibouti.
46. She made submissions in relation to the reasons why, despite his involvement with the MRD, the applicant continued to be employed by the government, managed to travel outside of Djibouti without any problems and was selected to undertake a course in Australia. [The representative] pointed out that the Convention test is a prospective one and the relevant question the delegate needs to ask is whether the applicant will be at risk of persecution in the future. While she conceded that the applicant had not expressed his anti-government political opinion after signing an undertaking not to do so, nevertheless this occurred because he was forced into that position by the authorities who incarcerated him, mistreated him and [caused him injury].
47. [In] July 2012, a delegate of the Minister refused the application on the basis that the applicant was not a person in relation to whom Australia had protection obligations.

Tribunal review

48. [In] July 2012, the applicant applied for review of the delegate's decision.
49. The Tribunal invited the applicant to appear before the Tribunal [in] September 2012. In the hearing invitation, the Tribunal foreshadowed that it would seek to contact Mr Daher Ahmed Farah, said to be the Chairperson of the MRD and based in Brussels, Belgium. It asked the applicant to provide contact details for Mr Farah. The Tribunal received the Response to Hearing Invitation on [a date in] September 2012. The Response named Mr Farah as a witness from whom the Tribunal should obtain evidence. It said that "Mr Farah is the chairman of the MRD. He knows that I am a member of the MRD, that I was targeted by the authorities and that I fled to Australia. He can also talk about the mistreatment of MRD members in Djibouti."

Statutory declaration of [a date in] September 2012

50. [In] September 2012, the Tribunal received a second statutory declaration by the applicant, dated [in] September 2012. In that statutory declaration the applicant sought to explain the reasons why he disagreed with the delegate's decision. The applicant stated that he was able to renew his passport, retain a job with the government and leave for Australia, because initially the authorities did not know about his involvement with the MRD. Later on, in May 2011 (when the applicant returned to work after his detention and medical treatment) the [department] where the applicant was employed was "in a state of flux".
51. [Employment information deleted: s.431(2)]. It was thanks to [Mr A] that the applicant managed to obtain a visa to Australia.

52. The applicant explained that the communication channels between various security organisations and government departments in Djibouti were "primitive and ineffective". There is no central security database. The immigration officials at the airport would have had no way of knowing that the applicant had been suspected of being involved with the MRD.
53. The statutory declaration advised that the applicant had received information that he had been fired from his job in his absence from the country, and that his mother, wife and children had moved to [Town 1] and his father had been travelling between [Country 4] and Djibouti.
54. According to the statutory declaration the political situation in Djibouti had "continued to deteriorate for MRD members" and President Guelleh had been engaged in a crackdown on the opposition. The applicant also reiterated his fears of persecution if he were to return to Djibouti for reasons of his political opinion and membership of the MRD.

DFAT advice

55. [In] August 2012, the RRT made a request to DFAT, asking if the diplomatic post in Brussels could confirm the following:
 - Whether Djibouti's Movement for Democratic Renewal (MRD) has a presence in Belgium.
 - Whether Mr Daher Ahmed Farah in particular resides in Belgium, and whether he is the author of the letter provided by the applicant (the RRT attached a copy of the letter).
 - Whether Mr Farah is happy to receive further communication from the RRT in relation to the applicant.
56. [In] September 2012, the RRT received the following response:
 - Djibouti's Movement for Democratic Renewal and Democracy (MRD) has a presence in Belgium. The Belgian chapter of the MRD is headed by a committee based in Kortrijk (Courtrai).
 - Mr Daher Ahmed Farah resides in Belgium. He has sighted the copy of the attached letter and confirms that he is its author and signatory.
 - Mr Farah is happy to receive further communication from the RRT in relation to the applicant. His contact details are as follows:

[Email and telephone deleted: s.431(2)].

Letter of support from "Djibouti Community in Australia"

57. On the day of the Tribunal hearing, the Tribunal received a letter of support from [a senior office bearer] of Djibouti Community. The letter stated that the "Djibouti community in Australia" supported the case of the applicant who will be at high risk of torture, imprisonment or death if he went back to Djibouti. The letter did not specify why the applicant would be persecuted, except to say that it was by reason of his "political activities". The letter asserted that the risk has now been heightened by virtue of the fact that the applicant has been away from Djibouti for over a year and he would be considered to have "run away from the country".

Tribunal hearing

58. The applicant appeared before the Tribunal [in] September 2012 to give evidence and present arguments. The Tribunal also received oral evidence from Mr Daher Farah in Brussels, Belgium. The Tribunal hearing was conducted with the assistance of an interpreter in the Somali and English languages. Mr Farah provided evidence in French and the Tribunal utilised the services of an interpreter in the French and English languages in relation to his evidence.
59. The applicant was represented in relation to the review by his [migration agent].
60. At the commencement of the hearing the Tribunal asked the applicant if he considered himself fit to give evidence in light of the material provided by him that he suffers from post-traumatic stress disorder. He said he was capable of giving evidence.
61. The Tribunal asked the applicant about his family and recent contact he had had with them. The applicant advised that he had last spoken with his wife about a week after "last Islamic celebration", by which the applicant later clarified he meant about a week after Eid el Fitr.¹ The applicant's wife, his [children], and his mother all live in [Town 1]. They went for their own safety. First, they went to an even smaller place by the name of [Village 2], but then to [Town 1].
62. They had left Djibouti City after the authorities had come to the applicant's house to find out where he was. During Eid El Fitr the applicant's father went from [Country 4] to [Town 1]. The applicant was not sure if he subsequently returned to [Country 4]. One of the benefits of living in [Town 1] – where the rest of the family are – is that it is near the [Country 4] border as well as far from the capital Djibouti City.
63. The Tribunal asked the applicant questions about his membership of the MRD. He said he had joined the MRD [in] 2008. When asked about the reasons why he joined, he claimed that the MRD is a youth party. He had been a supporter before he joined. He wanted to play a role in ending the dictatorship.
64. The applicant stated that he met Mr Farah, the MRD leader, only once. The two had not been in "direct contact" while the applicant was still in Djibouti, because Mr Farah's telephone and internet were being tapped. The Tribunal sought clarification in case the applicant was making a *sur place* claim that he is communications with Mr Farah would mean that he is now known to the authorities and would be at risk by reason of his association with Mr Farah. The Tribunal asked the applicant to clarify what he meant and the applicant explained that the Djibouti authorities might intercept phone calls which originate from Djibouti but not from Australia.
65. The applicant also said that he had exchanged many emails with Mr Farah.
66. The Tribunal invited the applicant to describe his involvement with the MRD. He said soon after he joined [in] 2008, the party was banned from operating within Djibouti. The applicant was not assigned a specific role or position in the party until 2010 when the President of Djibouti decided to have the Constitution changed in order to be elected for a third term.

¹ The Tribunal notes that in 2012 Eid el Fitr fell on 19 August 2012:
<http://www.timeanddate.com/holidays/australia/eid-al-fitr>.

Around that time, he was “appointed to talk to the people” in the small suburb of [District 3] in Djibouti City. The activities were mainly done behind the scenes, clandestinely.

67. The applicant’s evidence in relation to his role in the party during the period was initially vague. He referred to talking to people in small groups, talking to students who were angry at the government or workers who had been dismissed from their jobs. However, when the Tribunal asked the applicant to name the five members of the MRD who operated under him in [District 3] he did so without any hesitation. The five [members] were [names deleted: s.431(2)]. The applicant told the Tribunal how frequently he would meet the other party members in [District 3] and he was able to state their occupations without having to pause and think about it.
68. The Tribunal asked the applicant whether within the MRD he had to report to someone higher up about his activities. The applicant confirmed that he would [liaise] with someone. His name was [Mr D].
69. The Tribunal asked the applicant to recount the events [in] February 2011, which led to his arrest. The applicant said that the intention of the opposition groups was not to leave the area where they were all going to gather unless and until the government was forced out of office or resigned. The demonstration was to start at Nasser Avenue at 2pm and move to Hassam Gouled Stadium by 4pm. The Tribunal asked the applicant at what time the government was expecting that the demonstration would finish. The applicant replied that it was 6 pm.
70. The Tribunal asked what happened after 6pm. The applicant said the whole area was surrounded by security personnel from various government agencies. It was announced that demonstrators had to leave immediately. They started using tear gas and rubber bullets. About 7pm, the influence that the organisers had on the people was very limited because of the pressure from the security forces to disperse. People were escaping into the suburbs and soldiers were chasing them through the night. The entire country was in chaos, with protestors burning tyres, throwing stones and fighting with the security forces.
71. The applicant said that he was arrested in the street as he was fleeing towards [District 3]. He was picked up in a large truck. The security forces identified him as someone who had been at the demonstration because he was going away from the place of the rally and was short of breath and appeared to have been running.
72. The people who arrested him were the national police. While he was trying to climb onto the truck, he was pushed from behind. [He] hit the back of the truck and was seriously injured. The detainees were taken to a prison called Nagad. On the way they were “beaten and tortured”; later, the applicant clarified that the injury [sustained] was from the initial impact when he was getting onto the truck, rather than a subsequent assault.
73. The Tribunal asked about the precise location of Nagad Prison and advised the applicant that the country information in relation to it was contradictory with four sources giving four different locations. He said it was only about 1 km from the city and near the airport. It was on the road to Somalia.
74. The Tribunal asked how long the trip to Nagad had taken. The applicant replied that if the truck had been going directly it would have taken about 30 minutes, but it took about 2 hours because the truck stopped and other people were arrested along the way. The applicant said

that the truck was big enough to accommodate 50 or even 100 people but there were only about 30 people in it with the applicant.

75. The applicant explained that Nagad was not a prison but a detention centre for illegal migrants. The applicant estimated that [in] February a total of about 80 or 90 people were arrested and taken to Nagad. He could only definitely confirm that the group he was arrested with consisted of about 30 people. Nagad was being used as a prison, because the main Djibouti prison, Gabode, was full. Gabode could accommodate about 500 people but people had told the applicant that after the arrests [in] February there were about 750 people there. The applicant clarified that many of the 750 people would have been imprisoned at Gabode prior to [February] 2011.
76. The Tribunal asked the applicant how the authorities knew that he was an MRD member if some 40,000 people attended the demonstration. He said 40,000 was an estimate and then said things which were not relevant to the question asked. The Tribunal had to rephrase the question. He said he had been taking part in the organisation of the demonstration, he had a loudspeaker and a car and there were “many ways they could have known” that he was one of the organisers.
77. The Tribunal asked about Mr Abib Ali Doualeh in relation to whom the applicant submitted a short article stating that Mr Doualeh, had been arrested in June 2012, released and rearrested [in] August 2012. He had been tortured in detention and “thrown in to the Gabode Prison” The applicant said that [information deleted: s.431(2)], and Mr Doualeh was [in charge] of another group or “cell” in the same way that the applicant was in charge of [members] in [District 3]. Initially, after the demonstration [in] February 2001 he had not been caught. He was caught in June 2012, released, then arrested once more in August 2012.

Evidence from Mr Daher Farah

78. The Tribunal contacted the witness, Mr Daher Ahmed Farah on [telephone number deleted: s.431(2)] and took evidence with the assistance of a French interpreter. The Tribunal confirmed Mr Farah’s identity. Mr Farah spoke passionately and at some length about the MRD and his own role in that Party. He was quite proud of his achievements as a political leader endeavouring to defend the democratic rights of the people of Djibouti. He explained that he was one of the founding members of the MRD, in 1992, some 20 years ago. The party was originally called the PRD.
79. Soon after the first president of the party, Mohamed Djama Elabe died in 1996, the party was declared illegal. The majority of the members resisted the regime. Mr Farah was elected president in 1997. After that he was imprisoned on several occasions. Through their resistance struggle, the MRD members managed to have the party made legal again in 2002 in the wake of the deal struck between President Guelleh and the armed opposition FRUD (Front for the Restoration of Unity and Democracy).
80. Mr Farah went to Belgium in 2004 because he feared that the authorities may assassinate him. He was a very determined individual and when the use of imprisonment, violence and everything else they had in their power did not work to stop him, they wanted to kill him.
81. The Tribunal invited Mr Farah to explain how he knew the applicant. He said Mr Farah belonged to the “Djibouti youth” and because Mr Farah was still the youngest of the Djibouti party leaders, he was particularly interested in young people; he did all within his power to

attract young members. He first met the applicant in [year deleted: s.431(3)], when he was still in Djibouti.

82. The Tribunal asked what the role of the applicant was in the MRD. Mr Farah said he had been informed that the applicant was in charge of the [District 3] “branch” of the Party. The role of the “managers” of these small local groups was to diffuse information, to mobilise people, and to ensure proper communication between ordinary members and the party leadership. In Mr Farah’s opinion, it was thanks to the work of people such as the applicant that the Party was able to organise rallies and get people mobilised.
83. The Tribunal asked how many people the applicant would have been in charge of in [District 3]. Mr Farah said he was not sure of the exact number but there were [number deleted: s.431(2)], some of them members and some of them supporters.
84. The Tribunal asked Mr Farah to name the senior person within the MRD with who would have been the applicant’s point of contact or to whom he would have had to report. Mr Farah said it would have been [Mr D].
85. The Tribunal put to Mr Farah that the applicant had provided the Tribunal with an article about an MRD person who had recently been arrested and asked Mr Farah to name this person if he could. Mr Farah said that many people had been arrested but near [District 3] Mr Abib Ali Doualeh had been arrested. He added that his own [brother], journalist and human rights defender, had been [imprisoned].
86. The Tribunal asked Mr Farah, who had written in a letter provided to the Tribunal that he knew of the applicant’s arrest, how he possessed that knowledge. Mr Farah said that whenever an MRD member gets arrested, party leaders pass on the names to him (Mr Farah). He had learnt of the applicant’s arrest a few days after a lot of people were arrested in February 2011.
87. Mr Farah was asked if he knew the place where the applicant had been detained. He replied that it was a place in Nagad. In response to a question from the Tribunal he said he thought that the applicant was released “a few days later”, maybe [a date in] February 2011. Finally, Mr Farah was asked about the injuries that the applicant sustained. He said he had been informed that the applicant had [details of injury deleted: s.431(2)] and suffered other injuries.
88. Mr Farah expressed the view that the applicant, if he were to return to Djibouti, would be at great risk because the authorities do not like people leaving and seeking asylum elsewhere. In addition, he would be at risk as a member of the MRD, as someone who is against “the dictator’s” (President Guelleh’s) methods. The authorities punish people such as the applicant in order to deter others from speaking out. The Tribunal thanked the witness for his evidence and ended the call.

Further evidence from the applicant

89. The Tribunal advised the applicant that Mr Farah’s evidence was not consistent with the applicant’s only in relation to the number of people the applicant claimed to have been in charge of in [District 3]. Mr Farah had referred to [details deleted: s.431(2)]. The Tribunal noted that this was not a major issue and that Mr Farah may be overestimating the strength of

the Party. The applicant said that Mr Farah, a leader in exile, had left Djibouti almost 10 years ago and could not know all the details of what was going on the ground in the country.

90. The applicant was asked but did not know the name of the judge before whom he appeared [in] February 2011; he pointed out that these events had taken place more than a year ago.
91. The Tribunal asked about the fate of the other people who had been arrested together with the applicant and detained at Nagad. The applicant replied that the President released most people because he wanted people to vote for him in the then upcoming elections in March 2011. He did keep senior opposition leaders until June 2011. Later on in June some people were released on Independence Day.
92. The Tribunal asked the applicant about the person who nominated him for the course in Australia. The applicant had previously provided the name [Mr A]. The Tribunal put to the applicant that it had seen a document on an overseas departmental file, which showed that [Mr A] was not the full name of this person; he had another name. The applicant said he did not know. When the Tribunal said the person's full name, according to the document, was [name deleted: s.431(2)], the applicant said he remembered, after the name was mentioned; he then smiled and explained that lately he had become forgetful.
93. The Tribunal asked what [Mr A]'s current position was. [Details deleted: s.431(2)].
94. In response to a question from the Tribunal the applicant said that he did not believe that [Mr A] would have problems with the authorities for having assisted the applicant to leave the country because the applicant's personal connection to [Mr A] was not generally known at that place of employment.
95. The Tribunal briefly returned to the topic of the applicant's detention and asked why he had been kept in hospital for an entire week for [his injury]. The applicant explained that the technology used to determine the extent of the injury was old and not very good so diagnosing the injury took a long time. He further advised that he had [surgery] after his release from detention.
96. The Tribunal asked the applicant what he thought would happen to him if he went back to Djibouti. He said it was the equivalent of travelling back to the country with a "shroud or death cloth", that is, he would be killed. He said while he had been released in 2011 he was under "continuing investigation" Further, he [travelled to Australia to study] and now he had sought protection. He knew that he was in danger because of the authorities' visits to his house and the fact that after he left the country, his job was "cancelled" immediately.

Country information

Djibouti

97. Djibouti is a republic with a strong elected president and a weak legislature. In April 2010 parliament amended the Constitution to allow President Ismail Omar Guelleh to stay on as president for a third term. He won the elections held on 8 April 2010 with 80 per cent of the

vote. One of two opposition coalitions had boycotted the election until early April; the other coalition did not participate in the election.²

Demonstration and crack down on 18 February 2011

98. Several sources report on the demonstration which was held in Djibouti City on 18 February 2011. According to the US State Department Report on Human Rights Practices:³

On February 18, demonstrators gathered initially in the area of Avenue Nasser, outside the city center of Djibouti City, and then marched to Hassan Gouled Stadium, where the crowd grew to approximately 3,000 persons. Participants listened to opposition speeches calling for President Guelleh to abandon plans for a third term and criticizing the country's 60 percent unemployment rate, high cost of staple foods, and lack of affordable housing. Most participants departed the stadium before the 6:00 p.m. permit deadline imposed by the Ministry of the Interior; however, several hundred remaining young demonstrators began throwing rocks, overturning vehicles, and burning tires. Security forces responded with tear gas and rubber bullets, killing one demonstrator and injuring numerous others.

99. Estimates vary for the number of people arrested during and after the 18 February 2011 protest. The above mentioned US State Department Report states that the estimated number of arrestees ranges from 80 to 200. A Human Rights Watch report⁴, refers to 80 people being arrested. According to Freedom House, 'at least 100' people were arrested.⁵ A French language report by the Association for the Respect of Human Rights in Djibouti claimed that more than 200 protesters were imprisoned.⁶ *Afrol News*⁷ quotes a Djiboutian human rights group stating that 'more than 300 persons' were arrested.⁸ The same article notes that people were arrested during the 18 February protests, 'during the night', and at their homes.⁹
100. In relation to the release of detainees arrested on 18 and 19 February 2011, the country information is contradictory. Human Right Watch reported that some 80 people were brought before a court on 27 February 2011. A judge ordered the release of 40 people. Instead of them being released, the Justice Minister replaced the judge who promptly convicted and sentenced to terms of imprisonment 25 people. It is not clear from the report what happened to the remaining 55.¹⁰ The Observatory for the Protection of Human Right Defenders Annual Report 2011 states that 39 people were released on 6 May and 45 people were still in

² United States Department of State 2012, *Country Reports on Human Rights Practices for 2011 – Djibouti*, 24 May, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186190>> Accessed 18 September 2012.

³ United States Department of State 2012, *Country Reports on Human Rights Practices for 2011 – Djibouti*, 24 May, Section 1(a) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186190>> Accessed 18 September 2012.

⁴ Accessed at <http://www.hrw.org/news/2011/04/04/djibouti-allow-peaceful-protests> on 25 September 2012.

⁵ Freedom House 2012, *Freedom in the World – Djibouti*, 17 August <<http://www.freedomhouse.org/report/freedom-world/2012/djibouti>> Accessed 18 September 2012.

⁶ 'Occupation pacifique de l'ambassade de Djibouti' (Peaceful occupation of the Embassy of Djibouti) 2011, *Alliance Republic Development*, 24 February <<http://www.ard-djibouti.org/Edition%20En%20Ligne%20Fevrier%202011/sommaire.html>> Accessed 18 September 2012

⁷ The report by the Djiboutian human rights group could not be located. *Afrol News* is an independent multilingual news agency covering news from the African continent. The news agency is based in Norway.

⁸ 'Mass arrests stopped further Djibouti protests' 2011, *Afrol News*, 27 February <<http://www.afrol.com/articles/37449>> Accessed 17 September 2012.

⁹ 'Mass arrests stopped further Djibouti protests' 2011, *Afrol News*, 27 February <<http://www.afrol.com/articles/37449>> Accessed 17 September 2012.

¹⁰ 'Djibouti: Allow Peaceful Protests', *Human Rights Watch*, 4 April 2011, accessed at <http://www.hrw.org/news/2011/04/04/djibouti-allow-peaceful-protests> on 25 September 2012.

detention at the end of April 2011. It is possible that this is a typographical error and it should have referred to March instead of May.¹¹ According to a report (in French) the judge, who ordered the release of prisoners on 27 February, was Souleiman Cheick Moussa.¹²

Nagad

101. No reports were found that provide the number of people detained at Nagad prison; however reports indicate that people arrested after the protests were detained at Nagad prison, as well as Gabode prison. *Somaliland Press* commented that the prisons were full of arrested protesters:

The detainees were crammed into squalid cells of the police, gendarmerie and elsewhere. Police, gendarmerie, the center's administrative detention Nagad and other prisons were filled with detained demonstrators.¹³

102. A French language report by the Association for the Respect of Human Rights in Djibouti claimed that Nagad detention centre was 'stuffed to the brim'¹⁴ Other reports estimate that the number of people detained at Gabode prison was only between 20 and 38.¹⁵

103. The Tribunal has found no definitive information regarding the exact location of the National Police Detention Center in Nagad (also known as the Nagad Detention Center); the Centre could not be located using online map services. Sources provide differing information regarding the location of the centre:

- A 2011 French language report by the World Organisation Against Torture asserts that the detention centre at Nagad is five kilometres from the city of Djibouti.¹⁶
- A 2008 leaked diplomatic cable published on Wikileaks notes that the 'National Police Detention Center at Nagad [is] located in the capital, approximately 2 miles south from U.S. Naval Base Camp Lemonier'¹⁷ The report also claims that 'the Nagad Detention

¹¹ accessed at <http://www.unhcr.org/refworld/docid/4ea7a84a2.html>, accessed on 10 September 2012.

¹² "Djibouti: Élections présidentielles tronquées", *FIDH*, 7 April 2011, accessed at <http://www.fidh.org/Djibouti-Elections-presidentielles.html> on 25 September 2012.

¹³ 'DJIBOUTI: 'Guellah step down and Somalia remove your police' – opposition statement' 2011, *Somaliland Press*, 22 February <<http://somalilandpress.com/djibouti-guellah-step-down-and-somalia-remove-your-police-opposition-statement-20366>> Accessed 18 September 2012.

¹⁴ 'Les chroniques du Sergent Ariko. Le récit des manifestations en détail' (The Chronicles of Sergeant Ariko. The story of the events in detail) 2011, *ARDHD*, 21 February <<http://www.ardhd.org/affinfo.asp?articleID=14377>> Accessed 18 September 2012.

¹⁵ Davison, W 2011, 'Djibouti Opposition Parties to Meet to Plan More Anti-Government Protests', *Bloomberg*, 21 February <<http://www.bloomberg.com/news/2011-02-20/djibouti-opposition-parties-to-meet-to-plan-more-anti-government-protests.html>> Accessed 18 September 2012; 'Voice of Djibouti "LVD" ON AIR – Stop the Torture Dictator Ismail Omar Guellah – The Regime is in Panic!' 2011, *Saylici Press*, 26 February <<http://www.saylicipress.net/opinion101/2011/02/26/voice-of-djibouti-lvdon-air-stop-the-torture-dictator-ismail-omar-guelleh-the-regime-is-in-panic/>> Accessed 18 September 2012.

¹⁶ 'Djibouti: Arbitrary arrest and detention of 26 individuals_OMCT is gravely Concerned about Their physical and psychological integrity' 2011, *World Organisation against Torture*, 2 March <<http://www.omct.org/urgent-campaigns/urgent-interventions/djibouti/2011/03/d21142/>> Accessed 19 September 2012.

¹⁷ 'Refugee Surge: Djibouti Feels the Woes of Instability in the Region' 2008, US Embassy Djibouti, 6 May, Wikileaks <<http://wikileaks.org/cable/2008/05/08DJIBOUTI437.htm>> Accessed 19 September 2012.

Center can temporarily hold approximately 500 people', and the security of the detention centre is run by the Djiboutian National Police.¹⁸

- The 2007 *Annual Report* of the Observatory for the Protection of Human Rights Defenders provides the location of Nagad Detention Centre as '40 kilometres from the city of Djibouti'.¹⁹
- A 2002 report from the International Confederation of Trade Unions places the location of the centre at 'about 10km from the capital'.²⁰

The Movement for Democratic Renewal and Development or Mouvement pour le renouveau démocratique et le développement (MRD)

104. The Movement for Democratic Renewal and Development or Mouvement pour le renouveau démocratique et le développement (MRD or MRDD) is a small party listed in Djibouti entry of the *Political Handbook of the World* under the heading "Other Parties". It is described as follows:²¹

Legalized in 1992, the MRDD is an offshoot of the Party of Democratic Renewal (PRD), which had been formed in 1992 and served as a leading opposition grouping. MRDD leader Daher Ahmed Farah is editor of the opposition weekly *Le Renouveau*, which has been the object of repeated closures by the government.

105. In August 2005 the Canadian Immigration and Refugee Board reported that according to some sources:

Houssein Ahmed Farah, brother of Daher Ahmed (editor of *Le Renouveau Djiboutien*), and journalist with the same newspaper, was arrested by police officers on 8 June 2004 during a procession of the Djibouti president's wife in Djibouti city (IFEX 15 June 2004; RSF 15 June 2004; *Le Renouveau Djiboutien* 10 June 2004.). Described as being one of the most active and dynamic executive members of the Movement for Democratic Renewal and Development (MRD) (ibid.), Houssein Ahmed Farah was detained in Gabode central prison in "harsh" conditions while no visits or contacts with other persons were allowed (IFEX 15 June 2004; RSF 15 June 2004). Houssein Ahmed Farah was released on 17 June 2004 (ibid. 18 June 2004; *Le Renouveau Djiboutien* 24 June 2004).²²

In addition, a 3 July 2003 *Le Renouveau Djiboutien* report stated that four MRD members, namely Pauline Mohamed Abdou, Farah Abadid Hildid, Farah Said Farah and Hassan Omar Robleh, were given a two-month suspended sentence and released from Gabode prison where

¹⁸ 'Refugee Surge: Djibouti Feels the Woes of Instability in the Region' 2008, US Embassy Djibouti, 6 May, Wikileaks <<http://wikileaks.org/cable/2008/05/08DJIBOUTI437.htm>> Accessed 19 September 2012.

¹⁹ Observatory for the Protection of Human Rights Defenders 2007, *Annual Report 2007*, p.50 <http://www.omct.org/files/2008/09/4907/report2007obs_eng.pdf> Accessed 19 September 2012.

²⁰ International Confederation of Trade Unions 2002, *Djibouti: Annual Survey of Violations of Trade Unions Rights*.

²¹ *Political Handbook of the World 2012: Djibouti*, accessed at http://library.cqpress.com/phw/document.php?id=phw2012_Djibouti&type=toc&num=52 on 27 September 2012.

²² Immigration and Refugee Board of Canada, *Djibouti: Treatment by government authorities of members of the Movement for Democratic Renewal and Development (Mouvement pour le renouveau démocratique et le développement-MRD) and those of the Party for Democratic Renewal (Parti du renouveau démocratique - PRD), including their family members (2000-August 2005)*, 11 August 2005, accessed at: <http://www.unhcr.org/refworld/docid/440ed6f22.html> on 26 September 2012.

they had been detained since 25 June 2003 for having displayed a poster demanding the release of Daher Ahmed Farah, president of MRD (Le Renouveau Djiboutien 3 July 2003).

106. The 2011 *Political Handbook of the World* stated that “the MRDD was said to have folded in 2008”.²³ According to another research paper prepared by the Canadian Immigration and Refugee Board, the MRD was banned in July 2008 after the President of Djibouti, Ismail Guelleh, accused Daher Farah of encouraging neighbouring Eritrea to invade Djibouti. The President ordered that the assets of the MRD be “liquidated”:

According to the LesNouvelles.org article, the MRD, its leader and the party's newspaper, Le Renouveau, have been subject to the ... "wrath" of the Djiboutian authorities (11 July 2008). Two sources ... state that since the MRD disbandment in 2008, its members have been working underground (ARDHD 4 Nov. 2010; LDDH 4 Nov. 2010).²⁴

107. On 15 August 2012, the *Committee to Protect Journalists* reported that Mr Houssein Ahmed Farah had been arrested a few days earlier.²⁵

FINDINGS AND REASONS

108. Based on the applicant's passport, a copy of which was provided together with his application for a Protection Visa, and in the absence of any evidence to the contrary the Tribunal finds that the applicant is a citizen of Djibouti and has assessed his claims against that country.
109. Overall, the Tribunal found the applicant to be a credible witness who gave evidence in a consistent and coherent manner. While there were some inconsistencies and gaps in his evidence, they were of a minor nature.
110. The applicant claims to be a member of the opposition party ‘Movement for Democratic Renewal and Development’ (MRDD or MRD, *Mouvement pour le renouveau démocratique et le développement* in French). Based on the country information (paragraph 104), the Tribunal finds that the leader of the MRD is Mr Daher Ahmed Farah. Based on the applicant's and the witness's evidence, and DFAT advice (paragraphs 55-56), the Tribunal accepts that the witness with whom it spoke on the telephone in Mr Daher Ahmed Farah, who lives in exile in Belgium.
111. The applicant claims to fear persecution for reasons of his membership of the opposition MRD, and his membership of three particular social groups, namely, MRD members and supporters; his family who are supporters of the MRD (and [a family member] was killed because of his association with the MRD); and people who have sought asylum abroad. This particular social group was not claimed until the hearing before the Tribunal during which it was the witness Mr Farah who first raised that claim. The claim was repeated by the applicant himself towards the conclusion of the hearing when he was asked why he feared returning to

²³ *Political Handbook of the World 2011: Djibouti*, accessed at http://library.cqpress.com/phw/document.php?id=phw2011_Djibouti&type=hitlist&num=0 on 27 September 2012.

²⁴ Immigration and Refugee Board of Canada, *Djibouti: Whether the Movement for Democratic Renewal and Development (Mouvement pour le renouveau démocratique et le développement, MRD) was disbanded by the 9 July 2008 presidential decree; treatment of MRD members by authorities; the existence of secret detention centres, including those designated as Brigades*, 19 November 2010, accessed at <http://www.unhcr.org/refworld/docid/4de46bd52.html> on 26 September 2012.

²⁵ *Committee to Protect Journalists*, 15 August 2012, accessed at <http://www.cpj.org/africa/djibouti/> on 27 September 2012.

Djibouti. As the Tribunal has concluded that the applicant has a well-founded fear of persecution for reasons of his political opinion, it is not necessary to consider any of the other Convention grounds.

112. In terms of the experience of past harm, the applicant claims that on 18 February 2011 he was picked up together with other opposition supporters and taken to Nagad police station / prison. During the interview with the delegate the applicant claimed that a total of 300 people were arrested in Djibouti City and about 80-90 were taken to Nagad; and that he was taken in in a group of about 30. During the hearing before the Tribunal he gave more or less the same evidence: about 80 to 90 people were detained at Nagad, and that he personally saw only about 30. He provided figures in relation to the number of people at the main prison of Djibouti City, Gabode, he had heard that a total of 750 were in that prison which has a capacity of 500.
113. In light of the divergent country information about the total number of people arrested on 18 and 19 February 2011 (paragraph 99), the Tribunal accepts the applicant's evidence that he was detained with about 30 other people. He does not have personal knowledge about the total number of people detained at Nagad, Gabode or the total number of arrests in Djibouti on 18 February 2011 and the Tribunal makes no findings in relation to those numbers.
114. The applicant claims that as he was being "loaded" on the truck that eventually took him to Nagad, the police [caused an injury to him]. The Tribunal accepts this claim based on the applicant's oral and written evidence as well as two brief medical reports. It is true, as the delegate pointed out in his decision, that the medical reports by [Dr B] and [Dr C] do not prove how the injury was received and are partly based on information provided to the medical specialists by the applicant himself. The Tribunal is of the view that while the medical reports cannot conclusively prove that the applicant suffered the [injury] in the manner in which he claims, they should be given appropriate weight to the extent that they corroborate the applicant's story. The Tribunal also accepts that the applicant was assaulted on the way to Nagad prison and denied medical attention for several hours despite being in agonising pain.
115. The Tribunal accepts that the applicant was among 40 or so people whose release a judge ordered on 27 February 2011. The country information states that the authorities disregarded the court order and returned the prisoners to Nagad. The country information is unclear as to who was released at what point in time (paragraph 100). In the absence of evidence to the contrary, the Tribunal accepts the applicant's evidence that he was released on [a date in] March 2011 without re-appearing in court. The Tribunal accepts that while the applicant was imprisoned, he was kept in substandard conditions and assaulted, albeit not seriously, because of his existing [injury] which he sustained en route to Nagad.
116. In summary, the Tribunal is satisfied that the applicant was physically assaulted, injured, interrogated repeatedly and detained between 18 February and [a date in] March 2011 for reason of his anti-government political opinion and his membership of the MRD. The government did not have proof of the applicant's membership of the MRD; nevertheless, the Tribunal finds that the applicant suffered harm because of the authorities' suspicion that the applicant was a member of the MRD and their actual knowledge of his participation in the anti-government demonstration on 18 February 2011.
117. The Tribunal found the evidence of Mr Farah to be compelling and consistent with the applicant's evidence in almost all respects except in relation to the number of MRD members

whom the applicant “managed” in [District 3] and the time of the applicant’s release from prison. The Tribunal has formed the view that Mr Farah genuinely overestimates the strength of the MRD in Djibouti. The Tribunal agrees with the applicant that as Mr Farah has not lived in Djibouti since 2004, it is only natural to expect that he would not be up to date with the activities of the MRD at the grassroots level. The Tribunal found the applicant's own evidence that he was in charge of [number deleted: s.431(2)] MRD members to be credible. He was able to name those [people] and to state their occupations effortlessly.

118. In relation to the date of the applicant’s release from prison, the date suggested by Mr Farah, 27 February 2011, is the date when the applicant’s release was first ordered by a judge (paragraph 100). The Tribunal is satisfied that the failure of the witness to remember the exact date of the applicant’s release (an event which took place more than 18 months ago) does not diminish Mr Farah’s overall credibility as witness.
119. The country information is unequivocal that there are significant deficiencies in the way the country is governed. The US State Department Report speaks of "use of excessive force, including torture by security forces; harsh prison conditions; arbitrary arrest and prolonged pre-trial detention; denial a fair public trial; interference with privacy rights; restrictions on freedom of speech, press, assembly and association”.
120. The MRD, a party to which the Tribunal accepts that the applicant is a member, was banned in 2008 and the ban has not been lifted (paragraph 106). It is a small party with few members. The applicant’s evidence was that he was in charge of only [a small number of] members of the MRD and yet he was reporting to [Mr D] who was [an important person] in the MRD in Djibouti; Mr Farah remains the leader in exile.
121. The applicant himself has provided an article, the veracity of which the Tribunal accepts, that Mr Abib Ali Doualeh, was arrested and subjected to serious physical ill-treatment while in detention (paragraph 77). The Tribunal further accepts that Mr Doualeh played or plays a no more prominent role in the MRD than the applicant. The Tribunal accepts Mr Farah’s evidence, corroborated by country information (paragraph 107) that his own brother was arrested in August 2012. The MRD remains an illegal party in Djibouti (paragraph 106).
122. The Tribunal notes the concerns expressed by the delegate in relation to the applicant's ability to have his passport renewed in 2010, get nominated to attend a course in Australia and depart Djibouti without any problems. The applicant in his statutory declaration of [a date in] September 2012 provided plausible explanations in relation to all of the above.
123. The Tribunal finds that the applicant was able to remain employed by the government because prior to February 2011 the government had no knowledge of his membership of the MRD. After his arrest on 18 February 2011 the authorities still had no more than a suspicion that the applicant was an MRD member. The applicant was released in March 2011 due to the lack of evidence against him.
124. The Tribunal accepts that only one person [within his employer] knew of his MRD membership and that was [Mr A]. A letter contained in the applicant’s overseas file confirms that it was a certain [Mr A], who nominated the applicant for the course in Australia. Despite the fact that during the Tribunal hearing the applicant was unable to provide [Mr A]’s last name as it appeared in the letter on file ([name deleted: s.431(2)]), the Tribunal finds that [Mr A] was personally known to him in a social capacity and was willing to help the applicant get out of the country. The Tribunal finds that the applicant's inability to remember [Mr A]’s last

name might have been due to his general anxiety at the hearing or his post-traumatic stress disorder.

125. The Tribunal finds that the applicant was able to get nominated for the course in Australia and to leave Djibouti without any hindrance because, if the applicant himself put it in his statutory declaration [dated in] September 2012, "Djibouti is still a very underdeveloped, poor country. The communication channels between various government authorities are still very primitive and ineffective... There is nothing like a central government database".
126. Opponents of the government, including MRD members, are persecuted irregularly but routinely. The MRD is a small party with relatively few members and, as the Tribunal has already found, the applicant himself and other members of the party have suffered serious harm in the past. The MRD remains "disbanded" or prohibited. The Tribunal accepts that there is a real chance that the authorities will find out that the applicant is an actual member of the MRD and harm him for that reason.
127. The country information indicates that anti-government activists are routinely harassed, imprisoned and tortured or mistreated in detention. The Tribunal accepts that if the applicant were to return to Djibouti now in the reasonably foreseeable future, there is a real chance that he would be re-arrested, mistreated and sentenced to a term of imprisonment because of his anti-government political views and membership of the MRD. The Tribunal finds that this would constitute serious harm under section 91R(1), amounting to persecution. The Tribunal finds that the applicant's political opinion, in support of the MRD and against the government, would be the essential and significant reason for the persecution. The Tribunal further finds that any such treatment would be systematic and discriminatory.
128. The Tribunal therefore finds that the applicant has a well-founded fear of persecution for reasons of his political opinion if he were to return to Djibouti now or in the reasonably foreseeable future.

State protection

129. For the reasons set out above, the Tribunal accepts that the agent of the feared persecution will be the Djibouti authorities for reasons of the applicant's actual or imputed political opinion. The Tribunal is therefore satisfied that state protection against the feared persecution in accordance with international standards would not be available to the applicant in Djibouti.

Internal relocation

130. Djibouti is a small country. Its territory is 23,200km² The population is less than 1 million people (925,000 according to UN estimates and 775,000 according to a US census) and at least 600,000 live in Djibouti²⁶ where the applicant resided prior to leaving the country. The rest of the country, with a total population of between 175,000 and 325,000 people is sparsely populated. The applicant fears harm from the central government and there is nowhere inside the territory of the country where the authorities would not be able to find the applicant and harm him. The Tribunal accepts that there is nowhere in Djibouti where, objectively, there is not a real chance of the feared persecution in the reasonably foreseeable future. The Tribunal

²⁶ *Political Handbook of the World 2012: Djibouti*, accessed at http://library.cqpress.com/phw/document.php?id=phw2012_Djibouti&type=toc&num=52 on 27 September 2012.

is therefore satisfied that internal relocation is not available to the applicant to avoid persecution.

Safe third country

131. There is no evidence before the Tribunal that the applicant has a right to enter and reside in any third country for the purposes of s.36(3) of the Act and, accordingly, the Tribunal finds that he does not have any such right.

CONCLUSIONS

132. The Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

133. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.