

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76296

AT AUCKLAND

<u>Before:</u>	B A Dingle (Member)
<u>Counsel for the Appellant:</u>	I Uca
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	22 & 23 January 2009
<u>Date of Decision:</u>	29 June 2009

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a citizen of Sri Lanka.

INTRODUCTION

[2] The appellant is a single man in his early 30s, of Tamil ethnicity. He arrived in New Zealand on 3 October 2007 and claimed refugee status on arrival at Auckland airport. On 8 October 2007, he lodged his Confirmation of Claim form with the RSB. He was interviewed by a refugee status officer over four days spanning the period between 6 December 2007 and 11 September 2008. His application was declined in a decision dated 28 November 2008. He now appeals that decision.

[3] The essential issue to be determined in this appeal is whether the appellant faces a real chance of being persecuted should he now return to Sri Lanka.

THE APPELLANT'S CASE

[4] What follows is a summary of the evidence given by the appellant in support of his appeal. The credibility of this evidence will be assessed later in the decision.

[5] The appellant was the third of five children born to his parents in Jaffna in the north of Sri Lanka.

[6] The appellant began attending primary school in 1986 and continued his schooling until 1995.

[7] In approximately 1990, the appellant's older brother, TT, departed Sri Lanka and travelled to Switzerland where he later gained citizenship on the basis of a successful refugee claim. TT left Sri Lanka because he experienced problems with the Indian Peace Keeping Force, although the appellant does not know the details of those problems. TT is currently living in the United Kingdom.

[8] In approximately 1993, the appellant was approached by the Liberation Tigers of Tamil Eelam (LTTE) who requested that he join them. The appellant did not join and did not suffer any consequences as a result.

[9] In approximately 1993, the appellant's school was damaged by aerial bombing by the Sri Lankan Army (SLA). Although school buildings were damaged and some students were injured, nobody was killed during the bombardment. Over the next two years, the appellant experienced a number of disruptions to his schooling as a result of the conflict between the LTTE and the SLA.

[10] In mid-1995, the appellant and his family were displaced from their home and village as a result of conflict between the SLA and the LTTE. The SLA's forces approached his village, using military weaponry on their approach. The shelling reached the appellant's family home and one of the appellant's younger brothers was killed in the incident. The appellant also suffered significant injuries in the incident, sustaining a large wound on his arm and several smaller wounds on his face.

[11] In order to escape the hostilities, the appellant's family left their village and walked across paddy fields and on minor roads to reach another village. The appellant's grandmother accompanied them but, due to her fragile state, the appellant's father took her ahead on a bicycle and left her to shelter in a church. As the appellant's father returned to accompany the rest of the family on foot, the

church was bombed and approximately 140 people, including the appellant's grandmother, were killed. Having reached the church and ascertained that the grandmother was no longer alive, the family continued on their way to another village where they had distant relatives. They did so in an attempt to avoid any further SLA shelling. The family stayed with their distant relatives in that village for approximately three to four days. After two days there, the appellant went to a nearby hospital and received belated medical treatment for his shrapnel wounds. His arm wound was not sutured because it had already begun to heal.

[12] As the location of the conflict began approaching them again, the appellant and his family moved on to another location [Irupalai] where they again stayed with distant relatives, arranged by their previous hosts. The appellant's family remained there for a number of months.

[13] In October 1995, the family moved again as a result of another SLA offensive in the Jaffna region. They went to Mesaali and when there, they managed to build a small shelter on some bare land in the area. Other displaced families were also living there. The appellant did not attend school at this time. His father would purchase and clean coconuts for sale at the market and the appellant would help him.

[14] During this time, the appellant and his family would often be approached by LTTE members who would encourage them to join. At times, the LTTE would move around the area with loudspeakers demanding that one individual from each family join the LTTE. Despite these approaches, the appellant managed to rebuff the requests and tried to avoid the LTTE as much as possible.

[15] In approximately June 1996, the appellant's family decided to travel to the Vanni where one of the appellant's uncles lived. Large numbers of other Tamils were also moving to avoid approaching SLA shelling. However, during the trip, the family became separated due to further SLA shelling and, in the chaos that ensued, the appellant and his younger sister lost contact with the rest of the family. However, the appellant and his sister managed to board a boat and travel to their destination in the Vanni where they were able to locate their uncle's house. At the time, the appellant was not aware what had happened to the remainder of his family. He now knows that because of bomb attacks, they were unable to continue on the journey and they eventually returned to their home village after some time. The appellant had no direct contact with his parents between his arrival at his uncle's house in mid-1996 and his departure from Sri Lanka in 1997,

although he understands that his uncle had written contact with them once they had arrived home.

[16] While staying with his uncle, the appellant was again approached by the LTTE almost every time he left the house. Each time, they would stop him and encourage him to join the fight against the SLA. He was also forced to perform labour for the LTTE, constructing walls or bunkers and sometimes parcelling food. The appellant undertook this labour on a number of occasions because he feared the consequences if he refused. The appellant did not have any further particular problems.

[17] In 1997, the appellant and his uncle agreed that the appellant should depart Sri Lanka to escape the hostilities and the risks associated with being a young Tamil male. In mid-1997, the appellant travelled to Colombo with his uncle to arrange for his departure. On one occasion, the appellant was detained for two days, simply because he and his uncle had been stopped and questioned by the Sri Lankan authorities at a roadside checkpoint. He had been detained and questioned along with other young Tamil men and was released when his uncle came and negotiated for his release. He is not aware whether or not his uncle had to pay a bribe or bail for his release.

[18] During his stay in Colombo, the appellant obtained a Sri Lankan passport with the assistance of his uncle and an agent. The passport contained the appellant's correct personal details and photograph, but the appellant is unaware whether it was lawfully issued or not. His travel out of Sri Lanka was also arranged by his uncle through an agent. The appellant's uncle paid for the travel and provided him with some US\$ to take on the trip. The appellant departed Sri Lanka in July 1997, using his passport and had no difficulties in doing so. He was accompanied by an agent and was part of a group of approximately 10 to 12 other young Tamils.

[19] The appellant initially travelled to Moscow where he stayed for approximately one month. During that time, he remained with the group with whom he had travelled from Sri Lanka. In late 1997, he travelled by train from Moscow to Belarus where he again stayed for one month. The appellant then travelled through a number of other European countries, using a network of agents. By late 1997, he arrived in Switzerland where he was told by his agent to lodge a refugee claim. The appellant did so, using a cousin's name and identity, AA. The appellant used this name because he had already been arrested at the

border of Switzerland when he first attempted to enter and had been returned to Germany before he managed to enter Switzerland on another attempt. Because he had a record at the border police, he agreed with the advice that he would have more chance of a successful claim, using his cousin's identity.

[20] The appellant stayed at a refugee camp in Switzerland for some time but his application for refugee status was not successful, although he cannot remember the reasons for the decision.

[21] In early 1998, the appellant was asked to leave Switzerland by the Swiss authorities and he did so, with the assistance of the same agent who had brought him into Switzerland. He travelled by train to Germany, at which time he was arrested by the Germany police. With the help of his agent, who acted as an interpreter with the police, the appellant was later released. He is unsure what the agent did on his behalf but, soon after his release, they travelled by car to Belgium. There, the appellant stayed in a house with other Sri Lankans with the intention of travelling on to England. Again, in Belgium the appellant was arrested by the authorities and then detained in an "open" camp from which he was free to come and go. He cannot now recall whether he applied for refugee status in Belgium or what documents he may have filled out there.

[22] Within a few days of being arrested in Belgium, the appellant was smuggled into the United Kingdom in a shipping container on a ferry. He was advised by his then agent that he should seek asylum on arrival in the UK, at which point he would be provided with a Tamil interpreter. Upon arrival in the UK, the appellant and three other Sri Lankans with whom he was travelling were detected by British customs officers. They were transferred to another location where they were questioned through an interpreter. They all claimed asylum. At this time, they were also photographed and had their fingerprints taken. The following day they were released and travelled to London. The appellant provided the authorities in the UK with his correct personal details but submitted a false claim for refugee status. He told them he had been having specific problems with the SLA and the LTTE in Sri Lanka. He did this because he was advised by his agent that this was necessary if his refugee claim was to succeed.

[23] The appellant then began living in London. He knew of some people from his village who were living there and his brother (living at the time in Switzerland) had given him some contacts. The appellant supported himself through government assistance and by working illegally.

[24] On 15 May 2000, the appellant's younger brother, JJ, arrived in New Zealand and claimed refugee status on arrival. He was recognised as a refugee by the RSB on 17 October 2000. In summary, the basis of JJ's claim was that he was twice arrested and detained on suspicion of being an LTTE member (once in the north and once in Colombo). In 1997, during the first detention, he was tortured and was forced to sign a document confessing he was an LTTE member. He was then released through the intervention of a lawyer. His second detention occurred in Colombo in 2000 and was caused, he said, because he had registered his stay in Colombo and was therefore located by police through his registration card. Again he was released with the help of a lawyer retained by his uncle with whom he (JJ) had travelled to Colombo. Soon after, he arranged to leave Sri Lanka with the help of an agent.

[25] At the end of 2001, the appellant's sister, KK, arrived in the UK and lodged a claim for refugee status. The appellant was not aware of how she managed to travel from Sri Lanka to the United Kingdom.

[26] In approximately 2005, the appellant's refugee claim in the UK was declined, at least in part because he had travelled through safe third countries before arriving in the UK. He appealed the decision but this appeal too was unsuccessful. The appellant's brother, TT (who was living in Switzerland), then travelled to the United Kingdom and attempted to sponsor the appellant into the UK as a relative of a European Union citizen. The application was declined. His brother could not sponsor him into Switzerland because he was over the age limit.

[27] On 1 November 2005, the appellant's brother in New Zealand, JJ, lodged an application to sponsor an individual by the name of BB into New Zealand under the refugee family quota category. That identity was, in fact, intended to be the appellant and JJ stated that that identity was resident as at November 2005 in Sri Lanka. JJ's application was not accepted by Immigration New Zealand (INZ).

[28] In approximately September 2007, the appellant decided to travel to New Zealand and apply for refugee status here. He decided to use his brother, TT's, Swiss passport to travel to New Zealand because he could not afford to acquire a false passport made up containing his details. Although the appellant had been supplied with application forms to obtain a Sri Lankan passport by the UK Home Office, he did not apply because he was aware that people issued with Sri Lankan passports in the UK had been deported as soon as the passports were issued. The appellant had saved enough money from his work to purchase the airfare to

New Zealand.

[29] On 3 October 2007, the appellant departed the United Kingdom, using TT's Swiss passport. However, when he arrived at Auckland International Airport, he claimed refugee status, using the name CC. After an arrival interview, a decision was made by INZ to detain the appellant pursuant to s128 of the Immigration Act 1987 because he had neither appropriate immigration documents nor any identity documents. The appellant was transferred to the Mangere Refugee Resettlement Centre.

[30] On 8 October 2007, the appellant lodged his Confirmation of Claim form with the RSB under the name given at the arrival interview of CC. The appellant claimed that he feared being persecuted in Sri Lanka because he was at risk from the LTTE and the SLA. He attributed this risk to his activities collecting money for an LTTE orphan fund. The appellant did not declare to the RSB any of his previous asylum claims or identities he had used in the time since he had left Sri Lanka.

[31] Between October 2007 and July 2008, INZ conducted a number of enquiries about the appellant, his various identities and family members with the Swiss and UK immigration authorities. This process took some time due to the appellant having used at least three different identities since he had left Sri Lanka in 1997. It is not intended to reproduce a detailed account of all those enquiries in this decision. It is sufficient to note that these enquiries, combined with information received from one of the appellant's cousins here in New Zealand (who was interviewed in relation to another fraud investigation), revealed that the appellant had unsuccessfully applied for asylum in the UK under his own name and had exhausted his appeal rights there in 2005. The enquiries also revealed that a refugee claim had been made in Switzerland before he had travelled on to the UK.

[32] On 21 July 2008, after INZ had interviewed his cousin, the appellant submitted a new written statement to the RSB. Therein he conceded that CC was a false identity and gave his real name as [the appellant]. He stated that he had left Sri Lanka in 1997 and travelled through a number of European countries, including Switzerland where he had unsuccessfully applied for refugee status. He also stated he had been in the UK for approximately 10 years pursuing an unsuccessful refugee claim there.

[33] Later in 2008, the RSB sent a further information request to Switzerland requesting information of the appellant's identity. The RSB also requested a copy of the appellant's UK asylum file, a privacy waiver having been signed for that purpose by the appellant.

[34] On 1 September 2008, the appellant submitted a further written statement (dated 31 August 2008) in which he set out what he now says is the true account of his life and the basis for his refugee claim. The statement also provided explanations for his previous false identities and false refugee claims.

WHEREABOUTS OF THE APPELLANT'S FAMILY

[35] It will be recalled from the above that the appellant was one of five children in his family. None of the appellant's immediate family is currently living in Sri Lanka. One of his brothers was killed in the 1995 shelling incident. His older brother (TT) and older sister are both living in the UK and have legal immigration status there. In mid-2008, the appellant's parents departed from their home in the Jaffna area and travelled through Colombo to Chennai, India. They moved to India because of the general state of insecurity in the north of Sri Lanka. Immediately before their departure they could not leave their house after approximately 5 o'clock in the evening because of ongoing hostilities between the LTTE and the SLA. They were frequently questioned by the SLA because they lived in an area regularly visited by the LTTE. The appellant is not aware of any specific problems they had, but they felt they needed to move away from what was becoming an increasingly insecure and hostile situation. The appellant's younger brother, JJ, who was granted refugee status by INZ, lives in New Zealand.

[36] The appellant's paternal uncle with whom he stayed in 1996-1997 still lives in the north of Sri Lanka. The uncle's son was killed last year during hostilities. The appellant is not aware of any other relatives who remain living in Sri Lanka.

[37] In summary, the crux of the appellant's claim is that as a relatively young, single Tamil male returning to Sri Lanka after more than 10 years living abroad, he will be at risk of serious harm from the Sri Lankan authorities. He says that immediately on arrival at the airport, he would be arrested and questioned about his activities overseas and his relationship with the LTTE. He also asserts that even were he to be released after questions at the airport, he will encounter frequent and serious problems living in Colombo. The appellant has an identity card which indicates that he is from Jaffna. He says that he will encounter

problems because of his card and because he has no employment or social network in Colombo giving him a reason to be there. His situation will be exacerbated because his brother has previously been identified as an LTTE suspect and has signed a confession to that effect. The appellant also has scars which may lead the authorities to presume he has been in combat as an LTTE fighter.

DOCUMENTS FILED

[38] Under cover of a letter of 16 January 2009, counsel filed opening written submissions and a supplementary statement of the appellant (dated 16 January 2009). During the hearing, the Authority received the following documents:

1. A letter dated 19 January 2009 written by a member of the Sri Lanka New Zealand Forced Migrants' Support Group Incorporated. The letter is written in support of the appellant's refugee status claim in New Zealand. It confirms that the appellant is a Tamil male from the north of Sri Lanka and asserts that because of the civil war situation in Sri Lanka, he would be subject to persecution on return there.
2. A calendar which has been produced on the one year anniversary of his cousin's death in 2008.
3. Partial copies of his mother and father's passports containing departure stamps from Sri Lanka and entry stamps into India through the Chennai airport on 20 November 2007.
4. An open letter to the Indian Foreign Secretary from Amnesty International, dated 14 January 2009, in which Amnesty International urges the Indian Foreign Secretary to raise concerns about the safety of civilians trapped within Wannai (the Vanni) as a result of the military conflict between the LTTE and the SLA.
5. Human Rights Watch *World Report 2009 – Sri Lanka*, 14 January 2009, which outlines the events of 2008, including an outline of threats and attacks against civilians as a result of the civil war, the arbitrary arrest and detention of Tamil civilians, particularly those in Colombo, and other human rights violations in Sri Lanka.

[39] On 30 January 2009, counsel submitted a bundle of documents including

14 articles relating to the situation of Tamils in Sri Lanka. The bundle also included a letter from Dr Tony Wansborough (dated 23 January 2009) addressed to "The Law/Immigration Officer" in which Dr Wansborough states that she has consulted with the appellant and noted various scars on his body. She reports that the appellant attributes the scars to shrapnel wounds sustained in 1995 and gives her opinion that the scars are consistent with wounds inflicted in that manner and at that time. She confirms that the scar on his left forearm is 5cm in length and has healed without being sutured.

[40] On 13 February 2009, the Authority received a further letter from counsel indicating that counsel would be on leave until 23 February 2009 and therefore requested further time in which to submit closing submissions.

[41] A further letter was received on 18 March 2009, in which counsel referred to *Refugee Appeal No 76272* (23 February 2009) and which counsel submitted was applicable to the current appellant's circumstances. Also attached to the letter was a one-page document entitled "UN Sri Lanka Statement" (dated 16 February 2009) in which the United Nations was expressing concern for the tens of thousands of civilians caught in the Vanni between the SLA and the LTTE. Further country information in the form of the UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka* (April 2009) was submitted under cover of a letter on 27 April 2009.

[42] Under cover of a letter dated 24 June 2009 counsel filed further items of country information relating to the current situation in Sri Lanka.

THE ISSUES

[43] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[44] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[45] The appellant's account as it has been presented in his final statement to the RSB on 21 July 2008 and on appeal to this Authority is accepted as credible. In making this finding, the Authority has reminded itself that the appellant has an 11 year history of exercising deceit against the immigration authorities of Switzerland, the United Kingdom and New Zealand, by submitting refugee claims under false identities and providing false accounts of his life in Sri Lanka. The Authority is in no doubt, therefore, that the appellant would have pursued the false account he presented to INZ on arrival in New Zealand, had that account not been undermined by INZ making enquiries which exposed the claim as being a fraudulent one. The appellant has shown his willingness to manipulate refugee processes over an extended period and on multiple occasions.

[46] However, having had his fraudulent claim and identity exposed, the appellant has presented a claim which simply rests on his characteristics as a male Tamil from the north without family support in Sri Lanka. He has at least one brother who has previously been identified as a suspected LTTE member and he (the appellant) also has body scars consistent with shrapnel wounds. These core elements in the current claim are corroborated by evidence external to the appellant's own written and oral account. His Sri Lankan identity card (a copy of which is on file) indicates that he is from the north. His brother's RSB claim, which was accepted by the RSB, is consistent with the appellant's claim as it is now presented as to the displacement of the family in 1995, the subsequent separation of the appellant in 1996 and the appellant's injuries sustained in 1995. His brother's claim also discloses the brother's profile as an LTTE suspect. As regards the appellant's whereabouts between 1997 and 2007, his account is verified by the immigration records of Switzerland and the UK.

[47] The Authority concludes, therefore, that the appellant is a Sri Lankan national and is a Tamil who was born and raised in the north of Sri Lanka and

whose family was displaced from their village in 1995. The Authority accepts that the appellant's younger brother was killed during those hostilities and that the appellant received shrapnel wounds, the scars of which are still visible. The Authority also accepts that the appellant has no immediate family remaining in Sri Lanka and that the only relative with whom he has any contact or relationship is his uncle who lives in the north of Sri Lanka. It is upon these findings of fact that the Authority will now assess whether the appellant has a well-founded fear of being persecuted should he now return to Sri Lanka.

A WELL-FOUNDED FEAR OF BEING PERSECUTED

[48] For the purposes of refugee determination, "being persecuted" has been defined as the sustained or systemic violation of basic or core human rights, demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996).

[49] In determining what it means that a fear be "well-founded", the Authority has consistently adopted the approach set out in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that even a low likelihood of harm can be enough to afford an appellant the benefit of the protection conferred by the Refugee Convention. A well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative, chance of such persecution occurring.

[50] Before assessing whether this appellant has a well-founded fear of being persecuted on return to Sri Lanka, it is necessary to consider the country information as to the current situation in Sri Lanka.

COUNTRY INFORMATION

[51] At the outset, the Authority observes that the current situation in Sri Lanka is in a state of significant transition and flux due to the recent cessation of military hostilities between the SLA and the LTTE after defeat of the LTTE forces. The Authority has considered the most recent reports available to it but in doing so acknowledges that media access to much of Sri Lanka is limited, especially so in the north. Relevant news reports are being filed daily and therefore the information that follows represents a snapshot of the reported situation at the time of writing.

[52] The Authority also notes that the present panel has, contemporaneously, been considering refugee appeals for two other Sri Lankan appellants whose predicament bears some similarity to that faced by this appellant (they are Tamil). For that reason, the summary of country information outlined in this decision has also been largely adopted in the contemporaneous decision. The decisions are not related in any other respects and the timing of their determination is entirely coincidental.

[53] As is well known, the Sri Lankan President Mahinda Rajapaksa declared victory in the decades-long conflict with the LTTE on 18 May 2009. The declaration followed months of intense conflict during which the SLA pushed north into areas previously considered LTTE strongholds, and overwhelmed the remaining LTTE fighters with considerable military firepower. The final months of the conflict is usefully summarised in the report of the International Crisis Group *Conflict history: Sri Lanka (May 2009)* (“the 2009 ICG report”) It records:

“Following the 2 January 2009 capture of de facto LTTE capital of Kilinochchi, government forces won back all but small amount of territory held by LTTE in the Mullaitivu District. Between 250,000 and 300,000 civilians were trapped in areas of fighting, with limited access to food, water or medical assistance. The LTTE forcibly conscripted civilians and prevented others from fleeing LTTE-controlled areas by firing at them, killing many. Government repeatedly bombed and shelled densely populated areas, including its own unilaterally declared “no fire zone”. UN Agencies estimated more than 7,500 civilians dead and over 15,000 wounded between mid-January and early May 2009.”

[54] Since that report, the figure for civilian deaths as a result of the last two months of fighting has been revised upwards to a figure of 20,000 with many more listed as wounded. (“UN chief knew Tamil civilian toll had reached 20,000” *Times online* (30 May 2009)).

[55] The 2009 ICG report summarises the current fate of the 300,000 mostly Tamil civilians in the north and east who were forced to flee the fighting.

“With the military phase of Sri Lanka’s thirty-year civil war apparently over, major challenges remain before a lasting peace can be found. Nearly 300,000 civilians who escaped the fighting are now held in overcrowded government-run internment camps. The displaced are denied the right to live with relatives or host families and UN agencies and humanitarian organizations have not been granted full and unimpeded access to the camps and are thus unable to deliver adequate supplies and services. There are also serious concerns about the protection of residents from threats from government-backed Tamil paramilitaries, government security forces, and remaining LTTE cadres within the camps. Government officials have sent conflicting signals on how long people will be forced to remain within the camps, with estimates ranging from six months to three years.”

[56] The Sri Lankan government justifies the internment of Tamil civilians on the

basis that it needs to identify an unknown number of LTTE suspects in the camps. ("Sri Lanka's post-war resettlement stalls" *Christian Science Monitor* 19 June 2009). Human Rights Watch reports that the government is developing a system of registration and passes which those in the camps will be able to use to travel in the area but "young or single people would not be allowed to leave" ("Sri Lanka: End Illegal Detention of Displaced Population" Human Rights Watch (11 June 2009)).

[57] In addition to the civilian internments, Human Rights Watch report that the Government has also detained more than 9,000 alleged LTTE fighters and those suspected of having LTTE connections in separate camps ("Sri Lanka: Avoid a Postwar Witch Hunt" *Human Rights Watch* 3 June 2009). The same report records that international agencies have little or no access to the suspected LTTE detainees or oversight of the "screening process" which the government is undertaking to identify former LTTE fighters. There appears to be no formal registration of those detained and in many cases, families of the suspects have no idea of their whereabouts.

[58] In the initial period following the death of the LTTE leader Velupillai Prabhakaran, there appeared to be disagreement amongst the remaining LTTE leaders about what direction the organisation would take. However, in mid-June 2009, the LTTE international relations chief, Selvrasa Pathmanathan, announced that the LTTE would continue to pursue its aim of securing a separate Tamil state. Indications point to an agenda of political action and hopes for inclusion in whatever governance structure may be established in the largely Tamil northern region. There has been no mention of a resumption of hostilities or guerrilla warfare and, given the enormous death toll of LTTE soldiers and almost total destruction of the organisation's hierarchy, commentators are not predicting any in the foreseeable future. ("LTTE to regroup as a political body" *Aljazeera.Net* (19 June 2009) and "Sri Lanka Tamil Tigers say struggle for separate state will continue from exile" *The Times* (17 June 2009)).

[59] These announcements by the LTTE will likely heighten the sensitivity of the Sri Lankan government to the potential re-emergence of Tamil resistance.

[60] The country information confirms that the government is focused on maintaining tight security control in all areas of the country and particularly in the north east and in Colombo. This appears to be both to ensure that no further pockets or LTTE or Tamil resistance emerge and to identify those who have links

with the LTTE. To that end, the military presence in the north and east is highly concentrated and army leaders have announced an intention to recruit a further 100,000 army soldiers, to boost the army numbers to 300,000 (Human Rights Watch ("Sri Lanka: Tigers under the bed" 18 June 2009)). One reporter recently witnessed hundreds of armed SLA soldiers lining the roads near an eastern town, waiting to respond should there be any further outbreaks of LTTE violence ("The Disappeared" *The Observer* (14 June 2009)).

[61] Despite the cessation of hostilities, the government is maintaining other restrictive measures which it claims are necessary to maintain the peace and security in Sri Lanka. In fact, some observers have expressed fear that the government, encouraged by its own recent military success, will use the post-war situation to impose more restrictive and oppressive measures on those it considers to be opponents. ("Sri Lanka: Avoid a Postwar Witch Hunt" *Human Rights Watch* 3 June 2009). The Prevention of Terrorism Act, which was fully implemented in 2006 and which is used to arrest and indefinitely detain LTTE suspects and government critics, remains in place. On 9 June 2009 the Parliament voted to extend the State of Emergency for another month under which the security forces have sweeping powers to arrest and detain suspects on vague grounds relating to national security ("Sri Lanka extends emergency laws" *BBC News* 9 June 2009). Both of these laws are used routinely to detain people indefinitely, often without charge, legal representation or access to the courts.

[62] The Sri Lankan government continues to be highly suspicious of civilian Tamils generally and it is implicated in treating some of those it believes to have been associated with the LTTE with arbitrary brutality. In May 2009, there were several reports of suspected LTTE fighters being identified by authorities within the internment camps and being killed or seriously mistreated (See for example "The tragedy of refugees in Sri Lanka, hidden from the eyes of the world" *Asia News* 19 June 2009). In one incident, the bodies of eleven women who had been living in the Menic Farm camp and had been identified as LTTE fighters (because of their short haircuts) were found outside the perimeter fence of the camp with their throats cut. ("In Sri Lanka the war is over but Tamil Tiger remnants suffer brutal revenge" *The Guardian* (21 May 2009)). Also reported is the abduction of young children by paramilitary groups from the internment camps from where they are taken to nearby army camps and questioned about ties to the LTTE which was well-known for recruiting child soldiers. ("Tamil children 'being abducted'" *BBC News Online* (20 May 2009); "Women killed and children kidnapped as Tamil Tiger

remnants suffer brutal revenge" *The Guardian* (22 May 2009)).

[63] The intolerance for those perceived to have been aligned with the Tamil cause is not limited to suspected LTTE members. Journalists, aid workers and witnesses who have visited LTTE controlled areas or who have spoken critically of the Government face arrest, prosecution, intimidation and abduction (see, for example "Journalists trying to cover the fate of Tamils are threatened, obstructed" *Reporters Without Borders* 29 May 2009 online at www.unhcr.org). On 1 June a journalist and free press activist who has openly criticised the Government was abducted and beaten by unidentified thugs in Colombo ("Poddala Jayantha: Sri Lanka Free Press Advocate Abducted, Beaten As Part Of Ongoing Trend" *Huffington Post* 1 June 2009). No-one has been arrested for the attack although a fellow journalist who informed the police about the incident was interrogated for hours ("Victory's rotten fruits" *The Economist* 11 June 2009). International journalists are subjected to similar intimidation, a number having been deported after criticizing the government or reporting on conditions in the internment camps ("Sri Lanka throws out three Channel 4 journalists" *The Guardian* (10 May 2009)).

[64] Humanitarian aid workers too have suffered arbitrary arrest, detention or "disappearance" with some being accused of smuggling LTTE members out of the camps. ("Sri Lanka's postwar resettlement stalls" *Christian Science Monitor* 19 June 2009). The attitude of the government has been recorded by Human Rights Watch ("Sri Lanka: Tigers under the bed" 18 June 2009) as follows:

"The government is also systematically harassing and threatening aid workers, the media and Sri Lankans who question the detention policy. It has refused visas to some humanitarian workers and kicked out others. Many Sri Lankan journalists and activists have fled the country recently, fearing the notorious "white vans" that have for so long picked up dissidents in the night and made them disappear ...Virtually anyone who had any contact with the LTTE, whether Sri Lankan or foreign, is now a suspected LTTE sympathiser."

[65] Travel throughout Sri Lanka, while marginally improved by the re-opening of roads, train lines and airplane flight paths, is still characterised by frequent militarised checkpoints and comprehensive screening of travellers by the security forces. One *Observer* reporter described his recent trip north as being punctuated by frequent military checkpoints. He recorded that the military is "on every corner" and has effectively created a border across the entire north of the island ("The Disappeared" *The Observer* (14 June 2009)).

[66] Most of the roads recently re-opened are only for use by pre-authorised trade vehicles transporting approved supplies to the north. ("Sri Lanka to open key

highway in north" *Xinhua News Agency* (20 May 2000); "Restoration of Yal Devi train service the beginning of restoring dignity to Tamil people - President" *Reliefweb* (22 June 2009)). These vehicles are all required to pass through checks by security personnel before they can travel north, sometimes under the direct supervision of an army convoy. Some commentators suggest that the number of checkpoints has increased since the cessation of hostilities in May 2009 (See for example "The Disappeared" *The Observer* (14 June 2009)).

The situation in Colombo

[67] In Colombo too, frequent military checkpoints and roaming military patrols are continuing the long-established pattern of house searches and the arrest and detention of Tamils, particularly male youths. A short *Tamilnet* article on 23 June 2009 states that "search and check operations have escalated in Colombo in recent times" ("7 Tamil youths arrested in Colombo" *Tamilnet* 23 June 2009). This statement aligns with other country information which indicates that Tamil youths are being arrested on an almost daily basis in Colombo, some being held indefinitely and without access to family or legal representation. Those without a Colombo identity card and with only casual employment or temporary accommodation are most at risk of being detained for longer periods. (See, for example, *Tamilnet* 20 June 2009 "12 Tamils arrested in Wellawatte" and "Police detains 3 Tamil youths in Colombo" and 16 June 2009 "9 Tamil youths arrested in Colombo" and 4 June 2009 "25 Tamil youths arrested in Colombo"). The same *Tamilnet* articles also record that many more Tamil youths are interrogated while on the street or in their workplaces or homes, with those of most interest being taken to local police stations as a result.

[68] In addition to arrests, "disappearances" of ethnic Tamils in the north and in Colombo remains a serious problem. (*Human Rights Watch* "Sri Lanka: Avoid a Postwar With Hunt" (3 June 2009)). Such disappearances are most often attributed to the SLA or paramilitary groups aligned with the army. The International Crisis Group estimates that "at least 2,000 people – possibly many more – have been forcibly "disappeared" in Sri Lanka since early 2006". ("Sri Lanka: after the war" ICG (updated 16 June 2009) at www.crisisgroup.org).

[69] Recent Tamil arrivals at the international airport in Colombo are being subjected to increased scrutiny with multiple instances of returnees being interrogated, arrested and some being detained on arrival on suspicion of being LTTE operatives from overseas. The *Sri Lankan Guardian* reported that two Tamil

youths were arrested after arriving from Doha (“Two Tamils arrested in Katunayake Airport on arrival from Qatar” 17 June 2009). They were arrested by police as they were leaving the airport grounds with relatives. The report states that the relatives were also taken into custody and questioned, but were released the same day. The two youths were still in custody at the time the article was written. In another reported incident, 15 Tamils arriving from London were detained incommunicado for nearly two weeks during which time they were interrogated by security about their connections with the LTTE in London (“Sri Lanka harass visiting Tamils at the Colombo airport” *Sri Lanka Guardian* 10 June 2009). In the same article it is reported that a young Tamil woman was also searched, held and interrogated for three hours on arrival. After denying she was involved in the London protests criticising the Sri Lankan military offensives she was released.

[70] As to the fate of those arrested and detained on suspicion of association with the LTTE, it is widely acknowledged in international reports that intimidation, mistreatment and torture are routinely employed by the security forces. Representative of the prevailing view, the UN Special Rapporteur on Torture, Manfred Nowak, concluded that “torture is widely practiced in Sri Lanka” after a visit there in October 2007 (United States Department of State *Country Reports on Human Rights Practices for 2008: Sri Lanka* (25 February 2009)).

[71] Also generally acknowledged is that Sri Lanka’s domestic institutions are demonstrably unwilling or unable to deal with the systemic violation of human rights within the security forces. Illustrative of international reports the Human Rights Watch report “Return to War, Human Rights under Siege” (5 August 2007) noted that:

“Impunity for human rights violations by government security forces, long a problem in Sri Lanka, remains a disturbing norm. As the conflict intensifies and government forces are implicated in a longer list of abuses, from arbitrary arrests and “disappearances” to war crimes, the government has displayed a clear unwillingness to hold accountable those responsible for serious violations of international human rights and humanitarian law. Government institutions have proved inadequate to deal with the scale and intensity of abuse.” (Section X, Impunity for Rights Violations)

[72] The information cited above is representative of the abundant international news reports recording the current situation and there is no benefit in further recording them.

OBJECTIVELY, ON THE FACTS FOUND, DOES THE APPELLANT HAVE A

WELL-FOUNDED FEAR OF BEING PERSECUTED ON RETURN TO SRI LANKA?

[73] The Authority finds that, given the highly militarised and tightly controlled post-war security situation currently manifest in Sri Lanka the appellant would face a real chance of being persecuted on suspicion of being an LTTE member. He could not travel north without being stopped at the many military checkpoints in place. As a young, single Tamil male, without any family in Sri Lanka and with bodily scars, he will immediately come under close scrutiny. There is a real chance that he would be suspected of LTTE links and would suffer arbitrary arrest, detention and physical harm.

[74] The Authority also accepts that in the present situation of intense military presence throughout Colombo, the appellant faces a real chance of being detained and mistreated at the airport, during a “cordon and search” operation or at a military checkpoint. The appellant’s identity card will identify that he is from the north which will initially invite further scrutiny. He does not have a network of friends or relatives with whom he can rely on for support and therefore he will be staying in temporary accommodation of the sort which is frequently raided by security forces. His profile as a young, single, Tamil male in temporary accommodation, without evidence that he has permanent employment or other reasons for being in Colombo and in conjunction with the shrapnel scarring he has, leads the Authority to conclude that there is a real chance the appellant would face arrest and custody.

[75] Once in custody, it is highly likely that the appellant’s identity will be investigated further. Due to his long absence from Sri Lanka and lack of discernible reason for return, there is a real chance that the authorities will suspect he has links with the LTTE overseas. His situation will be exacerbated if the authorities link him with his brother JJ who has previously been detained on suspicion of being an LTTE member. The Authority finds that in these circumstances, where there is a real risk of arbitrary arrest, indefinite detention and physical mistreatment of the kind referred to in the country information, the appellant is at risk of serious harm at the real chance threshold.

[76] The appellant faces a risk of being persecuted at the hands of the state security forces, or paramilitary groups associated therewith. There is no state protection available to him.

CONVENTION REASON

[77] The appellant faces a real chance of being persecuted in Sri Lanka, at least in part, on account of his Tamil race.

CONCLUSION

[78] For the reasons set out above, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"B A Dingle"

B A Dingle
Member