



Supreme Court of New Zealand

27 August 2010

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**THE ATTORNEY-GENERAL (MINISTER OF IMMIGRATION) v TAMIL X
AND REFUGEE STATUS APPEALS AUTHORITY
SC 107/2009 [2010] NZSC 107**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The Supreme Court, in a unanimous decision, has dismissed an appeal by the Attorney-General against a Court of Appeal judgment which held that the respondent, a Sri Lankan citizen who arrived in New Zealand in 2001, was eligible to claim refugee status. The Refugee Convention excludes from refugee status persons in respect of whom there are serious reasons for considering that they have committed a crime against humanity or a serious non-political crime.

The respondent had been chief engineer on a cargo vessel owned by the Liberation Tigers of Tamil Eelam (Tamil Tigers) during a voyage in which it was transporting munitions and weapons to Sri Lanka for their use. The Refugee Status Appeals Authority found that, before the ship embarked, the

respondent knew of the nature of the cargo, its destination and of many atrocities committed by the Tamil Tigers during the civil war in Sri Lanka. The voyage concerned ended when the vessel was intercepted by the Indian Navy and escorted towards Chennai. Before reaching that port it was scuttled by those on board, some of whom were Tamil Tigers soldiers. An Indian Court convicted the respondent and other crew members of criminal charges arising from this event.

The Crown argued in the Supreme Court that the respondent's involvement in the voyage made him complicit in the atrocities committed by the Tamil Tigers, so that he had committed crimes against humanity as an accomplice. As well, his involvement in the sinking of the vessel was a serious non-political crime. The Crown's submission was that each aspect of his conduct disqualified him from being recognised as a refugee under the Refugee Convention and New Zealand law.

The Supreme Court has decided that it was not shown that the respondent's supportive activities were actually linked to any atrocities committed by the Tamil Tigers. This was because the armaments which he helped transport did not reach the Tamil Tigers as they went down with the ship. Accordingly, it was not established that any crime against humanity had been committed to which the respondent was an accomplice. Furthermore, any crime committed in relation to the sinking of the vessel was of a political nature which did not disqualify the respondent from holding refugee status under the Convention.

The Supreme Court has referred the respondent's application for refugee status back to the Appeals Authority for consideration of whether he meets the general requirements of the Convention and New Zealand law to be recognised as a refugee.

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