

1400923 [2015] RRTA 168 (13 April 2015)

DECISION RECORD

RRT CASE NUMBER: 1400923
COUNTRY OF REFERENCE: Sri Lanka
TRIBUNAL MEMBER: David McCulloch
DATE: 13 April 2015
PLACE OF DECISION: Sydney
DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Statement made on 13 April 2015 at 9:12am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

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 visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Sri Lanka, applied for the visa [in] December 2013 and the delegate refused to grant the visa [in] January 2014.
3. The applicant appeared before the Tribunal on 2 April 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil (Sri Lankan) and English languages.
4. The applicant was represented in relation to the review by his registered migration agent.

CONSIDERATION OF CLAIMS AND EVIDENCE

5. The criteria for a protection visa are set out in s.36 of the Act and 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 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
6. 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 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).
7. 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.
8. 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').

9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
10. The issue in this case is the credibility of the applicant and whether, on his accepted claims, he fulfils the criteria for protection. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.
11. The Tribunal's assessment is informed by information including: the Department's file relating to the applicant which includes the record of his entry interview conducted through a Tamil interpreter [in] September 2013; the audio recording of his Department interview held [in] October 2013, conducted through a Tamil interpreter, which the Tribunal has listened to; a copy of his Protection visa application form and documents provided in support of that application and the review application. The Tribunal's assessment is also informed by its detailed exploration of the applicant's claims when he appeared before it on 2 April 2015, by video link. During that appearance he communicated with the assistance of a Tamil interpreter. The applicant's representative was present by telephone. Neither the applicant or his representative identified any limitations in the applicant's capacity to communicate with the Tribunal or participate in the review. The Tribunal has had regard to a range of independent information referred to in this decision.

Background and claims

12. The applicant arrived in Australia at [location] [in] July 2012.
13. The applicant made the following claims in a statutory declaration provided as part of his application for a Protection visa.
14. The applicant was born on [date] in a village, [Village 1], [Jaffna District], Sri Lanka. He is a Sri Lankan citizen and a Tamil of Hindu religion. He does not have citizenship nor the right to reside in any other country. The applicant has [siblings]. Both the applicant's parents are deceased. The applicant completed year [grade] of secondary education in [year]. The applicant was displaced for approximately 12 months during the civil conflict and then returned to [Village 1]. The applicant was married [in] 1999 and they have [children]. The applicant travelled to [another country] in 2004 for work and returned to Sri Lanka in 2005. In 1997, the applicant began work as a fisherman until 2011. From 2011 to 2012 the applicant worked in [workplace] until he departed Sri Lanka.
15. In March 2012, the applicant was fishing with a friend and they were approached by the Navy who asked for IDs. The Navy returned his friend's ID but the applicant was told to go to the camp at 3pm to pick it up. The applicant took his wife and children to the camp with him. The applicant was told that people from his village had reported that he was a member of the LTTE, and that the applicant's family were LTTE supporters. The applicant denied this. The Navy said that they knew the applicant had been in Vani in 2006 [an LTTE controlled area]. The applicant said that this was because he was

displaced because of the war. The applicant was not believed and was kicked and punched and insulted.

16. The applicant was left in the room for half an hour, following which a man in civilian clothes came in and told the applicant he would not be harmed if he told the truth. The applicant repeated that he had never had anything to do with the LTTE, and neither had his family. He was told that he would be released but he would have to do report each Sunday and sign the register.
17. The applicant secured employment with a company and was told to go to [a location to do work]. This work was not consistent, so the applicant would fish in between. In July 2012, the applicant accepted to go to [this location to work]. The applicant was unable to take mobile phones into the [workplace], because it was under the control of the army. When the applicant returned home, his wife told him that he was getting abusive phone calls from the camp because he had missed reporting while he was away, so the applicant immediately went and signed the register. The applicant was again questioned about the LTTE, he was let go.
18. The mere fact that the applicant had to sign the register was sign of danger to him, because many who were ordered to do this eventually disappeared, so he decided to leave Sri Lanka and departed [in] July 2012.
19. The applicant fears that he will be arrested and detained and killed if he returns to Sri Lanka. He fears that he will be suspected as an LTTE sympathizer, and his escape to Australia will reinforce suspicion. The applicant has a fear due to the fact that he left Sri Lanka unlawfully.

Hearing, credibility and findings

20. In the hearing, the applicant indicated that living at his home in [Village 1] are his wife and [children]. He and his family have lived in that home since 2000, except for a period in around 2006 when the applicant and his family were displaced due to the war, and they moved to Vani, which was occupied by the LTTE. They lived in a displaced persons camp, which was established by residents. The applicant indicated that he had no involvement with the LTTE whilst in Vani.
21. The applicant in the hearing recounted the events of March 2012. The applicant indicated that he was questioned by one man in civilian clothes, and there were two other men in the room. The applicant was told that people from the village had indicated that he had been involved in the LTTE and trained by them when he was in Vani. The applicant denied this. He said he was beaten by one of the two other men in the room. The applicant continued to deny his involvement with the LTTE. The applicant was made to wait outside for a period of time. Eventually the man in civilian clothes who questioned him came out and indicated that he would be released, but that he needed to report every week.
22. The applicant said that every week he would report on a Sunday. He could report at any time on that day. He said he would be taken into a room where the book that needed to be signed was located. When that happened, he would be questioned by whoever from the CID was there at the time. They would tell him to admit his involvement in the LTTE and that that would then avoid the inconvenience of him having to come and sign

every week. The applicant said that the treatment of him was verbally intimidating, but he was not harmed in any of this questioning.

23. The applicant indicated that his work commitments at the [workplace] were such that on two occasions he missed reporting on a Sunday. The Tribunal asked the applicant if he explained to the CID personnel in advance that he would not be able to report due to work. The applicant responded that he did, but they said that that was not a legitimate excuse, and he still had to report. The applicant said he had no choice but to work as he needed the income to support his family. The applicant said that for the times he was unable to report on the Sunday, as soon as he returned home, he would go to the CID and report late. He indicated that CID personnel would have telephoned his wife after he did not report.
24. The applicant indicated that after the applicant has missed two sign-ins after his departure for Australia, that the CID phoned the applicant's wife asking where he was. The applicant's wife said he had left by boat but did not know for where.
25. The applicant indicated that in July 2013, his [nephew] was told to report for questioning, which he did with his mother. The applicant's nephew was asked about the applicant's whereabouts. He was also asked whether the applicant had any involvement in the LTTE. The applicant's nephew said that he was not aware of that the applicant had any involvement with the LTTE. The applicant's nephew was told not to leave the country.
26. The applicant gave evidence in the interview with the delegate of the Minister in relation to the questioning of his nephew, consistent with the evidence given in the hearing.
27. The applicant indicated that [his nephew and his mother] have now left Sri Lanka. They travelled to [another country] and then on to [a third country].
28. The applicant was asked if he was aware of any other questioning by authorities either in relation to the applicant, or in relation to the fact that his nephew had left the country. The applicant indicated that he was not aware of any other enquiries other than the ones he had recounted.
29. The applicant indicated that his family in Sri Lanka are in a fearful state given the ongoing interest by authorities in the applicant, and given what has happened to the applicant's nephew.
30. In considering overall the credibility of the applicant the Tribunal is cognizant of the words of Beaumont J in *Randhawa v MILEA* (1994) 52 FCR 437 at 451 in which he stated that 'in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for...[but this should not lead to]...an uncritical acceptance of any and all allegations made by supplicants'. The Tribunal notes also the remarks of Gummow and Hayne JJ in *Abebe v Commonwealth of Australia* (1999) 197 CLR 510 at 191 where it was said that 'the fact that an applicant for refugee status may yield to temptation to embroider an account of his or her history is hardly surprising'. The Tribunal has sought to adopt the liberal approach outlined in these cases.

31. The applicant was a credible and impressive witness. He provided evidence with clarity and detail, and conveyed events in a way that caused the Tribunal to consider that he was speaking from actual experience. In the Tribunal's assessment there was little exaggeration or overstatement in the applicant's evidence.
32. However, there were some difficulties in the applicant's evidence over time. In the applicant's written statement, it is indicated that after the first round of questioning by the CID, after he was made to wait for a period, there was more sustained questioning asserting that the applicant was a member of the LTTE. In the Tribunal hearing, there was a different slant on the applicant's account. He indicated that after he was made to wait he was simply told that he could leave but had to undertake reporting requirements.
33. The Tribunal also notes that the applicant's written statement made no reference to his wife being telephoned by the CID after the applicant had left for Australia. When this was put to the applicant in the hearing, he said he thought he had conveyed information.
34. The Tribunal also notes that the applicant evidence relating to the questioning of his nephew was not contained in the written statement, but that is explicable by the fact that the statement predates his nephew's questioning.
35. The minor problems in the applicant's evidence referred to do not detract, in the Tribunal's view, from its assessment that the applicant provided a true and honest account of what has happened to him and his family.
36. The Tribunal is satisfied of the following:
 - the applicant is a citizen of Sri Lanka, and accordingly his claims will be assessed against Sri Lanka;
 - the applicant left Sri Lanka unlawfully by boat;
 - the applicant and his family have lived predominantly in [Village 1], in the Northern Province of Sri Lanka;
 - during the civil conflict, in around 2006, the applicant and his family relocated to Vani, which was occupied by the LTTE. They lived in a displaced persons camp;
 - the applicant had no involvement with the LTTE whilst in Vani, or otherwise;
 - in March 2012, the applicant was made to report to the CID. The applicant was accused of having been trained by the LTTE, and a supporter, when he was in Vani. He was told that someone in his village had provided this information. The applicant denied this. The applicant was detained, beaten. Eventually, the applicant was released on the condition that he report every week;
 - when the applicant would report weekly, he would be pressured to disclose his LTTE involvement, and told that if he did so that would remove the inconvenience of having to report;

- the applicant missed reporting on about two occasions, as work arrangements changed preventing him from reporting;
- the questioning and treatment of the applicant, the ongoing reporting requirements, and the fact that the applicant perceived that this put him at a heightened risk of harm, caused applicant to leave Sri Lanka;
- after the applicant's departure for Australia, CID have spoken by phone to the applicant's wife, who told the CID that the applicant had left Sri Lanka by boat;
- the applicant's nephew in July 2013 was questioned by CID about the applicant's whereabouts, and whether the applicant was involved in the LTTE. The applicant's nephew, and [his mother], have left Sri Lanka by [another country] for [a third country].

Refugees Convention

37. The Tribunal commences by considering the risk of harm to the applicant based on a combination of the applicant's race and political opinion and being a returned asylum seeker.

Information on the human rights situation in Sri Lanka and risks faced by Tamils

38. The US State Department has provided the following summary of the situation in Sri Lanka in 2013:

The major human rights problems were: attacks on, and harassment of, civil society activists, journalists, and persons viewed as sympathizers of the Liberation Tigers of Tamil Eelam (LTTE) terrorist organization by individuals allegedly tied to the government, creating an environment of fear and self-censorship; involuntary disappearances and a lack of accountability for thousands who disappeared in previous years; and widespread impunity for a broad range of human rights abuses, particularly torture by police and attacks on media institutions and the judiciary. Disappearances and killings continued to diminish in comparison with the immediate postwar period. Nevertheless, attacks, harassment, and threats by progovernment loyalists against critics of the government were prevalent, contributed to widespread self-censorship by journalists, and diminished democratic activity due to the general failure to prosecute perpetrators.¹

39. The report goes on to indicate:
- Discrimination against the ethnic Tamil minority continued;²
 - There were reports that the government, its agents or its paramilitary allies committed arbitrary or unlawful killings. The number of those killings appeared to decrease from the previous year;³
 - Enforced and voluntary disappearances continued to be a problem. While no official statistics exist, an incomplete study of open-source media over a seven

¹ US State Department, Sri Lanka 2103 Human Right Report, p.1

² *Ibid*, p.2

³ *Ibid*, pp2-3

month period in 2013 showed abductions of at least 17 individuals in 12 events, most of them in Colombo or the Northern or Eastern provinces;⁴ and

- There were credible reports that police and security forces tortured and abused citizens. In the Northern and Eastern provinces, 'military intelligence and other security personal, sometimes allegedly working with paramilitaries, were responsible for the documented and undocumented detention of civilians suspected of LTTE connection. Detention reported was followed by interrogation that sometimes included mistreatment or torture.'⁵

40. The DFAT Country Report on Sri Lanka, current as at 16 February 2015, to which the Tribunal must have regard, variously states:

[Treatment of Tamils]

Many Tamils, particularly in the north and east, express a fear of monitoring, harassment, arrest and detention by security forces. For example, during the civil conflict, more Tamils were detained under emergency regulations and the PTA [Prevention of Terrorism Act] than any other ethnic group. This was largely due to LTTE members and supporters almost all being Tamil. However, there were also likely instances of discrimination in the application of these laws with LTTE support at times imputed on the basis of ethnicity... There are no published statistics on the numbers or ethnicity of those arrested under the PTA. However, DFAT assesses that there are currently fewer individuals detained under the PTA than there were during the conflict. The new Sirisena government has reportedly asked for a list of all detainees held under the PTA for review, and has said it is willing to work with the International Committee of the Red Cross in providing greater access to detainees and establishing a comprehensive database on detainees.

A number of those intending to leave Sri Lanka and travel to Australia by irregular means surveyed by the Australian National University's Development Policy Centre, cited persecution and torture as reasons for leaving. This included 37 per cent who said they wanted to leave Sri Lanka because of 'persecution in Sri Lanka' and 36 per cent who cited 'torture in Sri Lanka'. DFAT assesses that these fears are significant 'push factors' for external migration.

However, the cessation of the forced registration of Tamils suggests the trend of monitoring and harassment of Tamils in day-to-day life has generally eased since the end of the conflict. According to the United Nations' High Commissioner for Refugees' (UNHCR) eligibility guidelines released in July 2010, due to the improved human rights and security situation there was 'no longer a need for group based protection mechanisms or for the presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country'.⁶

... **[Disappearances]**

There also have been credible reports of enforced or involuntary disappearances since the end of the conflict. A total of 126 complaints of disappearances were lodged with the HRCSL [Human Rights Commission of Sri Lanka] in 2012, down from a total of 1,030 in 2008, although some of these complaints have since been resolved.⁷

⁴ *Ibid*, p.6

⁵ *Ibid*, p.6

⁶ DFAT Country Report, Sri Lanka (16 February 2015), paras 3.10-3.12

⁷ *Ibid*, paras 4.7

... [Torture]

In practice, DFAT assesses that there have been credible reports of torture carried out by Sri Lankan security forces, in some cases resulting in death. Reports of torture come from a wide range of actors, including political activists, suspects held on criminal charges and civilians detained in all parts of Sri Lanka, including in relation to suspected LTTE connections. Incidents of torture are not confined to any particular ethnic, religious or political group.

Torture may be used to extract information or confessions from suspects. Although evidence obtained by torture is generally inadmissible in courts in Sri Lanka, for those suspects held under the PTA, all confessions obtained at or above the rank of Assistant Superintendent of Police are admissible in court.⁸

41. The UK Home Office *Operational Guidance Note – Sri Lanka* dated April 2012 makes the following statement which indicates that Tamils may experience discrimination in accessing government employment and housing:

Both local and Indian-origin Tamils maintained that they suffered long-standing, systematic discrimination in university education, government employment, and other matters controlled by the government. According to the SLHRC [Sri Lanka Human Rights Commission], Tamils also experienced discrimination in housing. Landlords were required to register any Tamil tenants and to report their presence to the police, although in practice many landlords did not comply. Tamils throughout the country, but especially in the conflict-affected north and east, reported frequent harassment of young and middle-age Tamil men by security forces and paramilitary groups.⁹

42. The UNHCR's July 2010 report 'Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka'¹⁰ states, in part:

These Guidelines are issued in the context of the improved human rights and security situation following the end of the armed conflict between the Sri Lankan Army (SLA) and the Liberation Tigers of Tamil Eelam (LTTE) in May 2009, and are intended for the use of UNHCR and State adjudicators in the assessment of claims by Sri Lankan asylum-seekers. They supersede the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka and the subsequent Note on the Applicability of the 2009 Sri Lanka Guidelines. The Guidelines contain information on the particular profiles for which international protection needs may arise in the current context. Given the cessation of hostilities, Sri Lankans originating from the north of the country are no longer in need of international protection under broader refugee criteria or complementary forms of protection solely on the basis of risk of indiscriminate harm. In light of the improved human rights and security situation in Sri Lanka, there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country. It is important to bear in mind that the situation is still evolving, which has made the drafting of these Guidelines particularly complex...".

43. The most recent version of the Guidelines, issued on 21 December 2012 states in part: UNHCR has carefully analysed the relevant developments in Sri Lanka since the publication of the 2010 Guidelines, as well as newly available information on the

⁸ *Ibid*, paras 4.17-4.18

⁹ UK HOME OFFICE 2012, *OPERATIONAL GUIDANCE NOTE*, APRIL, SECTION 3.6.4

¹⁰ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, 5 July 2010, <http://www.refworld.org/docid/4c31a5b82.html>

conflict period. All claims lodged by asylum-seekers need to be considered on their merits, according to fair and efficient status determination procedures and up-to-date and relevant country of origin information. UNHCR considers that the risks facing individuals with the profiles outlined below require particularly careful examination, and that they are likely to be in need of international refugee protection, depending on the individual circumstances of the case. This listing is not necessarily exhaustive and is based on information available to UNHCR at the time of writing. Therefore, a claim should not automatically be considered as without merit simply because it does not fall within any of the profiles identified below. Certain claims by asylum-seekers from Sri Lanka may require examination for possible exclusion from refugee status.

Recent reports have been published detailing exposure to serious violence directed against people from several of the risk profiles listed below, including in some cases mistreatment amounting to torture.

The psychological and physical consequences of past exposure to such experiences in an environment of past prolonged armed conflict, serious human rights violations and military occupation, needs to be appropriately taken into account in the assessment of a claim¹¹.

... At the height of its influence in Sri Lanka in 2000-2001, the LTTE controlled and administered 76% of what are now the northern and eastern provinces of Sri Lanka. Therefore, all persons living in those areas, and at the outer fringes of the areas under LTTE control, necessarily had contact with the LTTE and its civilian administration in their daily lives. Originating from an area that was previously controlled by the LTTE does not in itself result in a need for international refugee protection in the sense of the 1951 Convention and its 1967 Protocol.

However, previous (real or perceived) links that go beyond prior residency within an area controlled by the LTTE continue to expose individuals to treatment which may give rise to a need for international refugee protection, depending on the specifics of the individual case. The nature of these more elaborate links to the LTTE can vary, but may include people with the following profiles:

- 1) Persons who held senior positions with considerable authority in the LTTE civilian administration, when the LTTE was in control of large parts of what are now the northern and eastern provinces of Sri Lanka;
- 2) Former LTTE combatants or “cadres”;
- 3) Former LTTE combatants or “cadres” who, due to injury or other reason, were employed by the LTTE in functions within the administration, intelligence, “computer branch” or media (newspaper and radio);
- 4) Former LTTE supporters who may never have undergone military training, but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE;
- 5) LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan diaspora that provided funding and other support to the LTTE;

¹¹ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, 21 December 2012, <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?docid=50d1a08e2>, p25

6) Persons with family links or who are dependent on or otherwise closely related to persons with the above profiles.¹²

44. The 2012 version of the Guidelines identifies a list of general risk profiles which may give rise to a need for protection. That list is not exhaustive:

(i) persons suspected of certain links with the Liberation Tigers of Tamil Eelam (LTTE); (ii) certain opposition politicians and political activists; (iii) certain journalists and other media professionals; (iv) certain human rights activists; (v) certain witnesses of human rights violations and victims of human rights violations seeking justice; (vi) women in certain circumstances; (vii) children in certain circumstances; and (viii) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals in certain circumstances.¹³

45. Those Guidelines caution that ethnicity and geographical origin may still have some significance:

Within each of the risk profiles described, there is an ethnic dimension to their vulnerability. Whereas persons belonging to the Sinhalese majority may fall within the risk profiles, generally members of the minority Tamil and, to a lesser extent, Muslim communities are reportedly more often subjected to arbitrary detention, abductions or enforced disappearances. Other human rights issues, such as sexual and gender-based violence and violations of housing, land and property rights, also disproportionately affect members of ethnic minorities. In addition to a person's ethnicity, the place of origin may also be a relevant factor in the assessment of risk.¹⁴

46. The Tribunal also refers to the 2013 decision of the *United Kingdom Upper Tribunal (Immigration and Asylum Chamber) in GJ and others (post-civil war returnees) Sri Lanka CG* [2013] UKUT 00319 (AIC) which comprehensively considered the available information on the treatment of Tamils in Sri Lanka and the treatment of those returning. It is a decision that is designed to guide UK decision makers. The decision qualifies the risk category relating to those with actual or perceived connections to the LTTE. It states that the establishment of former links to the LTTE are not determinative of an asylum claim today :

It is not established that previous LTTE connections or sympathies (whether direct or familial), are perceived by the GOSL as indicating now that an individual poses a destabilising threat in post-conflict Sri Lanka; as indicated in the UNCHR Guidelines and in the evidence before us, the extent to which past links predict future adverse interest will always be fact specific, and for those with close links to the LTTE's operations during the war, the exclusion clauses may well be relevant.¹⁵

...

The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.¹⁶

¹² *Ibid* p.26-27

¹³ *Ibid*, p.5

¹⁴ *Ibid* p.26

¹⁵ *GJ and others (post-civil war returnees) Sri Lanka CG [2013] UKUT 00319 (AIC)*, para 325

¹⁶ *Ibid*, para. 356(3)

47. The decision lists risk categories of those who are subject to persecution or serious harm, including:

Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.¹⁷

48. It goes on to state:

The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.¹⁸

Independent evidence as to the treatment of failed asylum seekers

49. The Sri Lankan government has ongoing concern of Tamil support of the LTTE cause, particularly from the Tamil diaspora in Europe and North America,¹⁹ Authorities are concerned by Sri Lankans living overseas and sending money back to Sri Lanka for the LTTE cause.²⁰ This has led to claims being made by a number of human rights groups that returning asylum seekers will be imputed as LTTE supporters and this will give rise to a real chance of persecution or significant harm.²¹
50. Human Rights Watch in two reports in 2012 documented 21 cases in which individuals deported from the United Kingdom had suffered arbitrary arrest and torture upon their return to Sri Lanka.²² Freedom from Torture reported in the same year on similar claims of United Kingdom deportees.²³ A UK Home Office report contested the findings in these reports noting variously that there was insufficient evidence to substantiate the claims, that details left 'much to be desired', and that some of the claims 'lacked substance'.²⁴ The UK Home Office concluded after considering this report that it was safe in general to return Tamil failed asylum seekers to Sri Lanka.²⁵

¹⁷ *Ibid*, para.356(7)(a)

¹⁸ *Ibid* para.356(8)

¹⁹ 'Sri Lanka's ethnic problem' 2012, UNHCR Refworld, source: *Integrated Regional Information Networks*, 11 December <<http://www.unhcr.org/refworld/docid/50d0324b2.html>>

²⁰ 'Although LTTE defeated overseas supporters carry on' 2012, *The Island*, 4 March <http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=46705>

²¹ Amnesty International 2011, *Sri Lanka: Briefing to Committee against Torture*, October, p.9 <<http://www.amnesty.org/en/library/asset/ASA37/016/2011/en/2bb1bbe4-8ba5-4f37-82d0-70cbfec5bb2d/asa370162011en.pdf>>; Tamils Against Genocide 2012, *Treatment of Failed Asylum Seekers: An Overview of the Persecution Faced by Failed Asylum Seekers Returning to Sri Lanka*, TamilNet, May <http://www.tamilnet.com/img/publish/2012/05/Failed_Asylum_Seekers_SL_May_2012.pdf>

²² Human Rights Watch 2012, *Sri Lanka: UK: Halt Deportations of Tamils to Sri Lanka*, 25 February <<http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka>> Accessed 10 August 2012

²² Human Rights Watch 2012, *United Kingdom: Document containing cases of Sri Lankan deportees allegedly tortured on return*, 15 September <<http://www.hrw.org/news/2012/09/15/united-kingdom-document-containing-cases-sri-lankan-deportees-allegedly-tortured-ret>>

²³ Freedom from Torture 2012, *Sri Lankan Tamils tortured on return from the UK*, 13 September, pp.1-2 <http://www.tamilnet.com/img/publish/2012/09/Freedom_from_Torture_briefing92012.pdf>

²⁴ UK Home Office 2012, *Country Policy Bulletin – Sri Lanka*, October, pp1-8

²⁵ UK Home Office 2012, *Sri Lanka: Operational Guidance Note*, April, p.29

51. In August 2011, the Immigration and Refugee Board of Canada (IRBC) reported on the treatment of Tamils returning to Sri Lanka, including failed asylum seekers. The report cited information provided by the Canadian High Commission in Colombo who stated that:

The process for persons removed to Sri Lanka begins with verification of the person's citizenship by Sri Lankan Immigration. Once a person's right to enter has been established, clients are then interviewed at the airport by Criminal Investigations Division (CID), followed by an interview by the State Intelligence Service (SIS). Sri Lankan State Intelligence Service's questions are often in regards to how a client departed the country. They are seeking information about human trafficking and smuggling from the country.

The CID conducts criminal background check[s] of returnees by contacting police stations in all districts that a client may have lived. As criminal records are not accessible through a national databank, the final criminal checks may take 24-48 hours to complete depending on the day of the week a person arrives in Colombo. Generally, police record checks may be completed in a few hours, but if a client arrives on a Saturday or Sunday it may take a bit longer to contact appropriate offices. Following this admission process deported Sri Lankan Nationals are free to enter the country.²⁶

52. The IRBC also cited information jointly provided by various human rights organisations and lawyers, which noted that:

[i]mmigration authorities are alerted about the impending arrival of those who are deported or who are 'returned' as a result of failed asylum seekers processes. They are also identifiable by the fact that they travel on temporary travel documents. These individuals are taken out of immigration queues and subjected to special questioning by the Police, and by members of the Terrorist Investigation Department [TID]. They are almost always detained, sometimes for a few hours, and sometimes for months, until security clearance is obtained.²⁷

53. Additional information from the Canadian High Commission in August 2011 noted that:

[t]here have been only four cases of persons having been detained upon arrival of which the Canadian High Commission is aware. Each of these cases involved outstanding criminal charges in-country and were not related to their overseas asylum claims or their ethnicity. Persons of all ethnic backgrounds are returned either under escort or voluntarily to Sri Lanka daily, and the screening and admission process for all these persons remains the same.²⁸

54. The following information has been provided by DFAT²⁹, current at 16 February 2015:

Exit and Entry Procedures

²⁶ Immigration and Refugee Board of Canada 2011, *Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August

²⁷ Immigration and Refugee Board of Canada 2011, *Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August

²⁸ Immigration and Refugee Board of Canada 2011, *Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August

²⁹ DFAT Country Report, Sri Lanka (16 February 2015), paras 5.24 -5.26

Upon arrival in Sri Lanka, involuntary returnees, including those on charter flights from Australia, are processed by the Department of Immigration and Emigration (DoIE), the State Intelligence Service (SIS) and Airport CID. Officers of the Australian Department of Immigration and Border Protection (DIBP) based in Colombo endeavour to meet all commercial flights and charter flights with involuntary returnees from Australia on arrival. DIBP has observed that processing arrivals typically takes several hours, primarily due to the manual nature of the interview process and staffing constraints at the airport. Voluntary returns eligible for an Australian Government Assisted Voluntary Return package are usually met by the International Organization for Migration. Other voluntary returnees are usually met by DIBP staff based at the Australian High Commission in Colombo.

During the processing of returnees, DoIE officers check travel document and identity information against the immigration database. SIS checks the returnee against intelligence databases. Airport CID verifies a person's identity to then determine whether the person has any outstanding criminal matters.

For returnees travelling on temporary travel documents, police undertake an investigative process to confirm the person's identity, which would address whether someone was trying to conceal their identity due to a criminal or terrorist background, or trying to avoid, among other things, court orders or arrest warrants. This often involves interviewing the returning passenger, contacting the person's claimed home suburb or town police, contacting the person's claimed neighbours and family and checking criminal and court records. DFAT assesses that Sri Lankan returnees are treated according to these standard procedures, regardless of their ethnicity and religion—Tamil, Sinhalese and Muslim returnees are treated the same way on arrival in Sri Lanka. DFAT further assesses that detainees are not subject to mistreatment during their processing at the airport.

55. It is clear that monitoring of returnees occurs not just on arrival but in the period following their arrival back in the country and their return to their home area. In December 2012, the UNHCR noted that:

UNHCR post-return monitoring data indicate that in 2011, upon arrival in the village of destination, 75% of the refugee returnees were contacted at their homes by either a military (38%) or police (43%) officer for further "registration". 26% of these returnees were again visited at home for subsequent interviews, with a handful receiving a number of additional visits by the police or military.³⁰

56. This is confirmed in the decision of United Kingdom Upper Tribunal (Immigration and Asylum Chamber) in *GJ and others (post-civil war returnees) Sri Lanka CG [2013] UKUT 00319 (AIC)* which states:

There are no detention facilities at the airport. Although individuals may be interviewed at the airport by the security forces, the Sri Lankan authorities now aim to move returnees relatively quickly out of the airport and on their way to their home areas and to verify whether they have arrived there soon afterward. If the authorities have an adverse interest in an individual, he will be picked up at home, not at the airport, unless there is a "stop" notice on the airport computer system. There is no evidence that strip searches occur at the airport; the GOSL's approach is intelligence-led rather than being driven by roundups and checkpoints as it was during the civil war.³¹

³⁰ UN High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 21 December, p.8

<<http://www.unhcr.org/refworld/docid/50d1a08e2.html>>

³¹ Para.310

57. The DFAT post in Sri Lanka has commented on the treatment of returnees as at November 2012 as follows:

Post has not received any evidence to support allegations of mistreatment of returning Tamils to Sri Lanka. To date, Sri Lankans who have been returned from Australia have not made any complaints to post of mistreatment at the airport or on return to their places of residence. Post has not received any allegations of mistreatment by returnees since 2009. Post followed up an allegation of mistreatment made by a Sinhalese returnee in 2009 and no evidence was found to substantiate the allegation.

We have spoken to NGOs involved in facilitating the voluntary return of former asylum seekers/refugees to Sri Lanka. NGOs told us they have not witnessed or received any allegations of mistreatment from any of the Tamils Sri Lankans they have facilitated.

We contacted the British High Commission in Colombo to follow up on allegations documented by the organisation Freedom from Torture in its September 2012 report "Sri Lankan Tamils tortured on return from the UK" [CIS24086]. The Migration Directorate from the Foreign and Commonwealth Office (FCO) in London responded:

"We have received no substantiated cases of mistreatment on returns for our returnees, and claims made by organisations such as Freedom from Torture and Human Rights Watch are not supported by any of our interlocutors. There was an instance earlier this year (2012) where one of our returnees claimed to have been tortured on arrival. We had him medically examined and two scrapes on his shins were considered consistent with his allegation that he had been kicked under the table by a CID officer. Nothing was ever confirmed however and even if it had been it could hardly be considered to be torture"

On 16 August FCO and UKBA met with Human Rights Watch and Freedom from Torture to discuss their allegations. UKBA have written to them since and received no response and they are due to meet Freedom from Torture again in November.

We are also aware of a story on Tamil Net [CX299934] claiming a Tamil British national visiting Sri Lanka was detained by the CID in Colombo from 3 to 9 October and "allegedly tortured under suspicion of LTTE links". The article claims the person was released after a ransom was paid to CID. AFP at post has followed up on the claim with the Sri Lanka Police CID (including with the officer named in the story) who have categorically denied the allegation.³²

58. DFAT in its Country Report on Sri Lanka dated 16 February 2015, to which the Tribunal must have regard, has stated:

Torture or mistreatment of returnees

DFAT is aware of a small number of allegations of torture or mistreatment raised by asylum seekers who have been returned to Sri Lanka. Verifying these allegations is complicated by the fact that many have been made anonymously, often to third parties.

However, there have been thousands of asylum seekers returned to Sri Lanka since 2009, including from Australia, the US, Canada, UK and other European countries, but relatively few allegations of torture or mistreatment...Although DFAT does not routinely monitor the situation of returnees, DFAT assesses that the risk of torture or mistreatment for the great majority of returnees is low, including those suspected of offences under the *Immigrants and*

³² CX299951, Request Sri Lanka: Questions arising from recent applications, 29 November 2012

Emigrants Act. The risk of torture or mistreatment for returnees is greater for those who are suspected of committing serious crimes, including people-smuggling or terrorism offences. This is due mostly to the greater exposure these returnees will have to authorities on their return which generally includes extended periods of pre-trial detention. It is too early to make an assessment as to whether this will change under the Sirisena government.³³

... Experience following return

Between October 2012 and November 2013, over 1,100 Sri Lankan Irregular Maritime Arrivals were returned from Australia to Sri Lanka. This is in addition to the many Sri Lankan asylum seekers who have been involuntarily returned from other countries, including the US, Canada, the UK and other European countries. The majority of these returnees are Tamil. Although the experiences of individual returnees will vary, many Tamil returnees choose to return to the north, because it is their place of origin, where they have existing family links and the relatively lower cost of living compared to Colombo and other urban areas in the south.

Many returnees will have incurred significant expenses to undertake their outward journey and, in some cases, will have incurred debt to do so. Many are apprehensive about finding suitable employment opportunities on return. Those who have skills which are in high demand in the labour market will be best placed to find well-paid employment. Returnees who receive reintegration assistance on their return to Sri Lanka find it easier to resettle.³⁴

59. The Country of Origin Information Centre (Landinfo), which provides advice to Norwegian immigration and refugee bodies made the following comments in a late 2012 report³⁵:

The Norwegian immigration authorities has since the early 1990s gathered information about the security situation for Tamils will return to Sri Lanka (Colombo) after being denied protection in Norway or any other country of asylum in Europe. The information Landinfo has obtained from a number of visits to the country has been relatively unambiguous. Return Tamils face the same general conditions of the rest of the Tamil population in Sri Lanka, and other us not subject to a particular focus or treatment – neither from the authorities nor from private independent groups.

60. The UNHCR and the International Organization for Migration (IOM) actively encourage and facilitate the voluntary return of Sri Lankans to their home country. In relation to this the UK Home Office has observed that:

There is no evidence from UNHCR as to any risk on return to Sri Lanka for Tamils per se. Their programme of voluntary assistance from India and other countries, where Tamils, settled during the conflict, indicates they deem it safe to return Tamils and the priority is to ensure that they are recipients of the various aid programmes to re-establish themselves. Returnees from India are not failed asylum seekers; however, this is relevant as the allegations are that all categories of Tamil returnees to Sri Lanka are at risk.³⁶

61. In April 2012, the UNHCR noted that they 'had assisted the voluntary return of 1,728 Tamils in 2011 and 408 in the first quarter of 2012'. January 2012 reporting noted that

³³ DFAT Country Report, Sri Lanka (15 February 2015), paras 4.20-4.21

³⁴ DFAT Country Report, Sri Lanka (15 February 2015), paras 5.32-5.33

³⁵ Landinfo, "Sri Lanka: Human rights and security issues concerning the Tamil population in Colombo and the Northern Province", *Landinfo*, 01 December 2012, p.31 CIS25286

³⁶ UK Home Office 2012, *Country Policy Bulletin – Sri Lanka*, October, p.9

'the UNHCR had returned 2,054 in 2010 and 818 in 2009'. While mostly repatriating from Tamil Nadu, returnees also arrived from Malaysia, Hong Kong, Georgia and St. Lucia, and were 'mainly returning to Trincomalee, Mannar and Vavuniya districts with smaller numbers returning to Jaffna, Kilinochchi, Batticaloa, Colombo, Ampara, Puttalam and Kandy'. According to a 2012 press release:

UNHCR carries out regular monitoring in these areas and seeks to ensure that returnees receive mine risk education and are included in the food ration lists and become considered as beneficiaries to the many government, UN and other projects taking place to re-establish the lives of Sri Lankans in the North and East of the country.³⁷

62. The IOM works with the government of Sri Lanka in a number of areas related to failed asylum seekers, and stranded and irregular migrants. The IOM facilitates programmes in areas such as Immigration and Border Management, Counter Trafficking, and in particular, Voluntary Assisted Return and Reintegration Assistance for Sri Lankan Migrants.

Assessment

63. The independent information referred to makes clear that that the human rights situation in Sri Lanka continues to be problematic. Torture is practiced by authorities of the state as well as groups condoned by the state. Disappearances and killings continue, although their frequency seems to be declining. Tamil citizens are disproportionately affected by human rights abuses. There is a lack of state accountability and protection. The key catalyst in the human rights abuses for Tamils is most often certain perceived or actual links to the LTTE. Tamils in Sri Lanka face continuing discrimination, including harassment by authorities of young Tamil males, discrimination in university education, government employment and registration obligations.
64. The Tribunal, however, considers UNHCR guidelines which state that Tamil ethnicity of itself does not establish a group based protection mechanism for Tamils. According to the UNHCR a risk factor exists for a Tamil with certain actual or imputed links to the LTTE. The decision of the United Kingdom Upper Tribunal indicates that simply because a Tamil has had LTTE connections or sympathies will not now of itself cause the Sri Lankan government to consider that a person is a destabilising threat. The risk is limited to those who are or are perceived to have a significant role in relation to post-conflict separatism.
65. The Tribunal acknowledges that claims of torture and mistreatment of failed asylum seekers, particularly those emanating mostly from the UK, were made in 2012, although the UK Home Office has questioned the veracity of some of the claims in the various reports. The attempts by the DFAT post in Sri Lanka to follow up some of those claims, without being able to verify the alleged incidents of mistreatment and torture, are noted. The Tribunal also notes that returnees from the UK possibly face a greater risk than those returning from Australia, as the UK is seen as a centre of LTTE fundraising and therefore there is possibly a greater perception of LTTE links.
66. The independent evidence indicates that the applicant will be investigated at the airport, and interviewed by Sri Lankan authorities who will seek to identify the applicant,

³⁷ UK Home Office 2012, *Country Policy Bulletin – Sri Lanka*, October, pp.8-9

undertake checks on him, question him about the manner of departing the country, and the Tribunal finds that this will occur to the applicant. As part of this process police stations in areas where the applicant has lived may be contacted. Information from the IRBC suggests that this process can take 24-48 hours.³⁸ Reports from human rights groups and lawyers suggested that returnees can be detained for months.³⁹ The Tribunal has not found other evidence to establish that detention for this length of period ordinarily occurs. It notes the statement of the Canadian High Commission from 2011 that they were aware of only four cases of detention and they were for reasons unrelated to being failed asylum seekers or ethnicity.⁴⁰ The United Kingdom Upper Tribunal's more recent 2013 decision indicates that returnees moved swiftly through the airport with inquiries being made when a returnee gets to their home area.⁴¹ The UNHCR confirms follow up in home areas.⁴²

67. The Tribunal notes the decision in *SZQPA v Minister for Immigration and Anor* [2012] FMCA 123 (29 March 2012) in which Driver FM indicated that it was necessary to look at both the process of interrogation that a Tamil returnee may face in addition to the outcome, bearing in mind that the harm could occur during the process of convincing authorities that the person was not an LTTE member.
68. In considering whether the applicant himself faces a real chance of suffering serious harm, his own particular circumstances need to be considered. Firstly, the applicant has indicated that he has no actual links to the LTTE and had no involvement with them during his time in Vani.
69. The Tribunal has accepted that the applicant was questioned by CID in March 2012, where he was told that villagers had provided information that the applicant was a supporter of the LTTE, and had been trained by them. The Tribunal has accepted that the applicant was beaten in this questioning. The Tribunal has accepted that the applicant was released on condition that he report weekly. The Tribunal has accepted that during that weekly reporting, the applicant was further pressured to admit his involvement in the LTTE. The Tribunal has accepted that the applicant missed two of the reporting requirements, due to work commitments. The Tribunal has accepted that after the applicant's departure for Australia, his wife was telephoned by CID asking about the applicant's whereabouts. The Tribunal has accepted that in July 2013, the applicant's nephew was questioned about the applicant's whereabouts and whether the applicant was involved in the LTTE.

³⁸ Immigration and Refugee Board of Canada 2011, *Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August

³⁹ Immigration and Refugee Board of Canada 2011, *Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August

⁴⁰ Immigration and Refugee Board of Canada 2011, *Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August

⁴¹ United Kingdom Upper Tribunal (Immigration and Asylum Chamber) in *GJ and others (post-civil war returnees) Sri Lanka CG [2013] UKUT 00319 (AIC)*, para 3.10

⁴² UN High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 21 December, p.8
<<http://www.unhcr.org/refworld/docid/50d1a08e2.html>>

70. The Tribunal needs to consider whether this past interest and attention by authorities in the applicant and his whereabouts, creates a real chance of the applicant facing serious harm, particularly in terms of significant physical harassment or significant physical ill-treatment.
71. In terms of treatment at the airport, the Tribunal considers based on the information in the United Kingdom Upper Tribunal analysis that he is likely to be processed relatively quickly through the airport, with the main focus of questioning occurring in his home area.
72. The Tribunal is satisfied that there has been a targeting, post the civil conflict, of the applicant by authorities in his area as a person who may well be an LTTE supporter. The fact of the follow-up with the applicant's nephew, a year after the applicant left for Australia, indicates an ongoing, and not insignificant, interest and concern in the applicant by the authorities. Given a level of ongoing suspicion that the applicant is an LTTE supporter, given that the applicant was physically mistreated during his questioning in March 2012, given the likely added antagonism towards the applicant due to him absconding whilst having reporting requirements, and given the independent evidence concerning the mistreatment of Tamils who are suspected of ongoing LTTE support, the Tribunal considers there is a real chance of significant physical harassment or significant physical ill-treatment during the process of questioning on his return to his home area.
73. While the Tribunal acknowledges that most of those who were seriously suspected of LTTE involvement were identified and sent to rehabilitation camps at the end of the civil conflict, that does not discount, in the Tribunal's view, the potential for authorities to have ongoing suspicions of certain individuals, and hence the imposition of ongoing reporting requirements. The Tribunal considers that authorities in the applicant's area have not ruled out that the applicant is an ongoing supporter of the LTTE cause, perhaps a significant supporter, particularly given the nature of the follow-up questioning of the applicant's nephew. That therefore places the applicant in one of the risk categories identified by the United Kingdom Upper Tribunal. The Tribunal also notes that decision also identifies a risk category for those who are detained by Sri Lankan security services. The Tribunal considers that the past the level of interest by local authorities in the applicant, together with the fact that he has left Sri Lanka whilst having reporting requirements, means that there is a real chance he will be detained for a period that would put him at a risk of serious harm.
74. The Tribunal is satisfied that the applicant is facing a real chance of harm, in the reasonably foreseeable future should he return to Sri Lanka. That harm includes significant physical harassment or significant physical ill-treatment in terms of s.91R(2) of the Act, thus constituting serious harm in term of 91R(1)(b) of the Act.
75. The Tribunal considers that the essential and significant reason for the persecution in terms of section 91R(1)(a) of the Act would be a combination of the applicant's Tamil ethnicity and imputation of LTTE involvement.
76. The Tribunal is satisfied that the persecution would involve systematic and discriminatory conduct and thus satisfy s.91(R)(1)(c) of the Act.

77. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of 'practicable', to expect him or her to seek refuge in another part of the same country. What is 'reasonable' in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.
78. UNHRC Eligibility Guidelines of 2012 in relation to Sri Lanka state that where the agent of persecution is the state itself or associated with it that internal relocation is not possible elsewhere in the country, as the agent of persecution would be able to pursue the individual throughout the territory.⁴³
79. If the applicant is to relocate, then he will have to register his details at the local Grama Seveka. As indicated in the independent information, the intelligence systems of the state in Sri Lanka quite sophisticated. If the applicant has been noted as a person of interest in his home area, then that is likely to come to the attention of the security authorities in the area to which the applicant relocates. The Tribunal is satisfied that, given the extent of the adverse interest in the applicant in his home area, it is likely that he will be marked on systems as a person of interest. Alternatively, authorities in the area to which he moves may well contact authorities in the applicant's home area and be informed of their suspicions of him. As a returned asylum seeker, the applicant is likely to be questioned by authorities in whichever area he moves to. This creates a real chance of serious harm to the applicant wherever he lives in Sri Lanka, in the Tribunal's view. The Tribunal, therefore, considers that the risk of harm to the applicant is not localised, and relocation is not an option for him.
80. The Tribunal is satisfied on the evidence before it that the applicant does not have a right to enter and reside in any other countries and therefore s.36(3) of the Act is not applicable.

Conclusions regarding the Refugees Convention and other claims

81. The Tribunal concludes that the applicant has a well-founded fear of persecution for reasons of a combination of his race and imputed political opinion and that he satisfies s.91R(1).
82. Given that conclusion, it is not necessary to consider the applicant's other claims, or to consider the complementary protection criterion.

⁴³ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, 21 December 2012, <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?docid=50d1a08e2>

83. For the reasons given above, 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

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

David McCulloch
Member