

0805595 [2008] RRTA 502 (5 December 2008)

DECISION RECORD

RRT CASE NUMBER:	0805595
COUNTRY OF REFERENCE:	Bangladesh
TRIBUNAL MEMBER:	Sydelle Muling
DATE:	5 December 2008
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Bangladesh, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. According to the protection visa application, the applicant is an ethnic Chakma Buddhist male born on in town A, in Bangladesh. From specified dates, the applicant lived in city B, and from specified dates he lived in an area, in city C. The applicant is fluent in Bengali and can speak Urdu. He received several years education, qualifying with a degree awarded from the specified University. The applicant described his occupation before coming to Australia as Computer Professional. [Information about applicant deleted in accordance with S.431 as it may identify the applicant.] The applicant legally departed Bangladesh from city C on a specified date. At the time of completing the application, the applicant's parents and siblings were residing in Bangladesh.
21. In a statutory declaration attached to the application form, the applicant claimed that he feared returning to Bangladesh. He explained the situation in Bangladesh regarding religion and the indigenous people of the country, including the Chakmas. The applicant claimed his father was from the Chakma ethnic group His father had the opportunity to study in city C and he met his mother whilst working in a hospital in city C. His mother was a Bengali Christian. The applicant claimed that his parents marriage was strongly opposed by both families. His father's family would not tolerate the marriage of one of their sons to a Christian Bengali and his mother's family was opposed to her marriage to an indigenous Chakma Buddhist. The applicant explained that in Bengali people relied for security upon their family relationships. His family was insecure because they were alone as his parents did not have the support of either of their extended families. However, the applicant claimed that his parents had not been completely banished by their families Rather, they did not have any real relationship with their family members. Although they could go to the family home, they would not be welcomed and would not be included in family matters.
22. The applicant claimed that he and his family members had the added burden of being children of a mixed marriage. He did not fit in either ethnic group because his skin tone was darker and he looked more Asian than Bengalis but a lot less Asian than Chakmas. The applicant discussed the situation in the hilly areas around town A, where he was born He stated that his father decided to move away from the hilly areas and accepted a position as a field worker in a large organisation. His family moved to City B, which was an area less affected by the intolerance and ethnic and religious violence of the hills area.
23. The applicant claimed that his family had a relatively peaceful life in city B. In a specified year they moved to city C. The applicant discussed the fact that his father was given the opportunity to study medicine and explained that the fact his father was a Chakma did not mean he was not provided with an education and opportunities to work in his chosen profession. However, he claimed his father had to suffer the social stigma of being an

indigenous person, in addition to being married to a Christian Bengali. The applicant claimed although his father was able to secure employment with organisation 1, it was unlikely he would be offered a position by a Bangladesh based employer including the public service.

24. The applicant claimed his parents were completely alone and just operated as a family unit. He explained that they had sought to protect themselves by separating themselves from the communities they were brought up in and refusing to have much to do with the broader community at all. His parents had never been members of any religious or political movements and did not express their political or religious views. They survived in Bangladesh by keeping to themselves.
25. The applicant claimed that his father's relative moved to country D several years ago and his family made an application to migrate to country D on claims related to political asylum but this was refused. The applicant discussed the instances of violence in the hilly areas between the Chakma and the Bengalis and the Muslims and Buddhists. He discussed one occasion when the home of his father's family was burnt to the ground by the Bangladesh army.
26. The applicant claimed that his situation if he were required to return to Bangladesh was very vulnerable as he was a member of the ethnic minority of indigenous Chakma people of Bangladesh and he was a Buddhist because of his membership. However, he was also half Bengali. He claimed that his family decided he should try and get out of Bangladesh and his family's decision to support his studies was made in an effort to secure a right of residence not only for him but also members of his family, in the future. His relative in country D agreed to support his studies in Australia by paying his tuition fees and living expenses. Unfortunately, he experienced difficulties in his studies. The work was more difficult than he anticipated and his English language skills were not as good as they should have been. He failed in his studies and this was a source of shame and embarrassment for his family. His relative broke the agreement to provide financial support for him because she saw him as a bad investment. As a result, his family now had a broken relationship with his relative. The applicant claimed the shame he felt was overwhelming and he had distanced himself from his family.
27. The applicant claimed if he returned to Bangladesh he would be persecuted because of his race, religion and because he was the product of a mixed marriage. He would not enjoy the support of any member of his family. His own immediate family has lost faith in him and will not have contact with him in the future. The applicant claimed because he is a low status person and there was social stigma attached to him, there was no prospect he could secure employment without some assistance from a family member or friend. He was extremely vulnerable to being targeted by extremists of any sector including the Bengalis, the Chakmas or political or religious extremists. The applicant claimed the Bangladesh security forces were corrupt and ineffective and could not protect him from the persecution he feared.
28. In the submission from the applicant's adviser, attached to the application, the adviser reiterated general details of the applicant's claims and contended that the applicant was a refugee on the following grounds:
 - Fear of persecution in Bangladesh because of his race (indigenous person – Chakma);
 - Fear of persecution in Bangladesh because of his religion (Buddhist with a Christian mother);

- Fear of persecution in Bangladesh because of his membership of a particular social group (child of a mixed Chakma/Bengali marriage); and
 - Fear of persecution in Bangladesh because of his membership of a particular social group (child of a mixed Buddhist/Christian marriage).
29. The following documents were also attached, in support of the application:
- United States Department of State, Bangladesh - Country Report on Human Rights Practices 2007, released March 11 2008;
 - RRT decision N00/32053;
 - RRT decision N03/47076; and
 - Article titled “Fresh Violence on Jummas in Bangladesh Hill Forest” from The Weekly DurDesh website
30. The application for a grant of a Protection Visa was refused by the Department because the applicant failed to meet the criterion.
31. The applicant applied to the Tribunal for review of the decision made by the Department refusing his application. Attached to the review application was a copy of the Department’s decision.
32. The Tribunal received a detailed submission from the applicant’s adviser, reiterating the background of the applicant’s claims as summarised in the applicant’s statutory declaration, outlining the legislative criteria, and discussing the applicant’s specific fears if he returned to Bangladesh, with reference to relevant independent information.
33. Attached to the submission were the following reports:
- Amnesty International, “Bangladesh – Harassment of leaders of the indigenous people, ASA 13/012/2005, 13 October 2005;
 - Amnesty International, “Bangladesh – Chittagong Hill Tracts: A Call for Justice at Mahalchari”, ASA 13/003/2004, March 2004; and
 - Article previously submitted to the Department titled “Fresh Violence on Jummas in Bangladesh Hill Forest” from The Weekly DurDesh website, 24 April 2008.
34. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.
35. The applicant was represented in relation to the review by his registered migration agent.
36. The applicant stated that he was born in city B He grew up in city B, living there for several years before moving to city C. He could not remember when his family moved to city C but he was quite young. The applicant stated that he completed a Bachelor degree. He could speak Bengali, English and Hindi. He had a few years work experience. [Information about applicant deleted in accordance with s.431 as it may identify the applicant]. The applicant

stated that he departed Bangladesh legally on a specified date. His mother, father and sibling were living in city C. He had another sibling in country D. This sibling went to country D in specified date to study. The applicant stated that the last time he had contact with his family was almost 1 year ago. However, he was in contact with his sibling in country D.

37. The Tribunal asked the applicant why he feared returning to Bangladesh. The applicant explained that when he first came to Australia, his basic goal was to stay here and become a permanent resident and bring his family here to live with him safely and forget about the discrimination they live with in Bangladesh. However, he had problems with his studies and he messed it up for himself, as well as his family. The Tribunal asked the applicant what he feared would happen if went back to Bangladesh He stated first, it would be hard for him to get a job and secondly, it would be hard for him to accommodate himself somewhere He was sure he would always be in a vulnerable position because of his religious indigenous issue.
38. The Tribunal asked the applicant about his father's study. The applicant stated that he did not know when his father studied but it was definitely before he was born. His father studied at a Medical College. His father was working at the Medical College when he met his mother. His mother was studying there also. The applicant explained that his father secured a posting but he did not take it. Instead, he went overseas and was there for a long time. His parents were married in Bangladesh, as far as he knew, in city C. He did not know when they were legally married but they had a Christian wedding.
39. The Tribunal asked the applicant about the problems his parents experienced because of their marriage. The applicant stated that from both sides, their marriage was not socially accepted. The Tribunal asked the applicant if his parents were disowned by their families. He stated from his father side, yes. Traditionally, after his mother married she joined his father's family, so in a sense his mother was too. The Tribunal asked the applicant if, after his parents' marriage, his father had any contact with his family. The applicant stated that his father was always an escapist. The Tribunal asked the applicant what he meant by this. He stated that his father's relatives talked about his parents behind their backs and did not appreciate the marriage because it was mixed. His grandfather never accepted his parents' marriage until his death. The Tribunal asked the applicant if he ever had any contact with his father's family. He stated almost zero. In regard to his mother's family, the applicant stated that his grandmother loved him but his mother's family was pretty poor and lower class in Bangladesh society because they were from the Christian communities. The Tribunal asked the applicant if his mother and father saw their respective families after their marriage. He stated not too much. Maybe once or twice a year.
40. The Tribunal asked the applicant if he could remember anything of the time he lived in town A. The applicant stated that as long as he remember, he never stayed in town A more than several days. He confirmed most of his childhood was spent in city B. The applicant stated that his family lived in city B because his father had a job as a field worked with a large organisation. The Tribunal asked the applicant if he or his family ever experienced any problems whilst living in city B The applicant stated that his family spent several years in city B and it was shameful when they left from there. His father had worked there for such a long time but when they left city B there was no appreciation from anyone living there. His father had a small clinic and he had to sell it for a minimal price. The Tribunal asked the applicant if during the several years his family lived there, did they have any other problems or difficulties or did his family have a relatively peaceful life there. The applicant stated that it could be said that their life was relatively peaceful but for him and his brothers, they had no discreet identity. They always received taunting from classmates, friends and neighbours. The

Tribunal asked the applicant what he was taunted about. He stated skin colour, appearance and accent. His skin colour and appearance was more Asian looking because of his father's ethnicity. The applicant stated that he was treated like a clown.

41. The Tribunal asked the applicant why his family moved from city B to city C. The applicant stated that he was given a chance to attend a good college in city C. Just before they left city B, his father went to Canada and tried to arrange for the family to migrate there but he was refused. His father came back and started a business in town A, on his own. His mother and siblings lived in city C and his father would visit once or twice a month. The applicant stated that his father worked in a hospital in town A until about several months ago. He was not sure what his father was doing in city C but his sibling told him that his father was working. His mother was a housewife.
42. The Tribunal asked the applicant if he experienced any difficulties living in city C. The applicant stated that he learnt a lot of things in City C. He finished his college degree and his Bachelor degree. He found some friends, mostly Muslim friends. He stated it was a tiny world for him. The Tribunal asked the applicant if he had any problems whilst he was living in City C. He stated he was a student most of the time he was in City C so he was busy studying.
43. The Tribunal put to the applicant in his statutory declaration attached to his protection visa application, he had discussed the problems that existed between Chakmas and Bengalis and Buddhist and Muslims, particularly the violence between these groups, and asked the applicant if he had ever been subjected to any violence such as that which he discussed. The applicant stated not physically, never.
44. The Tribunal asked the applicant if he practised a particular religion. The applicant stated that no, he went everywhere. He went to both the temple and church. In Australia, he had been attending both the church and temple. The applicant stated that he did not practice any particular religion in Bangladesh because he felt sorrow to go there as everyone talked differently about him. If he went to any temple, he had no-one to talk to there. The same happened at church but he went to church to satisfy his grandmother and make her happy. The applicant confirmed he attended church with his grandmother. The Tribunal asked the applicant if he experienced any problems in Bangladesh because of his religious identity or because he practised both Buddhism and Christianity. The applicant stated that he could not use his religious identity and it had no value for him. However, his indigenous identity was identifiable in his name and would see he was a Chakma.
45. The Tribunal asked the applicant if he experienced any problems because he was identified as an indigenous person. The applicant stated being an indigenous person did not always feel good, for example when going to an interview or being introduced to a person for the first time. The applicant stated that he was not happy to be a minority person in Bangladesh and having this focused on every time he said his name. The Tribunal asked the applicant if he ever had problems or trouble from other people because he was a Chakma or could be identified as Chakma from his name or appearance. The applicant stated of course. He referred to an incident when he went with friends to a Muslim religious festival to see what they did and how they prayed but he was not allowed to enter because his appearance was different. They did not ask him his name, his race or religion. This was a kind of social harassment.

46. The Tribunal asked the applicant if he experienced any difficulties because of his parents' mixed marriage. The applicant stated yes, he was lacking a lot of social opportunities like other Bangladeshis such as acceptance from his parents relatives. The Tribunal noted in the recent submission it received it was claimed that his parents had to live discreetly and the Tribunal asked the applicant what he meant by this. The applicant stated because his parents marriage was not accepted they had to go to a remote place where they could not be identified and he thought that was why they chose City B. The Tribunal asked the applicant if his parents practiced their religions. He stated yes. The Tribunal asked the applicant if his parents were involved in any political groups or held any political views. He stated that he did not think his parents had any views about politics in Bangladesh. His father had tried to help a stated terrorist group, by giving medical aid. He could remember the leader of the stated terrorist group coming to City B to have an operation. The Tribunal asked the applicant if his father was active in politics apart from giving medical assistance to members of this particular group. The applicant stated that he did not know.
47. The Tribunal put to the applicant that he had claimed neither of his parents' families approved of his parents' marriage and that his immediate family were not supported by his extended family, yet his relative in country D supported him to come to Australia. The applicant stated that his relative in country D was his father's relative She had helped his family several times. When they shifted from City B to City C, his father was unemployed and his relative helped him a lot at that time. She also brought his father to country D and assisted him with the immigration process. His relative had also helped him. The applicant stated as far as he knew it was only his relative, in his father's family, who helped or communicated with his father.
48. The Tribunal put to the applicant it had also been claimed in his recent submission that his immediate family, his parents, would not have any contact with him. The Tribunal asked the applicant if this was initiated by his parents or had he decided to distance himself from his family because he had not been successful in his studies in Australia. The applicant stated this was also true. His relative insisted that he study and work together and this was a problem. The applicant confirmed he had stopped having contact with his family in Bangladesh but he was in contact with his sibling in country D. The Tribunal asked the applicant why he was not in contact with his parents. He stated first of all he was ashamed of the mess up and second, he was shameful to admit the failure and he wanted to rectify it The ultimate goal was for him to stay in Australia safely, in a good environment, without discrimination. This was his aim, as he had a job in Bangladesh The Tribunal asked the applicant if his parents tried to contact him. He stated they did but at the moment he did not want to speak to them. The last time he spoke to him parents was almost one year ago, last Christmas. His mother and sibling stopped talking to him and told him never to come back. They told him he had to fix up his problem by himself because they sent him to Australia with a mission and until he did something about it, they would not talk him. They then stopped having contact with him but later on he extended it himself. The applicant confirmed since then his family had tried to get in contact with him. The applicant stated that he was not working in Australia. He was managing financially through the help of a friend and tax returns from the past years.
49. The Tribunal asked the applicant why he believed if he returned to Bangladesh now, he would be persecuted because he was the product of a mixed marriage. The applicant stated he would not be persecuted immediately. From the moment he returned there would be no life for him to lead. The Tribunal asked the applicant why he believed there would be no life for him to lead and that he would be unable to secure a livelihood in Bangladesh. The applicant

stated that he now had almost a few year period with no job and he had nothing to show for what he had done during this period. He stated if he had to relocate to any part of Bangladesh, it would be hard for him to get accommodation. The Tribunal put to the applicant the fact that he had completed his education, including a degree, and worked in his chosen profession at the conclusion of his studies, did not suggest that he had suffered any difficulties, let alone persecution, in relation to securing a livelihood in the past. The applicant stated he was now in his late 20s so it would be hard for him to get an IT related job. He explained in Bangladesh, they preferred to employ younger people in these fields.

50. The Tribunal noted that in the course of the submissions and statutory declaration he had submitted, there was the suggestion that his Chakma ethnicity could result in him being denied the opportunity to work and secure a livelihood. However, the Tribunal put to the applicant the fact that his father had been given the opportunity to study medicine and had worked as a doctor, as well as his own ability to study and work in his chosen profession, did not suggest that his indigenous identity would have an adverse affect on his ability to get a job, if he returned to Bangladesh. The applicant stated to get a job in Bangladesh was a hard thing to do. He stated that at a government level, no-one admitted that they gave jobs on the basis of class but it was obvious that they preferred Bengalis to Chakmas.
51. The Tribunal noted it had also been claimed in the recent submission from his adviser that he would be forced to live discreetly if he returned to Bangladesh and asked the applicant what he meant by this or how he would have to live. The applicant stated that it would be the same as what his father did in his own life, hiding from his own people and living in social isolation. The applicant stated his family were like gypsies and he did not want to live like that. The Tribunal asked the applicant about his claimed wish to express his frustrations at the discrimination suffered by religious and ethnic minorities in Bangladesh. The applicant stated that his frustration was that he was not a Chakma but his name was Chakma and he looked like them. A lot of things had happened to Chakmas. When he was pretty young he had seen whole villages all around his home burnt down. His house was at the top of the hill and this was all that was left. The applicant could not remember when this happened. He was not living there at the time but his father was living there. He went to see what happened, as well as his aunt. He was in primary school at the time and living in City B. The Tribunal asked the applicant if he had ever engaged in any activities in the past related to his views regarding the treatment of religious and ethnic minorities in Bangladesh. The applicant stated no. Not directly, never.
52. The Tribunal asked the applicant who he feared would persecute him if he returned to Bangladesh. The applicant stated he could not get a job immediately. There was nowhere he could ask for help. The Tribunal asked the applicant why he waited until specified date to apply for protection, if as he claimed, he left Bangladesh with the intention to remain in Australia permanently. The applicant stated lots of Chakma people arrived in Australia and lived like him. He came on a student visa and that was his goal. His visa expired at the end of specified date.
53. The Tribunal put to the applicant that it had read the country information provided by his adviser, as well as independent evidence it had obtained, and the Tribunal accepted that in the Chittagong Hill Tract area, the situation for indigenous people such as the Chakma was precarious and that there were human rights abuses committed against the indigenous people not only by the Bengali settlers but also the army. However, the Tribunal had been unable to find any evidence to suggest Chakma outside of the Chittagong Hill Tract area were targeted for persecution. The applicant stated in relation to his indigenous claim, relocation was an

option but in relation to his mixed background and religious claims, he would not receive any facilities from society.

54. In regard to mixed marriages, the Tribunal noted that the country information provided that there was no legal barrier to inter-religious marriages in Bangladesh and such marriages were reportedly becoming more common in the larger cities of Bangladesh. The Department of Foreign Affairs and Trade advised in October 2006 that they had been informed by Christian church leaders that mixed religious marriages were neither encouraged or discouraged. As there was no legal barrier for mixed couples to get married, the churches had an understanding approach to the issue. The Post was also not aware of any incidents of social, religious or political repercussions towards mixed marriages in Bangladesh. Rather, problems that arose were generally of a personal nature first and familial nature second. The Tribunal also put to the applicant that the bulk of the information regarding mixed marriages in Bangladesh focused on mixed marriages where one party was a Muslim and the other was not and problems that arose as a result of unions where one person was from outside the Islamic faith. The Tribunal noted that it had not found any country information suggesting that people in other mixed marriages are persecuted, or that children of mixed marriages were targeted for serious harm or persecution. The applicant explained that being a member of a Buddhist minority marrying a member of a Christian minority was an insult for that family and race because they were much lower class.
55. The applicant's adviser submitted that the applicant was trying to explain to the Tribunal that as an ethnic Chakma, who was also a child of a mixed Buddhist/Christian marriage, he had no community in Bangladesh who he could rely on for support. His mother was from a very low class, poor Christian family so he could not expect any support or assistance from them. His father was from a family that had effectively disowned him and in any event, they resided in a part of Bangladesh that would be unsafe for him to return to. The adviser submitted that whilst the applicant may have enjoyed the opportunity to have an education and work for a period of time after the conclusion of his course, the applicant was at that time part of that group of students going through and he was no longer part of that community, which it was contended may have been the only time he enjoyed membership of part of a group. The adviser submitted that if the applicant returned to Bangladesh, he would have no community which he could form part of. She stated although the applicant could go to the temple or church, he was not part of either religious communities. The applicant was not really a Chakma in a sense that he could live with his community group and it was submitted being in such a situation in Bangladesh meant he was very vulnerable as it was clearly a country which relied upon membership of a community group for advancement of employment and securing basic necessities. The applicant now had an additional problem of his estrangement from his family. Although this may be something that could be worked on and reconciled in the future, at this stage he did not have their support either. The adviser submitted the applicant was terribly ashamed of himself for having failed in his attempts to stay in Australia and this contributed to the estrangement due to the applicant's reluctance in having contact with his family. The adviser submitted in relation to the Tribunal's question regarding the timing of the applicant's protection visa, the applicant's goal was to progress from a student visa to a skilled migration visa, thereby avoiding the necessity to apply for protection but unfortunately because of his disappointing results with his studies he was unable to achieve this. The adviser also brought to the Tribunal's attention decision V05/18182 and noted the similarities between the current case and that particular decision.

56. The Tribunal received a further submission from the applicant's adviser outlining country information which was contended suggested that discriminatory attitudes and practices towards the indigenous population of Bangladesh was country wide, additional notes on the applicant's fears in relation to discrimination in employment and his livelihood and the unsuitability of relocation in the applicant's case because of his Buddhist/Christian religion.

COUNTRY INFORMATION

Chakmas

57. Country information indicates that Chakma persons, and indigenous, or tribal, persons within the Chittagong Hill Tracts generally (collectively known as the Jumma) continue to be subjected to various forms of human rights abuse. Such abuses include assault, kidnapping, arbitrary arrest, murder, land appropriation and displacement. These abuses are said to be perpetrated against Chakma persons, and the wider Jumma community, by Bangladesh security forces, Bengali settlers and the opposing forces of the Jumma community's own warring political groups, the Parbattya Chattagram Jana Samhati Samiti (PCJSS; or Chittagong Hill Tracts People's Solidarity Association) and the United People's Democratic Front (UPDF) (the UPDF formed as a break away movement from the PCJSS in opposition to the PCJSS's acceptance of the terms of the 1997 Chittagong Hills Tracts Peace Accord).
58. On 26 May 2005, BBC Monitoring South Asia published an article, sourced from the Bangladeshi newspaper *Prothom Alo* on 26 May 2005, which reported that the UN Permanent Forum on Indigenous Issues (UNPFII) had received testimony from both the PCJSS and the UK-based Jhumma People's Network which claimed that the presence of the Bangladesh's military forces in the Chittagong Hill Tracts was facilitating human rights abuses against indigenous persons in the region. The chairperson of the UNPFII is reported to have "explained why she thought the issue of CHT should be handed over to a UN peacekeeping mission through the UN Security Council". The article follows in detail:
- The representative of Parbatya Chattagram Jana Sanghati Samity (PCJSS), Mrinal Kanti Tripura, attending the UN Permanent Forum on Indigenous Issues in New York has urged the Bangladesh government to stop militarizing the Chittagong Hill Tracts region (CHT) in Bangladesh. He said there should be a mechanism for monitoring the incidents of human rights violation in the hill areas. In his speech, he opposed the army drive called "Operation Uttaran" [an army drive began during the Awami League era and continuing today]. The representative of UK-based Jhumma People's Network, Aina Hume [name as transliterated], in her written statement said the lives of women and young people have become impossible due to army rule in CHT. She mentioned indiscriminate rapes, setting fire to residences and communal attacks in her speech.
- The chairperson of UN Permanent Forum on Indigenous Issues, Victoria Tauli-Corpuz, explained why she thought the issue of CHT should be handed over to a UN peacekeeping mission through the UN Security Council ('Bangladesh criticized for rights violation in hill area' 2005, BBC Monitoring South Asia, source: *Prothom Alo* [Bangladesh], 26 May)
59. On 25 May 2005, the Asian Centre for Human Rights (ACHR) published an overview of the human rights violations which, it is claimed, had been committed against the tribal peoples of the Chittagong Hill Tracts in the preceding months. Such violations included: the wrongful appropriation of the lands of tribal peoples and the displacement of the peoples living on them; the arbitrary arrest of tribal political activists, most notably members of the UPDF; and the mistreatment and assault of tribal persons, in general, by security personal conducting investigations into the political activities of groups like the UPDF. The report also noted that

there had been “fratricidal killings between the Jana Samhati Samiti [the PCJSS] and its *bete-noire*, United Peoples Democratic Forum [the UPDF]”. Although this report typically referred to the Jumma peoples generally, Chakma persons were specifically named, in the course of reporting certain incidents, throughout the report. A brief extract, from the numerous abuses documented by this report, follows in detail.

In a latest incident on 31 March 2005, the Deputy Commissioner of Khagrachari served acquisition notices to the indigenous Jumma landowners in respect of acquiring 45 acres of land in Babuchara under Dighinala Thana in Khagrachari district for the purpose of constructing a battalion headquarters’ office of the Bangladesh Rifles. At least 74 Jumma families in three villages—Jatna Dhan Karbari Para, Gobinda Karbari Para and Hengottya Karbari Para will be displaced. An additional one hundred families will have to ultimately vacate their lands once the construction of the camp compound is completed. Most of these Jummas were uprooted after the construction of the Kaptai Hydro Electric Project in 1960s. In 1986, all these families had to flee to Indian state of Tripura where they lived as refugees until the Chittagong Hill Tracts accord was signed in 1997.

...The members of the UPDF have been reportedly facing the repression from the government of Bangladesh Hundreds of its activists have been arrested on fake charges by the police and military personnel to weaken their protests against the policies of the government of Bangladesh.

On 15 March 2005, Natun Kumar Chakma and 36 other UPDF members were arrested in Chittagong. They were detained for a day and freed later.

On 26 April 2005 Lieutenant Colonel Momin Khan, Commanding Officer of Lakshmichari zone under Khagrachari district, picked up two Pahari Chattra Parishad activists – Sushil Chakma and Kaladhan Chakma at Boroitali village in Bermachari union. Both were beaten up mercilessly and taken to Ghagra camp in Rangamati. Later, on 29 April 2005, they were released from Bannyachola army camp.

Common Jummas too face numerous repression. Since 23 April 2005, the military from Ghagra, Lakshmichari and Sindukchari camps have been reportedly carrying out massive operations in Lakshmichari, Kawkhali and Kudukchari areas. They are frequently raiding Jumma villages, beating and interrogating innocent villagers and arresting people on suspicion of being members of the UPDF (‘Destruction of a people: Jummas of the CHTs’ 2005, Asian Centre for Human Rights (ACHR), 25 May <http://www.achrweb.org/Review/2005/74-05PF.htm>).

60. The UK Home Office Country Report on Bangladesh dated 25 September 2008 provides the following information regarding the tribal people of Bangladesh, including the Chakmas:

[The Chittagong Hill Tracts (CHT) covers about 10 per cent of the total land area of Bangladesh; it includes the districts of Khagrachhari, Rangamati and Bandarban within the Division of Chittagong. [25]]

- 22.01 Amnesty International (AI), in a report of 1 March 2004, noted as follows:

“The Chittagong Hill Tracts (CHT) is a hilly, forested area in south-eastern Bangladesh which for many hundreds of years has been home to people from 13 indigenous tribes [collectively known as the *Jumma* people]. These tribal people differ significantly from the rest of the population of Bangladesh in terms of their appearance, language, religion and social organisation.” [7m]

“Pressure for land to cultivate and encouragement from successive governments have led to the migration of large numbers of non-tribal Bengali people to the CHT. Tribal people have viewed the movement of Bengali settlers to the CHT as a threat to their way of life and their customs and traditions.” [7m]

“Armed rebellion in the Chittagong Hill Tracts began in mid-1970s. A peace accord signed in 1997 ended the armed conflict, but human rights violations against the tribal people which began during the armed conflict have continued on a smaller scale.” **[7m]**

22.02 The Internal Displacement Monitoring Centre ‘Profile of the internal displacement situation’ updated 28 March 2006 (IDMC 2006 Profile) quoted from various primary sources as follows:

“Prior to the creation of Bangladesh in 1971, the population of the [CHT] area consisted almost entirely of people from 13 different indigenous tribes. The tribal people who differ significantly from the majority population of Bangladesh are of Sino-Tibetan descent, have a distinctive appearance with Mongoloid features and are predominantly Buddhists, with small numbers of Hindus. They differ linguistically and in their social organization, marriage customs, birth and death rites, food, agriculture techniques and other social and cultural customs from the people of the rest of the country. (AI February 2000, section 2) ...The three largest groups are the Chakma, the Marma and the Tripura. The total population of the CHT, in the 1991 census, was 974,445 of which 51.43 per cent were indigenous Jumma people and 48.57 per cent were non-indigenous Bengalis. At the time of the independence of India in 1947, only 9 per cent of the population of the CHT was non-indigenous. (UNPO 1997)” **[45c] (p26)**

22.03 The Internal Displacement Monitoring Centre, in a special report of 28 March 2006 entitled ‘Minorities increasingly at risk of displacement’, recorded that:

“Tensions intensified after the independence of Bangladesh in 1971, when tribal demands for constitutional safeguards and recognition as a separate community were rejected (Amena Mohsin, 2003, p. 22). The tribal population reacted by creating the Parbatya Chattagram Jana Samhati Samiti or Chittagong Hill Tracts People’s Solidarity Association (PCJSS) in 1972. Its armed wing, the Shanti Bahini, was formed in January 1973...In 1976, Shanti Bahini started an armed insurgency with the support of India, which in turn led to a sharp increase of government forces in the Hill Tracts. Thus began a 25-year-long armed conflict...As the conflict escalated, the government began relocating Bengalis in the Chittagong Hill Tracts as a counter-insurgency strategy. Between 1979 and 1983, over 400,000 poor and landless Bengalis from the plains were settled in the region and provided with land, cash, rations and other incentives (AITPN, April 1998, p. 20-21). At the height of the conflict, almost one third of the Bangladesh army was deployed in the region and Bengali settlers were also mobilised against the tribal population. Official figures indicate that more than 8,500 people were killed during two decades of insurgency, including some 2,500 civilians (AI, February 2000).” **[45b] (p9)**

“Forced evictions, atrocities in the conflict between the Shanti Bahini and government forces, confiscation of land to establish military camps, the population transfer programme and clashes between tribals and new settlers compelled tens of thousands of [Jumma] to leave their homes. After 1980, ten major massacres by Bengali settlers and the security forces led to a refugee exodus of about 65,000 tribals to the neighbouring Indian state of Tripura (AI 2000, UN GA, August 2000, para. 69). An even larger number were internally displaced.” **[45b] (p9)**

22.04 The Europa World Year Book 2004, Volume 1, noted:

“In December 1997 the Bangladesh Government signed a peace agreement with the political wing of the Shanti Bahini [the Parbatya Chattagram Jana Sanghati Samity – PCJSS], ending the insurgency in the Chittagong Hill Tracts. The treaty offered the [Shanti Bahini] a general amnesty in return for the surrender of their weapons and gave the [Jumma] people greater powers of self-governance through the establishment of three new elected district councils (to control the area’s land management and policing) and a Regional Council (the chairman of which was to have the rank of a state minister). The peace agreement, which was strongly criticized by the opposition [BNP] for representing a ‘sell-out’ of the area to India and a threat to Bangladesh’s sovereignty, was expected to accelerate the process of repatriating the remaining refugees from Tripura (who totalled about 31,000 at the end of December 1997). According to official Indian sources, only about

5,500 refugees remained in Tripura [in India] by early February 1998. By the end of 2000 most of the Chakma refugees had been repatriated, the district and regional councils were in operation, and a land commission had been established.” **[1a] (p640)**

A general amnesty was granted to PCJSS members who surrendered their arms within the time frame set out in the Peace Accord. The Bangladesh High Commission in London advised in March 2006 that 71 members of PCJSS who surrendered their arms under the terms of the amnesty had since been reinstated to their previous jobs in government and autonomous bodies, and a total of 715 PCJSS members had been appointed to various posts in the Bangladesh Police Force. **[79a]** According to the IDMC report of 28 March 2006, most returning refugees were provided with some economic rehabilitation and food rations, but many did not recover their lands which were now occupied by Bengali settlers. **[45b](p11)**

22.05 The IDMC 2006 Profile observes that the issue of tribal land ownership has remained at the core of the conflict in the CHT:

“...the situation of more than 60,000 internally displaced Chakma remained unresolved at the end of 2002, despite provisions in the ‘accord’ for the ‘rehabilitation’ of both the refugees and the internally displaced. (USCR 2003)...The settlers confiscated their land and in many instances obtained official certificates of ownership.” (AI February 2000) **[45c] (p49-50)**

“A major problem is to determine the ownership of tribal land. Among the tribal population many did not possess any documentation of land ownership [tribal communities owned land on a communal basis and little documentation was deemed necessary], while Bengali settlers taking over their land obtained official certificates ...The Land Commission, which was supposed to resolve land disputes, has not been functioning for two years...” **[45c] (p63)**

The IDMC special report of 28 March 2006 observed:

“The Land Commission was to function as a special tribunal for property restitution for the tribal people. By May 2003, some 35,000 cases had been filed involving land disputes between indigenous people and state-sponsored settlers (Daily Star, 5 May 2003). However, it had not even started its work as of March 2006.” After years of delay, the Commission had met for the first time on 8 June 2005, but no date was set for a subsequent meeting. **[45b] (p12)**

22.06 The USSD 2007 report noted as follows:

“Tribal people had a marginal ability to influence decisions concerning the use of their lands. There was little progress in the implementation of the 1997 Chittagong Hill Tracts Peace Accord. The government still refused to cede responsibility for key functions like land use and natural resources to local authorities, as called for in the Accord. Law-and-order problems and alleged human rights violations continued, as did dissatisfaction with the implementation of the Peace Accord.

“The Land Commission dealing with land disputes between tribal individuals and Bengali settlers did not function effectively in addressing critical land disputes. Tribal leaders remained disappointed with the lack of assistance provided to those who left the area during the insurgency. Local human rights organizations alleged that security forces took advantage of the state of emergency to increase human rights abuses, including arbitrary arrests, against indigenous people.

“During the year [2007] according to a human rights organization, seven persons died and two were injured in violence in the Chittagong Hill Tracts. Moreover, seven persons were kidnapped and two persons were arrested.

“In February [2007] the government withdrew 16 temporary camps of security forces in the Rangamati area of the Hill Tracts. Since the signing of the 1997 Peace Agreement, the government had withdrawn 196 camps, leaving approximately 280 camps.

"The conflict between the Parbattya Chattagram Jono Sanghati Samity (PCJSS), which signed the 1997 Peace Agreement with the government and the United Peoples' Democratic Front (UPDF), which is opposed to the Peace Agreement, continued. On January 16 [2007], UPDF activists shot and killed Vinku Kumar Chakma, a youth front activist of PCJSS, at Chongrachhari in Khagrachhari district.

"Tribal organizations continued to allege that security forces abused the indigenous population of the Hill Tracts. On December 9 [2007], the 10th anniversary of the signing of the Peace Treaty, leaders of the indigenous village of Mahalchari in Khagrachhari district, held a press conference in Dhaka to allege ethnic Bengali settlers had encroached on their farmland. They claimed Bengali settlers, with assistance of local authorities, seized 366 acres of their farmland during the year. Late in the year, a UNDP-funded project to develop a nursery in the indigenous village of Maddya Lemuchari in Khagrachhari fell through after Bengali settlers constructed homes on the location designated for the project. According to local villagers, despite the fact that they held title to the land, local authorities issued duplicate land titles to the settlers in violation of the law and the Peace Treaty.

"The PCJSS and indigenous leaders alleged that Joint Forces personnel led by the army took advantage of the state of emergency to step up "suppressive actions" against indigenous people, including arrests and filing of false cases. According to their report, individuals could not protest due to the state of emergency.

Tribal people in other areas also reported loss of land to Bengali Muslims. The government continued work on national park projects on land traditionally owned by indigenous communities in the Moulvibazar and Modhupur forest areas ... In addition, indigenous communities, local human rights organizations, and churches in the area claimed that the government had yet to withdraw thousands of false charges filed against indigenous residents by the Forestry Department. **[2a] (section 5)**

- 22.07 On 27 August 2007, the High Court issued a rule on the Government to explain as to why the CHT Peace Accord should not be declared to be without lawful authority. This followed a writ filed by a Supreme Court barrister, challenging the Treaty. The Court also ordered the authorities not to debar any non-tribal Bangladeshi nationals living in the CHT from registering on the Voter's List until the ruling was resolved. (UNB, 27 August 2007) **[39ax]**
- 22.08 A meeting of the CHT Advisory Council was held on 31 May 2007, after a break of more than six years, under the chairmanship of the Foreign and CHT Affairs Advisor in the Caretaker Government. It was resolved at the meeting to staff and activate the Land Commission. (*Daily Star*, 1 June 2007) **[38m]** *The Daily Star* reported on 1 April 2008 that the CHT Land Commission was soon to be reconstituted. The Food and Disaster Management Advisor in the Caretaker Government had announced on 31 March that a new chairman and two full time members were to be appointed to the Commission; in particular, they would investigate why certain land in the CHT area had been handed over to settlers despite a ban on the reallocation of land there. **[38dj]**
- 22.09 The Chittagong Hill Tracts Commission, which was first formed in 1990 and then disbanded after the signing of the CHT Peace Accord, was re-constituted in Copenhagen in May 2008; the new 12-member commission is co-chaired by Lord Eric Avebury, vice-chairman of the UK Parliamentary Human Rights Group, and Sultana Kamal, a former Advisor in the Caretaker Government. Members of the Commission were due to undertake a five-day visit the Chittagong Hill Tracts from 7 August 2008, and then to meet with senior members of the Government. (*Daily Star*, 7 August 2008) **[38dj]**
- 22.10 The United Nations Development Programme (UNDP) announced on 15 December 2005 that the UNDP and the Government of Bangladesh had agreed a US\$50 million joint investment programme in the Chittagong Hill Tracts for the period 2006 to 2009 **[8e]** Several other foreign donors and agencies have also been involved in development projects in the CHT since 2001. (Bangladesh High Commission, London) **[79a]**

- 22.11 As recorded in an Asian Centre for Human Rights (ACHR) report of 23 April 2008, hundreds of illegal plain settlers attacked seven indigenous Jumma villages in the Chittagong Hill Tracts on 20 April 2008. Journalists who visited the area on 21 April 2008 with local government officials reported that at least 500 houses in a four kilometer stretch from Baghaihat to Gangaram were burnt down. Several indigenous Jummas were wounded and an unknown number of women were raped by the perpetrators. Hundreds of people had been displaced as indigenous Jummas took shelter into the deep forest fearing further attack. The Rangamati Hill District Council provided some compensation to the victims. **[53d]**

Situation of Buddhists

61. A 2007 US Department of State report provides a basic summary of the religious demography of Bangladesh, noting the concentration of Buddhists amongst the indigenous population of the Chittagong Hill Tracts:

Sunni Muslims constitute 88 percent of the population. Approximately 10 percent of the population is Hindu. The remainder is mainly Christian (mostly Roman Catholic) and Theravada-Hinayana Buddhist. Ethnic and religious minority communities often overlap and are concentrated in the Chittagong Hill Tracts and northern regions. Buddhists are found predominantly among the indigenous (non-Bengali) populations of the Chittagong Hill Tracts (US Department of State 2007, *International Religious Freedom Report for 2007 – Bangladesh*, 14 September).

62. Information specific to the current situation of Buddhists in Bangladesh focused on events in the Chittagong Hill Tracts. In particular, several reports were regarding attacks on Buddhist tribal communities which were connected to conflict over land. A May 2008 article carried by the *Indo-Asian News Service* reported claims that Buddhist tribal people in Bangladesh were currently subject to land dispossession by both government authorities and non-state actors:

Bangladesh's ethnic minority communities, mainly Buddhist tribals, continue to be thrown out of their ancestral land, allegedly by government agencies, influential people and private organisations, a survey revealed.

...The survey, conducted jointly by the Jatiya Adibashi Parishad, Incidin Bangladesh and Jahangirnagar University's department of anthropology, since January this year, said the government hardly paid any heed to the causes and miseries of the communities (Bangladesh's ethnic minorities lose land: survey' 2008 *Indo-Asian News Service*, 11 May).

63. A report published in June 2008 accused the Bangladesh army of complicity in attacks on indigenous Jumma villages in Sajek Union in the Rangamati District of the Chittagong Hill Tracts:

On 20 April 2008, hundreds of illegal plain settlers backed by Bangladesh army launched pre-planned attacks on seven indigenous Jumma villages namely Nursery Para, Baibachara, Purba Para, Nangal Mura, Retkaba, Simana para and Gangaram Mukh under Sajek Union under Baghaichari upazila (sub-district) in Rangamati district in the Chittagong Hill Tracts (CHTs) of Bangladesh from 9.30 pm to 1.30 am.

... The attacks in Sajek are emblematic of the Bangladesh government's policy of "cultural genocide" of the indigenous Jumma peoples in the CHTs. The policy of the government in Dhaka irrespective of whether democratically elected or backed by the military – has been to evict indigenous Jumma peoples from the lands by burning their villages, occupy their lands

including Buddhist temples and churches, and gradually destroy their ethnic and cultural identities (Asian Indigenous and Tribal People's Network 2008, 'Sajek: Burnt To Ashes – Emblematic of Bangladesh's policy towards indigenous Jumma peoples', Asian Indigenous and Tribal People's Network website, June, pp.1-2 <http://www.aitpn.org/Reports/Bangladesh-Sajek.pdf>).

64. An article published on the Asian Centre for Human Rights website in January 2008 reported that Bangladeshi authorities had banned a Buddhist religious gathering organised by indigenous Jumma people at Sarnath Aranyo Kuthir in the Khagrachari district of the Chittagong Hill Tracts. The article situated this incident within what it described as a “pattern of wider attacks on the religion of the indigenous communities”. The article reported that Buddhist temples had been targeted as part of a program of land-clearing for Bengali settlers, and outlined several incidents of attacks and intimidation of Buddhists by Bangladeshi army and security personnel in 2007 and 2008:

The events at Sarnath Aranyo Kuthir are not isolated. Across the CHTs, Buddhist temples have been targeted for destruction by the authorities Indigenous Buddhist Chakmas and Marmas usually live in and around their temples. Once temples are destroyed the area can be more easily cleared for illegal plain settlers ('Bangladesh: The Army attacks Buddhism to facilitate illegal settlement in the Chittagong Hill Tracts' 2008, Asian Centre for Human Rights website, 23 January <http://www.achrweb.org/Review/2008/203-08.html>).

65. An article by Rosaline De Costa, published in October 2007 by the Human Rights Congress for Bangladesh Minorities, claimed that the current caretaker government had used the state of emergency in Bangladesh to suppress the political organizations of the indigenous tribes of the Chittagong Hill Tracts:

Under the state of emergency, the Joint Forces led by military forces are conducting drive against the corrupt politicians, businessmen and godfathers...However the military forces have been using the state of emergency with a different motive in case of indigenous peoples in CHT. Basically it has been used to suppress the voice of indigenous Jumma people of CHT.

...the government forces in CHT are hugely misusing the emergency power equating corrupt Bengali politicians and businessmen with the Jumma rights defenders. The military forces are using the emergency rules to unleash sweeping political repression against indigenous Jumma peoples including two Jumma political parties Parbatya Chattagram Jana Samhati Samiti (PCJSS) and United People's Democratic Front (UPDF) and their front organisations (De Costa, Rosaline 2007 'Fresh Land Grabbing and Bengali Settlement Programme continued in CHT' Human Rights Congress for Bangladesh Minorities website, 17 October <http://hrcbm.org/news/news-cht-landgrab.html>).

66. An article published by local Chittagong news outlet *The Daily People's View* reported on the April 2008 murder of a Buddhist monk in Rangamati in the Chittagong Hill Tracts, noting that a case had been filed with local police, but no suspects arrested ('Buddhist monk chopped to dead in Rangamati' 2008, *The Daily People's View*, 29 April http://www.peoples-view.org/day_by_day/2008/04/29/Chittagong_Highlights.php).

Current Situation of Religious Minorities

67. The recent United States Commission on International Religious Freedom report on Bangladesh, published in May 2008, referred to reports of human rights abuses committed by security forces in Bangladesh since the caretaker government has been in power, and speculated on the implications for religious freedom should the rule of law and respect for human rights be further undermined. The report also noted that the Caretaker Government's postponement of the elections which had been scheduled for January 2007 did not result in widespread anti-minority violence:

Despite the caretaker government's repeated public promises to uphold human rights, there have been numerous reports detailing serious human rights abuses, including suspected extrajudicial killings by the security forces, arbitrary detentions, torture, curbs on press freedom, and violations of the right of due process. Many of the reported abuses have been associated with the high-profile anti-corruption campaign spearheaded by the military and the Anti-Corruption Commission, which have arrested thousands of individuals since January 2007, many of whom have been detained in harsh conditions without due process.

...The role of the military under the current caretaker government raises questions about the future of democracy, rule of law, and respect for human rights in Bangladesh. These institutions, important guarantors for religious freedom, could be further eroded if the country's caretaker government prolongs its tenure in office by impeding efforts to prepare for the free and fair election of a national government truly representative of the popular will, such as by refusing to lift the state of emergency.

...On the positive side, unlike the anti-minority violence surrounding the 2001 national elections, the political turmoil that led to the postponement of the January 2007 elections has not resulted in widespread anti-minority, particularly anti-Hindu, attacks (United States Commission on International Religious Freedom 2008, *USCIRF Annual Report for 2008 – Bangladesh*, 1 May).

68. A DFAT report from February 2008 contains advice from the Human Rights Congress for Bangladeshi Minorities suggestive of a reduction in violence against religious minorities in Bangladesh since the institution of the Caretaker Government in January 2007:

Question 6B. Is DFAT able to consult with any local human rights groups with an interest in Bangladesh's Hindu minority, such as the Bangladesh Hindu, Buddhist, Christian Unity Council (BHBCUC) or the Bangladesh Human Rights Congress for Bangladesh Minorities (HRCBM)? If so, please seek these groups' assessments of the current security situation (since January 2007) for Hindus in Khulna district. Please provide an indication of whether these groups have any reason to think that the current security situation might change in the near future?

DFAT contacted the Secretary General of HRCBM who advised that the occurrences of violence and mistreatment against minority groups were comparatively lower now than compared to pre-January 2007. According to him, the community including security agencies, non-Hindus, lawmakers and other neighbourhood groups, had been less aggressive towards minorities due to the current emergency situation. However, he believed that the current situation might not be sustained were the State of Emergency to be lifted.

DFAT would note that any assessment of the security situation in a post-Emergency period should be treated with caution, as it is unclear as to when the State of Emergency might be lifted, and under which circumstances this would take place (Department of Foreign Affairs and Trade 2008, *DFAT Report 764 – RRT Information Request BGD32527*, 4 February – [Attachment 1](#); RRT Research & Information 2008, *Research Response BGD33328*, 14 May)

69. The US Department of State report on religious freedom in Bangladesh, published in September 2007, provides an extended discussion of the situation of religious minorities, including Buddhists, stating that ‘attacks on religious and ethnic minorities continued to be a problem’ in Bangladesh:

The Constitution establishes Islam as the state religion but provides for the right to profess, practice, or propagate, subject to law, public order, and morality, the religion of one’s choice. It also states that every religious community or denomination has the right to establish, maintain, and manage its religious institutions. While the Government publicly supported freedom of religion, attacks on religious and ethnic minorities continued to be a problem.

... There were reports of societal abuses and discrimination based on religious belief or practice during the period covered by this report. Hindu, Christian, and Buddhist minorities experienced discrimination and sometimes violence by the Muslim majority (US Department of State 2007, *International Religious Freedom Report for 2007 – Bangladesh*, 14 September).

70. The May 2008 United States Commission on International Religious Freedom report on Bangladesh made note of claims that religion played a part in disputes over property and land:

Minority group advocates claim that religion plays a role in property and land disputes, pointing to expropriations of Hindu property since the Pakistan era and the gradual displacement of non-Muslim tribal populations by Bengali Muslims in the Chittagong Hill Tracts and other traditionally indigenous areas. Such disputes occasionally result in violence (United States Commission on International Religious Freedom 2008, *USCIRF Annual Report for 2008 – Bangladesh*, 1 May).

71. A paper published by Odhikar, a Bangladeshi human rights organization, noted that there had been 135 reported human rights violations against religious minorities in Bangladesh in 2007, but did not specifically address the issue of attacks on Buddhists (Odhikar 2008, ‘Human Rights Concerns 2007: Odhikar Report On Bangladesh’, Odhikar website, 1 January, p. 23 http://www.odhikar.org/documents/hr_report_2007.pdf – Accessed 29 February 2008 – Attachment 6).

72. The United States Commission on International Religious Freedom 2008 on Bangladesh noted that members of minority religious communities in Bangladesh may be disadvantaged in accessing government employment, and that minority groups are under-represented in elected offices:

...Despite constitutional protections, Hindus and other non-Muslims in Bangladesh face societal discrimination and are disadvantaged in access to jobs in the government, armed forces, and police, as well as public services and the legal system. Religious minorities are also underrepresented in elected political offices, including the national parliament (United States Commission on International Religious Freedom 2008, *USCIRF Annual Report for 2008 – Bangladesh*, 1 May).

73. A recent article published on the Union of Catholic Asian News website on 18 June 2008 reported that a “forum representing religious minorities in Muslim-majority Bangladesh has called for an end to Islam as the state religion, claiming this two-decade-old Constitution change made them ‘second-class citizens’” (‘Bangladesh Minority Communities Call For Re-establishment Of Bangladesh’s Secular Constitution’ 2008, Union of Catholic Asian News

website, 18 June <http://www.ucanews.com/2008/06/18/minority-communities-call-for-re-establishment-of-bangladeshs-secular-constitution/print/>).

74. The 2007 US Department of State report on religious freedom in Bangladesh noted that the Government maintained trusts for the support of the Buddhist, Hindu and Muslim communities:

... The Ministry of Religious Affairs administered three funds for religious and cultural activities: the Islamic Foundation, the Hindu Welfare Trust, and the Buddhist Welfare Trust.

... The Buddhist Welfare Trust, also founded in the 1980s, had a fund of \$425 thousand (30 million taka) at the end of the period covered by this report. The trust used funds to repair monasteries, organize training programs for Buddhist monks, and celebrate the Buddhist festival Purnima. There has been no public criticism of how the money is proportioned or distributed (US Department of State 2007, *International Religious Freedom Report for 2007 – Bangladesh*, 14 September).

75. An article published 21 May 2008 by the *United News of Bangladesh* reported a statement expressing commitment to promoting religious harmony in Bangladesh made by Caretaker Government Chief Adviser Dr Fakhruddin Ahmed at a meeting with Buddhist leaders ('CA exchange greetings with Buddhist community' 2008, *United News of Bangladesh*, 21 May).

Inter-religious Marriages

76. Information was found to indicate that there is no legal barrier to inter-religious marriages, and such marriages are reportedly becoming more common in the larger cities of Bangladesh. However, couples in inter-religious marriages still experience problems, ranging from family pressure to physical attacks. The sources suggest that the more extreme instances of violence occur in rural areas. Inter-religious marriages are reportedly recognised under the Special Marriages Act of 1872. Information indicates that a non-Muslim woman wishing to marry a Muslim man is required to convert to Islam. However, if she refused to convert to Islam, and the family accepted this decision, the marriage may be reportedly solemnised under the Special Marriages Act.
77. On 28 November 2005, information on the situation for persons in mixed marriages was received from Dr Kazi Nurul Islam, Professor and Chairman of the Department of World Religions, University of Dhaka. Dr Islam stated the following in relation to inter-religious marriage:

Bangladesh has been a country of interreligious harmony for centuries. But in the recent past particularly after the change of the Govt. in 2001 the fanatics have got an upper hand. It is unfortunate that some fanatics have been made even ministers in the present Govt.

Interreligious marriage is not uncommon in Bangladesh But according to Muslim rule the non-Muslim spouse will have to be converted into Islam first. If a Muslim boy marries a Christian or Jewish girl conversion is essential. If they are not converted, neither the family members, nor the society nor even the civil court accept this marriage. As a result the couples concerned face immeasurable harassment and there are certain cases where they are kidnapped and killed.

Not only as President of International Association for Religious Freedom, Bangladesh but also as a man of conscience I feel that this kind of discrimination, torture, harassment in the name of religion has to be stopped.

At this moment the situation in Bangladesh is very grave. The entire world knows that the fanatics are killing even the judges. The nation is heading towards a civil war between Fanatics and Moderate Muslims. That is why I do hereby strongly urge upon you to help this couple and save them from an absolutely uncertain life (Nurul Islam, Dr Kazi 2005, Email: 'Re: Refugee Review Tribunal Information Request: BGD17686', 28 November).

An October 2006 Department of Foreign Affairs and Trade (DFAT) response addressing the legal and social situation for persons in inter-religious marriages provided the following information:

A. The Post talked to the Chief Metropolitan Magistrate and the Deputy Attorney General of Bangladesh to seek statistical information about mixed religious marriages. Both sources indicated that no official statistics are available on the incidence of mixed religious marriage in Bangladesh. Marriages are registered at the District level and not recorded centrally.

B. The High Commission routinely monitors the media in Bangladesh including the major Bangla and English language newspapers. While the focus of the monitoring is on political and economic affairs, the three officers who undertake this task cannot recall any reports of problems arising out of mixed religious marriages. Media reports on difficulties in marriages reflect the broader problem of violence against women in Bangladesh, particularly at the hands of their spouse, in-laws or disgruntled suitors.

C. Since the 1999 report, there have been two additional high-profile mixed religious marriages between celebrities in Bangladesh. In early 2000 two popular Bangladeshi singers were married – the woman being a very famous music artiste from a Muslim family, and the man from a Hindu family. Another celebrity mixed marriage was between a leading female television actor, a Muslim, and an Indian model/actor, a Hindu. While both the marriages ended in divorce there was no indication that these marriages broke up for social, religious or political reasons. These marriages both attracted public attention on the basis of the celebrity nature of the union, rather than the religious identities of the people involved.

D. We are not aware of public comment on this issue from religious leaders. Post contacted a number of respected religious leaders of the Christian and Hindu communities and were advised that there had been no public comment on this issue from their denominations. We have been informed by Christian church leaders that mixed religious marriages are neither encouraged nor discouraged. Since there is no legal barrier for mixed religious couples to get married, the Churches have an understanding approach to the issue. Hindu individuals have informed us that Priests do conduct mixed religious marriages at temples. The Post was not able to get a response from the Director of the Islamic Foundation Dhaka because of his tight schedule during Ramadan.

E. Marriages between people from different religions are recognised under the Special Marriages Act of 1872. Two marriage acts exist in Bangladesh. Generally, a non-Muslim wishing to marry a Muslim is required to convert to Islam and then the pair can be wed under the Muslim Marriages Act. However, if the non-Muslim party declines to convert to Islam, the marriage may take place under the Special Marriages Act. This Act was enacted during the British colonial era specifically for inter-caste and inter-faith couples. Marriages under the Special Marriages Act are registered before the Metropolitan Magistrate, to whom the inter-faith couple declares, "We do not follow any particular religious denomination and therefore want to marry each other before the Metropolitan Magistrate". The Magistrate then

solemnises the marriage and registers it on a standardised Registration Form. There are no statistics or data on the impact of mixed religious marriages. While it is possible that in rural Bangladesh communities may not look upon such marriages favourably, in the urban areas such a pairing is not considered a big taboo. If problems arise in such marriages, it is generally personal first and familial second. Post is not aware of any incidents of social, religious or political repercussions towards these mixed marriages in Bangladesh... (Department of Foreign Affairs and Trade 2006, *DFAT Report 552 – Bangladesh: Mixed Marriages: RRT Information request IND30692*, 19 October).

FINDINGS AND REASONS

78. The applicant travelled to Australia on a valid Bangladeshi passport and claims to be a national of Bangladesh. Therefore for the purposes of the review, the Tribunal has accepted the applicant's country of nationality is Bangladesh.
79. The Tribunal accepts that the applicant is an ethnic Chakma male and that he is a child from a mixed marriage between a Chakma Buddhist male and Christian Bengali woman. The Tribunal accepts that the applicant's parents' marriage may have been strongly opposed by his parents' respective families. However, the Tribunal does not accept that the applicant's parents were banished or disowned by their families, as he claimed in the hearing. The Tribunal has taken into account that in the applicant's statutory declaration attached to his protection visa application, the applicant had in fact claimed that his parents had not been disowned by their families and in the hearing he stated that his father and mother did occasionally see their families. Also the applicant claimed that his father had the support and assistance of his relative, who was residing in country D. The applicant gave evidence of help provided to his father by his relative when his family moved from City B to City C and his father was unemployed and the efforts his relative made to bring his father to country D in an attempt to relocate the family there. Similarly, the applicant discussed in the hearing his close relationship with his maternal grandmother. The Tribunal therefore does not accept that the applicant and his family were as alone and insecure as he claimed or that they did not have some support from their families. The Tribunal accepts that the applicant's parents' relatives may not have appreciated their marriage and may have talked about them behind their backs. However, the Tribunal does not accept that such familial disapproval constitutes persecution within the meaning of the Convention.
80. The applicant made claims that he fears persecution if he returns to Bangladesh because of his Chakma ethnicity. The Tribunal accepts that Chakmas, or indigenous or tribal persons, within the Chittagong Hill Tracts are subjected to various forms of human rights abuses perpetrated by Bengali settlers, the Bangladesh security forces and opposing forces of the Jumma's own community warring political groups. However, as the Tribunal put to the applicant in the hearing, the country information does not suggest that outside of the Chittagong Hill Tract area, Chakmas are subjected to the human rights violations committed in the hill areas or that they are targeted for persecution. The Tribunal notes that the applicant stated in the hearing that although he was born in town A, which is in the Chittagong Hill Tract area, he did not stay there for very long. The Tribunal notes that the applicant's family do not live in the Chittagong Hill Tract area. As the applicant has not lived in the Chittagong Hill Tract area, the Tribunal is assessing his claims on the basis that he is not from the Chittagong Hill Tract area. The Tribunal therefore does not accept that relocation is a relevant issue in the applicant's case.

81. The applicant claimed he lived in City B from a very young age, for several years and that during that time his family had a relatively peaceful life. The applicant made no claims that either he or his family ever experienced any serious harm whilst living in City B. Although he claimed his father was not appreciated by the community when his family left City B to go to City C, the Tribunal does not accept that this was related to the applicant's father's Chakma ethnicity or his Buddhist religion. Nor does the Tribunal accept that such lack of appreciation, as expressed by the applicant, constituted serious harm within the meaning of the Convention.
82. Similarly, the Tribunal accepts that the applicant may have been subjected to verbal taunts by classmates and possibly neighbours and friends because of his different skin colour, appearance and accent. The Tribunal accepts that the applicant may have felt that he was treated like a clown. However, the Tribunal does not accept such name calling or taunting constitutes serious harm within the meaning of the Convention.
83. The Tribunal accepts that the applicant, his mother and siblings moved to City C because he was given the chance to attend a good college there. The applicant claimed in the hearing that his father returned to town A and worked there as a doctor, visiting them in City C once or twice a month. The applicant made no claims to have experienced any problems whilst living in City C because of his Chakma ethnicity. Although the applicant did discuss in the hearing a particular incident when he attended a Muslim festival and was asked to leave because he claimed he was different, the Tribunal found the applicant's evidence to be vague and confusing. The Tribunal finds it implausible that at an event which had thousands of people attending, the applicant would be singled out because of his Chakma ethnicity. The Tribunal therefore does not accept that the applicant was asked to leave a Muslim religious festival because of his Chakma ethnicity.
84. The applicant claimed in the hearing that if he returns to Bangladesh he will not be able to find a job. The Tribunal notes that the applicant's father was given the opportunity to study medicine and the applicant received several years education, graduating with a degree in computing. The applicant himself identified in the statutory declaration attached to his protection visa application that his father's Chakma ethnicity did not result in his father being denied an education and opportunities to work in his chosen profession. The Tribunal finds that the applicant's ethnicity also did not affect the applicant's ability to find employment in his area of expertise, after he graduated from University. The Tribunal therefore does not accept that the applicant has suffered discrimination in education or employment in the past because of his Chakma ethnicity or been denied the opportunity to secure a livelihood. The Tribunal does not accept that if the applicant returned to Bangladesh he would be denied the capacity to earn a livelihood because he is an ethnic Chakma. The Tribunal accepts he may find it hard to get a job because he had been out of the workplace for a number of years now and he would be competing against younger, more recent graduates. However, the Tribunal does not accept the difficulty the applicant may experience finding employment would be due to his Chakma ethnicity, Buddhist religion or membership of a particular social group of children of mixed marriages. The Tribunal has also taken into consideration the recent submissions made by the applicant's adviser regarding the serious harm the applicant would face in relation to his livelihood. The Tribunal notes that the adviser's submission focused on the situation of internally displaced Chakma and given the Tribunal finds that the applicant has not lived in the Chittagong Hill Tract area in the past, but resided in City B and then City C, the Tribunal does not accept that the applicant's circumstances are comparable to that of an IDP.

85. The applicant has also claimed it would be hard for him to accommodate himself if he returned to Bangladesh. The Tribunal notes that the applicant's family have continued to reside in City C since he departed the country. Although the applicant claimed he has had no contact with his family for almost one year, the Tribunal finds that this had been due significantly to the applicant's own actions which has led to his estrangement from his family. The Tribunal accepts that when the applicant's student visa initially expired and his goal to stay in Australia permanently was tenuous, the applicant's family may have reacted angrily and stopped having contact with him. However, the Tribunal finds on the evidence provided by the applicant and submissions made by his adviser in the hearing, that the applicant's family have tried to initiate contact with him and he has refused to do so. In light of this, the Tribunal is satisfied if the applicant returned to Bangladesh, he would have the assistance of his immediate family to accommodate and support him. The Tribunal also notes the applicant's evidence of friendships he had made when he moved to City C from City B and completed his studies there. The Tribunal therefore does not accept that the applicant would have no community to return to in City C. The Tribunal is satisfied, for the reasons provided above, that the applicant would not face a real chance of persecution, now or in the reasonably foreseeable future, if he returned to Bangladesh, for reasons of his Chakma ethnicity.
86. Following the hearing the applicant's adviser raised claims regarding the treatment of indigenous Bangladeshis more generally, in parts of Bangladesh other than the Chittagong Hill Tract area. The Tribunal accepts that other indigenous communities may face persecution in the areas they originate from, such as those mentioned in the country information cited in the adviser's submission. The Tribunal also accepts that ethnic and indigenous minorities may face harassment and discrimination in parts of Bangladesh. However, the Tribunal must consider this in the context of the applicant's particular circumstances. The applicant has not demonstrated that he has been subjected to serious harm in the past because of his indigenous identity. As he himself stated in his statement, he lived a peaceful life in City B, he was educated, including tertiary education and was employed in his chosen profession. The applicant made no claims that he experienced any harm, particularly harm that could be characterised as persecution, either in City B or City C. In weighing up the country information before it, including the adviser's submission, and the applicant's own experiences in Bangladesh, the Tribunal is satisfied that the applicant does not face a real chance of persecution as an indigenous Bangladeshi, now or in the reasonably foreseeable future, if he returned to Bangladesh.
87. In addition to his Chakma ethnicity, the applicant has claimed a fear of persecution because of his religion. The applicant claimed in the hearing to not practice a particular religion but rather attend both the temple and Christian church in Australia. Although, the applicant claimed he did not practice any religion in Bangladesh because he felt sorrow as people talked about him, the Tribunal notes that he gave evidence that he attended the temple, as well as church with his grandmother, whilst living in Bangladesh. The Tribunal therefore accepts that the applicant was able to practise his chosen religions. The applicant has made no claims regarding any difficulties or harm he experienced because of his religious identity. Although, the applicant may have felt like an outsider when he attended the temple, the Tribunal does not accept that such feelings of social exclusion constitutes serious harm within the meaning of the Convention. The Tribunal finds that if the applicant returned to Bangladesh he could continue to attend both the temple and church and he would not face a real chance of persecution, now or in the reasonably foreseeable future, for reasons of his religion.

88. The Tribunal accepts that, a longstanding adherent to both the Christian and Buddhist faiths, the applicant has engaged in activities of both religions in Australia otherwise than for the purpose of strengthening his claims against the Convention. The Tribunal is therefore not required by s.91R(3) of the Act to disregard the applicant's conduct in Australia.
89. The applicant has also claimed that he fears persecution in Bangladesh because of his membership of the particular social groups, child of a mixed Chakma/Bengali marriage and child of a mixed Christian/Buddhist marriage. The Tribunal accepts that as a child of a mixed marriage or inter-ethnic and inter-religious marriage, the applicant may have felt that he did not fit into either ethnic group and that he did not have a discreet identity. However, the Tribunal does not accept that the applicant has experienced any difficulties in the past which constituted persecution or that he would face a real chance of serious harm for reasons of his membership of such groups, if he returned to Bangladesh, now or in the reasonably foreseeable future because of his parents' mixed marriage. The applicant raised the lack of social opportunities and acceptance from his parents' relatives as difficulties he had experienced because of his parents mixed marriage. However, the Tribunal is not satisfied that the applicant was in fact denied such approval or recognition given that he had a close relationship with his maternal grandmother and the support of his relative.
90. The applicant made claims that it was due to his parents' mixed marriage that they were forced to live discreetly. He suggested in the hearing that his parents move to City B was because their marriage was not accepted, so they went to a remote place. However, the Tribunal is satisfied that his family's relocation to City B was due to the applicant's father securing a position with organisation 1 and not because they had to live discreetly in order to avoid persecution. It was claimed in the applicant's statutory declaration that the applicant's parents did not express their political or religious views, however in the hearing he stated that they practiced their respective religions and that his parents did not have any views about politics in Bangladesh. Although, the applicant did discuss his father's dealings with a terrorist group called the stated, the Tribunal is satisfied that the applicant's father was not associated with this group but rather performed his duties as a doctor by administering medical assistance to its members. The Tribunal does not accept that the applicant's parents suppressed their religious or political views because of their mixed marriage. Nor does the Tribunal accept that the applicant has had to live discreetly in the past in Bangladesh or that if he returned there, he would have to live in hiding from his own people and social isolation. The Tribunal accepts that the applicant may have feelings of frustration because he is the child of a mixed marriage and an ethnic Chakma, however, the Tribunal does not accept that the applicant has in the past, or would in the future, engage in any activities aimed at expressing his views regarding the treatment of religious and ethnic minorities in Bangladesh. The Tribunal found the applicant's evidence in the hearing regarding this particular claim to be vague and confusing and he was unable to articulate with any clarity what his views were regarding the discrimination suffered by religious and ethnic minorities in Bangladesh or why he would have to be discreet. The Tribunal therefore does not accept that the applicant would be forced to live discreetly if he returned to Bangladesh.
91. The Tribunal accepts that the applicant has overwhelming feelings of shame and dishonour because of the difficulties he experienced with his studies in Australia and his failure in achieving his primary goal to stay in Australia as a permanent resident. However, based on the above findings, the Tribunal is satisfied that the applicant does not face a real chance of persecution, now or in the reasonably foreseeable future, if he returned to Bangladesh, for reasons of his Chakma ethnicity, Buddhist and Christian religions or his membership of a

particular social group “child of a mixed marriage”. The Tribunal has considered its decision in V05/18182, however, it does not accept that this is an analogous case. Therefore, the Tribunal finds that the applicant’s fear of persecution is not well-founded.

CONCLUSIONS

92. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

93. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the Migration Act 1958.

Sealing officer’s I.D. hbuckl