

1103475 [2011] RRTA 1042 (12 December 2011)

DECISION RECORD

RRT CASE NUMBER: 1103475

DIAC REFERENCE(S): CLF2010/51307

COUNTRY OF REFERENCE: Syria

TRIBUNAL MEMBER: Clyde Cosentino

DATE: 12 December 2011

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, being a person to whom Australia has protection obligations under the Refugees Convention.

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 and Citizenship 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 Syria, arrived in Australia [in] January 2010 and applied to the Department of Immigration and Citizenship for the visa [in] April 2010. The delegate decided to refuse to grant the visa [in] 15 March 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] April 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1) (c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. 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. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to 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.

10. 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 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. 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.
16. 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 persecution 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.
17. 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.

18. Whether an applicant is a person to 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.

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.

Protection Visa application

20. At the time of his protection visa application, the applicant was represented by the Refugee and Immigration Legal Service (RAILS). According to information provided in his protection visa application, the applicant was born in Al Yaaroubiya, Syria. He described himself as being of Kurdish ethnicity and of the Muslim faith. In his application, he lists his father's name as [Mr A], born [year deleted: s.431(2)] in Syria and his mother's name as [Ms B], born [year deleted: s.431(2)] in Syria. He indicates both his mother and father's country of residence as Syria. He also lists the names of his [siblings], all born in Syria and all who have their country of residence as Syria. He states that he is of Syrian Citizenship and had only travelled to Lebanon in 1996 before his current journey to Australia.
21. He indicates in his application that he arrived in Australia [in] January 2010, and that he transited Turkey before arriving in Australia. He states that he departed Turkey using a Saudi Arabian passport in the name of [Mr C]. He indicates that he arrived in Australia as a stowaway at an unknown port. He states that he was accompanied by an Indian man, [Mr D], who spoke classical Arabic and who accompanied him on the ship to Australia. He indicated that [Mr D] took control of the applicant's travel arrangements to Australia. [Mr D] continued to help the applicant when the applicant arrived in Australia. He indicates that once he had cleared immigration in Australia, [Mr D] took the applicant's Saudi Arabian passport. The applicant indicates that he paid [Mr D] a substantial amount of money after the applicant had cleared security. The applicant, through the assistance of [Mr D], was given the contact details of RAILS.
22. He indicates that he lived at an address [in] Syria from [birth] to December 2009. He indicates that he has attained 17 and half years of education, having attained a Bachelor [degree] in 1998 [in] Syria. He indicates that he was a [vocation deleted: s.431(2)] before arriving in Australia and that he worked from 2001 to 2004 at [Club 1]. He states that he was in prison from 2004 to 2009.
23. He states that he has never applied for refugee status in any other country other than Australia and has not been assessed by the United Nations High Commissioner for Refugees for refugee status. He states that he is in contact with his brother-in-law back in his home country.

24. The applicant presented to the Department, as part of his application, two Syrian documents as evidence of his Syrian identity in the name of [the applicant]. One of the documents was a Syrian Identification Certificate, translated by a NAATI accredited translator. The other document was a Personal Civil Register Record, also translated by a NAATI accredited translator.
25. The translated Identification Certificate contains information that the name of the person holding this certificate is [the applicant], born in Al-Yaroubiyeh on [date deleted: s.431(2)]. The applicant's father's name is listed as [Mr A] and his mother's name is listed as [Ms B]. The Identification certificate has a seal purported to be of the Ministry of Local Government and Environment, Town of Al-Qahtaneyyah, Qamishli District, Al-Hasaka Governorate Jihad Suburb Committee, Deputy Mayor Abdalla Mohamed Al Moamed. The applicant's photograph is on the certificate.
26. The translated Personal Civil Register Record contains information that the applicant has a national ID No: [number deleted: s.431(2)] and that his father's name is [Mr A] and his mother's name is [Ms B]. It indicates that the applicant was born in Al-Yaroubiyeh on [date deleted: s.431(2)]. It indicates that the document has been issued by the Arab Republic of Syria, Ministry of Interior Civil Affairs. It indicates that the data has been collected from the civil register of the Arab Syrian citizens and is identical to the applicant's record in the register as of the date of issue [in] August 2009.
27. Both translated documents were sent by the delegate to the Department's Document Examination Unit (DEU) for examination. The DEU concluded that the result of the documents' authenticity were inconclusive. The delegate made reference in his decision that the two documents were examined by the DEU.
28. The applicant attached to the application a statutory declaration signed and dated [in] March 2010, detailed in full below:

I, [the applicant], of [address] in the State of Queensland, do solemnly and sincerely declare:

1. I was born on [date]. I am [age] years old.
2. I am a Kurd from Syria.
3. My father's name is [Mr A] and my mother is [Ms B].
4. I have [number] sisters and [number] brothers. I am the third eldest of the children in my family.

Early life

5. I was born in Al Yaaroubiya, Syria, about 85 km east of Qamishli (also spelt Kamisli) in northeast Syria.
6. My father had been working in Al Yaaroubiya at that time, and when I was 2 years old my family returned to our home city of to Qamishli.
7. Until 2004, my life was hard because I was a Kurd living in Syria, but I did not have particular trouble with the government. I worked as a [vocation], and I was not involved in politics.
8. While I was at university, I had been involved in demonstrations and vigils in support of Kurds in Iraq. I had been suspended twice for those activities, but I had not been arrested or interrogated because of them. I also took part in Kurdish cultural celebrations that were always disrupted by Syrian authorities.
9. My father comes from a large family that is well connected in the Kurdish community.

10. My father is not involved in politics, but some of my father's cousins, who we call uncles, are involved in Kurdish politics.
11. My uncle [name] is in Yeketi.
12. My uncle [name] is in the PYD (Hezb al-Ittihad al-dimocrati).
13. It is my understanding that my uncles use different names within their parties to the names that I know them as. I do not know those names.
14. In [year], my father was working as a [vocation]. Because of his knowledge of the Kurdish community, and the travelling that he does in his job, Syrian political security asked him to be an informer about the movements of Kurdish leaders. My father refused to do so.
15. Soon afterward, my father was [incident deleted].
16. I believe that the [deleted] was deliberately sabotaged by Syrian security.
17. My father was badly injured and spent 11 months bed-ridden. His right leg remains badly damaged.
18. My father was dismissed from his job in [year] without the compensation or severance pay that he should have received.

2004

19. In March 2004, there was a football match in Qamishli between the local Kurdish team ([Club 1]) and a visiting Arab team from [Club 2].
20. I [deleted] from the [Club 1] club, but I was not directly involved with the teams that were playing on that day.
21. The crowd was about three quarters Kurdish fans and one quarter Arab fans.
22. I noticed that the Arab fans brought flasks, or thermoses, to the game, and that they were not searched by security.
23. The flasks were filled with stones, which the Arab fans threw at the Kurdish fans.
24. The military came to the ground in response to the fighting between the Arab and Kurdish fans.
25. Instead of protecting the Kurds from the Arabs throwing stones, the military protected the Arab fans, and started beating and firing at the Kurds.
26. Along with everyone around me, I tried to run away from the stadium. I was beaten as I ran away.
27. From the stadium, I went back to my aunt's home. There I heard about the people that had been killed. I think about 8 to 12 people were killed on that day.
28. The fighting continued after the football match, with people lighting fires and being attacked by the military.
29. The next day, there was a funeral for the people who had been killed at the stadium.
30. The funeral was a mostly peaceful march of about 400 to 500 thousand people, with the military escorting it in front and behind.
31. We were carrying coffins from the mosque, through town, to the cemetery.
32. I was in the middle of the crowd. I had covered my face and head in a scarf because the security forces usually have people in the crowds identifying and photographing people so they can be arrested later.
33. Without being provoked, the military started shooting at the funeral crowd. This caused chaos, and I fled to my aunt's house that was nearby.
34. I think that the military were afraid that they could not control such a large crowd of people, and thought that the crowd might attack government buildings in Qamishli.
35. While at my aunt's house, I heard from friends via my mobile phone that government security was searching for people who had been at the football game or at the funeral. I heard that people were being arrested and beaten by security forces.
36. I was afraid of being arrested if I went home, so I stayed at my aunt's house for about one month.
37. I was in contact with my family while staying at my aunt's and after about a month, my father told me it would be safe to come home.
38. Within 24 hours of getting home, I was visited by Syrian security.

39. Syrian security took all of my documents from my home, including my university papers, documents from the football club, and my passport, and I was arrested.
40. For more than four years, I was imprisoned by the Syrian government. I never had a trial.

My imprisonment

Qamishli

41. At first I was held in the jail in Qamishli.
42. I was held on my own for about 3 to 4 days, and I was beaten and questioned about what I had seen at the football match, how I had heard about the funeral, and who had organised the funeral.
43. I admitted that I had been at the funeral, and told them that I had heard about it from lots of people, because everyone was talking about it.
44. I was then put in a room with about 200 other people, and I stayed in that room for about 1 month.
45. I was routinely beaten by the guards, and from time to time they would take me out of the group and question me.
46. We received 1 meal per day, but it was not fit to eat.
47. At night, the guards would throw cold water over us so that we could not sleep.

Palestine Branch

48. I was transported to the Palestine Branch of the security forces, north of Damascus. We travelled by covered truck, and it took about 15 hours.
49. For about the next 15 days I was alone and the Palestine Branch questioned me. My hands were bound behind my back for much of that time.
50. I was in a room with no windows and only one small light. I was unable to stand up straight.
51. The first day I was made to stand for about 10 hours. Other times I was made to stand on one leg for a long time.
52. I was fed only borgul (dry ground wheat).
53. While I was held by the Palestine Branch, my lower right leg was badly damaged while I was being dragged to my cell. My nose was also broken three times.
54. I was asked again why I had been in the demonstrations; why I was involved in anti-government activity; who was involved in the conflict at the football game; who had organised the funeral; what other political activity I was involved in; and what political party I belonged to.
55. I was made to sign what I was told was an agreement to co-operate with the authorities. I wasn't given an opportunity to read the document, and my eyes were quite swollen at the time, so I'm not sure what it actually said. I also signed a blank piece of paper.
56. I was put into another cell with about 10-15 people, mostly Kurds, who I stayed with for the next 15 days.
57. I was not questioned much during those 15 days.
58. It is my understanding that I was jailed for my involvement in the March 2004 demonstrations, and that, because I am a Kurd, the government thinks that I am politically active and opposed to the government.

Adra

59. I was then transferred to Adra prison north of Damascus. I think that happened about June 2004.
60. I spent the first week in Adra alone. I was beaten often and I was made to stand on one leg for long periods of time.
61. I was then released into the general prison population.
62. There were more than 3000 prisoners in Adra, and the prison is divided into 13 suites.

63. There is a two story wing that holds the political prisoners. I was not held in that wing.
64. Some of the political prisoners were kept away from the other prisoners, but some were not. I heard about one prisoner called the Professor who would go on hunger strikes sometimes, but I never saw him. I don't think he was a Kurd.
65. I was in a cell with more than 200 prisoners.
66. A group of about 15 of us would prepare food on a small gas cooker in our cell. The prison provided some food to the prisoners, but it was of a very poor quality, so we would prefer to prepare our own and share.
67. Our families would bring food to us in the prison. When they visited, they could pass the food to a guard, who would check it and then pass it on to us. Sometimes the guards would take some of the food.
68. The guards also sold food and cigarettes to the prisoners, but it was very expensive.
69. It was difficult for my family to visit me because they do not live near Damascus. My brother-in-law, [Mr E], would visit me a few times a year, and bring food and some money when he came. I don't drink or smoke, so I was able to buy some food with that money also.
70. My brother-in-law also paid the guards so that I would be somewhat protected.
71. Other prisoners whose families were closer might get visited about once a month, and they would have more food to share.
72. We would do jobs around the prison — mostly cleaning. The jobs would be spread around the prisoners, and cleaning the toilets would be used as a punishment.
73. We would be allowed out for physical activity such as football, basketball or volleyball, for about an hour a day. Sometimes this would be about three times a week, sometimes it would be every day.
74. I exchanged letters with my parents and my sister [Ms F]'s family while I was in Adra. Some of the guards had mobile phones that you could pay them to use, but I considered it was safer and less expensive to write to my family.
75. I was beaten sometimes while at Adra, but this didn't happen very much once I was in the general population. I was also not questioned much after I had signed the papers for the Palestine Branch.
76. I tried to keep to myself while in Adra. I played cards with other people in my cell, or exercised when I could. Other prisoners had weapons such as knives, and could be aggressive, so I kept myself.
77. I did not speak to other prisoners about Kurdish issues or why I was in prison, because 'the walls have ears' – that is, there are informers everywhere, or people who will betray you to gain advantage.
78. In early 2007, there was some rioting in the prison. About 200 prisoners had been pardoned, and some of those who were not pardoned set fires and damaged the prison. The boss of the prison was also running a business, selling things to the prisoners for inflated prices. For these reasons, the prisoners rioted.
79. I stayed behind the prisoners who were fighting the guards. I was in a large crowd of people not involved in the fighting.
80. The prisoners fought with the guards for about 13 or 14 hours, and we were all locked in our cells afterward.
81. I was in Adra for nearly four years, before I was told that I would be released. Tadmor, Palmyra
82. I was transferred from Adra to Tadmor military prison in Palmyra, where I was imprisoned for about 6 months. I was told that it was because I had not done military service.
83. Ordinarily, I would have done military service in [year], when I finished university. However, my family and I managed to postpone it until 2001.
84. In 2001, my father paid the government to have me exempted from military service. I think that he paid about 200 to 250 Syrian Pounds, but my father arranged it and I wasn't very involved.

85. I was given no warning that I was going to Tadmor — I thought I would be sent from Adra to Qamishli and released.
86. When I arrived at Tadmor, my hands were tied, and I had a hood over my head, with only a hole for my mouth. I didn't know that I was at Tadmor at that time. I was told nothing by the guards.
87. For the first two days, I was in an underground cell with no windows, and only a dim light. I was fed once a day. Cockroaches crawled all over me. I am allergic to insects, and get itchy and have trouble breathing when in contact with them.
88. After about two days I was put in a cell with other people. They told me that I was in Tadmor. For the next six months, I shared a cell with about 5 to 15 other people at a time.
89. Our cell was much less crowded than other cells in the prison. The other prisoners would comment that we were very lucky to have an uncrowded cell.
90. Our cell had no windows, but it had a barred door that the guards could watch us through. The light was always on, day and night. There was no windows, but there was an opening in the ceiling.
91. The other prisoners all seemed to be military prisoners, and many of them were from the Muslim Brotherhood.
92. I did get hit and slapped, as did everyone, but that was standard for everyone. I was not tortured as we would think of-being beaten by weapons or having electricity used. This was because my brother-in-law paid bribes to the guards to protect me. He had paid people to find out where I was after I left Adra, and was able to help me while I was in Tadmor also.
93. I heard other people suffering from torture, and I was constantly afraid while I was in Tadmor. I saw other prisoners beaten by the guards, but there is nothing you can do or say to help them, or to make it stop. The guards just beat the prisoners if they want to.
94. Many of the prisoners had been there for many years. Many had skin problems from eating bad food and living in bad conditions. They were very thin, showing their ribs.
95. We would be fed between once and three times a day — it varied. The food was very bad, such as bad bread and rotting tomatoes, borgul or potatoes. The food would be brought to our cell on a tray that we would all share. After we ate at night, we were not allowed to talk to each other until the next day.
96. After about six months, the authorities accepted that I had been exempted from military service. When I was released from Tadmor, they apologised for having kept me there for so long.

Return to Qamishli

97. From Tadmor, I was sent to the jail in Qamishli while the administrative requirements for my release were completed. I think it was in [month] 2009.
98. There were many public holidays in the weeks that followed, and I was not released from jail until [month] 2009.
99. My extended family was waiting for me when I was released, and we celebrated my freedom. My family had a large tent ready and sheep were slaughtered to celebrate my return. The celebration lasted all day.
100. When I was released from prison, I was told that I had been released on the condition that I would not be involved in politics.
101. While I was in prison, the Syrian government had closed down our team's football stadium, and demoted our senior team to Division 3,
102. I think that after the 2004 demonstrations, the government was afraid that the football team would continue to bring large crowds of Kurds together. I think that the government saw this as a security threat.
103. For three months after I was released, I was reporting to police in Qamishli twice per month.

104. I was always afraid that someone could tell the authorities that I had acted against the Syrian government, and I would be arrested again.
105. In July 2009, I ran away from Qamishli to stay with my sister [Ms F] in Aleppo. [Ms F]'s husband is well connected, and I hoped that he would be able to help me.
106. I stayed with my sister [Ms F]'s family in Aleppo until December 2009.

Fleeing Syria

107. It was not safe to me to stay in Aleppo. I had left Qamishli without permission, and was no longer reporting to police. If I was found, it would have been very bad for me, and would have put my family in danger also. My brother-in-law, [Mr E], had helped me a lot while I was in prison, and he would have been in danger if he continued to help me.
108. My father and my brother-in-law arranged for me to leave Syria.
109. On [date] December 2009, my brother-in-law and I met with a man named [Mr G].
110. I said goodbye to my sister, and travelled with [Mr G] to Afrin — a town to the northwest of Aleppo.
111. Early the next morning, we drove north, and then walked about 45 minutes across the border into Turkey, where [Mr G] had a car waiting for us.
112. We drove to Istanbul, which took about 24 hours. We stopped once to eat, and another time to get petrol and sleep for about 2 hours.
113. We arrived in Istanbul in the early morning of the next day. [Mr G] housed me in a furnished apartment he had arranged.
114. On about [date] December 2009, I went with [Mr G] to have photos taken for a passport.
115. On [date] [December 2009, I went with [Mr G] to the airport and departed Turkey. I used a Saudi Arabian passport in the name of [Mr C].
116. We flew for about 10 hours. I did not speak to [Mr G] during the flight. I sat up the front of the plane, and he in the back.
117. We landed in India — I was told that it was Delhi. We were met by an Indian man named [Mr D]. [Mr D] spoke classical Arabic.
118. [Mr G], [Mr D] and I went to a restaurant about 15 minutes away from the airport. I paid [Mr G] US\$7000, and he left me with [Mr D]. [Mr D] and I drove to a bus station, and then travelled south by bus for more than a full day. I spent most of that time asleep.
120. [Mr D] and I reached a port with many large ships. We approached one that had 'CARGO' written on it, and [Mr D] told me that he was the cook on that ship. I didn't notice the name of the ship.
121. We boarded the ship, and I was given blue overalls and steel-capped boots, and shown to a small room. I saw about 9 or 10 other crew, who were also wearing blue overalls. [Mr D] wore white clothes as the cook.
122. I stayed in my room most of the journey. [Mr D] would come to the room every now and then to bring me food, and [Mr D] slept in the room at night.
123. On [date] January 2010, we reached a port and we got off the ship.
124. There was no trouble getting off the ship - no one questioned me. [Mr D] showed both his passport and my Saudi passport to police or security who were at the port. I took off my belt and bag to pass through security, and [Mr D] answered some questions. I did not speak to the security.
125. The security officer was wearing a dark blue shirt, and blue pants. I think he had a gun, but I can't be sure.
126. I never held the Saudi passport while I was travelling. [Mr G] held it for the first part of my journey, and [Mr D] held it for the second part. I was only told to remember that my name would be [Mr C]. [Mr D] kept the passport once we had passed security in Australia.
127. When we had passed security, [Mr D] and I walked for about 10 minutes to a train station.

128. I paid [Mr D] US\$5000. [Mr D] bought me a train ticket, and gave me about \$100 Australian.
129. I stayed on the train for about three hours until what I thought was the last stop. Most of the people on the train got off, so I got off also.
130. I slept in the train station on the night of [date] January 2010. I would wake up and walk around each time a train came in, and then find a bench to sleep on again. No one bothered me that night.
131. The following morning, I saw a man reading an Arabic newspaper, and I told him my story. He wrote two phone numbers and addresses on a piece of paper.
132. The man phoned the first place, and he was told to contact the Refugee and Immigration Legal Centre, and they have been assisting me since that time.

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at [City] on [date] March, 2010

Signature of declarant

29. The applicant provided in support of his application the following documents:
 - a. Letter from [Mr H] (dated [in] March 2010), explaining that he had been assisting the applicant by providing accommodation and other support since the applicant's arrival in Australia.
 - b. A copy of [Mr H]'s Canadian passport.
 - c. A translation of a search notification of the applicant purporting to be from the Syrian Ministry of Interior dated [in] 2009
 - d. A translation of correspondence relating to the applicant purporting to be from the Department of Intelligence dated [in] 2009
 - e. A translation of a summons for the applicant's appearance at the General Intelligence Branch, Investigations Department [in] 2009 purporting to be from the Ministry of Interior
 - f. A translation of a General Communiqué purported to be from the Arab Socialist Baath Party relating to the targeting of Kurds and dated 3/11/2008
 - g. A translation of an arrest circular relating to the applicant purporting to be from the Army and Armed Forces General HQ dated [in] 2009
30. The RAILS provided initial submissions to the Department (October 2010) submitting that the applicant had a well-founded fear of persecution for the convention grounds of:
 - imputed political opinion – Kurd; family's political involvement
 - ethnicity – Kurd
 - member of a particular social group - previously incarcerated Kurdish male

- member of a particular social group - returned asylum seeker

31. The legal submissions go on to provide country information relating to persecution of persons of Kurdish ethnicity in Syria, arbitrary detention and torture of persons of Kurdish ethnicity in Syria, prison conditions in Syria, persons of Kurdish ethnicity being imputed with political opinions opposing the government, and relating to returned asylum seekers. The submissions go on to argue that relocation of the applicant within Syria 'is not a realistic option' and that the applicant does not have the right to enter and reside 'in any other country except Syria'.
32. [In] December 2010, the RAILS provided further legal submissions to the Department in response to the Department's interview with the applicant [in] October 2010. The RAILS submitted that, while the evidence on the issue of illegal departure from Syria is not conclusive, information available to the Australian government strongly suggests that some penalty would be imposed on those who leave Syria illegally. The RAILS cited a CISNET Document (No: CX43812, 13 August 2000) which states:

Given the possible illegal departure from Syria and if the circumstances of previous arrests were as described he would most likely face some form of mistreatment or detention on return to Syria.

33. The RAILS acknowledged in its submission that any person living Syria illegally would be liable to such a penalty and that generally any penalty which might be imposed would not necessarily be imposed for a Convention reason. The RAILS submitted that in this case that any questioning of the applicant in relation to his illegal departure would reveal his previous detention, and the ongoing adverse interest in him by Syrian security forces. The RAILS submission was that the treatment the applicant would face upon return to Syria as a person with an adverse security record, suspected of supporting pro-Kurdish or anti-government political groups, and who has departed Syria illegally, would include arrest, interrogation and torture, all of which constitute persecution. The RAILS provided a US Department of State Human Rights Report 2009 (USDS) which indicated that Kurdish citizens particularly faced significant persecution in Syria in the form of arbitrary detention and torture at the hands of Syrian authorities.

Department interview ([in] October 2010)

34. The applicant was interviewed by the delegate [in] October 2010. A copy of the recording of that interview is on the Department file. The Tribunal has listened to that recording. The applicant stated at the interview that he was assisted by his migration agent to prepare it and then it was read back to him by an interpreter. He subsequently signed the statutory declaration.
35. He indicated that he had only travelled to Lebanon in 1995 or 1996 prior to coming to Australia. He had only visited during that time. He has never applied for a visa in any other country. He stated that he never did military service as his father was able to pay money to help him to avoid it.
36. He indicated that his father was a [vocation deleted: s.431(2)] in Syria. He has [details of siblings deleted: s.431(2)], all still living in Syria. He went to primary school from [years deleted: s.431(2)]. From [years deleted: s.431(2)] he went to middle and secondary school. From [years deleted: s.431(2)], he [studied] at [university]. From [years deleted: s.431(2)], he [studied] at the [university]. He attained his [degree] there. He indicated that his studies at

university were free and that he lived at his sister's place so he did not have to pay rent for accommodation.

37. From 2001 to 2004, he worked at a sports club. He [details deleted: s.431(2)].
38. He attended peaceful demonstrations back home. He did not consider himself politically active back in Syria. He loved his sport only. He was seeking protection in Australia because he was unjustly arrested and imprisoned in Syria for being Kurdish. He came to Australia to live in peace.
39. [In] March 2004, he attended a football match in his home area, in support of his local football team, [Club 1]. He recalls that there were a group of people shouting slogans against the Kurdish people at the stadium. Stones were then thrown inside the stadium at them. People were injured. The police came and started shooting randomly into the crowd. A number of people were killed. The applicant, being afraid, ran away with others there. There were police everywhere. The police station was very close to the stadium. He escaped to his aunt's home. The police started to arrest people who they thought had instigated the riots at the stadium. The incident at the stadium occurred after three o'clock.
40. The applicant slept that night at his aunt's home as he was afraid to go back to his home. At about noon, there was a funeral for those who died at the stadium the day before. Nearly 400,000 people attended the funeral. The applicant was one of them. He covered his face as he was afraid of being identified by spies in the crowd. At the funeral, there were slogans being shouted such as "long live the Kurdish" people. The funeral procession started from the Mosque. There were a lot of police present. About half an hour after they left the Mosque, the police and intelligence service started shooting into the crowd. He witnessed people being shot in the procession.
41. The applicant escaped the shooting and ran back to his aunt's house. He arrived at his aunt's home within a few minutes. The applicant subsequently went home after his father contacted him. The applicant was subsequently arrested by security forces because, he believed, he [worked] at [Club 1] and because he was Kurdish. He was taken to the jail at Qamishli where he was tortured. He was detained there for about one month. After Qamishli, he was moved to the Palestine prison. He was detained there for one month. He was tortured at this prison. He was then moved to Adra prison. There were other Kurdish prisoners detained with me. He was imprisoned for about 4 years at this prison. After that, he was moved to Tadmor prison where he was imprisoned for about 6 months. He was then returned to Qamishli where he was released.
42. After his release from prison, the applicant decided to flee from Syria and organised his escape some months later, where he came to Australia.

Tribunal file

43. The applicant applied to the Tribunal [in] April 2011 for review of the delegate's decision.
44. [In] May 2011, the applicant provided to the Tribunal further documents in support of his review. The first document was a statement signed by a [Mr I] and dated [in] April 2011. It had on the bottom of the statement a stamp initialled by a Commissioner of the Regional Municipality of Peel, for Newcomer Centre of Peel. The statement was written as follows:

To Whom It May Concern of the lawyers and judges of the Australian government in regards to the case of [the applicant], a Kurdish born in Kamishli in Alyaarabiya on [date]. Due to our Kurdish ethnic background we were imprisoned in Adra's jail in the year of 2006 until the year 2008 and [Mr I] born in Hassakeh in [year], certify that because I was jailed along with him for the Kurdish case, and I am pleading to all who may concern such as the courts and Australian's authorities to take my testimony into consideration, as I am in no condition to be with him as a refugee and the Canadian government accepted my refugees claim, and I am attaching a copy of the acceptance for your record.

Yours truly

The witness: [Mr I]

45. Attached to the statement was a notice of decision from the Immigration and Refugee Board of Canada, Refugee Protection Division, granting refugee protection to [Mr I], and other members associated with his application.
46. The Tribunal provided to the applicant a Direction pursuant to section 440(1) of the *Migration Act 1958*.

Tribunal Hearing ([in] June 2011)

47. The applicant appeared before the Tribunal [in] June 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
48. The Tribunal indicated to the applicant that it needed to address the issue of his Syrian Kurdish nationality. The applicant stated that he was born on [date deleted: s.431(2)] at Al Yaroubiyeh. He stated that his name is [Mr A]. He speaks Kurmanji and Arabic. He learnt a small amount of English in Australia.
49. He indicated that his country of citizenship was Syria. He lived in Al Qamishli, Syria and studied in Aleppo. He lived in Al Qamishli for most of his life, having arrived there when he was a two year old boy. Prior to that, he was living in Al Yaroubiyeh where he was born. He studied in Aleppo from [years deleted: s.431(2)]. After [year deleted: s.431(2)], he went back to live in Al Qamishli. He remained in Al Qamishli until 2004.
50. He stated that his mother's name is [Ms B] and is Kurdish Syrian by ethnicity. His father's name is [Mr A] and is Kurdish Syrian by nationality.
51. Her studied [subject and years deleted: s.431(2)]. After he was suspended, he studied from [years and subject deleted: s.431(2)]. He stated that he was suspended in 1995 because he participated in Kurdish events which resulted in his suspension. The Tribunal asked why he was allowed to carry on with his studies after his suspension. He responded that he was allowed to go back to [study] and to complete this degree but he decided to change his [course]. He completed [subject and year deleted: s.431(2)]. In this course, he completed three subjects in his last semester.
52. He did not live at [university] as he stayed with his sister, who lived in Aleppo. He indicated that the distance between Al Qameshli and [university] was between 400 and 500 kilometres.

53. After university, he did not find work for two years. He then obtained employment at a sports club called [Club 1] in Al Qamishli. He worked there from 2001 to 2004.
54. The applicant indicated that he was familiar with Al Qamishli having lived there for much of his life. He stated that, from the top, Al Qamishli bordered Turkey. From the East, Iraq is only 80 to 85 kilometres from Al Qamishli. Al Yaroubiyeh is closer to Iraq's border. Al Qamishli is closer to Turkey's border.
55. He stated that the official population of Al Qamishli was 400,000 to 500,000 people. The unofficial population of Al Qamishli may reach 1,000,000 people. He stated that this was because it has a lot of a lot of Kurdish people who have been deprived of citizenship. He stated that Al Qamishli has a majority of Kurdish people. Al Qamishli also has a population of Syrians, Armenians and Christian Orthodox.
56. He stated that the river Al Qamishli was situated on was called Jaghjaghah. It is a small river. In summer, this river hardly has any water in it. He was unable to answer whether this small river flowed into a larger river.
57. He stated that cotton, wheat and other grain us grown in Al Qamishli. He stated that there were no factories in Al Qamishli itself. Al Qamishli was a predominantly crop growing area. However, there is a cement factory that is outside of Al Qamishli near the Turkish border.
58. He stated that when the train departs from Al Qamishli, its next stop, heading towards the big cities, is Al Hassatta, then Derasaur, then Raka as it heads towards Damascus. There is another train that departs from Al Qamishli travelling towards the village areas.
59. He stated that the planes leaving from Al Qamishli tend to head for Damascus. Most of the flights head for Damascus.
60. The Tribunal then indicated to the applicant that it wanted to discuss with him his claims of imprisonment in Syria. The Tribunal showed the applicant his statutory declaration that he made with his original application. The applicant confirmed that there was an interpreter on the day who interpreted the statutory declaration back to him. He confirmed that it was interpreted, in part, by an interpreter who was present and, in part, a telephone interpreter. He stated that he had to correct some aspects of the statutory declaration at the time.
61. He confirmed that he was arrested by security forces after he attended the funeral. This funeral procession was the result of a number of people killed at a soccer match. He was present as a spectator and supporter of the [Club 1] football club on the day of the incident at the senior soccer match between [Club 1] and [Club 2]. The applicant was [details deleted: s.431(2)] of the [Club 1] sport club. The [Club 1] club also has a senior football team. He stated that there were between 10,000 and 20,000 people present at this match. He believed that the stadium had a capacity to hold about 20,000 spectators.
62. The soccer match where people were killed, and in which he was present at, took place in March 2004. The applicant indicated that the people who were killed were Kurdish. The applicant stated that he witnessed two dead bodies. He believed that between 10 to 12 people were killed on the day. Many people fled from the stadium.
63. The funeral procession started at the local Mosque and ended at a place called Swiss Canal in Al Qamishli. He stated that up to 500,000 attended the funeral though he thought that more

could have attended. The Tribunal put to the applicant how he could know that 500,000 people were present at this funeral. He responded that no women or children attended the funeral and that there could have been more. He still believed that there was this amount of people who attended. The funeral took place the day after the soccer match. The applicant was present at this funeral. He indicated that at the funeral he was afraid of being identified. That is why he covered his face.

64. He was arrested one month later by security forces. When asked why he believed that he was arrested, he stated that he was arrested because he attended the funeral. The Tribunal asked the applicant how the security forces knew that he was at the funeral. He stated that there were spies everywhere. He was arrested at his home in Al Qamishli in April 2004.
65. The Tribunal asked the applicant where he was first taken to after his arrest. He stated that he was taken to Al Qamishli jail. He was arrested by the intelligence service. He was detained there for about one month. The Tribunal put to him that in his statutory declaration he had stated that he was only three or four days in prison. He responded that he was 3 to 4 days in solitary prison and another 25 or so days detained in the prison with approximately 200 other people.
66. When asked whether he was given reasons why he was imprisoned, he responded that they asked him why he had attended the soccer match and had attended the funeral. He was interrogated as to how he knew about the funeral. When asked what the security forces did to him while he was at Al Qamishli prison, he responded that that he was beaten, tortured by cold water and subjected to other forms of torture.
67. When asked where he was next taken to after Al Qamishli, he responded that he was taken to the Palestine Branch in Damascus. When asked how he knew that it was the Palestine Branch in Damascus, he responded that when he was interrogated they would tell him who they were while they interrogated him. He stated that he was at this prison for 15 to 16 days. He stated that he was beaten there and interrogated. He was asked why he attended the demonstrations and why he was trying to topple the regime, as examples. He stated that he was put in a single jail cell. There were others who were at the prison as he could hear cries at the prison.
68. The Tribunal indicated that at this point it might be good to have an adjournment. The applicant and the interpreter accepted the invitation. The Tribunal adjourned the matter for a short period.
69. At the resumption of the hearing after the adjournment, the Tribunal continued with its questions to the applicant.
70. The applicant was asked where he was taken to after his imprisonment at the Palestinian branch. The applicant responded that he was made to sign a statement. He was then taken to Adra prison in June or July 2004. He was imprisoned at Adra for about 4 years. He was not certain why he was taken to Adra prison. He knows that that Adra prison is a very large prison while the Palestinian Branch was an interrogation centre. He stated that he was questioned at Adra prison. The Tribunal put to the applicant whether he was sent to Adra prison because he had committed a criminal offence. The applicant stated that he had not committed a criminal offence and denied that he was there because of any criminality. He stated that Adra prison was a civil prison. The Tribunal asked him why he thought that he was detained at Adra. He believed that the security forces had no places available at the

Palestinian Branch and other places were full so they imprisoned him at Adra. The Tribunal again put to the applicant why he thought that he had been detained by the security forces. He replied that he thought it was because of his participation in the demonstration at the funeral where Kurdish flags were raised and slogans were shouted against the regime. The Tribunal again put to the applicant whether he had been placed in prison because of a criminal offence. He stated that this was not the case and he had committed no criminal offence.

71. The Tribunal put to the applicant that he had provided a statement from [Mr I] as a witness of the applicant being in the prison at Adra. The applicant stated that [Mr I] is a Syrian Kurd. He is from Hassaki, which is 78 kilometres from Al Qamishli. He did not know [Mr I] before he met him in prison. [Mr I] was in Adra prison with the applicant. The applicant indicated that he and [Mr I] were in prison together for about two years. He stated that his charges were more political. He stated that they did not talk too much about things because of their fear of spies overhearing them in the prison.
72. The applicant indicated that [Mr I] and he came to know each other because they were Kurds with the same interests and concerns. He stated that they were also from the same region and that they understood each other. He stated that [Mr I] was a [vocation deleted: s.431(2)].
73. [Mr I] was moved into Adra in 2006. He stated that he shared the same cell as [Mr I] for two years. [Mr I] left Adra prison one to two months before the applicant left Adra.
74. The Tribunal asked the applicant when the riots at Adra prison took place. He replied that it was in 2007. When asked whether he was punished for what happened in the riots, the applicant responded that he was punished but not as severe as others. He stated that they were left in their cells for a time. The prisoners burnt a lot of things. They were punished because of this. When asked what forms of punishment they encountered because of the riots, the applicant responded that they were made to wash the toilets again and again and washing the floors as examples. He stated that when they were kept in their cells, they were not allowed to leave the cells for one week at a time.
75. The applicant stated that he left Adra prison at the end of 2008. He was then taken from Adra to Tadmor prison. He thought that he was being released. He had no idea that he was going to another prison. When asked why they sent him to Adra prison, he responded that he did not do his obligated military service. He stated that Tadmor is a well-known city. The applicant confirmed that Tadmor is called Palmyra. Tadmor is the Arabic name. He stated that he was in Tadmor prison for about 6 months. The Tribunal asked the applicant whether he was certain that he was in Tadmor prison. He responded that he was not aware at the beginning until he was told later that he was in Tadmor prison. He was told this by fellow prisoners.
76. The Tribunal put to the applicant independent country information which stated that Tadmor officially closed in 2001. The applicant responded that "officially" this was the case but unofficially it was still in operation and still is. The Tribunal asked the applicant whether he was aware that it was supposed to be closed in 2001. He stated that he was aware of this information. However, this is international information which indicates that the prison was closed. But local information gives a different account. The Tribunal asked the applicant whether he had any local information to suggest that the prison was still open. The Tribunal indicated that it would find it helpful if there was country information that suggested that it had not closed. He stated that the prison was still very full.

77. The Tribunal put to the applicant that it could only make determinations of what evidence was before it. It stated that it would consider his responses. However, the Tribunal had to also consider the country information that it had before it that Tadmor prison was closed in 2001. The country information before the Tribunal suggested that it was inconsistent with the applicant's claim that the prison was open. The Tribunal stated that it was keeping its mind open to the evidence that was before it. However, the country information before it might cast doubts that the prison was still open as suggested by the applicant in 2009. The applicant responded that he was not in prison between 2001 and 2004. The Tribunal again put to the applicant that its doubts might be that he was in Tadmor prison in 2009 as suggested by the country information before it. The applicant responded that between 2001 and 2004 he was not in jail. He was aware that Tadmor prison was closed during that time. However, why should he be lying that he was in prison in 2008/2009. The Tribunal again stated that it would consider all the material before it relating to Tadmor prison. The applicant stated that if he wanted to lie, he would have stated that he was imprisoned at a different jail.
78. When asked where he was taken to after Tadmor prison, he stated that he was taken to Qamishli. He was there for one month before he was released. He was released [in] 2009. He went back home where he stayed with his mother, father and siblings. He was there for about 15 to 20 days.
79. He stated that he was required to report to the police twice per month but sometimes more if requested. He was reporting to the Intelligence service in Al Qamishli. He reported to the police for 3 to 5 months before fleeing to Aleppo. He stated that he stopped reporting to police in July 2009. He then went to Aleppo and stayed with his sister and brother-in-law.
80. The Tribunal asked why he had to escape from Al Qamishli and then from Aleppo. He responded that he felt stressed. He was fearful of the police always accusing him of something, no matter how small. He was fearful of being imprisoned again and never being released. The Tribunal put to the applicant that during the 3 to 5 months he reported to the police, nothing happened to him during that time. He responded that when he went to sign, they would keep him there for hours. He was always fearful that something would happen to him.
81. The Tribunal asked the applicant whether he was concerned for his family's welfare if he did not report again. He knew that they might be interrogated but then be released. The Tribunal asked whether he had been in contact with his family in recent times. He stated that his heart bleeds for them. He had recently spoken to his sister.
82. He stated that he departed Syria illegally. He exited the border at the Turkish border North of Aleppo. He confirmed that he exited into Turkey with a people smuggler. He stated that he had identity documents on him at the time he left; the same documents that he provided to the Department of Immigration.
83. The Tribunal put to him that in his statutory declaration he stated that when he was first arrested after the funeral the security forces came and took much of his documentation. The applicant confirmed that this was the case. He applied to get certain identity documents after his release. His personal identification, university diploma and passport were still with the police.

84. The applicant stated that he came on a Saudi Arabian passport when he came to Australia. He stated that his photograph was on the passport but the passport was not his. He confirmed that it was not his passport. He is not a citizen of Saudi Arabia.
85. The Tribunal stated that he provided an identification certificate to the department. The applicant stated that he was aware of that certificate. The applicant stated that it was a genuine document. When asked how he obtained this document, he responded that he paid bribes to obtain it. He paid bribes to the local notary. He received this document after he was released from prison. The Tribunal asked the applicant whether the document was genuine considering that he bribed the official. He stated that he bribed them to sign. All the information in the certificate is obtained in the official registry. Nobody can falsify this information. It is only a certificate of identification. It is used to identify a person.
86. The applicant then acknowledged the civil register document that he provided. The applicant stated that it was a genuine document. He stated that if the Tribunal wanted to check then it could make enquiries. He stated that the same official was bribed to obtain this document. The one document must come with the other.
87. The Tribunal then referred to the document provided from the Arab party branch. This was shown to the applicant. He acknowledged the document provided. He stated that it is a document that is very well known and can be obtained on the internet. He obtained the document from his brother-in-law who sent it to the applicant. The applicant confirmed that the document was not obtained from the Party branch but instead obtained from the internet.
88. The Tribunal then referred to the document from the Ministry of Interior. The applicant acknowledged the document referred to. He was asked how he obtained the document from the Ministry. He responded that he did not obtain it personally. It was sent to him by his brother-in-law. The Tribunal asked the applicant how his brother obtained this document from the Ministry. The applicant responded that he sent the document from Lebanon by the internet. His brother-in-law was able to find someone inside the Ministry in Syria and bribe him to get the document.
89. The applicant stated that his brother also sent the arrest circular and the summons to the applicant from Lebanon, after obtaining these documents from Syria through bribery. His brother-in-law sent these documents, and other documents that he had on him, to the applicant from Lebanon. He was unable to send the documents from Syria for safety reasons.
90. The Tribunal asked the applicant what work did his brother-in-law do. He responded that he was a businessman. The Tribunal again asked the applicant how his brother-in-law obtained the documents from the Ministry. The applicant responded that he paid bribes to a person at the Ministry to obtain the documents. The Tribunal put him the question why his brother-in-law would risk his life to go into the Ministry and pay bribes so to obtain these documents for you. The applicant responded that he was his brother. The applicant would have done the same for his brother-in-law. The Tribunal asked show his brother-in-law would have known the person to contact within the Ministry. The applicant responded that his brother-in-law was a businessman and he knew how to do things. He stated that the person who was bribed would take a copy a copy of the document from his file within the Ministry.
91. The Tribunal indicated that it might be concerned that it was plausible that his brother-in-law could convince a person within the Ministry by bribes to copy documents from the applicant's file and give those documents to the applicant. The applicant responded that one

did not need a high senior officer to bribe. All that was needed was someone working within the Ministry and they can be bribed. The Tribunal again raised its concerns that if someone could be bribed within the Ministry, they might not provide accurate information about the applicant. It might be that they will put in the document the information that they are bribed to obtain. Therefore, the information contained in the documents may have been contrived. The applicant responded that he did not know whether the documents before him were true copies or not. He indicated that he had what was given to him. He stated that he had provided to the Tribunal the documents that were given to him. He had no knowledge of what happened in Syria between his brother-in-law and the Ministry. He indicated that people do not talk about these things over the telephone.

92. The Tribunal asked the applicant why he thought that he would be harmed if he returned. The applicant responded that he has been imprisoned and that it was enough that he was Kurdish. He left Syria illegally and without the Syrian authorities knowing that he had departed. He stated that he is fearful of what will happen to him if he returns, particularly in the current political climate there. He indicated that he will be either beaten or killed if he returned to Syria.
93. The Tribunal asked why his being Kurdish would put him at risk of harm from the Syrian authorities. The applicant stated that because he was Kurdish, he was considered to be a danger to the State due to their history of asking independence from Syria.
94. The Tribunal raised with the applicant that he had stated in his application that he had completed a Bachelor [degree] and had found [work] for 4 years in Qamishli. The Tribunal put to him that it did not appear, from this, that he was targeted because of his Kurdish background. He was not prevented from completing his tertiary education nor was he prevented from working and earning a living utilising his education qualifications. The Tribunal indicated that from this it might not appear that he was being persecuted because of his Kurdish background. The applicant responded that he suffered throughout his life because he was Kurdish. He was forbidden to speak his native Kurdish language from Grade 1 to Grade 7 at school. If he spoke his native language at primary school, or for that matter in Secondary school, he would be severely punished. He stated that his marks at secondary school and even at university were marked down because he was Kurdish. The government took land from his father, which was owned by him, for no reason other than he was Kurdish. He would not have had to be a [vocation deleted: s.431(2)] if his land was not confiscated. His father had land and two shops. All this was taken from him by the government.
95. The Tribunal indicated that it would consider all the information before it.

Post hearing

96. The Tribunal made further enquiries with the department about the applicant's identity. The Department confirmed that the Canadian passport provided by the applicant was the passport of his friend, [Mr H], with whom the applicant was [living] at the time. [Mr H] wrote a supporting letter indicating that the applicant had stayed with him for a period of time and that he was able to provide support to the applicant. The Department indicates that this was the only passport provided by the applicant at interview. The Department also indicated that an internal Syrian travel document was provided by the applicant to the Department, which was subsequently forwarded on for authentication.

INDEPENDENT COUNTRY INFORMATION

Al Qamishli (Al Qamishli)

97. A number of recent reports from non-government organisations and news agencies indicate that Al-Qamishli has a predominantly Kurdish population.¹ A report by the United States Institute of Peace, published in April 2009, also states that “many of Syria’s denationalized Kurds live in Hasakah province, especially in Malkia and the cities of Qamishli and Ras al-Ain”.²
98. An article from the Encyclopaedia Britannica Online provides detailed information on the ethnic and religious demography of the population of Al-Qamishli, as well as information on the geographic location of the town. This information reads as follows:

Al-Qāmishlī, also spelled Qamishliye, town in northeastern Syria. It lies along the Turkish border, which divides the Syrian town of Al-Qāmishlī from the Turkish town of Nusaybin. Al-Qāmishlī was founded in 1926 as a station on the Taurus railway. Its mixed population increased with influxes of Armenian, Assyrian Christian, and Kurdish refugees from Turkey and Iraq. The town also has Sunni Muslims, Syriac-speaking Christians, and a Jewish community. It is the seat of both an Armenian and a Syrian Catholic archbishopric. Located on the Jaghjaghah River, a tributary of the Khābūr River, the town is the centre of an extremely fertile area, growing cotton and wheat. A spur of the railway line extends approximately 20 miles (32 km) farther east to a wheat and cotton depot. The region is within a zone of moderate rainfall, so dry farming is practiced as well as farming by irrigation.

With the discovery and exploitation of oil in the Qarah Shūk region 50 miles (80 km) east of the town, Al-Qāmishlī grew rapidly. The town has a sawmill and cement factory. In addition to being a railroad centre on the route from Istanbul, Ankara, Mosul, and Baghdad (the old Orient Express), Al-Qāmishlī also connects with Dayr al-Zawr and Aleppo. Domestic air service is provided to Aleppo and Damascus. Al-Qāmishlī is linked by road with both Turkey and Iraq. It serves as a market centre for the whole of northeastern Syria, and its importance has eclipsed that of Al-Ḥasakah as a transport, market, and cultural centre. Pop. (2003 est.) 200,000.³

99. Independent country information indicates that the distance between Qamishli and Aleppo is 420 kilometers. (www.visit-syria.com/dist.htm)

Al Qamishli riots – March 2004

100. On 18 March 2004, Human Rights Watch reported of the riots (in Al Qamishli as follows (<http://www.hrw.org/en/news/2004/03/18/syria-address-grievances-underlying-kurdish-unrest>):

¹ Zambelis, C. 2011, ‘Unrest in Syria inspires new wave of Kurdish activism’, *Jamestown Foundation Terrorism Monitor*, 2 June, Vol. 9, No. 22, p. 8; Human Rights Watch 2011, “*We’ve never seen such horror*” : *crimes against humanity by Syrian security forces*, 1 June; ‘Syria tightens noose on protest hubs: activists’ 2011, *Agence France Presse*, 10 May; ‘Dozens in Syria demand liberty, end to corruption’ 2011, *Agence France Presse*, 16 March; ‘Kurdish killings widely condemned’ 2008, *Institute for War and Peace Reporting*, 1 April.

² Ziadeh, R. 2009, *The Kurd in Syria: Fueling Separatist Movements in the Region?*, United States Institute of Peace website, April, p. 3

³ Encyclopædia Britannica 2011, ‘Al-Qāmishlī’ <http://www.britannica.com/EBchecked/topic/485435/Al-Qamishli> - Accessed 10 June 2011

At least 30 people were killed and more than 160 were injured in days of clashes that began March 12 at a stadium in Qamishli, a largely Kurdish city in north-eastern Syria, according to accounts from Syrian Kurdish sources and press reports. Kurdish sources have stated that security forces used live ammunition against unarmed Kurdish civilians almost immediately after clashes erupted in Qamishli at a soccer match between Kurdish fans of the local team and Arab supporters of a visiting team from the city of Deir al-Zor. The international press reported that nine people were killed on March 12. The unrest spread to other Kurdish towns along the northern border with Turkey, and then to Damascus and Aleppo.

... ..

Press reports have also noted that Kurdish attacks on state property following the initial clashes have prompted additional harsh responses from security forces. The Syrian government has an obligation to respond to such attacks, but must use means that are proportionate to the threat.

Human Rights Watch interviewed two Kurdish residents of Qamishli who said that they were eyewitnesses on March 13 to the use of live ammunition by government security forces during a large funeral procession in the city for Kurds killed the day before. One eyewitness, affiliated with a Kurdish political party, said that some marchers had stoned the government water authority's building in the city center, and then set fire to the customs office and an agricultural supplies building.

In separate interviews, both men said they saw armed security forces in uniforms and plainclothes open fire into the long funeral march. These forces, they said, were traveling in approximately 10 roofless, military-style jeeps. The jeeps sped past without slowing down while the occupants indiscriminately raked the mourners with fire from automatic rifles. One of the men said that he saw a man shot in the leg, and that when he visited hospitals later in the day he learned that a number of Kurds were killed and scores injured.

Human Rights Watch urged that independent monitors be granted unimpeded access to the areas where demonstrations and clashes have occurred. Journalists, diplomats and human rights investigators should not be turned away.

Security forces have reportedly rounded up hundreds of Kurds since the unrest began. Syrian human rights lawyer Anwar al-Bunni on March 16 said that his group, the Association for the Defense of Human Rights in Syria, had the names of 300 people who were arrested in Dummar, a predominantly Kurdish suburb of Damascus. Following the violence at the March 13 funeral march in Qamishli, one Kurdish source there told Human Rights Watch that hundreds of young Kurdish men in the city had been randomly arrested and detained.

"There are good reasons to fear for the treatment of these detainees, given the practices of Syria's internal security forces," Stork said. "This is a government that routinely throws detainees into incommunicado detention and tortures them during interrogation."

Human Rights Watch called on the authorities to ensure that persons arrested not be subjected to torture or incommunicado detention. Family members and lawyers should be informed immediately of the detainees' whereabouts and given prompt access to them, Human Rights Watch said. Individuals suspected of having committed recognizably criminal offenses under international law should be tried in fair proceedings in civilian courts—not in the supreme state security court.

"Any detainee who is charged before the state security court will have no chance of getting a fair trial," Stork said.

Since the early 1990's, Syria's security court has handed down harsh sentences to hundreds of political prisoners following trials that did not meet minimal international due process standards. Security court judgments cannot be appealed to a higher tribunal as is required under international law.

Human Rights Watch has documented systematic discrimination against the Kurdish minority in Syria, including the arbitrary denial of citizenship to generations of Syria-born Kurds. (See Human Rights Watch's report, Syria: Silenced Kurds, October 1996)

One news article relating to the 14 March 2004 Al Qamishli riots, taken from http://www.laboratoiredesfrondeurs.org/archives/Islam/Syrie/04_SYR_1/04_SYR_1.htm website, describes the events as follows:

DAMASCUS: Syria (AP) - Two days of rioting that began with fights between fans of rival soccer teams left 15 people dead and more than 100 injured in Kurdish areas of northern Syria, Kurdish officials said Sunday, adding that calm had been restored in the city where the trouble began.

Fifteen people died in the violence, 13 of them in Qamishli, 775 kilometers (450 miles) northeast of Damascus, and two in Amouda village, 30 kilometers (18 miles) to the west, said Faisal Youssef, a member of the political bureau of the Democratic Progressive Kurdish Party in Syria .

Youssef, who was in Qamishli, would not elaborate, but nine people were believed to have died in the initial soccer fights and the rest in rioting ignited during funerals for some of the dead.

Another local Kurdish leader in Qamishli also said 15 people were confirmed dead and that Qamishli was calm on Sunday, but Abdel Baki Youssef said there may be "more martyrs" because he understood burning and looting was continuing in the ethnically mixed city of Hasakah and elsewhere.

His report of continuing rioting could not immediately be confirmed.

Other reports put the death toll much higher. In Turkey, the private NTV television reported Sunday from Nusaybin, across the border from Qamishli, that 49 people were reportedly killed.

Abdel Baki Youssef, secretary of the Kurdish Yakiti Party, told The Associated Press by telephone from Qamishli that Syrian authorities had detained some 250 Kurds since Friday. Youssef is a common name, and it wasn't immediately clear if the two men were related.

Clashes broke out Friday between supporters of [Club 1] and [Club 2] soccer teams shortly before their Syrian championship match was to begin in a stadium in Qamishli. The game was cancelled.

On Saturday, hundreds of Kurds went on the rampage, vandalizing shops and state offices.

Syrian state broadcasting reported late Saturday evening that the government had appointed a committee to investigate reasons behind the rioting. It said the riots damaged "the stability and security of the homeland and the citizen" and were the fault of "some intriguers" who had adopted "exported ideas."

Faisal Youssef said calm had been restored in Qamishli following a meeting involving a Syrian government committee to investigate the trouble and representatives of Kurdish parties in Qamishli.

In a statement distributed to reporters, Faisal Youssef called on fellow Kurds to "maintain maximum self-restraint ..., not to be dragged into these harmful and useless acts and to halt their demonstrations."

He also called for solidarity among Arab and Kurdish Syrians and announced a three-day mourning period for the victims.

Syria also closed its border crossing from Qamishli to Nusaybin, Turkey, as of Sunday morning, according to the Turkish television station, NTV. A few Syrians were unable to cross into Syria, it said.

That Saturday's riot was led by Kurds makes it especially sensitive for the authorities. The government is concerned that the Kurdish minority could take its cue from the new found power of Kurds in neighboring Iraq and agitate for greater recognition. Syrian President Bashar Assad recently joined Turkey in warning against a Kurdish state in northern Iraq.

Kurds make up about 1.5 million of the 18.5 million Syria's population. Most live in the underdeveloped northeastern areas of Qamishli and Hasakah. The Syrian constitution does not mention Kurds.

About 160,000 Kurds have been denied Syrian nationality, meaning they cannot vote, own property, go to state schools or get government jobs.

Mahdi Dakhllallah, editor-in-chief of al-Baath newspaper of the ruling Baath party, said Sunday in a front-page editorial that the Qamishli violence was aimed at "stirring riots, harming Syria and contributing to the whole well-known pressures on it."

He called the rioting "a regrettable incident" that harms all Syrians.

Syria's state-run newspapers generally act as mouthpieces for the government.

In Brussels, Belgium, meanwhile, about 50 Kurdish demonstrators broke into the grounds of the Syrian Embassy on Saturday to protest the deaths in the soccer riots in northern Syria.

Shouting "Syria, terrorists!", the demonstrators climbed into the embassy garden and smashed windows. Some forced their way into the entry hall of the embassy, scattered pamphlets and damaged furniture before being removed by police.

They clashed with Belgian police, who detained most of them briefly, according to VRT television of Belgium. About a dozen remained in custody Sunday morning. Belgium has a large Kurdish community, most immigrants from Turkey.

Syrian Kurds and Stateless Kurds in Syria

101. Kurds comprise approximately 10% of the Syrian population and live mostly in the north-east regions of the country.⁴ International human rights organisations and government reports

⁴ Amnesty International 2011, *Annual Report 2011 – Syria*; Danish Immigration Service 2010, *Human rights issues concerning Kurds in Syria: Report from a joint fact finding mission by the Danish Immigration Service (DIS) and ACCORD/Austrian Red Cross to Damascus, Syria, Beirut, Lebanon, and Erbil and Dohuk, Kurdistan Region of Iraq (KRI), 21 January to 8 February 2010*, May, p.7

indicate that the Kurdish minority in Syria are subject to government discrimination.⁵ Country information indicates that Kurdish people face severe restrictions in relation to the expression of their language and culture.⁶ The teaching of Kurdish is prohibited in schools.⁷

102. International Human Rights organisations have reported that an estimated 220,000 to 300,000 Syrian born Kurds have been deprived of citizenship.⁸ Stateless Kurds are unable to obtain identification documentation which in turn restricts their ability to own land, travel overseas, obtain government employment, access education and vote. Freedom House have reported that “in 2009, the government made it more difficult to hire noncitizens, resulting in the dismissal of many Kurds.”⁹
103. Kurdish activists, particularly members of banned Kurdish political parties, have been subject to monitoring, intimidation, arbitrary arrest, long periods of detention and torture.¹⁰ Amnesty International recently reported that Kurds are subject to “particularly harsh abuse” in Syrian detention centres.¹¹ According to Freedom House suspected Kurdish activists are also “routinely dismissed from schools and public-sector jobs.”¹²

<http://www.nyidanmark.dk/NR/rdonlyres/FF03AB63-10A5-4467-A038-20FE46B74CE8/0/Syrienrapport2010pdf.pdf> – Accessed 18 November 2010

⁵ Amnesty International 2011, *Annual Report 2011 – Syria*; US Department of State 2011, *2010 Country Reports on Human Rights Practices*, 8 April, www.state.gov/g/drl/rls/hrrpt/2010/nea/154473.htm - Accessed 11 April 2011 -

⁶ Amnesty International 2011, *Annual Report 2011 – Syria*; Freedom House 2011, *Freedom in the World 2011 - Syria*, 26 May,

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2011&country=8143&pf - Accessed Mon, 30 May 2011.

⁷ Human Right Watch 2011, *World Report 2011*, 24 January www.hrw.org/en/world-report-2011/syria - Accessed 31 January; Minority Rights Group International 2010, *State of the World's Minorities and Indigenous Peoples 2010: Events of 2009*, July, p.194

⁸ Freedom House 2011, *Freedom in the World 2011 - Syria*, 26 May,

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2011&country=8143&pf - Accessed Mon, 30 May 2011; Human Right Watch 2011, *World Report 2011*, 24 January

www.hrw.org/en/world-report-2011/syria - Accessed 31 January; Minority Rights Group International 2010, *State of the World's Minorities and Indigenous Peoples 2010: Events of 2009*, July, p.194

⁹ Freedom House 2011, *Freedom in the World 2011 - Syria*, 26 May,

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2011&country=8143&pf - Accessed Mon, 30 May 2011; Amnesty International 2011, *Annual Report 2011 – Syria*; US Department of State 2011, *2010 Country Reports on Human Rights Practices*, 8 April,

www.state.gov/g/drl/rls/hrrpt/2010/nea/154473.htm - Accessed 11 April 2011

¹⁰ Amnesty International 2011, *Annual Report 2011 – Syria*; Freedom House 2011, *Freedom in the World 2011 - Syria*, 26 May,

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2011&country=8143&pf - Accessed Mon, 30 May 2011; Human Right Watch 2011, *World Report 2011*, 24 January

www.hrw.org/en/world-report-2011/syria - Accessed 31 January; Danish Immigration Service 2010, *Human rights issues concerning Kurds in Syria: Report from a joint fact finding mission by the Danish Immigration Service (DIS) and ACCORD/Austrian Red Cross to Damascus, Syria, Beirut, Lebanon, and Erbil and Dohuk, Kurdistan Region of Iraq (KRI), 21 January to 8 February 2010*, May

<http://www.nyidanmark.dk/NR/rdonlyres/FF03AB63-10A5-4467-A038-20FE46B74CE8/0/Syrienrapport2010pdf.pdf> – Accessed 18 November 2010; Minority Rights Group

International 2010, *State of the World's Minorities and Indigenous Peoples 2010: Events of 2009*, July, p.194 - [\ntssyd\REFER\Research\INTERNET\MELBNET\Reports\MRG\Minorities_2010\Minorities_2010.pdf](http://ntssyd\REFER\Research\INTERNET\MELBNET\Reports\MRG\Minorities_2010\Minorities_2010.pdf)

¹¹ Amnesty International 2011, *Annual Report 2011 – Syria*; US Department of State 2011, *2010 Country Reports on Human Rights Practices*, 8 April, www.state.gov/g/drl/rls/hrrpt/2010/nea/154473.htm - Accessed 11 April 2011.

¹² Freedom House 2011, *Freedom in the World 2011 - Syria*, 26 May,

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2011&country=8143&pf - Accessed Mon, 30 May 2011

104. The US Department of State report on the human rights situation in Syria during 2010 provides further detailed information on the treatment of Kurds during 2010. The report states that "security services arrested hundreds of Kurdish citizens during the year, and the SSSC prosecuted them, in some cases on charges of seeking to annex part of Syria to another country." The report provides the following relevant information on the treatment of Kurds including Kurdish conscript deaths, convictions against Kurdish political activists, arbitrary arrests and the repression of Kurdish language and cultural identity:

The government discriminated against minorities, particularly Kurds, and severely restricted workers' rights.

...Suspicious Kurdish conscript deaths continued throughout the year. Human rights observers reported that 11 Kurdish conscripts died during the year, purportedly by suicide or accident.

...On May 25, the UN Committee Against Torture voiced its concern that the government operates secret detention facilities where those detained are held incommunicado and routinely tortured, according to "numerous, ongoing, and consistent allegations." The committee also highlighted its concern regarding treatment of Kurdish political activists and military courts' convictions on Kurdish detainees on vague charges of "weakening national sentiment" or "spreading false or exaggerated information."

The report also asserted that abuses were "intentionally and frequently inflicted on Kurds in Syria with the consent or acquiescence" of officials and encouraged by the government.

...During the year police and security agents arrested individuals based on race, religion, nationality, political opinion, or membership in a particular group. The government was especially harsh toward individuals allegedly involved in Kurdish political or civil society activism.

...The government prohibited all Kurdish-language publications, although there were credible reports that such publications were available in the country.

...The government also arrested journalists and others who wrote in Kurdish or in favor of greater Kurdish rights.

...A Kurdish-run human rights watchdog, Kurdwatch.org, estimated that as of October 11, there had been 59 arrests and 38 convictions of Kurds. In addition, the Web site recounted that 26 of the 38 convictions were for having connections to a political party.

...Many human rights observers believed that the government deliberately attempted to stop any public display of "Kurdishness."

Although the government contended there was no discrimination against the Kurdish population, it placed limits on the use and teaching of the Kurdish language. It also restricted the publication of books and other materials in Kurdish, Kurdish cultural expression, and at times the celebration of Kurdish festivals. After beginning in 2009, authorities continued enforcement of an old ruling requiring that at least 60 percent of the words on signs in shops and restaurants be in Arabic. Officials reportedly sent patrols into commercial districts to threaten shop owners with closure if they refused to change the names of their stores into

Arabic. Minority groups--especially Kurds, whom the government appeared to target specifically--regarded the step as a further attempt to undermine their cultural identity.¹³

105. The Minorities at Risk (MAR) project, a university based research project that monitors and analyses the status and conflicts of politically-active communal groups in all countries with a current population of at least 500,000, gives its assessment for Kurds in Syria as follows (<http://www.cidcm.umd.edu/mar/assessment.asp?groupId=65202> accessed 29 November 2011):

Risk Assessment

The Kurdish people of Syria exhibit some factors pointing to increased risk for rebellion. They are somewhat geographically concentrated and have a regional base in northeastern Syria. Additionally, they have faced high levels of government-led discrimination and repression in recent years. However, Syrian Kurds lack the political organization of their kindred in Turkey and Iraq. Organized rebellion, therefore, remains unlikely at this point; however, less organized forms of violence, such as the riots that erupted in Qamishli in 2004 and 2005, are more likely.

Syrian Kurds have a moderate risk for protest, primarily due to longstanding cultural restrictions. However, such protests are unlikely to become sustained protest movements, due to consistent and relatively effective repression by the Syrian government.

Kurds in Syria remain at a high risk of government repression if they choose to become politically active. All Kurdish organizations remain banned in Syria, as are expressions of Kurdish nationalism.

Analytic Summary

The Kurdish people make up about 10 percent of the population of Syria, with 40 percent living in the northeastern sections of Jazeera governorate in northern Syria... Some Kurds have started moving into the larger cities to seek employment, but many still live in the mountainous north-east. The main distinctions between the Kurdish people and the majority Sunni Muslims in Syria are language, cultural beliefs and holidays... They share the same religious beliefs and are of no different racial stock or noticeable racial difference than the majority Sunni-Arabs...

Within Syria, Kurds are disadvantaged in many ways. Successive governments have pursued forced Arabization policies. A majority of Kurdish people are considered non-citizens or some lower level form of citizen. They do not receive equal education, health services, right to organization or the right to equal legal protection... Also, they have lower levels of income and face societal discrimination in access to lands, jobs and higher education...

Throughout the 1980s there was a system of forced resettlement by the government and competition for land. During the 1990s, the forced resettlement tapered off but the competition and disposition of their lands remains an issue. Between 1995 and 1999, the Kurdish area of Syria experienced a drought, causing some demographic stress. The drought exacerbated the steady, low-level migration to urban areas and external migration.

Kurdish grievances include equal legal protection under the Syrian constitution, better education and economic opportunities and the cessation of Arabization policies. This would

¹³ US Department of State 2011, *2010 Country Reports on Human Rights Practices*, 8 April, www.state.gov/g/drl/rls/hrrpt/2010/nea/154473.htm - Accessed 11 April 2011

allow them to speak their language and practice their cultural customs. Like Kurds in Iraq and Turkey, there is also some support for an autonomous region...

The Kurdish people within Syria are not highly organization because of the mountainous region they live in and because Kurdish political parties are banned in Syria. Fifteen Kurdish political organizations do exist covertly... Kurds in Syria have not suffered from intracommunal conflict in recent years.

The Syrian government's policies of Arabization and oppression of the Kurdish people are still in place. In 2004, fighting between fans of rival football teams escalated into ethnic riots in Qamishli, resulting in the deaths of more than 30 people and hundreds more injured... In 2005, following the abduction and murder of a prominent Kurdish cleric, Sheikh Muhammad Mashuq al-Khaznawi, protests erupted and turned violent when local Arabs attacked protesters and Kurdish shops... Protests took place in each year from 2004 to 2006 ..., centered on government treatment of Kurds, on the Qamishli riots and on the death of al-Khaznawi. Government repression of civilians occurred in 2004 with the torture and arrests of innocent civilians in wake of Qamishli riots... In 2004 and 2005 non-violent Kurdish protesters were killed by Syrian government forces, and in 2006 Kurds celebrating the Kurdish New Year were arrested... Kurdish rioters were killed in 2004 and arrested in 2005...

... ..

Kurdish language

106. In the *English!info* definition, found online at <http://english.turkcebilgi.com/Kurmanji>, "Kurmanji" (Kurdish: Kurmanc)(sometimes misspelled as *Kirmanji* or *Kermanji*) is described as the dominant dialect or class of dialects belonging to the Kurdish language spoken in Turkey, Syria, Iraq, Iran, the former Soviet republics and by Kurds living in Central Asia. It is spoken by the vast majority of Kurdish speakers and is the only dialect or class of dialects spoken in all four parts of Kurdistan. Kurmanci is often used by Kurdish linguists to describe the larger of the two branches of the Kurdish language.

Adra Prison

107. In its 2005 annual report, the Syrian Human Rights Committee stated that "political detainees considered of a lesser threat are transferred to the 'Adra Prison north of Damascus. These include the detainees of "Damascus Spring" and Kurds; they are sent based on the Security's categorisation."¹⁴ For the same year, the US Department of State reported that "at least 150 political prisoners were held in Adra prison, including the 6 'Damascus Spring' prisoners."¹⁵
108. There are reports that torture of political prisoners is also conducted at Adra. In June 2009 the US Department of State reported that "PSD agents from the al-Fayha branch in Damascus arrested Berzani Karro, a 20-year-old Kurd, at Damascus International Airport upon his forced return to the country from Cyprus. The PSD held Karro incommunicado for three months before transferring him to Adra prison, where officials allowed his family to visit him. Human rights observers reported Karro was 'reportedly subjected to prolonged beatings' ...[and] torture with electricity shocks while in PSD custody."¹⁶

¹⁴ Syrian Human Rights Committee 2005, Annual Report On Human Rights Situation in Syria, p.41

¹⁵ US Department of State 2006, Country Report on Human Rights Practices 2005 – Syria, 8 March

¹⁶ US Department of State 2010, *Country Report on Human Rights Practices 2009 – Syria*,

109. A 2010 report by the Danish Immigration Service also provides information in relation to the poor conditions in Adra prison. The report states that:

Representatives of a Kurdish human rights organisation (1) stated that torture is used by the security services during pre-trial detention, specifying torture as beatings, personal insults and interrogations. It was added that serious forms of ill-treatment and torture are used both during pre-trial detention and in prisons especially in Adra prison close to Damascus. Generally, the prison conditions in Syria are very bad.¹⁷

Tadmor Prison (AKA Tadmor or Palmyra Prison)

110. The Syrian Human Rights Committee reported in 26 June 2007 (see www.shrc.org/data.aspx/d3/3243.aspx):

[O]n 27 June 1980, the Syrian Regime's death machine slaughtered approximately 1000 Islamic detainees as they sat defenceless within their cells in the desert prison of Tadmur. For two decades and until its official closure in early 2001, massacres continued harvesting thousands of human souls who were killed in mass execution campaigns.

Failed Asylum seekers returning to Syria

111. The US Department of State report on human rights in Syria during 2010 indicates that returned failed asylum seekers may face prosecution on return to Syria:

The law provides for the prosecution of any person who attempts to seek refuge in another country to escape a penalty in Syria. Persons who have unsuccessfully sought asylum in other countries and who have past connections with the Muslim Brotherhood have been prosecuted upon their return to the country. The government routinely arrested dissidents and former citizens with no known political affiliation who tried to return to the country after years or even decades in exile.¹⁸

112. Amnesty International has reported that in September 2009 a failed Kurdish asylum seeker was detained upon return to Syria. According to the report he was charged with propagating 'false news' about Syria:

Khaled Kenjo, a member of the Kurdish minority, was arrested in September, 12 days after he was forcibly returned to Syria from Germany, where he had unsuccessfully sought asylum. He was charged with "broadcasting abroad false news that could harm the reputation of the state". The charge apparently related to his participation, while in Germany, in activities to promote Kurdish minority rights in Syria. On 30 December, Qamishli Military Court ordered his release without dropping the charge. According to Khaled Kenjo, he was tortured in custody.¹⁹

113. From 21 January to 8 February 2010 a fact-finding mission into the situation for Kurds in Syria was conducted by the Danish Immigration Service and the Austrian Centre for Country

¹⁷ Danish Immigration Service 2010, *Human rights issues concerning Kurds in Syria: Report from a joint fact finding mission by the Danish Immigration Service (DIS) and ACCORD/Austrian Red Cross to Damascus, Syria, Beirut, Lebanon, and Erbil and Dohuk, Kurdistan Region of Iraq (KRI), 21 January to 8 February 2010*, May <http://www.nyidanmark.dk/NR/rdonlyres/FF03AB63-10A5-4467-A038-20FE46B74CE8/0/Syrienrapport2010pdf.pdf> – Accessed 18 November 2010

¹⁸ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Syria*, 8 April, Section 2.d

¹⁹ Amnesty International 2010, *Amnesty International Annual Report 2010 – Syria*, 28 May

of Origin and Asylum Research and Documentation. The report of the fact finding mission provides information on the treatment of returned failed asylum seekers to Syria. According to the report returned asylum seekers are interrogated and detained. The report states that a “Western diplomatic source” stated that one returnee was charged with spreading false information abroad, although according to the returnee’s lawyer his client had not been politically active at all. The report contains the following information on the treatment of returned Syrian asylum seekers:

Nadim Houry, senior researcher, Human Rights Watch, Beirut, stated that returned failed asylum seekers are most likely detained upon return to Syria, although not necessarily for a long period of time. It was added that there is a high likelihood of ill-treatment during their initial detention which can amount to torture if the person is expected to know something of interest to the security service. What will happen to a returnee depends on what is in the file (if there is one) or on whether the security services believe what the returnee tells. Usually, the authorities release returnees after making a file on them and probably refer them to an investigative judge. Upon release persons are very commonly required to report regularly.

A Western diplomatic source (5) stated that failed asylum seekers would be detained upon return to Syria simply because of the fact that he or she has been abroad. The person would be subjected to interrogation by the security services. However, it is unclear how the person would be treated during this detention that in some cases could last for weeks or even longer.

...Nadim Houry, HRW, added that the immigration service is not necessarily the first instance which returned failed asylum seekers meet at the border, and that they can as well be detained and interrogated by the security services immediately upon arrival. The security service is generally present at the airport. It could happen that the immigration service at the airport contacts the security service in advance informing them about the returnee so that the security service is already waiting for the returnee at the airport.

Regarding the situation for returned failed asylum seekers, Nadim Houry, HRW, stated that every returned failed asylum seeker will automatically be detained and interrogated.

...According to a Western diplomatic source (4) persons who have left Syria illegally have been, upon return, subject to investigation by the immigration authorities. This can include detention in the immigration service’s own detention centres, which the source considered to be routine if it does not exceed two weeks. It was stressed that in almost all cases known to the source, the detainees the past three months, out of which three were first detained but later released, while one person was charged with spreading false information abroad as part of his political activities, although the person’s lawyer argued in court that his client had not been politically active at all. The source mentioned that the computer system employed at border controls to screen persons upon their entry into Syria works well. Border guards check whether the name of someone who enters Syria can be found on one of the wanted persons lists of the security services. These lists contain information from the various security services’ offices from all parts of the country, including from Qamishli. Immigration authorities are thus able to see whether a returnee has a file with the security services somewhere, and can subsequently inquire about the file’s details with the authorities from these cities or municipalities. It was added that there is no single list of wanted persons but that every security agency maintains its own list. If one of the security services has a file concerning a returnee, he or she would be transferred from the immigration services’ detention facilities to the security agency’s detention centre.

A Western diplomatic source (1) stated that if somebody is called in for interrogation by the security services and the person does not show up, he would be arrested, and if his absence is due to the fact that he has left the country, he would be put on the list of wanted persons.

Upon return to Syria, such a person would be arrested and interrogated by the security service. However, it was emphasized that it is very hard to say what exactly would happen in such cases.

A Western diplomatic source (4) stated that amnesties are not reliable in Syria stressing that persons who are on the list of wanted persons remain targeted even after an amnesty.²⁰

114. The UK Home Office's April 2009 operational guidance note for Syria expresses the view that returnees are unlikely to be charged only on the basis of seeking asylum abroad. The report states that:

The law provides for the prosecution of any person attempting to seek refuge in another country to escape a penalty in Syria. Persons who have unsuccessfully sought asylum in other countries and who have past connections with the Muslim Brotherhood have been prosecuted upon their return to Syria. The government routinely arrested dissidents who tried to return to the country after years in exile. However the authorities are unlikely to try a failed Syrian asylum seeker on the basis of applying for asylum alone, although it would not help their case if they were to be tried for some other crime. In addition the Syrian authorities would not automatically know an individual had applied for asylum in the UK.²¹

115. A report published by the Immigration and Refugee Board of Canada in May 2008 refers to advice provided by the Syrian Human Rights Committee and the Office of the United Nations High Commissioner for Refugees (UNHCR) Representation in Canada on the issue of failed asylum seekers returned to Syria. The advice indicates that failed asylum seekers are interrogated upon return to Syria and may be charged with 'spreading false information':

An official from the Syrian Human Rights Committee (SHRC), an independent London-based organization concerned with the freedoms and human rights of Syrians (SHRC 5 Dec. 2003), provided the following information in correspondence with the Research Directorate:

... [A]nyone who applies for asylum and [is] known to the Syrian security services will be arrested, prosecuted and detained, for distributing false information about Syria.

This issue is applicable to all countries including Canada and USA. (SHRC 4 Apr. 2008)

An official from the Office of the United Nations High Commissioner for Refugees (UNHCR) Representation in Canada provided the following information in 14 April 2008 correspondence with the Research Directorate:

According to information available to the UNHCR Representation in Damascus, and confirmed by a number of European Embassies in Syria, the mere unsuccessful application for asylum abroad will not lead *per se* to prosecution or other forms of persecution in Syria.

²⁰ Danish Immigration Service 2010, *Human rights issues concerning Kurds in Syria: Report from a joint fact finding mission by the Danish Immigration Service (DIS) and ACCORD/Austrian Red Cross to Damascus, Syria, Beirut, Lebanon, and Erbil and Dohuk, Kurdistan Region of Iraq (KRI), 21 January to 8 February 2010*, May, pp.55-56 <http://www.nyidanmark.dk/NR/rdonlyres/FF03AB63-10A5-4467-A038-20FE46B74CE8/0/Syrienrapport2010pdf.pdf> – Accessed 18 November 2010

²¹ UK Home Office 2009, *Operational Guidance Note: Syria*, February, p.13

...4. The procedure upon return of the unsuccessful asylum-seeker to Syria is the following:

a. The person has to report to the Immigration Department in order to apply for new documentation.

b. The procedure also comprises a visit to the Political Security Branch by which the person will be interrogated regarding the earlier motives and reasons for the illegal departure from Syria. Should this arise, it will be very difficult for the returnee to keep the information on a potential asylum application abroad confidential. Inquiries on the reasons for an asylum application abroad may follow.

c. Should there be no problem, then the person will obtain, in about three months, new identity documents.

d. Should the authorities come to the conclusion that the person may be considered as an opponent against the regime, the consequences may be very serious. UNHCR is not aware of the fate of such persons. Human Rights Reports on the conditions and treatment of detainees in different types of detention facilities, in particular of those facilities belonging to different Security Branches, speak for themselves.

The UNHCR also stated that the following information that was provided to the Research Directorate on 28 August 2003 was still accurate:

The Syrian law on departure of Syrian nationals, Law no. 42 of 31 December 1975 remains in force and has not been amended. Available information indicates that the practical implementation of this law has not changed since [April 1995]. Any Syrian national who departs the country illegally faces judicial consequences that may, in principle, result in up to three months imprisonment.

Generally speaking, one may expect the same treatment for unsuccessful Syrian asylum-seekers who have departed the country illegally. ... [T]he response of the Syrian authorities is very much dependent upon the nature of the departure and the profile and background of the individual. If it becomes known that they have applied for asylum, the consequences may be severe. However, if the individual's claim for asylum remains confidential then s/he may avoid further complications with the local law enforcement agencies and judicial authorities. Of course, the maintenance of confidentiality will depend, in part, on the manner in which the individual is returned to the country of origin. (28 Aug. 2003)

Refugees International, a Washington-based organization that provides advice on displacement issues to governments and non-governmental organizations (NGOs) (n.d.), reports on the case of a man who was deported to Syria from Germany after his asylum application was refused (Refugees International 13 Feb. 2006). Upon his return, he "was sentenced to two years in prison by the high security court and severely tortured" (ibid.). Refugees International also indicates that "[t]he average length of detention for seeking political asylum abroad was reported to be three to six months" (ibid.). According to the United States (US) Department of State Country Reports on Human Rights Practices for 2007, "[p]ersons who have unsuccessfully

sought asylum in other countries and who have past connections with the MB [Muslim Brotherhood] have been prosecuted upon their return to Syria” (11 Mar. 2008, Sec 2.d).

According to Amnesty International (AI), two men, Abdul Rahman Musa and Usama Sayes were detained by the Syrian authorities after having failed to secure asylum from the United Kingdom (UK) and the United States (US) respectively (13 May 2005). A 2007 AI report indicates that, in June 2005, both Sayes and Musa were sentenced to death but that their punishment was decreased to a twelve-year prison sentence (see also Independent on Sunday 2 July 2006). The Official from the SHRC provided the following information on Musa and Sayes:

Mr Abdul Rahman Musa who was deported to Syria from the USA after applying for asylum was charged with distributing false and fabricated information and undermining the prestige of the state. The same was applied to other deportees including Mr. Usama Sayes who was deported from the UK in 2005 [and] whose sentence was increased [to] two years because he was charged [with] distributing false information and undermining the state’s prestige because he applied [for] asylum in the UK. (SHRC 4 Apr. 2008)²²

116. On 29 December 2010, Kurdwatch.org documented the following accounts of persons arrested for attempting to leave Syria illegally:

On December 19, the criminal court in al-Qamishli decided that Mahmud Mahmud Zubayr (b. 1987, Maktum), his father Zubayr Mahmud Hasan (b. 1965, married, eight children, Maktum) and Husayn Sharaf ‘Abdullah (b. 1973, married, three children) will be released from custody on a bond of 1,000 Syrian Lira.

On November 4, 2010, members of the military police arrested the individuals named, along with Ahmad Shaykhu Muhammad ‘Ali (b. 1988), his father Muhammad ‘Ali Shaykhu ‘Isa (b. 1945, married) and ‘Abdulqadir Khalu Muhammad (b. 1975, married) in Rumaylan on the suspicion that they wanted to leave the country illegally. On November 11, 2010, they were transferred to the Political Security Directorate in al-Hasakah. During the interrogation there, they were tortured by being forced into a tire and beaten (so-called Dulab method). On the same day they were presented to the prosecutor in al-Hasakah, who referred the case to the district attorney’s office in al-Qamishli. The district attorney’s office decided to release Ahmad Shaykhu Muhammad ‘Ali, Muhammad ‘Ali Shaykhu ‘Isa and ‘Abdulqadir Khalu Muhammad from custody.

Mahmud Mahmud Zubayr, Zubayr Mahmud Hasan, Husayn Sharaf ‘Abdullah and ‘Abdulqadir Khalu Muhammad are charged pursuant to Article 33, with reference to Article 2, Decree No. 29 from the year 1970 (Decree on the entry and departure of foreigners). Mahmud Mahmud Zubayr is accused of leaving the country illegally, while the other individuals named are accused of aiding and abetting. Ahmad Shaykhu Muhammad ‘Ali and Muhammad ‘Ali Shaykhu ‘Isa are charged pursuant to Statute No. 42 from the year 1975 (Passport statute). They are also accused of leaving the country illegally. However, none of the men actually crossed the Syrian border. The next hearing is scheduled for December 26, 2010.

²² Immigration and Refugee Board of Canada 2008, SYR102807.E – Syria: *The Syrian government’s attitude towards, and its treatment of, citizens who have made refugee or asylum claims, particularly when the claim was made in Canada or the United States (US)*, Immigration and Refugee Board of Canada website, 1 May http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451893 – Accessed 13 August 2008

The Human Rights Situation in Syria

117. The Freedom House report *Freedom in the World 2009 - Syria*, published on 16 July 2009, and accessed from <http://www.unhcr.org/refworld/docid/4a64527dc.html> includes the following:

The security agencies, which operate independently of the judiciary, routinely extract confessions by torturing suspects and detaining their family members. After release from prison, political activists are often monitored and harassed by security services. The Syrian Human Rights Committee has reported that hundreds of government informants are rewarded for or coerced into writing reports on relatives, friends, and associates who are suspected of involvement in "antiregime" activities.

118. The 2010 Human Rights Watch World report, published in January 2011 and available from <http://www.hrw.org/en/world-report-2011#countries>, includes the following:

There was no significant change in Syrian human rights policy and practice in 2010. Authorities continued to broadly violate the civil and political rights of citizens, arresting political and human rights activists, censoring websites, detaining bloggers, and imposing travel bans.

Emergency rule, imposed in 1963, remains in effect and Syria's multiple security agencies continue to detain people without arrest warrants, holding them incommunicado for lengthy periods. The Supreme State Security Court (SSSC), an exceptional court with almost no procedural guarantees, regularly sentences Kurdish activists and Islamists to long prison terms...

Arbitrary Detention, "Disappearances," and Torture

Syria's multiple security services continue to detain people without arrest warrants and frequently refuse to disclose their whereabouts for weeks and sometimes months, in effect forcibly disappearing them. The fate of Nabil Khlioui, detained in 2008 from the region of Deir al-Zawr because of suspected ties to Islamists, remains unknown. The authorities have also kept silent about the fate of at least 20 Kurds detained since 2008 on suspicion of ties to a separatist Kurdish movement.

Human Rights Watch received numerous reports of ill-treatment and torture by security agencies. The United Nations Committee against Torture said in May that it was "deeply concerned about numerous, ongoing, and consistent allegations concerning the routine use of torture by law enforcement and investigative officials."

At least five detainees died in custody in 2010, with no serious investigations into the deaths by the authorities. In June security services returned the body of Muhammad Ali Rahman to his family. According to Syrian human rights activists, his corpse showed signs of torture. Syrian law provides Syrian security services with extensive immunity for acts of torture.

As in previous years, the government failed to acknowledge security force involvement in the "disappearance" of an estimated 17,000 persons, mostly Muslim Brotherhood members and other Syrian activists detained by the government in the late 1970s and early 1980s, as well as hundreds of Lebanese and Palestinians detained in Syria or abducted from Lebanon.

More than two years after security forces opened fire on rioting inmates in Sednaya prison, killing at least nine, the government has not released any information about the casualties. The authorities have not released Nizar Rastanawi, a prominent human rights activist who

completed his four-year sentence in Sednaya on April 18, 2009, and there is no information about his well-being.

119. On 1 June 2011, Human Rights Watch published a report entitled “We've Never Seen Such Horror” Crimes against Humanity by Syrian Security Forces, (<http://www.hrw.org/en/reports/2011/06/01/we-ve-never-seen-such-horror-0>), includes the following:

II. Crimes against Humanity and Other Violations in Daraa

Situated in the southwestern part of the country on the border with Jordan, Daraa is one of fourteen Syrian governorates or provinces. With less than a million people, it is divided into three districts, al-Sanamayn, Daraa, and Izraa. The provincial capital, also called Daraa, has a population of about 80,000.

It was in Daraa that the anti-government protests that have spread all over Syria since mid-March started. Initial protests were sparked by the detention and torture of 15 boys, ages 10 to 15, accused of painting graffiti slogans calling for the downfall of the regime. For days, the boys' families pleaded for their release with the authorities and with General Atef Najeeb who was in charge of the local political security department in Daraa where the boys were held. Then the residents of Daraa took to the streets.

On March 18, following the Friday prayer, several thousand protesters marched from al-Omari Mosque in Daraa calling for the release of the children and greater political freedom, and accusing government officials of corruption. According to multiple witnesses interviewed by Human Rights Watch, security forces at first attempted to beat the protesters back with stones and batons. Later riot police were deployed with water cannons and teargas, and finally members of political security branch of the mukhabarat or security services showed up and opened fire on demonstrators using live ammunition. At least four protesters were killed that first day, and several dozen injured.

The release of the children—bruised and bloodied after what they described as severe torture in detention—fanned the flames of popular anger. Protests continued, every day growing bigger, joined by people from towns and villages outside Daraa city.

Security forces responded to the protests with increasing brutality. As this report describes in detail, they have systematically opened fire on overwhelmingly peaceful crowds during demonstrations and funeral processions, killing, at this writing, at least 418 people in the governorate of Daraa alone, and wounding hundreds more. The security forces routinely prevented the wounded from getting medical assistance in a number of instances, and subjected thousands of people to arbitrary arrests and brutal torture in detention. When none of these measures succeeded in quelling the protests, Syrian authorities launched a large-scale military operation in Daraa at the end of April, put the city under military control, and imposed a siege on the city, preventing movement not only in and out of the city but also within it, and depriving the residents of basic services. Later the security forces extended these siege tactics to nearby towns.

Human Rights Watch believes that the nature and scale of abuses committed by the Syrian security forces, the similarities in the apparent unlawful killings and other crimes, and evidence of direct orders given to security forces to 'shoot-to-kill' protestors, strongly suggest these abuses qualify as crimes against humanity.

120. The Department of Foreign Affairs and Trade's (DFAT) travel advice with respect to Syria, accessed from <http://www.smartraveller.gov.au/zw-cgi/view/Advice/Syria>, accessed on 29 November 2011, includes the following:

- We strongly advise you not to travel to Syria at this time because of the deteriorating security environment, civil unrest, ongoing violent clashes, and the high threat of terrorism.
- Violent clashes are possible in any part of Syria and the security situation is likely to deteriorate further in the near-term.
- Civil unrest and violent clashes, resulting in over 2,000 reported civilian deaths, have occurred throughout Syria since March 2011, including in major cities such as Damascus, Aleppo, and Homs.
- You should also avoid areas where people congregate after Friday midday prayers in all parts of Syria and avoid funerals and mourning processions.

FINDINGS AND REASONS

121. The applicant claims to be a citizen of Syria and to be born to Kurdish Syrian parents. He claims to have been born in Al Yaroubiyeh, where he spent the first two years of his life. He then moved to Al Qamishli where he spent a substantial amount of his time while in Syria, except when he was studying in Aleppo. He claims to have arrived in Australia at an unknown shipping port [in] January 2010. He claims that he travelled from Aleppo to Afrin, a town northwest of the Aleppo. From Afrin he drove north to the Turkish border, where he exited Syria illegally without departure documentation. He then travelled to Istanbul in Turkey. He claims that he met a man there called [Mr G]. Together, they travelled to India where the applicant met another man called [Mr D]. [Mr D] took control of the applicant's movements to Australia. [Mr D] departed for Australia by boat using a Saudi Arabian passport in the name of [Mr C]. The applicant claims that this passport was handed over to [Mr D] who accompanied him from India, once the applicant had safely departed from the boat at an Australian port. The Department does not indicate on its file that it has ever sighted or came in possession of this Saudi Arabian passport. The applicant submitted a Syrian Identification Certificate and a Syrian Personal Civil Register Record (both translated in English by a NAATI accredited translator) to the department. The department submitted these two documents onto its Document Examination Unit (DEU) for examination of the documents' authenticity. The DEU concluded that the result of the documents' authenticity was inconclusive. The applicant did not make submissions that he was a citizen of any other country. He has claimed in his application, at the department interview and at the hearing that he is a Syrian Kurd by birth. He stated in his application that he speaks both Arabic and Kurmanji, his own Kurdish language. He requested a Kurdish interpreter in the Kurmanji dialect to be present as an interpreter at the Tribunal hearing. When the Tribunal was unable to obtain this interpreter, he agreed to an Arabic interpreter as a second option.
122. The Tribunal does not have evidence before it that the applicant was ever a Saudi Arabian citizen. The applicant has claimed that he used an irregular Saudi Arabian passport to enter Australia but has claimed that he is a Syrian Kurd by birth and a Syrian citizen. He has presented two Syrian identification documents which, upon examination, have proved inconclusive as to their authenticity. It does not necessarily follow from the DEU's conclusions that the document is not valid. Nevertheless, the Tribunal has some reservations as to how much weight it can attach to these two documents. At the hearing, the Tribunal questioned the applicant at some length as to his claimed nationality. The Tribunal asked the applicant a number of questions about Al Qamishli relating to such characteristics as its demographics, its geography and the people living there. The applicant responded to the

questions without hesitation and confidently. The Tribunal finds that the applicant demonstrated a sound knowledge of Al Qamishli, based on the country information that was before it. The Tribunal finds that the answers given by the applicant demonstrated that he had lived in Al Qamishli. His knowledge of the distance between Aleppo and Al Qamishli, which he answered without hesitation, indicated that he had travelled between these two places on a number of occasions. Country information indicates that there is a very large Kurdish population living in Al Qamishli. Given the applicant's knowledge of Al Qamishli, and his request in his review application, at first instance, for an interpreter of his own dialect (Kurmanji), the Tribunal finds, in the absence of any evidence suggesting that the applicant is a national of any other country, that he is a national of Syria, and has assessed his claims against that country.

123. The applicant, with the assistance of his authorised representative, has set out his protection claims in detail in the statutory declaration submitted in support of his visa application. He provided details in his statutory declaration and at the hearing about his imprisonment in Qamishli, the Palestine Branch (as he describes it), at Adra prison and at Tadmor prison. He also provided written details about his illegal departure from Syria. He provided written and oral evidence about his [employment] at [Club 1] for 4 years in Qamishli and his time as a student at [university] where he obtained his Bachelor [degree]. He indicated that he participated at the senior football match in Qamishli between which resulted in riots and clashes at the football stadium in March 2004. He indicated that a number of persons were killed at the stadium He indicated that he participated at the consequent funeral the following day for which he attended and that there was a crackdown by Syrian security forces against the marchers. He was subsequently arrested and detained between 2004 and 2009, before finally being released. He was required to report to the police in Qamishli which he did for 3 to 5 months before fleeing to his sister's home in Aleppo. He subsequently crossed the border illegally into Turkey.
124. The Tribunal has had to consider various aspects of the applicant's claims at the hearing against the applicant's previous statements and evidence, as well as the country information before the Tribunal relevant to the applicant's circumstances. The Tribunal makes its findings on credibility on the following matters.
125. The Tribunal finds that the applicant has made a valid application for a protection visa in Australia.
126. The Tribunal notes that the applicant has been consistent in his claim, as indicated in his written application, statutory declaration and departmental interview, that he is a Syrian Kurd. He has indicated at the hearing that his father and mother are both Syrian Kurds. He describes his father as coming from "a large family that is well connected with the Kurdish community" He has given sound information about the demographics, geography and the people of Al Qamishli consistent with someone who has lived there. Independent country information (The United States Institute of peace website) indicates that Al Qamishli has a predominantly Kurdish population. The applicant had requested, as his first preference, a Kurmanji interpreter for the Tribunal hearing and has indicated in his original application that he speaks, reads and writes Kurmanji and Arabic. Independent country information indicates that Kurmanji is described as the dominant dialect or class of dialects belonging to the Kurdish language spoken in several regions including Syria. Taking into consideration the applicant's consistent accounts of his Kurdish ethnicity, and supporting country information, the Tribunal finds that the applicant is a Syrian Kurd.

127. The Tribunal has also considered the applicant's claims that he departed Syria illegally. The Tribunal notes that the applicant has not presented to Australian authorities any evidence of a Syrian passport, which would have been needed for exiting Syria and which is needed for entering Syria. The Tribunal has considered both the department file and the Tribunal file and acknowledges that Australian authorities do not hold any Syrian passport in the name of the applicant. The applicant has indicated in evidence that he crossed the border into Turkey north of Aleppo in Syria without any Syrian passport and that he arrived in Australia with an irregular passport. Given that his department movement records indicate that he has only ever been granted a subclass 030 visa [in] June 2010, that this visa has been extended since that time and that there is no recorded arrival date of his last entering Australia with a visa that was in effect at the time of his arrival (s 13(1) of the Act), the Tribunal finds that, at the time of his last arrival in Australia, the applicant did not have a visa that was in effect at that time. In the circumstances, and in the absence of any contrary evidence that he crossed legally into Turkey, the Tribunal finds that the applicant departed Syria through irregular immigration processes and arrived in Australia but not with a visa that was in effect at the time of his arrival.
128. The Tribunal has considered the applicant's claims about obtaining his education at the [university] and his attaining a Bachelor [degree] there. The Tribunal notes that there is no documentation to indicate that he has attained a bachelor's degree at [the university]. However, he has been consistent with his claim that he had studied in Aleppo from [years deleted: s.431(2)] in his protection visa application, his Form 80 – Personal Particulars for character assessment submitted to the department, at his departmental interview and at the Tribunal hearing. The applicant has also been consistent in his protection visa application, at his departmental interview and at the Tribunal hearing that he has worked at [Club 1] in Al Qamishli from 2001 to 2004. In the absence of contrary evidence indicating otherwise, the Tribunal accepts that the applicant obtained his Bachelor [degree] at [university] from [years deleted: s.431(2)], and that he worked at [Club 1], Al Qamishli from 2001 to 2004.
129. The Tribunal has considered the applicant's claim that he attended a football match in March 2004 (at the interview he gives the date as 14 March 2004 confirmed by independent country information) which subsequently led to riots between opposing spectators and people being killed and injured by Syrian security forces. The applicant indicated that he was aware that 10 to 12 people were killed on the day. This information is consistent with Human Rights Watch's report that 15 people died in the violence, 13 of them in Al Qamishli. The applicant indicated that he was a spectator on the day of the incident. He indicated at the hearing that he was attending a football game in Al Qamishli between [Club 1] and [Club 2]. The applicant provided this information about the two clubs without hesitation. The Tribunal researched a number of source documents and was able to confirm through country information research cited earlier in this decision that the football match did occur between [Club 1] and [Club 2]. The Tribunal acknowledges that this information was not readily available on the number of news articles and reports that it researched. In these instances, these articles consistently reported of the riots occurring at a football match between Al Qamishli and nearby Deir Al- Zour. The Tribunal notes that the applicant did not refer to the names of the two towns of Al Qamishli and Deir Al-Zour as is indicated in a number of reports, but instead referred to the football game between [Club 1] and [Club 2], information that does not appear to be as readily available in sources. The applicant has given a consistent account of his attendance at a football match in Al Qamishli between [Club 1] and [Club 2] in March 2004 in his statutory declaration, his departmental interview and at the hearing. Given these circumstances, and given that the Tribunal accepts that he had been

working for [Club 1] for the previous four years, the Tribunal finds it plausible that the applicant attended at the football match on or about the 14 March 2004 where a number of Kurdish spectators were killed by security forces.

130. The Tribunal has considered the applicant's account of his participation at the funeral following the deaths of Kurdish supporters at the football match on 14 March 2004 and his subsequent imprisonment following his attendance at the funeral. Having considered the applicant's evidence in his statutory declaration, at the department interview and at the hearing concerning his attendance at the funeral the following day for the Kurdish spectators killed at the stadium the day before, the Tribunal does not draw adverse findings to suggest that he was not present at the funeral. The Tribunal does have some concerns however about the applicant's account of his arrest resulting from his participation at the funeral. For instance, he provides evidence at the hearing that up to 500,000 people attended the funeral and evidence at the departmental interview that about 400,000 people attended. While the applicant had no way of verifying this number, he has been consistent that the numbers of people attending at the funeral were in the thousands. He indicates both at the departmental interview and at the hearing that he covered his face so that he could not be identified at the funeral. Given his evidence that he hid his face in the crowd, that there were thousands of marchers at the funeral and that he escaped to his sister's house within a few minutes from when the security forces started shooting into the crowd, the Tribunal finds it implausible that the applicant could have been identified for being involved with the funeral, as indicated by the applicant at the hearing. The Tribunal also has concerns that he was imprisoned at Tadmor prison for 6 months in 2009, given that independent country information in 2007 from the Syrian Human Rights Committee reported that the prison was officially closed in early 2001. The Tribunal has considered the applicant's response that officially the prison has closed but unofficially the prison is still operational. It has also considered his response that if he wanted to lie he would have stated that he was imprisoned at a different jail. However, given that the independent country information about Tadmor prison's closure in 2001 has been obtained from a local human rights organisation within Syria, the Tribunal finds the applicant account of his imprisonment at Tadmor at odds with independent country information and, in the circumstances, finds that the applicant was not imprisoned at Tadmor prison.
131. Notwithstanding these adverse findings, the Tribunal has considered the applicant's evidence at the departmental interview whereby he believed that he was arrested because he had been [employed] at [Club 1] and because he was Kurdish. The Tribunal has given consideration to the applicant's protection visa application, his statutory declaration, the departmental interview and the Tribunal hearing, where he has consistently claimed that he was imprisoned from 2004 onwards. The Tribunal has already accepted in its findings that the applicant was working at [Club 1] in Qamishli, that he is Kurdish, that he attended a football match between [Club 1] and [Club 2] and that this match resulted in a deadly riot which resulted in a number of Kurdish spectators being killed by security forces. The Tribunal finds it plausible on the evidence that the applicant could have been identified by Syrian authorities as Kurdish and working as an employee at [Club 1] where the riots first began. This is consistent with the applicant's belief that he was arrested because he had been [employed] at [Club 1] and because he was Kurdish. Independent country information gives support to the applicant's belief behind his arrest and imprisonment. Human Rights Watch reports that hundreds of young Kurdish men in Al Qamishli had been randomly arrested and detained following the violence at the funeral march in Al Qamishli. The MAR project reports that government repression of civilians occurred in 2004 with the torture and arrests of innocent civilians in

wake of the Qamishli riots. As there is evidence before the Tribunal making it more likely that he was arrested because of his Kurdish background and his employment with [Club 1], as against the oral evidence presented by the applicant that he was arrested for his participation at the funeral march, the Tribunal finds that the applicant was arrested by security forces for his Kurdish background and his employment with [Club 1] and not because of any participation at a funeral march.

132. The applicant has provided oral evidence that he was never in prison as a result of having committed a criminal offence and reiterated that he was never in prison because of any criminality on his part. He has indicated in his protection visa application that he has never committed or been convicted of a crime or offence in any country. In the absence of any contrary evidence suggesting that the applicant was convicted or arrested for a crime or offence in Syria, the Tribunal finds that the applicant was arrested and imprisoned otherwise than for his having committed a crime or offence in Syria.
133. Having made its finding that the applicant was arrested and imprisoned in Syria in 2004 otherwise than for his having committed a criminal offence in Syria, it is not necessary for the Tribunal to consider the applicant's further claims about where he was imprisoned and the duration of imprisonment, in order for the Tribunal to make a finding that there is a real chance that the applicant will suffer serious harm for a Convention reason if he were to return to Syria. It is also not necessary for the Tribunal to make a finding on any of the documents' provided by the applicant as part of his application and review in light of the other findings of fact made by the Tribunal about his claims.
134. The Tribunal accepts from independent country information that Kurds in Syria are particularly discriminated against by the government (See US State Department of State report 2011 on the human rights situation in Syria). The Tribunal also accepts independent country information that Kurdish people have lower levels of income and face societal discrimination in trying to access land, jobs and higher education (See The MAR project report in Syria). On the basis of being Kurdish alone in Syria, the Tribunal does not accept that the applicant faces a real chance of serious harm on the evidence provided. The applicant indicated in this protection visa application that he undertook 17 and half years of education in Qamishli and Aleppo in Syria. He was able to acquire a Bachelor [degree] [in] [year and university deleted: s.431(2)]. He worked for four years at [Club 1] as a [details deleted: s.431(2)] earning a salary. His [work status] was in line with his Bachelor's education. It does not appear that the applicant was discriminated against for reason of his Kurdish background in his work or in his education, thus being denied a capacity to subsist.
135. The Tribunal, however, has made findings on the following facts: that the applicant is a Syrian Kurd, that he lived in Al Qamishli, that he went to university in Aleppo, that he [worked] at [Club 1], that he attended a football match between [Club 1] and [Club 2] football clubs on 14 March 2004, that he was present at this match when riots broke out and a number of Kurdish spectators were killed by security forces, that he attended a funeral the following day for the Kurdish spectators killed at the stadium the day before, that he was arrested and imprisoned because he was [employed] at [Club 1] and because he was Kurdish and not because of any criminal activity on the applicant's part, that he departed Syria illegally and that he has made a valid application for a protection visa in Australia. The Tribunal has considered these facts cumulatively and assesses these facts with independent country information at hand. The Tribunal has serious concerns for the applicant's safety was he to return to Syria in the reasonably foreseeable future.

136. The Tribunal has had regard to the UNHCR's advice (2008) to the Canadian Research Directorate. That advice indicated that if the applicant was to return to Syria as an unsuccessful asylum seeker, he would have to report to the immigration Department in order to apply for new documentation. The applicant has no Syrian passport and no official record indicating that he departed Syria legally. The UNHCR continues its advice that the applicant would be required to visit the Political Security Branch who would interrogate the applicant regarding his earlier motives and reasons for the illegal departure from Syria. The UNHCR indicates that it would be difficult for the applicant to keep the information about a potential asylum application abroad confidential. The UNHCR concludes that, should the authorities come to the conclusion that the applicant may be considered as an opponent against the regime, the consequences may be very serious.
137. The Tribunal has also had regard to the UNHCR's advice that the Syrian law on departure of Syrian nationals, Law no.42 of 31 December 1975, remains in force and has not been amended. The advice states that any Syrian national who departs the country illegally faces judicial consequences that may, in principle, result in up to 3 months imprisonment. The advice provides a disturbing finding that the response of the Syrian authorities is very much dependent upon the nature of the departure and the profile and background of the individual. If it becomes known that they have applied for asylum, the consequences may be severe. Amnesty International (AI) has provided reports of two men detained by Syrian authorities after having failed to secure asylum from the United Kingdom and the United States respectively in 2005. AI reported that these two men were sentenced to death but that their punishment was decreased to a 12 year prison sentence. They had been charged with distributing false and fabricated information and undermining the prestige of the state. In 2010, AI reported that a Kurdish man, who had unsuccessfully sought asylum in Germany, was imprisoned upon his return to Syria for "broadcasting abroad false news that could harm the reputation of State" The Qamishli Military Court released him three months later but did not drop the charge. It was reported that he was tortured in custody.
138. The Danish Immigration Service and the Austrian Centre for Country of Origin and Asylum Research and Documentation in 2010 cited Nadim Houry of Human Rights Watch as stating that every return failed asylum seeker will automatically be detained and interrogated. The report goes on to say that computer systems employed at border controls to screen persons upon the entry into Syria works well. It states that border guards check whether the name of someone who enters Syria can be found on one of the wanted person's lists of the security services. It states that these lists contain information from the various security services' offices from all parts of the country, including from Qamishli where the applicant lived much of his life.
139. The Tribunal has also had regard to the Minorities at Risk project's analysis of the Kurdish protests that took place in Syria each year from 2004 to 2006, centred on government treatment of Kurds, on the Qamishli riots and on the death of al-Khaznawi. The government's response to these protests was brutal and severe. In 2004, the government tortured and arrested innocent civilians in wake of the Qamishli riots. In 2004 and 2005, non-violent Kurdish protesters were killed by Syrian government forces, and in 2006 Kurds celebrating the Kurdish New Year were arrested.
140. On the evidence before it, the Tribunal finds that if the applicant returns to Syria he will be automatically detained and interrogated about his illegal departure from Syria by the Political Security Branch there. There is a real chance that, during this interrogation, the authorities will discover that the applicant had applied for a protection visa in Australia. The Tribunal

finds that, as a result of Syrian Law No.42 of 31 December 1975 (still being in effect), the applicant is likely to face up to 3 months imprisonment for illegal departure from Syria. The Tribunal finds, having considered the country information, that there is a real chance the applicant will be handed a much longer prison term and face possible torture if he is identified as having applied for protection in Australia. The Tribunal finds that if the applicant returns to Syria there is a real chance that he will experience serious harm in the reasonably foreseeable future capable of amounting to persecution for the purposes of section 91R of the Act, in the form of detention and torture, by the authorities of the country. The Tribunal finds the purposes of s.91R(1) that the serious harm would involve systematic and discriminatory conduct based on the country information (see the MAR Project report as an example) reporting on the Syrian authorities intolerance and brutal repression of any actual or suspected opposition to the government.

141. The Tribunal finds that the applicant is a Syrian Kurd associated with [Club 1] in Qamishli whose Kurdish supporters were subsequently linked to demonstrations and protests against the government. The Tribunal finds that by virtue of the applicant's very association to the club and his Kurdish ethnicity, as well as his presence at the football game on 14 March 2004 when the violence erupted and his subsequent arrest by the authorities, there is a real chance that he will be imputed as a Kurd from Qamishli having a political opinion opposing the government. Given the independent country information that the government brutally cracked down on many Kurdish citizens following the Qamishli violence in 2004, there is a real chance that the applicant will be imputed as being a Kurdish activist opposing the government. The Tribunal has already made its finding that the applicant will be automatically detained upon his return to Syria for his illegal departure. The Tribunal has also made its finding that there is a real chance that the applicant will be imprisoned and tortured for being a failed asylum seeker abroad. Given the Tribunal's finding that the applicant will be imputed as being a Kurdish activist opposing the government, Tribunal accepts the UNHCR's advice that, should the authorities come to the conclusion that the applicant may be considered as an opponent against the regime, the consequences may be very serious. In the circumstances, the Tribunal finds that for the purposes of s.91R(1)(a) of the Act, the essential and significant reason for the persecution faced by the applicant is the Convention reason of his imputed political opinion.
142. The Tribunal has found that the applicant, upon return to Syria, would face a real chance of serious harm from the government, its agencies and its security apparatus. In the circumstances, the Tribunal finds that the applicant is unwilling to avail himself of the protection of his country because of his fear to return to his country, which is well founded.
143. Tribunal finds that the applicant has a well-founded fear of persecution for the purposes of s.91R(1) of the Act, were he forced to return to Syria in the reasonably foreseeable future, for the Convention reason of his imputed political opinion.
144. As the Tribunal has already concluded, any threat of serious harm to the applicant will be from the government, its agencies and its security apparatus. The Tribunal finds that if the applicant returns to Syria he would be at risk of persecution in that country generally, including upon arrival. The applicant has lived all his life in either Qamishli or in Aleppo. It has been found that Qamishli has been the centre of Kurdish discontent and on the government's security radar. DFAT has given its warning that civil unrest in violent clashes, resulting in over 2000 reported civilian deaths, have occurred throughout Syria since March 2011 including Aleppo. In the circumstances, it is not reasonable, in the sense of practicable, for the applicant to relocate to another part of Syria.

145. The Tribunal does not have any evidence before it to suggest that the applicant has the right to enter and reside in any third country for the purposes of s.36(3) of the Act or Article 1E of the Convention. In the circumstances, the Tribunal finds accordingly that he does not.

CONCLUSIONS

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

DECISION

147. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.