

BETWEEN:

QLN 146

Appellant

and

THE REPUBLIC OF NAURU

Respondent

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RESPONDENT'S OUTLINE OF ORAL ARGUMENT

Part I: Publication on the Internet

1. This outline is in a form suitable for publication on the internet.

Part II. Outline of the propositions that the Respondent intends to advance

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2. The narrow question that arises on the appeal is whether the observation of the Nauru Refugee Status Tribunal (**Tribunal**), that it 'seemed difficult to believe' that the Appellant would have been able to bribe an army commander to allow him to escape from Achuveli to Colombo, if he had genuinely been suspected of involvement with the LTTE, was a finding on a material question of fact.
3. The answer is "no", in circumstances where:
 - a. The written statement of the Tribunal, paragraphs [28] to [51] generally (CAB 13 to 18), and paragraphs [37] to [45] particularly (CAB 15 to 17), are to be read as a whole and together directed at exposing the "reasons" for doubting the credibility of, and ultimately rejecting, the Appellant's claims to have

been pursued by army personnel and militants because he had provided assistance to the LTTE (**LTTE claims**) (RS [4], [13]);

- b. Paragraph [37] (CAB 15) records that one of the reasons for rejecting the LTTE claims was that the Appellant's account of the means by which he and his family left Achuveli and travelled to Colombo (this involving departure from an airport under the control of the military) was in conflict with the Appellant's claim that he was terrified by the visits by the army to his home and had taken (extreme) measures as a result to hide from the army (RS [9]);
- c. This "reason" is reiterated at paragraphs [40] to [45] (CAB 15-17) in the Appellant's account of his arrangements in Colombo in the period between his arrival from Achuveli and his departure to India in January 2008 (RS, [14]);
- d. In the resolution of this "concern" at [45] (CAB 16-17), the Tribunal acknowledges the Appellant's evidence concerning the payment of a bribe; viz there is a level of corruption in Sri Lanka;
- e. Even afforded "due weight", those matters did not, overcome the Tribunal's concern that the conduct of the Appellant in bringing himself to the attention of the authorities was inconsistent with that of an individual who was genuinely terrified of such authorities (RS [6]); the focus squarely was on the actions and mindset of the Appellant, as distinct from that of the army officer;
- f. Accordingly, the question of whether the army commander would or would not have accepted a bribe to facilitate the appellant's travel from Achuveli to Colombo, was not of dispositive significance to the review; and
- g. The operative reasoning is further exposed at [50] and [64]; viz that there is no nexus between the Appellant's travel from Achuveli to Colombo and then from Sri Lanka to India and his claimed fear of the Sri Lankan military; this obviates the need for, and explains the lack of any, further inquiry or finding in relation to the bribe claim/explanation (RS, [15], [17]).

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4. As a consequence of the above, the Supreme Court was correct to find both that:

- a. The Tribunal did not record a finding that an army commander would not accept a bribe to compensate for the risk of corruptly facilitating the escape of a person suspected of LTTE involvement (reasons, [38] CAB 46); and
- b. There was no residual obligation to provide reasons connected with the bribe claim/explanation, including for the purposes of s 34(4) of the Refugees Convention Act (reasons, [38] CAB 46).

Dated: 11 September 2018

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Catherine Symons