Last updated 30 June 2022

Case	Decision date	Relevant paras	Comments
BW (Malaysia) [2021] NZIPT 505293 (Successful)			

			arising from breaches of his international human rights to be free from cruel, inhuman or degrading treatment under Article 7 of the ICCPR, and Articles 2(2) (non-discrimination), 6 (right to work), 9 (right to social security), 11 (right to adequate standard of living), 12 (the right to health) and 14 (right to an education) of the 1966 International Covenant on Economic, Social and Cultural Rights.

[189] In Myanmar, he will be denied access to political life and barred from public sector employment. Given the restriction on the internal movements of Rohingya, the appellant will struggle to find adequate employment and housing and is likely to end up living in an internally displaced persons' camp where he will face further restrictions on his freedom of movement. They dh (l)3 55 (v)5

			the severity of harm required to constitute a breach of Article 7 [of the ICCPR] for the purposes of the protected person category is not lower that [sic] the degree of severity required to establish refugee status – that is to say, it must constitute, at the least, serious harm. See in this regard the discussion in AC (Syria) [2011] NZIPT 800035 at [81]- [86]. In the present case ([48]): In terms of Article 7, for the reasons explained above in relation to the claim to refugee status, the Tribunal finds that the evidence does not establish that the appellant's socio-economic predicament in Malaysia (as the son of a Rohingya and non-citizen father, or otherwise), gives rise to a finding that the appellant would be in danger of serious harm arising from a breach of Article 7. He is not entitled to be recognised as a protected person under section 131(1) of the Act.
LG (India) [2021] NZIPT 801844 (Unsuccessful)	9 September 2021	2, 100–105, 128–130, 131–133	The Tribunal concluded that the appellant, an Indian citizen, was neither a refugee nor a protected person within the meaning of the CAT or the ICCPR. In the refugee context, the Tribunal accepted, despite credibility concerns, that the appellant had a well-founded fear of being persecuted in his local village in India but found that an internal protection alternative was open to him. Relevantly, however, in the course of concluding that the appellant did have a well-founded fear of persecution, the Tribunal observed that ([105]) if the appellant were to return to his home village, he would come to the attention of all three moneylenders and be at risk of similar treatment. There is a real chance

			that he would be subjected to an assault amounting to cruel, inhuman or degrading treatment or punishment in breach of his right to be free from such, under Article 7 of the ICCPR.
DJ (South Africa) [2021] NZIPT 801818 (Unsuccessful)	12 July 2021	58 (accepted facts); 75–76 (risk of suicide); 85–87 (CAT); 88–95 (ICCPR)	The appellant, a South African man, appealed against a decision of a refugee and protection officer declining to grant him refugee status or protected person status. The Tribunal accepted that while in South Africa: the appellant was on one occasion the victim of a violent assault during a bank robbery; he had worked as a support worker for the deputy sheriff and then as an appointed deputy sheriff for several years; in his work he was responsible for serving arrest warrants and eviction notices and supervising evictions; he came into contact with gang members from time to time and was shot at, threatened and physically assaulted in the course of his work; he also came in contact with members of labour unions; one of his evictions was the subject of a newspaper article; he developed trauma symptoms in the course of his work and in 2013 sought psychological assistance; after resigning he suffered PTSD and has extreme fear of being the subject of a retributive attack primarily at the hands of the criminal gangs he encountered in his work. The Tribunal accepted that the appellant continues to suffer from PTSD in New Zealand and has made one suicide attempt. While the Tribunal accepted these facts, it did not

			Relevantly, the Tribunal restated authorities to the effect that a risk of suicide does not amount to arbitrary deprivation of life in breach of Art 6 of the ICCPR, although the psychological condition of a claimant can be relevant to the question of whether any act or omission by the state (or other agent of harm) is of sufficient gravity to constitute a breach of Art 7 of the ICCPR. In respect of the application of the CAT, the Tribunal concluded that for the reasons given in relation to the refugee claim, there were no substantial grounds for believing that the appellant would be in danger of being tortured if returned to South Africa. In respect of obligations arising under the ICCPR, the Tribunal considered the appellant's submission that the risk of psychological harm amounted to "cruel treatment". The Tribunal observed that the difficulty with this submission was that the harm that the appellant would experience would be his own psychological response to being in South Africa. He did not identify any "treatment" that would be inflicted on him or any "act" that would be carried out against him in South Africa to cause him psychological harm. The Tribunal observed that it is clear that Art 7 is concerned with the actions of others against a person. For completeness, the Tribunal noted that, to the extent that it may be argued that inadequate provision of mental health services may constitute cruel treatment, s 131(5)(b) of the Act provides that: "[t]he impact on the

We have no hesitation in reaffirming that the fundamental rights in the NZBORA are to be given full effect and require generous interpretations. We also acknowledge that the meaning of the rights in the NZBORA may gradually expand in ways that accord with international jurisprudence.

			also no evidence before the Tribunal that the appellants would be unable to access state protection from any harm they apprehended.
HF (Sri Lanka) [2021] NZIPT 801855 (Successful)	18 June 2021	83 (refugee context), 95–102 (ICCPR context)	The Tribunal concluded that none of the appellants (a husband and wife and their children) were refugees and that the wife and children were not protected persons within the meaning of the CAT or the ICCPR. The Tribunal recognised, however, that the husband was a protected person within the meaning of the ICCPR. In the earlier refugee context, the Tribunal had found that there was a real chance of the husband being arbitrarily killed in Sri Lanka by "AA" or his associates, contrary to the husband's rights under ICCPR Article 6. This plainly amounted to serious harm for the purposes of the assessment of being persecuted. In the ICCPR context, the Tribunal repeated that the husband had a well-founded fear of being persecuted if he were to return Sri Lanka. The harm anticipated included potential breaches of his right to security of the person and his right to be free from arbitrary deprivation of life under ICCPR Articles 6 and 9. As such, the Tribunal was satisfied that there were substantial grounds for believing that the husband faced arbitrary deprivation of his life at the hands of "AA", or at his instigation, if he were to return to Sri Lanka. There were substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand. Accordingly, the Tribunal was satisfied that the husband appellant was entitled to be recognised as a protected person.
HE (Sri Lanka) [2021] NZIPT 801838 (Successful)	17 June 2021	123–133	The Tribunal concluded that the husband and wife appellants were refugees but not protected persons within the meaning of the CAT or the ICCPR (since they did not

require protection under these instruments due to the *Refugee Convention*'s prohibition on refoulement). In determining that the appellants were refugees, the Tribunal noted that their profile, combined with the wife's family history of suspected LTTE support, meant it was likely that, upon return to Sri Lanka, or at some point after, the couple would come to the attention of the authorities. The Tribunal was satisfied that there was a real chance that both the husband and wife would be subjected to serious harm in the form of torture or other physical mistreatment constituting cruel, inhuman, or

internal protection alternative available to him. Likewise, in the ICCPR context, the Tribunal accepted that, if the appellant were to return to his village, there were substantial grounds for believing that he would be in danger of cruel, inhuman, or degrading treatment or

			constitute a violation of the right under ICCPR Article 6 to be free from arbitrary deprivation of life. This amounted to a well-founded fear of being persecuted.
BU (Turkey) [2021] NZIPT 801776 (Successful)	7 May 2021	89–100 (wife appellant), 101–104 (husband and daughter appellants)	

AD (Hong Kong) [2021] NZIPT 801884 (Successful)	4 May 2021	83–89	The Tribunal concluded that the appellant was a refugee but not a protected person within the meaning of the CAT or the ICCPR (since she did not require protection under these instruments due to the *Refugee Convention*'s prohibition on refoulement). In determining that the appellant was a refugee, however, the Tribunal found that she faced a real chance that her right to freedom of expression and right to freedom of belief would be breached in violation of ICCPR Articles 18 and 19 to the level of serious harm. Further, she faced a real chance of being subjected to arbitrary arrest and detention and to cruel, inhuman, or degrading treatment or punishment in violation of ICCPR Articles 7 and 9, also constituting serious harm.
AK (Chile) [2021] NZIPT 801809 (Unsuccessful)	30 April 2021	123–124	The Tribunal concluded that the appellant was neither a refugee nor a protected person within the meaning of the CAT or the ICCPR. In the CAT context, however, the Tribunal considered an argument advanced by the appellant that the refugee and protection officer below (and, by extension, the Tribunal) should have taken into account all relevant considerations in determining whether the appellant was a protected person, including the existence of a consistent pattern of gross, flagrant, or mass violations of human rights, as required by section 130(5) of the *Immigration Act 2009* (NZ). The appellant argued that an attempt by the Chilean authorities to silence her—by intimidation short of physical injury, detention, or murder—would be a breach of her right to freedom of expression. In rejecting this argument, the Tribunal observed that even if the available evidence demonstrated a consistent pattern of gross, flagrant, or mass violations of human rights, the argument that any attempt to silence the appellant's freedom of expression

			had relevance to the question of protected person status was misconceived. This was because, in the Tribunal's view, it is unlikely that not permitting someone to speak up in itself would constitute "severe pain and suffering" as required to meet the definition of torture under section 130(5).
AX (Nigeria) [2021] NZIPT 801849 (Unsuccessful)	30 April 2021	94, 124, 128, 135, 137	The Tribunal concluded that the appellants were neither refugees nor protected persons within the meaning of the CAT or the ICCPR (noting that Nigeria and Brazil were their two countries of nationality), although the husband had a well-founded fear of being persecuted in Nigeria. In the refugee context, the Tribunal observed that the husband appellant had established the requisite real chance of harm if he returned to Lagos (Nigeria), such harm arising from breaches of his human rights, including his rights under ICCPR Articles 6 and 7 to be free from arbitrary deprivation of life and, inasmuch as he might be severely beaten or else forced to rejoin the 'cult', from cruel, inhuman, or degrading treatment or punishment. The Tribunal was satisfied that the severity of harm would reach the required threshold of 'serious'. In the cases of the appellant children, the Tribunal noted that bullying of any kind is reprehensible, with racial bullying being particularly so, and that, taking into account their status as children, such racial bullying constituted degrading treatment contrary to their rights under ICCPR Article 7. Equally concerning was the failure of the school to provide support and a safe

from the Iranian authorities for her failure to conform to the dress code and associating with men not related to her. Such attention had breached her right under ICCPR Article 18 to manifest her thought, conscience, and belief and her right to hold and express opinions under ICCPR Article 19. The appellant, in theory, would have the option of concealing her true beliefs in order to avoid interest from the state security authorities. However, the appellant was not required in the refugee and protection sphere to dissemble or hide her beliefs to avoid serious harm. Further, she would still be required to carry documentation which identified her as Muslim, to declare herself to be Muslim when asked, and to observe Islamic customs and practices whenever she was under any degree of public or official scrutiny. Recalling that ICCPR Article 18(1) encompasses the right to not manifest any religion or belief,(of)-7 (pub (f (e)4 ((e)

EU (Iran) [2021] NZIPT 801812 (Successful)	30 March 2021	67–72, 75–82	The Tribunal concluded that the appellant was a refugee but not a protected person within the meaning of the CAT or the ICCPR (since she did not require protection under these instruments due to the *Refugee Convention*'s prohibition on refoulement). In determining that the appellant was a refugee, however, the Tribunal observed that, if the appellant returned to Iran and was open about her atheist views, she faced ongoing risks of arrest, detention, and mistreatment. This would breach her right to be free from cruel, inhuman, or degrading treatment (ICCPR Article 7) and the right to be free from arbitrary arrest or detention (ICCPR Article 9). She also would be subject to widespread discrimination in employment and wider society. The appellant already had a record of warnings from her previous employer and had lost her job because of entrenched discriminatory practices against women. If she were open about her religious beliefs, it was likely she would be unable to find employment in the tertiary education sector or other employment commensurate with her education and experience. Such acts amounted to an impermissible limitation on the appellant's right under ICCPR Article 18 to manifest her thought, conscience and belief. Further, the Tribunal noted that the appellant also would be at risk of arrest or other harm if she did not restrict her views on women and their place in society, a breach of her right to hold and express opinions under ICCPR Article 19. As a non-married, openly atheist woman, she would be subject to religious and gender-based discrimination in most aspects of life. She would receive no support from her religious family, who would likely ostracise her, unable to accept her non-Muslim beliefs.

			Country information made it clear that she could not expect any effective state protection from the harm she faced. Finally, the appellant previously concealed her true beliefs while living in Iran so she could obtain and maintain her employment and avoid interest from the state security authorities. If she was to do this again, she would still be required to carry documentation which identified her as Muslim, to declare herself to be Muslim when asked, and to observe Muslim customs and practices whenever she was under any degree of public or official scrutiny. In any education or workplace environment in which she could be involved, she effectively would be coerced on an ongoing basis into concealing her atheist beliefs out of fear of being potentially treated as an apostate. Her right to freedom of religion under ICCPR Article 18(2) would be breached on a sustained and ongoing basis. The effects of such a lifestyle would be psychologically and emotionally damaging. Moreover, maintaining the facade of being a Muslim would expose the appellant to the likelihood of a forced marriage by her family, a clear breach of her right to marry with consent under ICCPR Article 23(3).
GH (China) [2021] NZIPT 801832 (Successful)	22 March 2021	109, 110–118	The Tribunal concluded that the appellants were refugees but not protected persons within the meaning of the CAT or the ICCPR (since they did not require protection under these instruments due to the *Refugee Convention*'s prohibition on refoulement). In determining that the appellants were refugees, the Tribunal accepted that, if returned to China, one response of the appellants could be to cease to preach and proselytise and also suppress their practise and study of Christianity, in order to avoid

believed were wrong, which would be seen as anti-government). The Tribunal noted that the appellant should not be required to suppress his political opinions, contrary to his right to freedom of expression under ICCPR Article 19, simply to avoid harm. Further, the

GT (Sri Lanka) [2021] NZIPT 801746 (Successful)	4 March 2021	114–127	The Tribunal concluded that the appellant was a refugee but not a protected person within the meaning of the CAT or the ICCPR (since he did not require protection under these instruments due to the

			mistreatment in breach of his rights under CAT Article 1 and ICCPR Article 7 ([69]).
GF (China) [2021] NZIPT 801717 (Successful)	24 February 2021	63, 66–70	The Tribunal found that the appellant was a refugee within the meaning of the Refugee Convention, but that he was not a protected person within the meaning of the CAT or the ICCPR. Relevantly, however, with respect to the claim under the Refugee Convention, the Tribunal referred to ICCPR Articles 7, 9(1), 18(1)–(3), and 19(1)–(2). The Tribunal noted that there was a real chance that the appellant would be subjected to arbitrary arrest, detention, and trial on serious charges arising from his importation of Christian books in China (at [66]). The Tribunal also observed (at [67]): > if returned to China, one response of the appellant could be to cease to import the Bible and other Christian books, and also suppress his practise and study of Christianity, in order to avoid detection and mistreatment by the authorities. However, an appellant cannot be required to refrain from the exercise of a non-derogable human right, such as the right to manifest thought, conscience and belief as provided for in Article 18 of the ICCPR or freedom of expression in Article 19, in order to remove or reduce the risk of being subjected to serious harm. The Tribunal notes that both Articles 18 and 19 permit limitations necessary to

KM (India) [2021] NZIPT 801814 (Unsuccessful)			sensibly be regarded as being necessary to protect any of these claims. Further, the Tribunal was satisfied that the appellant's freely chosen work as a seller of books had become intimately connected with his faith and that he was being unfairly deprived of his right to work as he chooses (at [69]). Viewed cumulatively, the Tribunal was satisfied that there was a real chance that the appellant would suffer serious harm arising from a breach of these rights ([70]).

DB (South Africa) [2021] NZIPT 801763 (Successful)	11 February 2021	74–75	The Tribunal found that the appellant was a refugee within the meaning of the Refugee Convention, but that he was not a protected person within the meaning of the CAT or the ICCPR. Relevantly, with respect to the claim under the Refugee Convention, the Tribunal noted (at [74]–[75]): [74] Because of the appellant's particular characteristics, including his past history of trauma, current mental health difficulties and lack of coping skills, the Tribunal is satisfied that a xenophobic attack on him, in which he would be physically harmed and potentially killed, would constitute serious harm, in the form of cruel, inhuman degrading treatment or arbitrary deprivation of life, in breach of Articles 6 and 7 of the ICCPR. [75] In terms of state protection, country information confirms that police and state officials fail to respond effectively to xenophobic violence.
HP (Fiji) [2021] NZIPT 801828 (Unsuccessful)	4 February 2021	73	The Tribunal found that the appellant was neither a refugee within the meaning of the Refugee Convention nor a protected person within the meaning of the CAT or the ICCPR. The appellant's refugee claims had failed and, with respect to his claim under the CAT and ICCPR, he did not advance any evidence of a prospective risk of harm other than the evidence relied upon in connection with his refugee claim. Relevantly, with respect to the claim under the ICCPR, the Tribunal also affirmed as a matter of principle that (at [73]):

			the level of harm inherent in cruel, inhuman or degrading treatment is no less than that required for recognition as a refugee — that is to say, serious harm. See, in this regard, the discussion in AC (Syria) [2011] NZIPT 800035, at [70]–[86], notably the reliance on Taunoa v Attorney-General [2007] NZSC 70, [2008] 1 NZLR 429.
DZ (Pakistan) [2021] NZIPT 801669 (Unsuccessful)	29 January 2021	85, 92	The Tribunal found that the appellant was neither a refugee within the meaning of the Refugee Convention nor a protected person within the meaning of the CAT or the ICCPR. The appellant's refugee claims had failed and, with respect to his claim under the CAT and ICCPR,

			happens to be visiting; however, he and his associates have not demonstrated that they have the means or initiative to search for and locate the appellant in X city. Once again, his status as a Pakistani national means that his access to the same basic norms of civil, political and socio-economic rights afforded to other citizens in X city.

GD (China) [2021] NZIPT 801793 (Successful)

> due to his profile as a wealthy individual, in breach of
> Articles 6 and 7 of the ICCPR. It finds that he has a well-founded fear of being persecuted in Iraq.

However, the Tribunal concluded that the persecution feared by the father in Iraq was not for a Convention reason because it arose simply from his profile as a wealthy individual (at [141]).

As to the father's claim under the ICCPR, the Tribunal was satisfied that (at [156]):

> the father faces a real chance of being subjected to cruel, inhuman and degrading treatment and/or arbitrary deprivation of life through kidnapping by militia in Baghdad. It follows that the Tribunal is satisfied that there are substantial grounds for believing that the father would be in danger of being subjected to cruel, inhuman or degrading treatment if deported from New Zealand, with none of the exclusions contained in sections 131(5) and/or 198(1)(c) having been found to apply.

ICCPR (though not the CAT). Relevantly, with respect to the ICCPR claim, the Tribunal affirmed that the phrase 'in danger of' in s 131(1) of the Immigration Act raises a low threshold ([92]) and found that, for the reasons outlined in relation to the appellant's claim for recognition as a refugee, there were substantial grounds for believing that the appellant was in danger of cruel, inhuman, or degrading treatment or punishment if he returned to X city ([93]). Further, the Tribunal found that the appellant could not access meaningful domestic

			establishes a well-founded fear of being persecuted. Further, the Tribunal observed (at [60]–[62]): [60] As to the daughter, she will be aware of the mistreatment (detention and beating) that her mother suffered in 2009, for perceived breaches of the hijab rules. Her own ability to express herself as she would wish (which, after her formative years here, is likely to continue to be westernised) must be severely compromised by the fear of similar mistreatment herself. The Tribunal has no doubt that, if returned to Iran, the daughter will revert to compliance with the dress code for women, with all of its connotations, notwithstanding her personal wish not to do so. [61] The daughter's westernisation must also be seen in context. Neither child has been brought up as Muslim. Their parents have eschewed Islam and the children have been raised in what is effectively a secular home. Yet they, too, will be compelled like their parents, to adopt the trappings of Islam in order to avoid the adverse attention of the state. The daughter's compliance with the dress code is only one limb of this. In due course, the son is likely to be required to perform compulsory military service, unless he is able to find a way to avoid it. During military service, he will be required to attend prayers and Islamic studies classes, and to feign being Muslim, in order

[86] The appellant is accused by the Taliban of [...] in a western country. Considering the extreme violence which is a frequent feature of the Taliban's mistreatment of those perceived to be supporters of the "west", there is a real chance of the appellant suffering serious harm in terms of arbitrary deprivation of life, torture and/or cruel, inhuman and degrading treatment, in breach of Articles 6 and 7 of the International Covenant on Civil and Political Rights. Such serious harm would amount to being persecuted.

[87] State protection is not available to the appellant because of the Afghanistan state's inability to prevent targeted attacks on civilians by the Taliban. The Tribunal is satisfied that none of the mechanisms of state protection reduce the risk to the appellant below the level of a real chance.

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			… the level of harm inherent in cruel, inhuman or degrading treatment is no less than that required for recognition as a refugee – that is to say, serious harm. See, in this regard, the discussion in AC (Syria) [2011] NZIPT 800035 at [70]–[86], notably the reliance on Taunoa v Attorney-General [2007] NZSC 70, [2008] 1 NZLR 429.
ER (Iran) [2020] NZIPT 801728 (Successful)	21 December 2020	16–19, 20–49	The Tribunal found that the appellant was a refugee within the meaning of the Refugee Convention, but that he was not a protected person within the meaning of the CAT or the ICCPR. The appellant's claim and the reasons for the Tribunal's decision here were withheld from publication pursuant to section 151 of the Immigration Act on the ground that disclosure of the same would be likely to identify the appellant. However, the Tribunal did discuss some aspects of the legislative history of New Zealand's implementation of its international obligations under the ICCPR and CAT.
AV (Egypt) [2020] NZIPT 801705 (Successful)	10 December 2020	42	The Tribunal found that the appellant was a refugee within the meaning of the Refugee Convention, but that he was not a protected person within the meaning of the CAT or the ICCPR. Relevantly, however, in the course of assessing the appellant's claim under the Refugee Convention, the Tribunal noted (at [42]): For the purposes of the present appeal, various Articles of the ICCPR are engaged, particularly the right not to be subjected to torture or to cruel, inhuman or degrading treatment (Article 7); the right not to be subjected to arbitrary arrest or detention (Article 9); the right to freedom from arbitrary or unlawful interference with privacy, family and home (Article 17); and the

right of effective protection against discrimination

			that there is no available state protection to reduce the risk of serious harm to them below a real chance level. [120] Notably, the threats of violence in themselves would reach the threshold of serious psychological harm for the wife in violation of her right to be free from cruel, inhuman or degrading treatment or punishment, given her vulnerable psychological condition, having been diagnosed with post-traumatic stress disorder, suicidal ideation and through her having a long and recent history of self-harm. The Tribunal concluded that it lacked jurisdiction to consider the appeal of the infant son in this matter.
JZ (India) [2020] NZIPT 801771 (Successful)	3 December 2020	113–114	The Tribunal found that the appellant was a refugee within the meaning of the Refugee Convention, but that he was not a protected person within the meaning of the CAT or the ICCPR. Relevantly, however, in the course of assessing the appellant's claim under the Refugee Convention, the Tribunal noted (at [113]–[114]): [113] The Tribunal is satisfied that upon return to India, the appellant will be identified as an evangelical Christian Dalit through his evangelism, which the Tribunal is satisfied is something he would engage with no matter where he was living. This will bring him to the attention of Hindu nationalists, and/or family members of coverts who will seek to harm him. The fact that he is a Dalit will serve to

of assessing the appellant's claim under the Refugee Convention, the Tribunal observed (at [84]–[85]):

> [84] Falun Gong is a belief system which is fundamental to the appellant's identity. The Tribunal is satisfied that there is a real chance that, in China, if the appellant seeks to manifest this belief, he may be subjected to arbitrary arrest and detention and to cruel, inhuman or degrading treatment, punishment or torture in violation of Articles 7 and 9 of the ICCPR. These also amount to impermissible limitations on his right to freedom of belief.
>
> [85] As the Tribunal has previously held, refugee law does not require individuals to be discreet or modify behaviour protected by non-derogable human rights, if they are doing so solely to avoid persecution. This infringes the appellant's right under Article 18 of the ICCPR, to manifest his thought, conscience and belief: see (DS (Iran) [2016] NZIPT 800788). Similarly, Article 19 provides individuals with the right to hold opinions without interference and the freedom to express those opinions, a right which would also be breached should the appellant return to China and be unable to express his beliefs and opinions about Falun Gong to and with others in order to avoid the risk of serious harm.

BN (Malaysia) [2020] NZIPT 801684

infliction of severe mental pain and suffering in breach of Article 7 of the ICCPR. The Tribunal was therefore satisfied that the appellant was in danger of being subjected to cruel treatment in Malaysia.

The Tribunal also referred to the two exceptions to the definition of a protected person under the ICCPR set out in s 131(5) of the Act: (a) treatment inherent in or incidental to lawful sanctions, unless the sanctions are imposed in disregard of accepted international standards, and (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality.

In relation to the first exemption, the Tribunal noted that the appellant's risk of harm arose from a prosecution under section 309 of the Penal Code in Malaysia. Prima facie, this was a lawful sanction under Malaysian law. However, the Tribunal observed that s 131(5)(a) also contains the proviso that the treatment inherent in or incidental to prosecution under section 309 will not be excluded from protection if the sanctions are imposed in disregard of accepted international standards. In this case, the Tribunal found tclW nBT0.22 and-0 0 8 ahe an4 (nd-.8 (t)-2 (t

			suicide and the effect of this practice on access to that care. Unlike an inability to provide health care, the continued enforcement of law criminalising suicide attempts would result in the cruel treatment of the appellant.
GI (Sri Lanka) [2020] NZIPT 801747 (Unsuccessful)	28 September 2020	62-66	The NZIPT concluded that the Sri Lankan appellants were neither refugees nor persons requiring protection under the ICCPR or CAT. However, in the course of assessing protection under the ICCPR, the NZIPT noted that one of the appellants was being treated in New Zealand for severe peripheral vascular disease and accepted that the quality of medical care and availability of treatment for people living in Sri Lanka and without the financial resources to pay for private medical care would be at aSof3-Mm[(t) -4 (u)4 (f)-4.68 Te-1 (o)--4 (u)1 (hou

			provide a somewhat detailed legal analysis of ICCPR Article 18 (freedom of religion), albeit in the context of considering refugee status (and seemingly adopted in determining harm under the ICCPR).
CT (South Africa) [2020] NZIPT 801643 (Unsuccessful)	15 June 2020	122-127 (conclusion on refugee status), 130-131 (CAT analysis), 134-139 (ICCPR analysis)	The Tribunal found that the South African appellant did not have a well-founded fear of persecution for a Convention reason and thus she was not a refugee. The Tribunal also found that there were no substantial grounds for believing she would be in danger of being subjected to torture (under CAT) or the arbitrary deprivation of her life or cruel treatment (under ICCPR) if deported. As such, she was not a 'protected person' as defined in s 130 of the *Immigration Act 2009* (NZ). However, the case does provide a somewhat detailed legal analysis of the CAT and ICCPR beyond that of a brief and straightforward application of the law.
AX (Colombia) [2020] NZIPT 801607 (Successful)	19 May 2020	102-111 (discussion of ICCPR Arts 6 and 7 in context of considering refugee status), 113 (conclusion on refugee status), 114-117 (CAT analysis), 118-130 (ICCPR and relocation analysis)	The Tribunal found that the Colombian appellant did not have a well-founded fear of persecution for a Convention reason and therefore he was not a refugee. The Tribunal also found that while the appellant was in danger of being subjected to severe pain or suffering intentionally inflicted by a gang for the purposes of punishing him for making a complaint to the police against him, he could not otherwise meet the definition of torture as there was no evidence to establish that this harm would be inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or of a person acting in an official capacity. Nonetheless, the Tribunal recognised that the appellant was at risk of being arbitrarily killed or punished in a manner which would involve the infliction of severe mental and physical pain and suffering. As such, the

			appellant was in danger of being subjected to the arbitrary deprivation of life or cruel treatment in Colombia (ICCPR Articles 6 and 7). The Tribunal then considered in detail the issue of whether the appellant could avoid being harmed by the gang by relocating elsewhere in Colombia. The Tribunal concluded that the appellant did not have available to him a viable internal protection alternative.
AR (Jordan) [2020] NZIPT 801671 (Successful)	14 May 2020	77-80 (discussion of ICCPR Arts 6 and 7 in context of considering refugee status), 83 (conclusion on refugee status), 86 (CAT analysis), 88-91 (ICCPR analysis)	The Tribunal found that the Jordanian appellant had a well-founded fear of persecution but concluded that this was not for a Convention reason and therefore he was not a refugee. The Tribunal also found that there was a real chance that the appellant would be subjected to severe pain or suffering by his extended family members for the purpose of intimidating or coercing him to desist from, or to abandon, any attempt to get the police to prosecute his maternal uncle and the challenge to senior tribe members that this would entail. However, as such persons were not public officials, there was no ground for considering that the appellant would be at risk of being tortured by a public official (or a person acting in an official capacity) if returned to Jordan. Nonetheless, the Tribunal recognised that there were substantial grounds for believing that the appellant was in danger of being arbitrarily deprived of his life (ICCPR Article 6). Additionally, the appellant faced a real chance of serious physical mistreatment by members of his mother's family as a means of preventing or stopping him from pursuing the prosecution of his mother's uncle for murder (thereby challenging the authority of senior members of his mother's tribe). Such mistreatment fell within the ambit of cruel, inhuman and degrading

			treatment (ICCPR Article 7) and the requisite severity of harm was met.
AR (India) v Attorney-General [2020] NZHC 421 (Unsuccessful)	25 February 2020	25-36	The court stuck out an Indian plaintiff's claim for breach of the New Zealand Bill of Rights Act on the basis that it does not show a reasonable cause of action, but in doing so, discussed risk of loss of life and a reduction in quality of life as these concepts relate s. 8 and s. 9 (torture, or to cruel, degrading or disproportionately severe treatment or punishment) of the Act.
HA (Fiji) [2019] NZIPT 801634 (Successful)	18 December 2019		

alleged to have committed in another country.' (Para 271)

As noted at [11], under this framework Parliament has entrusted the Minister (not the courts) to make the final decision as to whether or not the person should be surrendered. However, the power to make that decision, which is the subject of this review application, is constrained by mandatory and discretionary restrictions. These restrictions derive from fundamental principles and rights contained within various international covenants ratified by New Zealand which also underlie, to some extent, the rights and freedoms contained within the New Zealand Bill of Rights Act. All parties in this matter have proceeded on the basis that there are good grounds for concern as to the observance and protection of human rights in the PRC.' (Para 272)

'On judicial review, the Court is required to ensure the Minister's decision was guided by a correct understanding of the law, was reached with sufficient evidence, and was fully and accurately reasoned on the

(d) The Judge was correct to conclude that it was relevant for the Minister to ascertain whether Mr Kim was in one of the classes of people at high risk of torture in the PRC. However, the Judge erred in concluding that on the material before the Minister it was open to her to find that Mr Kim, as a murder accused, is not at high-risk. Relevant evidence asserting that murder accused were at a high-risk of torture could not reasonably be put to one side and no evidence before the Minister went so far as to conclude that murder accused were not at a high-M-4 (-1 (u u3T[(M

trial. When revisiting the decision whether or not to surrender Mr Kim, the Minister should apply the test as articulated at [179] above.

Seventh ground —fair trial

(j) The Judge erred in finding it was reasonably open to the Minister to be satisfied that the assurances met the risk that Mr Kim would not receive a fair trial if surrendered to the PRC. We have identified the following issues in connection with the following fair trial rights that were not adequately addressed by the assurances: (i) The right to a hearing before an independent panel or public tribunal: Mr Kim has a right to be tried before a tribunal that decides cases on the evidence before it and free from political pressure. There was material J-0.cam p

			material before the Minister to suggest that defence counsel operate in an environment in which they fear persecution for their representation of their client. (iii) The right not to be compelled to testify or confess guilt: there was material before the Minister to suggest that Mr Kim could be interrogated for a period of months in the absence of a lawyer. Eighth ground —disproportionate punishment (k) The Judge erred in finding the Minister made no error in failing to seek a specific assurance that the five years spent in custody in New Zealand would be deducted from any finite sentence of imprisonment in the PRC. As a matter of sentencing methodology, and considering New Zealand's international obligations, to not account for the time Mr Kim spent in custody would lead to a disproportionately severe punishment. Ninth ground —access to mental health care (l) We do not consider it appropriate to address the issue of Mr Kim's access to mental health services on the basis of the material before the Court.' (Para 275) 'The Minister of Justice must reconsider the issue of Mr Kim's surrender. In particular, the Minister should address the following matters: (a) Whether the general human rights situation in the PRC suggests that the value of the human rights recognised under the ICCPR and the Convention against Torture are not understood and/or valued, and further, if

they are, whether the rule of law in the PRC is sufficient to secure those rights.

(b) The Minister is to make further inquiry as to whether murder accused are at high-risk, or higher risk, than the notional ordinary criminal.

(c) The Minister should not treat the fact that Mr Kim will be tried in Shanghai, the stage of the investigation, or the strength of the case against Mr Kim as reducing the risk of torture, unless further inquiries provide a sufficient evidential basis for proceeding on that basis.

			information as to the position of the defence bar in the PRC, the right the defence has to disclosure of the case to be met, and the right to examine witnesses; and (iii) seek further assurances that Mr Kim will be entitled to disclosure of the case against him (detailed as to timing and content), that he will have the right, through counsel, to question all witnesses, and the right to the presence of effective defence counsel during all interrogation. (f) The Minister should address the risk that Mr Kim will be sentenced to a finite term of imprisonment and receive no credit for time already served in New Zealand. Relevant to consideration of this issue will be any assurances the Minister is able to obtain in relation to this.' (Para 278)
ES (China) [2019] NZIPT 801466 (Successful)	7 June 2019	2, 58, 63-69, 71, 85-87	A Chinese appellant was found to face a real chance of being tortured in pre-trial detention, in order to extract a confession from him, if he returns to China. The persecution the appellant feared was found not to be for a Convention reason, hence the failure to obtain refugee status. 'The appellant says that he gave help to a group of North Korean nationals who were illegally in China, by driving them from his home settlement of Z to another town. The arrest of another participant in the group's flight from North Korea has led to the Chinese and North Korean authorities becoming aware of the appellant's involvement and, he says, he is at risk of being detained and suffering serious harm arising from breaches of his human rights.' (Para 2).

			'It is not overlooked that, by assisting illegal immigrants, the appellant participated in actions which likely infringed Chinese criminal law. Nor could it be said that it is unreasonable or unconscionable for countries to have and enforce laws relating to the regulation and control of immigration. Indeed, New Zealand itself detains and removes illegal immigrants under such laws. Further, there is international concern at the scourge of human trafficking and people smuggling, and most countries view such offending gravely.' (Para 58.) 'To return to the substance of the law, it is apparent that, on its face, Chinese law make reasonable, and not draconian, provision for the criminalisation of providing assistance to illegal migrants.' (Para 63.) 'The matter does not rest there, however. As has been explained consistently by the Tribunal and its predecessor over the past quarter of a century, legitimate prosecution can become persecutory where disproportionately severe punishment or mistreatment occurs. See the discussion in *Refugee Appeal No29/91* (17 February 1992), at pp7–13. For the reasons which follow, it is not necessary to dwell on the issue at any greater length here. The mistreatment of which the appellant is at risk far exceeds anything justifiable by legitimate investigation and prosecution.' (Para 64.) 'The appellant can be expected to be detained on his return to China – either at the airport or soon thereafter. The sustained adverse interest in him by the Chinese authorities makes this almost inevitable.' (Para 65.) 'Country information makes it clear that the appellant is likely to be held in pre-trial detention for some two to seven months, depending on the severity with which his actions are viewed –

			see *CK (China)* [2018] NZIPT 800775-776, at [385]. During that period of detention, he will be at risk of torture or cruel, inhuman or degrading treatment in an attempt to make him confess. It is irrelevant for the purposes this enquiry whether or not the appellant is guilty. He has an absolute, non-derogable right not to be tortured or to suffer other such mistreatment.' (Para 66.) 'The Tribunal need only find that the risk of serious harm to the appellant reaches the real chance threshold – that it is a substantial, or real, risk that is not merely remote or speculative. The country information satisfies us that that threshold is reached.' (Para 67.) 'There are likely to be other forms of serious harm to which the appellant would be exposed, such as an unfair trial by a judicial body which was not independent or impartial, and an absence of a presumption of innocence. But it is not necessary to spend time on those concerns - the exposure to a real chance of torture and/or cruel, inhuman or degrading treatment, causing serious harm, amply suffices.' (Para 68.) 'Lastly, for the sake of completeness, the Tribunal observes that the use of severe pain or suffering to extract a confession will, in these circumstances, amount to torture as it is defined in Article 1(1) of the 1984 *Convention Against Torture*, …' (Para 69.) 'It would constitute torture under both the *Convention Against Torture* and Article 7 of the ICCPR.' (Para 71.) 'The enquiry, under this limb, requires us to determine, on the same facts, the risk of the same human rights violations which have already been considered in the course of the refugee enquiry. The Tribunal has already found the appellant to face a real chance of being tortured in pre-trial detention, in order

			to extract a confession from him, if he returns to China. The use of torture in such conditions is widely acknowledged by reliable human rights monitors to be routine.' (Para 85.) 'The Tribunal finds that the "in danger of" threshold is met. As with the "real chance" threshold in the refugee enquiry, it requires a degree of risk which is more than speculative or remote – see *AI (South Africa)* [2011] NZIPT 800050-053, at [81]-[83]. That threshold is comfortably met' (Para 86.) 'It follows that there ar substantial grounds forlieving that the appellant would be in danger of being subjected to torture if deported from New Zealand. He is a protected person under section 130 of the Act.' (Para 87.)
AZ (Malaysia) [2019] NZIPT 801520 (Successful)	31 May 2019	2, 22, 30, 62-63, 66-67	In this case, a Malaysia appellant is found to be at risk of cruel treatment at the hands of loan sharks/criminal gangs. His claim did not satisfy the definition of torture. 'The appellant alleges that he is at risk of being severely harmed in Malaysia by criminal gangs because he cannot repay funds he borrowed to finance his gambling. The primary issue on appeal is whether the appellant's fears are well-founded.' (Para 2). 'By early 2015, the appellant was hopelessly in debt, incapable of meeting his interest payments from his monthly income and had exhausted his sources of credit and loans. He was forced to again ask his parents for help. He had borrowed over RM1 million, most of it from loan sharks at illegal rates of interest. His parents insisted that, as his debts were too large to repay, he had no option but to leave the country otherwise he risked being harmed or killed. The appellant therefore resigned from his position as sales manager and departed Malaysia for Australia. He lived in Perth and when his three

visa expired he remained unlawfully in Australia for several more months working as a fruit-picker. He says he had been ignorant about work visas. On his departure he was informed that, because of his overstaying, he was subject to a five year ban on re-entry to Australia.' (Para 22).

'[30] The appellant fears to return to Malaysia. He cannot repay the impossibly large sums he owes to various loan sharks, including those with connections to Gang 24 and he believes that he is therefore at risk of being physically harmed or even killed. He cannot expect police protection if he receives threats because of the close connections the criminal gangs have with the police. He also believes that the police will be reluctant to help him because the Chinese in Malaysia are not liked and experience discrimination. He cannot safely avoid the gangs by living in another region in Malaysia as the gangs have a presence everywhere as well as connections to the police and other state institutions. He has been bankrupted so that he could even be arrested on his return to Malaysia, which could in turn lead to his being handed over to Gang 24.' (Para 30).

'The appellant has a real chance that he will be subjected to "severe pain or suffering" that would be for the purpose of "intimidating or coercing" him to pay money to loan sharks and/or associated criminal gangs. However, such entities are not public officials. The appellant's predicament may arise because a corrupt police officer provides information about his whereabouts to a loan shark or criminal gang. However, this scenario, whi6 (4.3 (,)2 (w)6.6 (h)12.9 (i)h 6.6 (o)2 (w)6.6 (ev)12.8(i)-2 (.3 (

"[89] It is not overlooked that the police have been found to be corrupt and might well form the conduit by which the appellant's whereabouts become known to the *ah long* FF. It might also be the case (though it need not be determined here) that the criminal activity of a corrupt police officer (in being in league with the *ah long*) could be said to be done by a public official, albeit that it would be a criminal act well outside his official duties. What is not established, however, is the requirement that the severe pain or suffering be inflicted "by or with the acquiescence of" a public official. The evidence does not establish that such pain or suffering would be

			treatment), to also determine whether there are substantial grounds for believing that he would be subjected to arbitrary deprivation of life if deported to Malaysia.' (Para 67).
FK (Sri Lanka) [2019] NZIPT 801383 (Successful)	5 March 2019	1-2, 71-72, 75-76	In this case, a Sri Lankan appellant is found to be at risk of torture, satisfying the definition due to the involvement of what appeared to be public officials colluding with non-state agents. 'The appellants comprise a husband, wife and three minor children, who are all nationals of Sri Lanka. The mother is the responsible adult of the children for the purposes of section 375 of the Immigration Act 2009 (the Act).' (Para 1). 'The husband, a wealthy gemstone and jewellery

set about neutralising the father's efforts to secure the settlement sum by bribery and corruption and by systematically attacking his primary source of income – a ZZ factory in Bangladesh, such that the business collapsed.' (Para 3).

'The father says that he is at risk of serious harm if he returns to Bangladesh (and his family members, by association with him) because his former business colleagues are powerful and well-connected and will wish to prevent him continuing with the criminal charges. They also wish to acquire the land on which his former ZZ factory sat, because it is adjacent to their own land which is landlocked.' (Para 4).

'This limb of the enquiry can be answered shortly in the case of the appellant. The Tribunal is satisfied that, if he returns to Bangladesh, he faces a real chance of serious harm at the hands of, or at the instigation of, CC and DD or their associates. He continues to represent a threat to their business and personal interests in Bangladesh because of the legal proceedings arising from the dishonoured cheques. The sum involved is substantial and there is the prospect of at least one of the men (CC) being personally criminally liable as a director of the company which failed to honour the cheques. They have already taken aggressive steps to neutralise and intimidate him.' (Para 80).

'In response to the appellant's efforts to obtain restitution, he has suffered the systematic destruction of his ZZ business, the harassment, intimidation and physical assault of his staff and relatives and he has himself become the victim of false criminal allegations reported to the Magistrates Court by the police, undoubtedly through corrupt influence. Nothing in the evidence suggests that the appellant has 8 BDC B36 (

seen him reduced from a person of some wealth to a bankrupt.' (Para 81).

'As to the appellant, the Tribunal finds that he is not at risk of being persecuted for any Convention reason. Any harm he suffers if he returns will be for reasons of crime and retribution or revenge. Counsel submits that an element of political opinion must exist, given the

			would be in danger of being subjected to torture if deported from New Zealand.' (Para 101). 'As to the appellant, for the reasons explained above in relation to the refugee enquiry, the Tribunal is satisfied that there are substantial grounds for believing that he would be in danger of cruel, inhuman or degrading treatment if he returns to Bangladesh. Given this finding, it is not necessary to consider whether or not there are also substantial grounds for believing that he is in danger of arbitrary deprivation of life. He is a protected person within the meaning of section 131 of the Act.' (Para 108).
AY (Iraq) [2018] NZIPT 801263 (Successful)	28 March 2018	2-3, 12-17, 21, 61-64, 73-78	This case concerned arbitrary deprivation of life and is an example of the Tribunal's reasoning in relation to an internal protection alternative (IPA) under the protected person's regime. 'The appellant is a Kurdish man aged in his early thirties. He claims to have a well-founded fear of being killed by agents of a well-known Kurdish political figure because he had knowledge about the latter's corrupt dealings which he made known to the leadership of the Gorran Party. The central issue to be determined is whether the risk of harm faced by the appellant is for one of the five reasons contained in the definition of a refugee under the Refugee Convention reason.' (Para 2). 'For the reasons which follow, the Tribunal finds that it does not and the appellant is not entitled to be recognised as a refugee; he is, however, entitled to be recognised as a protected person.' (Para 3). 'The appellant now understood that the cash he had been delivering to his employer monthly were in fact payments to AA who was very probably the actual owner of the hotel. It was a common practice in Iraqi Kurdistan that high-ranking

‘While detained inside the Land Cruiser, the appellant was verbally abused and the men indicated they knew who he was and where he lived. They told him that he had a “long tongue” and that they would kill him if they found out that he was the one who had been talking. The appellant was slapped in the face, causing bruising and a cut to his lip.’ (Para 16).

‘After 15 or 20 minutes, the Land Cruiser stopped and the appellant was dumped in the street. He telephoned his father who collected him and took him home. He told his father what had happened and his father admonished him for his actions which he considered foolish and reckless. Fearful of further attack, the appellant then began living in different places, alternating staying at his own house, and at those of friends and relatives for three or four nights at a time. He spent most his time at the home of the family lawyer, called CC.’ (Para 17).

‘The appellant does not believe it would be safe for him to

“a person must not be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if he or she is able to access meaningful domestic protection in his or her country or countries of nationality or former habitual residence.”’ (Para 75).

‘In *AC (Russia)* [2012] NZIPT 800151the Tribunal held, at [110]:

In order for the statutory test under section 131(2) to be satisfied it must be established that:

(a) The proposed site of internal protection is accessible to the individual. This requires that the access be practical, safe and legal;

(b) In the proposed site of internal protection there are no substantial grounds for believing that the appellant be will arbitrarily deprived of life or suffer cruel, inhuman or degrading

			Baghdad. In the current fractured climate inside Iraq in the wake of the disputed independence referendum and the subsequent capture of Kirkuk by Baghdad, as a single Kurdish male without family support in Baghdad, the appellant would be in danger of being exposed to other forms of serious harm there. For this reason alone, he has no viable IPA available to him.' (Para 77). 'Accordingly, the appellant is entitled to be recognised as a protected person within the meaning of section 131(1) of the Act.' (Para 78).
AV (Nepal) [2017] NZIPT 801125 (Unsuccessful) See related case AW (Nepal) [2017] NZIPT 503106 (22 September 2017)	22 September 2017		

			'The danger of further earthquakes in Nepal has not passed. Further, if they go back, the husband and wife would not have their son and daughter there to support them emotionally.' (para 9). 'In *AF (Kiribati)*, cited above, the Tribunal examined the scope of the right not to be arbitrarily deprived of life within the context of natural disasters and noted, at [83], that not all risks to life fall within the ambit of section 131, only those which arise by means of "arbitrary deprivation". It determined that the prohibition on arbitrary deprivation of life must take into account the positive obligation on a state to protect the right to life from risks arising from known environmental hazards. Failure to do so might, in principle, constitute an omission for the purposes of the prohibition on the arbitrary deprivation of life. As already noted, the appellants have not presented any evidence that the Nepalese government, with the assistance which it accepted from the international (state and non-state) community, has failed to take steps to positively protect its population, including the appellants, as best it could from the consequences of the earthquake. There is no basis for finding that the position would be any different in the future such that the appellants "would be in danger" of being arbitrarily deprived of their lives.' (para 46). 'As to the nature and scope of the prohibition on cruel, inhuman or degrading treatment, this was examined in detail in *BG (Fiji)* [2012] NZIPT 800091. The Tribunal determined that this prohibition was not intended to allow general socioeconomic conditions to constitute "treatment" unless there was: a deliberate infliction of socioeconomic harm by state agents or a failure to intervene while non-state agents did the same; the adoption of the particular legislative, regulatory or policy regime in relation to a section of the population; or the failure to discharge positive obligations towards

individuals wholly dependent on the state for their socioeconomic well-being.' (para 47).

'In *AC (Tuvalu)* [2014] 800517-520, this reasoning was applied in the context of natural disasters. The Tribunal stated at [84]:

Just as it was not intended that consequences of general socio-economic policy should constitute a treatment under Article 7 of the ICCPR, nor does the mere fact that a state lacks the capacity to adequately respond to a naturally occurring event mean that such inability should, of itself, constitute a 'treatment' of the affected population. However, the existence of positive state duties in disaster settings means that, in some circumstances, it may be possible for a failure to discharge such duties to constitute a treatment. Specific examples will be the discriminatory denial of available humanitarian relief and the arbitrary withholding of consent for necessary foreign humanitarian assistance. ...' (para 48).

applicant children
unsuccessful)

			because there would be no "treatment" of any kind in Afghanistan and the treatment element of the right cannot be located in the act of the New Zealand authorities in returning them. Such an approach to Article 7 has been applied intermittently by the European Court of Human Rights in the deportation context, but it has been rejected in this country and, more broadly, in the international jurisprudence in relation to the scope of Article 7, ICCPR. See the detailed discussion of this issue in *BG (Fiji)* [2012] NZIPT 800091, at [136]-[162].' (para 107). 'There are no substantial grounds for believing that either child would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand. Neither child is a protected person under section 131 of the Act.' (para 108).
DF (India) [2017] NZIPT 801022 (Unsuccessful)	16 March 2017	25-26, 67, 85-88	This case concerned an Indian husband and wife whose claims concerned, inter alia, lack of employment, poverty and lack of access to medical care. Pursuant to s 131(5) of the Act, the medical claim was rejected and the socio-economic claims could not succeed due to lack of relevant treatment for which the state could be held accountable. 'The husband had to borrow more than NZD100,000 for his liver transplant in India in late 2014. In the last two years he has repaid between NZD52,000 and NZD55,000. He thinks the bank has been paid back but the amount outstanding is payable to various family members. He is not paying interest. He is not under any particular pressure at the moment from family members because he is making regular repayments. He is expected to repay all the money.' (Para 25).

			'The only way the couple can repay the debt in full is by staying in New Zealand. When the husband was working in India prior to 2010, he was earning approximately NZD100 a month. Earnings at that level would not allow him to make repayments. Even IT jobs in India now are not sufficiently highly-paid for him to feed his children, pay school fees, pay for his medicine and make loan repayments.' (Para 26) 'The appellants state that they fear poverty, corruption, crime and the prevalence of drugs in India.' (Para 67). 'The appellants may have some difficulty obtaining employment in India. They may suffer a diminution in their standard of living in India. However, a lower standard of living is not, of itself, 'treatment' within the meaning of section 131. In *BG (Fiji)* [2012] NZIPT 800091 the Tribunal determined that, as a general rule, socio-economic deprivation arising from general policy and conditions in the state to which a claimant may have to return, does not constitute cruel, inhuman or degrading treatment. This is because there is no relevant 'treatment' of the appellant for which the state can be held accountable.' (Para 85). 'As to being in danger of arbitrary deprivation of life, a distinct issue, the conditions in India are not such that the appellants are subject to this risk. As to the husband's medical condition, section 131(5) of the Act makes it clear that the impact on a person of the inability of a country to provide medical care, or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment. In any case, the husband has been able to access sophisticated medical treatment in the past in India (his liver transplant), paid for with the assistance of his family, and it has not been established that he would be unable to access ongoing monitoring and medication for his condition.' (Para 86).

			'Neither of the appellants faces a real chance of cruel, inhuman or degrading treatment or of arbitrary deprivation of life, as a form of 'being persecuted' in the context of the International Covenant on Civil and Political Rights. Any such risk is no more than speculative and remote and does not reach the threshold of being "in danger of" such harm.' (Para 87). 'The appellants are not persons in need of protection under section 131 of the Act.' (Para 88).
(AI) Tuvalu [2017] NZIPT 801093 (Unsuccessful) See also AJ (Tuvalu) [2017] NZIPT 801120 (20 March 2017) for a similar decision relating to climate change in Tuvalu.	23 February 2017	29-33, 49-51, 53-54, 59-60, 62, 75-76	This case concerned a husband and wife from Tuvalu whose claims related to the effects of climate change and lack of employment prospects. The case was unsuccessful (manifestly unfounded) in reliance on *AC (Tuvalu)* [2014] NZIPT 800517 and *AF (Tuvalu)* [2015] NZIPT 800859. The Tribunal also addressed family unity. '

Zealand. While they have family members there, they cannot assist the appellants as they have families of their own and lack the means of supporting them. This would result in a situation of overcrowding, an increasing problem in Tuvalu due to the flow of individuals to the capital city as a result of the effects of climate change.' (para 31).

'The appellants also claim that they would be unable to

			appellants would be in danger of being arbitrarily deprived of their lives: "[107] That challenges remain in this area is also acknowledged in the [Universal Periodic Review] National Report which, at paragraph [81], notes the [National Adaptation Programme of Action] project and other climate change adaptation measures face challenges and constraints. These include the accessibility and availability of funds to procure materials for project development, complex United Nations funding processes, the unavailability of materials to progress projects, poor internal management systems and slow staff recruitment processes [108] While it is accepted that challenges do exist, particularly in relation to food and water security in Tuvalu, in light of the information as a whole, the Tribunal finds that it has not been established that Tuvalu, as a state, has failed or is failing to take steps to protect the lives of its citizens from known environmental hazards such that any of the appellants would be in danger of being arbitrarily deprived of their lives."' (para 49). 'In *AF (Tuvalu)* 800859, the Tribunal also found that: "[69] ... there is no evidence that the Government of Tuvalu is failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it can."' (para 50).

			status for that matter) is a status held by the individual. The question of whether any of the other members of your family are to be recognised as refugees or protected persons is not before the Tribunal. This appeal concerns only the appellants and it is their status only which requires to be addressed. These children are New Zealand citizens and are protected from being forcibly sent to Tuvalu.' (para 59). '*Family unity* Finally, the appellants claim they will be at risk of serious harm due to a breach of their right family unity, under articles 17 and 23(1) of the ICCPR and articles 7 and 9 of United Nations Convention on the Rights of the Child. However, the right to family unity, as it is understood in international law, does not require that the unity be provided in a certain locale. The family is able to be united in Tuvalu. However, the children in question are New Zealand citizens, and are able to remain here. If they do so, no issue of being persecuted arises as this would not amount to failure of state protection by Tuvalu. On the facts as found, there is no other reason why the appellants cannot return to Tuvalu. If the children wish to accompany them, then they are able to exercise their right to family unity.' (para 60). 'Of particular relevance to this aspect of the enquiry is the reality that socio- economic difficulties are often inter-linked and aggravate each other. A lack of employment for example, may well directly affect an ability to find housing. If the appellants are unable, collectively, to find employment sufficient to provide for their needs, it can be expected that their standard of living will be compromised. But that is the case anywhere.

What is as critical to this aspect of the assessment, as it was to the various concerns separately, is that the risk of serious harm befalling either of the appellants on this cumulative basis is no more than speculative, falling below the level of a real chance. Even if the appellants were both to have the misfortune to fail to secure employment, the evidence does not establish that any ensuing harm would arise from a breach of internationally recognised human rights.' (para 62).

'It is accepted that the appellants may suffer a diminution in their standard of living in Tuvalu. However, a lower standard of living is not, of itself, 'treatment' within the meaning of section 131. In *BG (Fiji)* [2012] NZIPT 800091, the Tribunal held that, generally, socio-economic deprivation arising from general policy and conditions in the receiving country does not constitute cruel, inhuman or degrading treatment, because there is no relevant 'treatment' of the appellant for which the state can be held accountable – see [149] and [197]. Nothing the appellants have asserted indicates any relevant treatment by the Tuvaluan government or otherwise.' (para 75).

[76] The appellants are not

family support, to live at a low socio-economic level, or worse (in poverty and in an informal settlement or squatter camp) upon return to South Africa. In particular, they fear arbitrary deprivation of life, and cruel, inhuman and degrading treatment or punishment, in the form of sexual or gender-based harassment and violence. They also fear being victims of general crime in South Africa.' (para 3).

'The couple claim that CC will be at risk of discrimination, arbitrary deprivation of life, and cruel, inhuman and degrading treatment or punishment on account of her association with her parents as lesbians, and from the high crime rate generally. They also fear she will suffer psychological harm upon return to South Africa, as she will be forced to live within narrow confines, given her parents' lesbian relationship and the escalating crime levels in the country. She will be leaving family behind in New Zealand to whom she is closely bonded. Further, she will not be able to continue her education to the standard that she is used to in New Zealand.' (para 4).

'It is necessary to assess the claim that, owing to discrimination against them as white, lesbian women, AA and BB will be denied employment and will return to live in poverty in South Africa. As their status as white and lesbian women, are overlapping statuses for the feared harm, the Tribunal considers these together.' (para 184).

'Article 26 of the ICCPR provides for a general guarantee of equality before the law:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this

language, religion, political or other opinion, national or social origin, property, birth or other status."' (para 185).

'Further, Article 2(2) of the ICESCR provides for a general obligation on states to ensure enjoyment of the rights recognised in the ICESCR without discrimination on specified grounds.' (para 186).

'The Committee on Civil and Political Rights has stressed in its *General Comment No 18: Non-Discrimination* (10 November 1989) at [13], that not every differentiation in treatment will constitute discrimination. Whether the differentiation in treatment is justifiable, or not, depends on whether the criteria for dif4 (,)p2 (e)11.el8.9 (i)-2.7 (t)o.6

‘However, for the purpose of this assessment, is it not necessary to consider whether such differentiation in treatment is discriminatory, as the reality is that the evidence does not establish that AA or BB would face a real chance being prevented from finding suitable employment upon return to South Africa on account of their shared status as white, lesbian women. While they may experience some discrimination in employment owing to their status, and may have limited opportunities for employment in certain fields, such as in government service, they are not wholly shut out of the labour market and have in the past each been able to find employment commensurate with their qualifications and expe0.12 272.16 13.8 re

that the adult appellants will, as they have in the past,

Zealand. Ms McFadden also highlights in her report that BB talked about handing over the custody of her daughter to her mother in order to protect CC from having to return to South Arica. She states that: “this thinking provides some insight to her motivations for staying in [New Zealand] and her perception of future harm and degree of anxiety that she is currently experiencing as a result of the current situation”.’ (para 249).

‘CC may suffer some psychological effects from her parents living a more circumspect lifestyle to minimise their subjective fears of mistreatment as white, lesbian women in a relationship, and in order to feel more secure on account of the high crime rates generally in South Africa. CC may also experience some discrimination as a consequence of her association with her lesbian parents, and witness some hostility towards her parents given their sexual orientation and relationship status. As a child, CC will be less equipped to deal with stress than an adult, and the subjective concern of her parents about crime and personal safety will have a detrimental effect on her mental and emotional well-being. However, even having regard to CC’s added vulnerability as a child with a developing personality and her state of immaturity in the face of such harms, the psychological effect on CC does not rise to the level of seriousness to constitute degrading treatment under Article 7 of the ICCPR. It can be anticipated that her parents will be able to provide the necessary level of support that she needs for her development and wellbeing. There are also other family members in South Africa to whom she is capable of developing bonds, including her grandparents ([AA’s]), and other family members of AA. Such effects on CC will not rise to the level of serious harm.’ (para 271).

‘Concerning the matter of her education, put simply, the fact that she will not be able to attend a certain type of primary school through prohibitive cost is not an infringement on her right to education. Further, the fact that she may return to live in South Africa at a lower socio-economic level than she has in the past, but at a level2.3 (f)6-1.6 (ve)9.2 (l)-4.6 6-1.6 2.004 Tc 0.07a0

suffer a level of harm not less than that required for recognition as a reft8128.9 (ef)1.2 tea3.

			determination by the Tribunal is whether the appellants can avoid harm at the hands of the wife's family by living elsewhere in India.' (para 3). 'The Tribunal notes that the 2012 Legislative Assembly list does not record that BB is currently a member of the Punjab Legislative Assembly in any relevant constituency. This was accepted by the appellants who agreed that at the time they left India, BB had been mired in a corruption scandal. However, CC was still active at a municipal level. Nevertheless, the Tribunal accepts the submission by counsel that, whether or not these people are politically active, this does not alter the fact that the family is politically connected to the ruling *Bharatiya Janata Party* (BJP Party) and, by this means, may be able to influence the local police to take no action against them or otherwise render null the effect of the protection order the appellants have obtained. Such a proposition cannot be dismissed as implausible having regard to the country information before the Tribunal.' (para 61). 'While noting that the wife's family do not appear in the months preceding their departure from India to have taken any steps to make good their threats to harm them in the knowledge that their political connections would shield them from prosecution and punishment, the risk that they would seek to do so should the appellants return to their home city rises to the real chance level. The Tribunal therefore finds that the appellants do have a well-founded fear of being persecuted in the form of being arbitrarily deprived of their lives in breach of their rights under Article 6 of the ICCPR.'' (para 62). 'In this case the appellants' problems have been localised to their home city. There is no impediment to them relocating to a large metropolitan area such as Mumbai in terms of its safety, practicality and legality. Indeed, the husband's

			occupation as a tailor would mean that he will be able to secure employment across India generally.' (para 68). 'As for the risk of being persecuted in the proposed IPA site, counsel submits that, while the political reach of the wife's family was perhaps more limited than that in *AV (India)*, nevertheless, her family remains politically connected to the ruling BJP party. Moreover, the risk to the appellants is of a more prosaic nature, namely, that it is inevitable that the husband's mother would mention their whereabouts to friends of hers. No matter how discreet she intended to be, it was human nature to talk and that this would inevitably in the fullness of time find its way back to the wife's relatives who lived in the neighbourhood. The appellants themselves stressed in their evidence that, because India is corrupt, it would be easy for her family to ascertain their whereabouts as a particular identity card is needed to access services and therefore her family will be able to readily access information as to their whereabouts.' (para 69). 'In the Tribunal's view the risk to them in any IPA site is highly speculative. Clearly, the husband's mother knows of the degree of animosity with which the wife's family are approaching her own son and now her daughter-in-law. They will no doubt maintain a high level of discretion as to the information they impart.' (para 70). 'As for the leverage the wife's family could bring to bear on third parties to ascertain the couple's whereabouts, even accepting that her uncle is linked of the ruling BJP party in their home city, it appears limited. One of the people AA has acted for has been mired in a corruption scandal and has not been part of the Legislative Assembly for at least four years; the other is a municipal councillor. While the wife's family's status in the city means they may be able to influence the local police to turn a blind eye to the appellant's predicament, there

			is nothing to establish that her family are of sufficient status so as to be able to influence the police at the national level. Further, in the Tribunal's view, it is speculative that their influence is such that they would be able to track the appellants down using the police, identity cards or other administrative process no matter where they are living in India.' (para 71). 'Moreover, there is no indication that the wife's family have sought to leverage their political connections in the dispute to date to try and prevent the marriage or to prevent her from leaving the country, even though they were aware of her plans to do so.' (para 72). 'For these reasons the Tribunal finds that it has not been established that the appellants would be at risk of being persecuted in a proposed site of internal protection alternative such as Mumbai or any other significant urban centre outside the Punjab state.' (para 73). 'Nor are there any new risks of being subjected to serious harm arising for either of the appellant's in the proposed sites of internal protection. Furthermore, they will each be able to enjoy basic civil, political and socioeconomic rights.' (para 74). 'By virtue of section 131(5): "(a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards: (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a

particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment."' (para 81).

'For the reasons set out above at [60]-[62], the Tribunal finds that, should the appellants be returned to their home city, there is a risk that they would be arbitrarily deprived of their life by

			(c) In the proposed site of internal protection there are no new risks of being exposed to other forms of serious harm or of *refoulement*; and (d) In the proposed site of internal protection basic civil, political and socio-economic rights will be provided by the State.' (para 83). 'This question of the appellants having access to meaningful domestic protection has been substantially addressed in relation to their claims for refugee status. For the reasons given there, the Tribunal is satisfied that the appellants can access meaningful domestic protection for the purposes of section 131(2). Neither of the appellants is therefore entitled to be recognised as protected persons under section 131 of the Act.' (para 84).