



**Submission by the Office of the United Nations High Commissioner for Refugees
in case numbers 202003129/1/V2 and 202004875/1/V2
before the Council of State**

UNHCR's mandate and role¹

1. By letter of 6 October 2020, the Council of State requested the Office of the United Nations High Commissioner for Refugees (“UNHCR”) to submit a written intervention in the cases 202003129/1/V2 and 202004875/1/V2.
2. UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with governments, seek solutions to the problem of refugees.² Paragraph 8 of its Statute confers responsibility upon UNHCR to supervise the application of international conventions for the protection of refugees,³ whereas Article 35 of the *1951 Convention relating to the Status of Refugees*⁴ (‘1951 Convention’) obliges State Parties to cooperate with UNHCR in the exercise of its functions, including in particular to facilitate its duty of supervising the application of the provisions of the 1951 Convention.⁵
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretive guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention and the 1967 Protocol. Such guidelines include the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (“UNHCR Handbook”), which was subsequently complemented by a number of *Guidelines on International Protection*.⁶
4. The UNHCR *Handbook* has been found by the Supreme Courts of Canada, the United Kingdom, and the United States to be a “highly relevant authority”,⁷ a “highly persuasive authority”,⁸ providing “significant guidance”,⁹ and “should be accorded considerable weight”, in the light of the obligation of Member States under article 35 of the Convention to facilitate its duty of supervising the application of the provisions of

¹ This *submission* does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. See, UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, www.refworld.org/docid/3ae6b3902.html.

² UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), <http://www.refworld.org/docid/3ae6b3628.html>

³ *Ibid.* para. 8(a).

⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, <http://www.refworld.org/docid/3be01b964.html>, p. 137.

⁵ *Ibid.*

⁶ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/ENG/REV. 3, <http://www.refworld.org/docid/4f33c8d92.html>. The UNHCR Handbook and Guidelines on International Protection are intended to provide guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff.

⁷ *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593, Canada: Supreme Court, 19 October 1995, http://www.refworld.org/cases,CAN_SC,3ae6b68b4.html at paras. 46 and 119; *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Canada: Supreme Court, 30 June 1993, http://www.refworld.org/cases,CAN_SC,3ae6b673c.html at pp. 713-714.

⁸ *R v. Secretary of State for the Home Department, Ex parte Adan, Ex parte Aitseguer*, United Kingdom: House of Lords (Judicial Committee), 19 December 2000, http://www.refworld.org/cases,GBR_HL,3ae6b73b0.html.

⁹ *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421; 107 S. Ct. 1207; 94 L. Ed. 2d 434; 55 U.S.L.W. 4313, United States Supreme Court, 9 March 1987, <http://www.refworld.org/cases,USSCT,3ae6b68d10.html>.

the Convention”.¹⁰ UNHCR’s *Handbook* has also been accepted as a valid source of interpretation under Article 31(3)(b) of the 1969 *Vienna Convention on the Law of Treaties*, in reflecting “subsequent practice in the application of the treaty”.¹¹

5. UNHCR submits this *amicus curiae* to provide neutral and expert information on the interpretation of the international refugee law concepts that are relevant in the cases to be adjudicated by the Council of State. UNHCR will only seek to address issues of legal principle arising and will refrain from taking a position on the individual cases. The submissions are based on applicable international human rights and refugee law as evolved over the years, as well as the EU *acquis*. UNHCR is well-known to this court, having provided *amicus curiae* to the Council of State before.
6. UNHCR will address legal issues pertaining to the interpretation and scope and content of the Convention ground ‘political opinion’ in Article 1A(2) of the 1951 Convention, as well as to the assessment of a well-founded fear of persecution for reasons of (imputed) political opinion, the issue of concealment in order to avoid persecution in this context and the assessment of *sur place* refugee claims related to (imputed) political opinion. With specific reference to the questions posed by the Council of State,¹² UNHCR will address the following:
 - I. The interpretation of political opinion as a protected ground under the 1951 Convention. *This section will address the Council of State’s question no. 1.*
 - II. Political opinion compared to other Convention grounds. *This section will address the Council of State’s question nos. 1 and 2.*
 - III. Political opinion as part of the holistic test of a well-founded fear of persecution for the reasons under article 1A(2) of the 1951 Convention. *This section will address the Council of State’s question nos. 1 and 2.*
 - IV. The assessment of *sur place* claims for international protection. *This section will address the Council of State’s question no. 3.*
7. In response to the Council of State’s question no. 4, Annex II to this *amicus curiae* provides an overview of relevant jurisprudence relating to the above topics.

I. Political opinion as a protected ground under the 1951 Convention

8. When interpreting Article 1A(2) of the 1951 Convention, consideration should be given to the *Vienna Convention on the Law of Treaties* (‘VCLT’), which confirms that a treaty shall ‘be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in the context and in light of its object and purpose.’¹³ The VCLT specifies that the context includes, inter alia, the preamble as

¹⁰ *Al-Sirri (FC) (Appellant) v Secretary of State for the Home Department (Respondent) and DD (Afghanistan) (FC) (Appellant) v Secretary of State for the Home Department (Respondent)*, [2012] UKSC 54, United Kingdom: Supreme Court, 21 November 2012, http://www.refworld.org/cases/UK_SC.50b89fd62.html at para. 36. Similarly, the Handbook has been found “particularly helpful as a guide to what is the international understanding of the Convention obligations, as worked out in practice”. *R v. Secretary of State for the Home Department, Ex parte Robinson*, Case No: FC3 96/7394/D, United Kingdom: Court of Appeal (England and Wales), 11 July 1997, http://www.refworld.org/cases/GBR_CA_CIV.3ae6b72c0.html at para. 11.

¹¹ *Pushpanathan v Canada (Minister of Citizenship and Immigration)* [1998] 1 SCR 982 para. 54; *R v. Secretary of State for the Home Department, Ex parte Adan and Others*, United Kingdom: Court of Appeal (England and Wales), 23 July 1999, http://www.refworld.org/cases/GBR_CA_CIV.3ae6b6ad14.html, at para. 71.

¹² An unofficial translation of the questions posed by the Court can be found in Annex I.

¹³ United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331: <http://www.refworld.org/docid/3ae6b3a10.html>, Article 31(1).

a source of the object and purpose of the instrument.¹⁴ The preamble of the 1951 Convention contains strong human rights language assuring “refugees the widest possible exercise of fundamental rights and freedoms” and indicates that the intention of the drafters was to incorporate human rights values in the application and interpretation of the Convention.¹⁵

9. Although political opinion is not defined in the 1951 Convention or elsewhere in international human rights law, protection of and freedom from discrimination on the ground of political opinion is enumerated in the *Universal Declaration of Human Rights*¹⁶ and is specifically protected by the *International Covenant on Civil and Political Rights* (‘ICCPR’), which states that “everyone has the right to hold opinions and is free to express them”.¹⁷ All forms of opinions are protected, including political opinions expressed and disseminated in any shape or form. Opinions can be “actual, perceived or supposed”.¹⁸ Freedom of opinion extends to the right to form an opinion, or change it whenever and for whatever reason a person so freely chooses.¹⁹ As such, for an opinion to be protected, it need not be fundamental to the individual holding it.
10. In all claims to refugee status, the well-founded fear of persecution needs to be related to one or more of the protected grounds specified in the refugee definition in Article 1A(2) of the 1951 Convention; that is, it must be for reasons of race, religion, nationality, membership of a particular social group or political opinion.
11. The concept of political opinion as a protected ground under the 1951 Convention should be understood in a broad sense, to incorporate “any opinion on any matter in which the machinery of State, government, society, or policy may be engaged”.²⁰ This presupposes that the applicant holds opinions not tolerated by, different from or critical of the policies, goals, traditions or methods of the authorities, or parts of, or

¹⁴ UNHCR, *Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees*, April 2001, <http://www.unhcr.org/refworld/docid/3b20a3914.html>, paras. 2– 5.

¹⁵ 1951 Convention, Preamble, paras. 1-3; UNHCR, *Interpreting Article 1 of the 1951 Convention*, note 14 above, paras 2– 5.

¹⁶ *Universal Declaration of Human Rights*, GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948) 71.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

¹⁷ ICCPR, Article 19. See also regional human rights law instruments, including: Article 13 of the *American Convention on Human Rights* (Organization of American States), Costa Rica, 22 November 1969, www.refworld.org/docid/3ae6b36510.html; Article 10 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention of Human Rights), 4 November 1950, <https://www.refworld.org/docid/3ae6b3b04.html>.

¹⁸ Human Rights Committee, General Comment No. 34, para. 9, considering that “[n]o person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions”.

¹⁹ *Ibid.*, The rapporteur leading the work on the General Comment summarized the Committee’s broad approach to freedom of expression by stating that ‘...freedom of expression embraces every form of idea and opinion capable of transmission to others, including views that may be deeply offensive.’ See Michael O’Flaherty: “Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee’s General Comment No 34” (2012) 12:4 HRLR 627 at 644-45.

²⁰ UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, (‘UNHCR GIP No. 1: Gender’), 7 May 2002, HCR/GIP/02/01, www.refworld.org/docid/4f33c8d92.html, para. 32. UNHCR, *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*, (‘UNHCR GIP No. 12: Conflict and Violence’), 2 December 2016, HCR/GIP/16/12, www.refworld.org/docid/583595ff4.html, para 38. G S Goodwin-Gill and J McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007), p. 87. This definition of political opinion was adopted and affirmed by the Supreme Court in Canada in *Ward*, note 7 above.

groups in, society.²¹ There is no need for the applicant to describe or qualify their opinion as political,²² or for the opinion to conform to the applicant's true beliefs.²³ Further, just as expressions (and non-expressions)²⁴ of political opinions are protected, so too is political neutrality.²⁵

12. The 1951 Convention ground of political opinion needs to reflect the reality of the specific geographical, historical, political, legal, judicial, and socio-cultural context of the country of origin.²⁶ Context is vital to understanding the substance of 'political', indeed "political opinion is not a matter of definition but depends on the context of the case".²⁷ There is "not as such an inherently political or an inherently non-political activity."²⁸ Thus, decision-makers need to ensure that the social and political context of the country of origin is meaningfully taken into account in assessing the existence of a political opinion.
13. Further, the protected ground 'political opinion' includes an opinion the applicant actually holds, or where they are perceived to hold it and have a political opinion imputed on them by the persecutor, even if they do not hold it.²⁹ An imputed political opinion may be the case, for example, because of non-conformist behaviour by the applicant,³⁰ the projection on the applicant of activities and opinions of family members, such as the views or opinions of parents on their children,³¹ or where the role or status within society that follows from, or is associated with, the applicant's trade, profession or occupation, may be regarded as a perceived political opinion.³² What is relevant is the perception of the persecutor.³³
14. The fact that political opinion includes both real and perceived or imputed political opinions is affirmed in Article 10 of the Qualification Directive, which states at Article 10:

(1)(e) The concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their

²¹ UNHCR GIP No. 1: Gender, note 20 above, para. 32. UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Article 1A(2) and 1(F) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, ('UNHCR GIP No. 8: Children'), 22 September 2009, HCR/GIP/09/08: <http://www.refworld.org/docid/4f33c8d92.html>, para. 45. UNHCR GIP No. 12: Conflict and Violence, note 20 above, para. 37.

²² UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in 201701423/1/V2, 201704575/1/V2 and 201700575/1/V2 before the Council of State*, 28 February 2018: www.refworld.org/docid/5c001b0a4.html, par. 25.

²³ As the Supreme Court of Canada held in *Ward*, "[t]he political opinion ascribed to the claimant and for which he or she fears persecution need not necessarily conform to the claimant's true beliefs." Note 7 above, at p. 746-747.

²⁴ UNHCR Handbook, para. 82.

²⁵ UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 31 March 2010, www.refworld.org/docid/4bb21fa02.html, para. 50; *UNHCR intervention before the Supreme Court of the United Kingdom in the case of RT (Zimbabwe) and others (Respondents) v Secretary of State for the Home Department*, 25 May 2012: www.refworld.org/docid/4fc369022.html, paras. 8(5); *RT (Zimbabwe) and others v Secretary of State for the Home Department*, [2012] UKSC 38, United Kingdom: Supreme Court, 25 July 2012: www.refworld.org/cases,UK_SC,500fdac2.html.

²⁶ *Refugee Appeal No. 76044*, No. 76044, New Zealand: Refugee Status Appeals Authority, 11 September 2008: https://www.refworld.org/cases,NZL_RSAA,48d8a5832.html.

²⁷ *Ibid*, para 83; See also UNHCR GIP No. 1: Gender, note 20 above, para. 32.

²⁸ UNHCR GIP No. 1: Gender, note 20 above, para. 32; UNHCR, *Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, ('UNHCR GIP No. 10: Military Service'), 3 December 2013, www.refworld.org/docid/529ee33b4.html, para. 51; and UNHCR GIP No. 12: Conflict and Violence, note 20 above, para. 38.

²⁹ UNHCR GIP No. 10: Military Service, para. 51. See also, *UNHCR intervention before the Supreme Court of the United Kingdom in the case of RT (Zimbabwe) v SSHD*, note 25 above, para. 8(6); and UNHCR, *MSM (Somalia) v. Secretary of State for the Home Department: UNHCR Submissions*, 18 January 2016, www.refworld.org/docid/56a23f2b4.html, para. 39.

³⁰ UNHCR GIP No. 1: Gender, note 20 above, para. 32. *UNHCR intervention before the Supreme Court of the United Kingdom in the case of RT (Zimbabwe) v SSHD*, note 25 above, para. 8.

³¹ UNHCR GIP No. 8: Children, para. 46; UNHCR GIP No. 10: Military Service, para 54.

³² UNHCR GIP No. 12: Conflict and Violence, note 20 above, para. 38.

³³ See *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Canada: Supreme Court, note 7 above at p. 746-747. See also, UNHCR, *Amicus curiae of the United Nations High Commissioner for Refugees in case number UM 1970-17 before the Swedish Migration Court of Appeal (Migrationsöverdomstolen, Kammarrätten) Stockholm*, 11 August 2017, <https://www.refworld.org/docid/5b963dde4.html>, para. 23.

policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

[...]

(2) *When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.*³⁴

15. In sum, the concept of political opinion must be interpreted broadly and in context. In determining the applicability of the Convention ground ‘political opinion’, whether the political opinion is fundamental to the applicant is not relevant as³⁵ it can change or be imputed or attributed to the applicant, irrespective of whether they hold that opinion. The perception of the persecutor is the determining factor.

II Political opinion compared to other Convention grounds

16. While there may be overlap between the five Convention grounds, and more than one ground may be applicable in an individual case,³⁶ the five Convention grounds are nonetheless stand-alone protected grounds. Where, for example, the Convention ground ‘political opinion’ aims to protect, inter alia, the right to freedom of opinion and expression, the ground ‘religion’ relates to the right to freedom of thought, conscience and religion.³⁷
17. The question whether political opinion is immutable is not a relevant question for determining whether the ground is applicable in an individual case.³⁸ While political opinion, actual or imputed, is a protected ground under the 1951 Convention, it cannot be characterized as an ‘immutable characteristic’ as persons retain the freedom to change their opinions.³⁹ As the UN Human Rights Committee has affirmed: “any form of effort to coerce the holding or not holding of any opinion is prohibited”.⁴⁰
18. Similarly, with regards to the protected grounds of religion, the Human Rights Committee has noted that “religion” is “not limited ... to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions”.⁴¹ It also broadly covers acts of failing or refusing to observe a religion or to hold any particular religious belief.⁴² Like political opinion, applications based on religion may be based on the public manifestation of that religion; perceived religion (that may not align with the applicant’s actual beliefs); it may be imputed; it may be changed; and it can also be based on not having a religion. Indeed, there is often some overlap between the grounds of religion and political opinion in for example, gender-related claims, especially with regards to imputed political

³⁴ Qualification Directive 2011/95/EU, art. 10(2): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>

³⁵ Goodwin-Gill and McAdam, *The Refugee in International Law* (OUP 2007), p. 87; *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Canada: Supreme Court, note 7 above; UNHCR, *Handbook*, para. 82. See also, UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in case numbers 201701423/1/V2, 201704575/1/V2 and 201700575/1/V2 before the Council of State*, 28 February 2018, www.refworld.org/docid/5c001b0a4.html, paras. 19 to 28 on the overlap between the Convention grounds religion, membership of a particular group and political opinion.

³⁶ UNHCR, *Handbook*, para. 67. UNHCR, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001, www.refworld.org/docid/3b20a3914.html, para. 24.

³⁷ UNHCR, *Handbook*, para. 71.

³⁸ *UNHCR intervention before the Supreme Court of the United Kingdom in the case of RT (Zimbabwe) v SSHD*, note 25 above, para. 12(6).

³⁹ See note 18 above.

⁴⁰ Human Rights Committee, General Comment No. 34.

⁴¹ Human Rights Committee, General Comment No. 22, UN doc. CCPR/C/21/Rev.1/ ADD.4, 27 September 1993, para. 2. See also UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, (‘UNHCR GIP No. 6: Religion’).

⁴² *Ibid.*, para. 4.

opinion. “While religious tenets require certain kinds of behaviour from a woman, contrary behaviour may be perceived as evidence of an unacceptable political opinion.”⁴³

19. While the assessment of whether a characteristic is fundamental or immutable may be relevant when assessing whether a claim for refugee status is based on grounds of membership of a particular social group, it is not relevant in assessing the applicability of the Convention grounds religion or political opinion. The protected characteristics approach (sometimes referred to as an ‘immutability’ approach), relevant in the context of membership of a particular social group, examines whether a group is united by an immutable characteristic or by a characteristic that is so fundamental to human dignity that a person should not be compelled to forsake it.⁴⁴ Such a test is not relevant or necessary when assessing a claim in the context of political opinion. Doing so would wrongly place additional burdens on applicants not envisaged in the 1951 Convention.⁴⁵
20. UNHCR submits that an applicant may not be denied refugee status on the basis that they could conceal (or exercise discretion in relation to) one of the grounds protected by the 1951 Convention.⁴⁶ What matters is whether a protected ground can be exercised or not. A person holding a political opinion should not be expected to modify their opinion or the expression of it in order to avoid persecution.⁴⁷ The underlying rationale of the 1951 Convention is to allow persons to live their lives free from fear of persecution because of their race, religion, nationality, membership of a particular social group, or political opinion. Expecting an applicant to modify or conceal their opinion or the expression thereof would be contrary to the whole purpose of the 1951 Convention. This would deny the applicant the right to freedom of opinion and expression.⁴⁸ Further, persecution does not cease to be persecution because those at risk of being persecuted can eliminate the harm (or threat thereof) by taking avoiding action.⁴⁹ As indicated above, the question to be considered in assessing whether an applicant’s fear of persecution is well-founded is what may happen if the applicant returns to their country of origin and exercises their human rights. The question is not, can the applicant conceal or modify their behaviour in order to avoid attracting adverse

⁴³ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in case numbers 201701423/1/V2, 201704575/1/V2 and 201700575/1/V2 before the Council of State, 28 February 2018: <https://www.refworld.org/docid/5c001b0a4.html>.

⁴⁴ UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02: <https://www.refworld.org/docid/3d36f23f4.html>. A different, although frequently overlapping approach examines whether or not a group shares a common characteristic which makes them a cognizable group or sets them apart from society at large (referred to as the ‘social perception’ approach). See also, UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in case numbers 201701423/1/V2, 201704575/1/V2 and 201700575/1/V2 before the Council of State*, 28 February 2018, www.refworld.org/docid/5c001b0a4.html, paras. 14 and 15.

⁴⁵ *UNHCR intervention before the Supreme Court of the United Kingdom in the case of RT (Zimbabwe) v SSHD*, note 25 above, paras 8(1) and 8(3).

⁴⁶ *UNHCR, MSM (Somalia) v. SSHD*, note 29 above, para. 31. See also, *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, where the Court held with reference to the rationale of the 1951 Convention that ‘people should be allowed to live their lives free from the fear of serious harm coming to them because of their race, religion, nationality, membership of a particular social group or political opinion.’; [2010] UKSC 31, United Kingdom: Supreme Court, 7 July 2010, www.refworld.org/cases,UK_SC,4c3456752.html, para. 52. The CJEU has also stated that it is not relevant whether the conduct which would place the asylum applicant at risk on return is at the ‘core’ or margin of the protected rights: *Germany v Y and Z* (joined Cases C-71/11 and C-99/11) and in *Minister voor Immigratie en Asiel v X, Y and Z* (joined Cases C-199/12 to C-201/12). Thus the Fourth Chamber affirmed in *X, Y and Z*, that ‘[t]he fact that [the asylum applicant] could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation is not to be taken into account.’, para. 75 and ‘it is unnecessary to distinguish acts that interfere with the core areas of the expression of sexual orientation even assuming it were possible to identify them, from acts which do not affect those purported core areas.’, para. 78.

⁴⁷ *UNHCR intervention before the Supreme Court of the United Kingdom in the case of RT (Zimbabwe) v SSHD*, note 25 above, para. 9.

⁴⁸ ICCPR, Article 19. UN High Commissioner for Refugees (UNHCR), *UNHCR intervention before the Supreme Court of the United Kingdom in the case of HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, 19 April 2010: <https://www.refworld.org/docid/4bd1abbc2.html>, par. 32

⁴⁹ *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008: <https://www.refworld.org/docid/48abd5660.html>, para. 25

consequences and risk, for example in the context of political opinion, that their opinions come to the attention of the persecutor or that they will be unable to exercise their right to freedom of opinion and expression.⁵⁰ Moreover, the well-founded fear of persecution is always to be assessed in terms of future risk, as the test is a forward-looking assessment and is the same regardless of the Convention ground on which it is based.⁵¹

III. Political opinion – actual or imputed – as part of the holistic test of a well-founded fear of persecution for the reasons under article 1A(2) of the 1951 Convention

21. In all claims to refugee status, the well-founded fear of persecution needs to be related to one or more of the grounds specified in the refugee definition in Article 1A(2) of the 1951 Convention. However, the applicable Convention ground or grounds in an individual case need only be a contributing factor to the well-founded fear of persecution; it need not be shown to be the dominant or even the sole cause.⁵²

22. As UNHCR acknowledges in its Handbook:

*An applicant claiming fear of persecution because of political opinion need not show that the authorities of his/her country of origin knew of his opinions before he left the country. He may have concealed his/her political opinion and never have suffered any discrimination or persecution. However, the mere fact of refusing to avail himself of the protection of his/her Government, or a refusal to return, may disclose the applicant's true state of mind and give rise to fear of persecution.*⁵³

23. While the strength of the opinion has no bearing on the assessment of the applicability of political opinion as the ground for persecution per se, the “relative importance or tenacity of the applicant’s opinion – in so far as this can be established from all the circumstances of the case – [... is] relevant” in assessing the applicant’s well-founded fear (of persecution).⁵⁴ Particularly where the applicant has not given expression to their political opinion, “due to the strength of his convictions, however, it may be reasonable to assume that his opinions will sooner or later find expression and that the applicant will, as a result, come into conflict with the authorities”.⁵⁵ However, as elaborated above, even persons not holding a political opinion at all can have a well-founded fear of persecution for reasons of a political opinion imputed to them.

IV. Assessing “sur place” claims for international protection

24. A person must not necessarily have left their country of origin on account of having a well-founded fear of persecution and may become a refugee *sur place* either as a result of circumstances arising in their country of origin during their absence, or because of their own activities, acts, or behaviour, such as associating with refugees already recognized, or expressing political views in their country of asylum.⁵⁶ As outlined above, political opinions may develop over time or change. As such, it is not determinative that the person expressing political views outside their country of origin already held or expressed such views (or any views) while in their country of origin. In fact, they may have concealed their political

⁵⁰ UNHCR, *MSM (Somalia) v. Secretary of State for the Home Department: Submissions on behalf of UNHCR*, 5 November 2014, AA/00387/2014: <https://www.refworld.org/docid/545cc43f4.html>, para. 37.

⁵¹ In general, the applicant’s fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, *or would for the same reasons be intolerable if he returned there*. [emphasis added] UNHCR Handbook, para 42. See also para. 45. See also, UNHCR GIP No. 12: Conflict and Violence, note 20 above, para. 24.

⁵² UNHCR GIP No. 12: Conflict and Violence, note 20 above, para. 34.

⁵³ UNHCR, *Handbook*, para. 83. See also, UNHCR GIP No. 1: Gender, note 20 above, para. 32.

⁵⁴ UNHCR, *Handbook*, para. 80.

⁵⁵ UNHCR, *Handbook*, para. 82.

⁵⁶ UNHCR, *Handbook*, paras 95 and 96.

opinion and withheld expressing views,⁵⁷ precisely so as to avoid persecution while still in the country of origin. Nonetheless, whether expressions or actions undertaken outside the country of origin are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances, taking into account up-to-date and relevant country of origin information.⁵⁸ Regard should also be had in particular to whether such actions may have come to the attention of the authorities of the person's country of origin and how they are likely to be viewed by those authorities.⁵⁹

25. Accordingly, where an applicant participates in political activities in which the agent of persecution perceives them to be holding a particular political view, even when such activities are not based on strong or any conviction, it would be contrary to the 1951 Convention to deprive them of international protection and return them to their country of origin. As UNHCR has stated “[i]n the event that the claim is found to be self-serving but the [applicant] nonetheless has a well-founded fear of persecution on return, international protection is required.”⁶⁰ The UK Court of Appeal has similarly held:

*For all these reasons I do not accept the Tribunal's conclusion that a refugee sur place who has acted in bad faith falls out with the Geneva Convention and can be deported to his home country notwithstanding that he has a genuine and well-founded fear of persecution for a Convention reason and there is a real risk that such persecution may take place. Although his credibility is likely to be low and his claim must be rigorously scrutinised, he is still entitled to the protection of the Convention, and this country is not entitled to disregard the provisions of the Convention by which it is bound, if it should turn out that he does indeed qualify for protection against refoulement at the time his application is considered.*⁶¹

The UNHCR Handbook underlines that an “examiner’s conclusion on the facts of the case and personal impression of the applicant should not lead to a judgment being influenced by personal considerations that the applicant may be an ‘undeserving case’.”⁶²

26. UNHCR further underlines the importance of an in-depth examination of *sur place* claims. Where the fear of persecution arises as a result of the person’s own behaviour while in the country of asylum, the issue of credibility arises, as it may be that the activities are self-serving especially when these activities are carried out at a time when an earlier asylum application has been rejected on a final basis and the concerned applicant is required to leave the country. When such activities are conducted for purely opportunistic reasons and not based on newly formed opinions, it may be less likely the applicant will come into conflict with a persecutor upon return in the country of origin.⁶³ However, it remains important in such cases that the full details are examined and analyzed carefully in light of the likelihood of a risk of persecution actually arising in consequence of the applicant’s behaviour.⁶⁴

⁵⁷ UNHCR, *Handbook*, para. 83.

⁵⁸ UNHCR, *Handbook*, para. 42; UNHCR, *Amicus curiae submissions of the United Nations High Commissioner for Refugees in case number 12-306487/UM3940-14*, 30 December 2015, JR-15401 JR-15405: <https://www.refworld.org/docid/56a239914.html>, para. 21.

⁵⁹ UNHCR, *Handbook*, paras. 95-96

⁶⁰ UNHCR GIP No. 6: Religion, para 36.

⁶¹ *Danian v. Secretary of State for the Home Department (Appeal)*, [2000] Imm AR 96, United Kingdom: Court of Appeal (England and Wales), 28 October 1999, www.refworld.org/cases.GBR_CA_CIV_3e71dd564.html, p. 22.

⁶² UNHCR, *Handbook*, para. 202.

⁶³ UNHCR Handbook, para. 96.

⁶⁴ UNHCR, *Amicus curiae of the United Nations High Commissioner for Refugees on the interpretation and application of 'sur place' claims within the meaning of Article 1A(2) of the 1951 Convention Relating to the Status of Refugees*, 14 February 2017: <https://www.refworld.org/docid/58ee206a4.html>, par. 26; UNHCR, *Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees*, April 2001, <http://www.unhcr.org/refworld/docid/3b20a3914.html>, para. 34. Also, *Danian v. Secretary of State for the Home Department (Appeal)*, note 61 above.

27. It should be recalled that the burden of proof is discharged by the applicant rendering a truthful account of facts relevant to the claim so that, based on the facts, a proper decision may be reached. As UNHCR has stated:

“In view of the particularities of the refugee’s situation, the adjudicator shares the duty to ascertain and evaluate all the relevant facts. This is achieved, to a large extent, by the adjudicator being familiar with the objective situation in the country of origin concerned, being aware of relevant matters of common knowledge, guiding the applicant in providing the relevant information and adequately verifying facts alleged which can be substantiated.”⁶⁵

28. While acknowledging that the Qualification Directive (2011/95/EU) permits EU Member States to reject a claim for international protection if it is based on “circumstances which the applicant has created by [their] own decision since leaving the country of origin”,⁶⁶ UNHCR cautions that this provision does not derive from the 1951 Convention. In UNHCR’s view, the *sur place* analysis does not require an assessment of whether the applicant has created the situation giving rise to persecution or serious harm by their own decision. Rather, as in every case, what is required is that the elements of the refugee definition are in fact fulfilled. The person who is objectively at risk in their country of origin is entitled to protection notwithstanding their motivations, intentions, conduct or other surrounding circumstances. As UNHCR has stated: “[t]he 1951 Convention does not, either explicitly or implicitly, contain a provision according to which its protection is unavailable to persons whose claims for asylum are the result of actions abroad.”⁶⁷ The phrase “without prejudice to the Geneva Convention” in Article 5(3) of the Qualification Directive requires *sur place* claims to be assessed consistent with the 1951 Convention.⁶⁸ Noting also that the Treaty on the Functioning of the European Union (TFEU) expressly requires EU secondary legislation on asylum to conform to the 1951 Convention,⁶⁹ and that the Court of Justice of the European Union (CJEU) has repeatedly reiterated that this instrument must be interpreted “in a manner consistent with the 1951 Convention and the other relevant treaties”.⁷⁰

29. Against this background, UNHCR emphasises that the decision-maker’s critical focus in the context of *sur place* refugee claims – as in the context of all claims – must be on the risk of persecution faced by the applicant and not on whether the activities of the applicant were self-serving. UNHCR thus submits that the determination to be made under the 1951 Convention is whether there is a fear of persecution for one or more Convention grounds and whether that fear is well-founded.⁷¹

⁶⁵ UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, <http://www.refworld.org/docid/3ae6b3338.html>, para. 6; UNHCR, *Handbook*, para. 196.

⁶⁶ Qualification Directive 2011/95/EU, art. 5(3): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>.
⁶⁷ UNHCR, *Amicus curiae of the United Nations High Commissioner for Refugees on the interpretation and application of 'sur place' claims within the meaning of Article 1A(2) of the 1951 Convention Relating to the Status of Refugees*, 14 February 2017: www.refworld.org/docid/58ee206a4.html, para. 29; ‘There is no logical or empirical connection between the well-foundedness of the fear of being persecuted or of suffering serious harm, and the fact that the person may have acted in a manner designed to create a refugee claim.’

⁶⁸ UNHCR, *Comments on the European Commission’s proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted*, 21 October 2009: <https://www.unhcr.org/4c5037f99.pdf>, p. 16.

⁶⁹ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, www.refworld.org/docid/4b17a07e2.html, Article 78(1).

⁷⁰ Referring to Article 63(1) of the Treaty Establishing the European Community (Consolidated Version) (Rome Treaty), now Article 78(1) TFEU, see *Salahadin Abdulla and Others v. Bundesrepublik Deutschland*, C-175/08, C-176/08, C-178/08 and C-179/08, CJEU, 2 March 2010, at paras. 53–54; *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, CJEU, 17 June 2010, at para. 38; *Bundesrepublik Deutschland v. B. and D.*, C-57/09 and C-101/09, CJEU, 9 November 2010, at para. 78.

⁷¹ UNHCR *Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals (OJ L 304/12 of 30.9.2004)*, 28 January 2005, <http://www.refworld.org/docid/4200d8354.html>, p. 17.

D. Conclusions

30. The refugee definition does not require a political opinion to be fundamental to an applicant for it to be a relevant Convention ground in their case. The political opinion ground covers both having a political opinion and having a political opinion imputed, whether or not an applicant actually holds that or any political opinion. Applicability of the political opinion ground as such does not require political activities, nor does it require an applicant to have expressed their opinion. Assessing a well-founded fear of persecution for reasons of political opinion will involve looking at the opinions, expressions, activities and other personal facts, circumstances or characteristics of the applicant that may come to the attention of the persecutor as well as having particular opinions imputed to them. Whether an applicant can conceal their political opinion is not relevant in this forward-looking assessment. If the price that a person must pay in order to avoid persecution is that they must conceal, for example, their political opinion, then they are “being required to surrender the very protection that the 1951 Convention is intended to secure for them.”⁷²
31. The Convention grounds listed in Article 1A(2) of the 1951 Convention are distinct stand-alone protected grounds. While they share an underlying core, based on human rights and non-discrimination principles, importing tests or concepts from one ground to another, such as ‘fundamental immutable characteristics’, would not be in accordance with the text of the refugee definition, in light of the object and purpose of the 1951 Convention and would place additional burdens on applicants not envisaged in the 1951 Convention. Thus, the ‘immutability approach’ developed in interpreting ‘membership in a particular social group’ should not be imported into the interpretation of political opinion.
32. Lastly, the 1951 Convention does not make a distinction between persons who have fled their country for fear of persecution and persons who become refugees at a later date. With *sur place* claims for international protection, as with any asylum claims, the determination to be made is whether there is a well-founded fear of persecution; a determination that is forward looking, irrespective of the applicant’s motivations, intentions, conduct or other surrounding circumstances.

All of which is respectfully submitted,

UNHCR, 17 November 2020

⁷² *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, United Kingdom: Supreme Court, note 45 above, para. 11.

ANNEX I - Questions posed by the Council of State⁷³

1. What does the notion ‘political opinion’ entail and when and subject to what conditions does the 1951 Convention and the EU Qualification Directive (2011/95) offer protection to a refugee because of his political opinion? Can for the assessment of asylum claims based on this ground be relied on the manner in which claims based on other grounds are assessed? Is it important whether the applicant developed his political opinion in his country of origin or developed the opinion only after he left his country of origin? Is it important whether the applicant expressed his political opinion in his country of origin, and if so, in what way is it relevant to the assessment?
2. Is there a need to determine that an applicant in fact holds the claimed political opinion when he applies for protection based on that opinion? If it is required to determine this, how should that be done? Should such assessment be similar to assessments in asylum claims based on other grounds of persecution, or does the verification of a political opinion differ from the evaluation in other asylum claims? If the assessment of asylum claims based on a political opinion does not require determining that the applicant holds the claimed political opinion, why is this not required? Does it matter whether the applicant developed the political opinion in the country of origin or only after leaving the country of origin?
3. How should asylum claims be assessed when an applicant undertook political activities in the Netherlands and acknowledges that these activities are not based on a political opinion, but claims a risk of persecution or inhuman treatment because of an imputed political opinion? How should the applicant establish/prove this risk of persecution? Can, in relation to such claims, the applicant be expected to exercise restraint in expressing his political opinion and activities? Is it relevant whether the applicant might have contributed to the fact that a political opinion is attributed to him?
4. Have other courts, since or before the above-mentioned judgment in the ‘Westernized women’ case, addressed cases relating to protection based on a political opinion or other matters relevant to the above questions? This question specifically refers to case law from Germany, the United Kingdom, Canada, Australia and the United States of America.

⁷³ Unofficial translation.

ANNEX II - Relevant jurisprudence

Further to the request by the Council of State, UNHCR would like to bring the following judgments from other jurisdictions to the attention of the Council of State.

Canada

1. The Supreme Court of Canada addressed (imputed) political opinion and its scope in its judgment in the case of *Canada (Attorney General) v. Ward*.⁷⁴ UNHCR intervened in this case.⁷⁵
2. X (Re), 2018 CanLII 115207 (CA IRB), Refugee Appeal Division (IRB), File Number: VB7-01376.⁷⁶
3. X (Re), 2018 CanLII 143926 (CA IRB), Refugee Appeal Division (IRB), File Number: TB6-17415⁷⁷
4. X (Re), 2017 CanLII 146874 (CA IRB), Refugee Appeal Division, File Number: TB4-10382⁷⁸

United Kingdom

5. The United Kingdom Immigration Appeal Tribunal addressed political opinion and the scope of political opinion in its judgment in the case of *Emilia Del Socorro Gutierrez Gomez v. Secretary of State for the Home Department*.⁷⁹
6. The United Kingdom Court of Appeal (England and Wales) addressed imputed political opinion in the case of *Jon Hairo Ortiz Suarez v. Secretary of State for the Home Department*.⁸⁰
7. The Supreme Court of the United Kingdom addressed the issue of concealment in the case of *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*.⁸¹ UNHCR intervened in this case.⁸²

⁷⁴ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Canada: Supreme Court, 30 June 1993, available at: https://www.refworld.org/cases,CAN_SC,3ae6b673c.html.

⁷⁵ UN High Commissioner for Refugees (UNHCR), UNHCR intervention before the Supreme Court of Canada in the case of *Ward* (Appellant) and the Attorney General of Canada (Respondent), 1992, File No. 21937, available at: <https://www.refworld.org/docid/50bcb6522.html>

⁷⁶ X (Re), 2018 CanLII 115207 (CA IRB), Refugee Appeal Division (IRB), File Number: VB7-01376:

<http://canlii.ca/t/hwdfq>

⁷⁷ X (Re), 2018 CanLII 143926 (CA IRB), Refugee Appeal Division (IRB), File Number: TB6-17415: <http://canlii.ca/t/j1tfj>

⁷⁸ X (Re), 2017 CanLII 146874 (CA IRB), Refugee Appeal Division, File Number: TB4-10382: <http://canlii.ca/t/hwn8h>

⁷⁹ *Emilia Del Socorro Gutierrez Gomez v. Secretary of State for the Home Department*, 00/TH/02257, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, 24 November 2000, available at: https://www.refworld.org/cases,GBR_AIT,40487df64.html

⁸⁰ *Jon Hairo Ortiz Suarez v. Secretary of State for the Home Department*, C/2001/1953 IATRF, United Kingdom: Court of Appeal (England and Wales), 22 May 2002, available at: https://www.refworld.org/cases,GBR_CA_CIV,3fe700274.html

⁸¹ *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, United Kingdom: Supreme Court, 7 July 2010, available at: https://www.refworld.org/cases,UK_SC,4c3456752.html

⁸² UN High Commissioner for Refugees (UNHCR), UNHCR intervention before the Supreme Court of the United Kingdom in the case of *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, 19 April 2010, available at: <https://www.refworld.org/docid/4bd1abbc2.html>

8. In its judgment in the case of *RT (Zimbabwe) and others v Secretary of State for the Home Department*, the Supreme Court of the United Kingdom addressed the issue of concealment in relation to political opinion.⁸³ UNHCR intervened in this case.⁸⁴
9. The United Kingdom Court of Appeal addressed the issue of concealment in relation to political opinion in its judgment in the case of *MSM (Somalia) v. Secretary of State for the Home Department*.⁸⁵ UNHCR intervened in this case.⁸⁶
10. The United Kingdom Court of Appeal further addressed the issue of concealment in the case of *LC (Albania) v. Secretary of State for the Home Department v. the United Nations High Commissioner for Refugees (Intervener)*.⁸⁷ UNHCR intervened in this case.⁸⁸
11. The Court of Appeal of the United Kingdom addressed sur place claims for protection in the case of *Danian v. Secretary of State for the Home Department*.⁸⁹

Australia

12. The High Court of Australia addressed the issue of concealment in its judgment in the case of *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*.⁹⁰
13. The Federal Court of Australia addressed the issue of concealment in relation to political opinion in its judgment in the case of *Minister for Immigration and Border Protection v SZSCA*.⁹¹

Following the adoption of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (art. 5J(3)),⁹² the following case is also relevant:

⁸³ *RT (Zimbabwe) and others v Secretary of State for the Home Department*, [2012] UKSC 38, United Kingdom: Supreme Court, 25 July 2012, available at: https://www.refworld.org/cases/UK_SC.500fdacb2.html

⁸⁴ UN High Commissioner for Refugees (UNHCR), UNHCR intervention before the Supreme Court of the United Kingdom in the case of *RT (Zimbabwe) and others (Respondents) v Secretary of State for the Home Department*, 25 May 2012, 2011/0011, available at: <https://www.refworld.org/docid/4fc369022.html>

⁸⁵ *MSM (Somalia) v. Secretary of State for the Home Department*, C5/2015/3380, United Kingdom: Court of Appeal (England and Wales), 12 July 2016, available at: https://www.refworld.org/cases/GBR_CA_CIV.578780534.html

⁸⁶ UN High Commissioner for Refugees (UNHCR), *MSM (Somalia) v. Secretary of State for the Home Department: Submissions on behalf of UNHCR*, 5 November 2014, AA/00387/2014, available at: <https://www.refworld.org/docid/545cc43f4.html>; UN High Commissioner for Refugees (UNHCR), *MSM (Somalia) v. Secretary of State for the Home Department: UNHCR Submissions*, 18 January 2016, available at: <https://www.refworld.org/docid/56a23f2b4.html>

⁸⁷ *LC (Albania) v. Secretary of State for the Home Department v. the United Nations High Commissioner for Refugees (Intervener)*, [2017] EWCA Civ 351, United Kingdom: Court of Appeal (England and Wales), 9 May 2017, available at: https://www.refworld.org/cases/GBR_CA_CIV.5919695e4.html

⁸⁸ UN High Commissioner for Refugees (UNHCR), *L.C. (Albania) v. Secretary of State for the Home Department: Case for the Intervener*, 22 March 2017, C5/2014/2641, available at: <https://www.refworld.org/docid/58de68dd4.html>

⁸⁹ *Danian v. Secretary of State for the Home Department (Appeal)*, [2000] Imm AR 96, United Kingdom: Court of Appeal (England and Wales), 28 October 1999, available at: https://www.refworld.org/cases/GBR_CA_CIV.3e71dd564.html

⁹⁰ *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, [2003] HCA 71, Australia: High Court, 9 December 2003, available at: https://www.refworld.org/cases/AUS_HC.3fd9eca84.html, para. 40

⁹¹ *Minister for Immigration and Border Protection v SZSCA*, [2013] FCAFC 155, Australia: Federal Court, 10 December 2013, available at: https://www.refworld.org/cases/AUS_FC.531998214.html

⁹² Article 5J(3) of the Act stipulates that a person does not have a well-founded fear of persecution if they could objectively take reasonable steps to modify their behaviour so as to avoid a real chance of persecution in the receiving country, other than a modification that would: (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or (b) conceal an

14. The Federal Circuit Court of Australia addressing the issue of concealment in relation to political opinion after adoption of the 2014 Act in the case of *DAF17 v Minister for Immigration & Anor*.⁹³

innate or immutable characteristic of the person; or (c) without limiting paragraph (a) or (b), require the person to do any of the following: (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith; (ii) conceal his or her true race, ethnicity, nationality or country of origin; (iii) *alter his or her political beliefs* or conceal his or her true political beliefs; (iv) conceal a physical, psychological or intellectual disability; (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child; (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.

⁹³ *DAF17 v Minister for Immigration & Anor* [2020] FCCA 1763, Australia: Federal Circuit Court of Appeal, 12 August 2020, <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2020/1763.html>.