

060868092 [2007] RRTA 55 (5 January 2007)

DECISION RECORD

RRT CASE NUMBER: 060868092

DIMA REFERENCE(S): CLF2006/66664

COUNTRY OF REFERENCE: Nepal

TRIBUNAL MEMBER: Ms Philippa McIntosh

DATE DECISION SIGNED: 5 January 2007

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Nepal, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights.

The delegate refused the visa application on the basis that the applicant was not a person to whom Australia had protection obligations under the Refugees Convention

The applicant applied to the Tribunal for review of the delegate's decision.

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

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, in this case 19 June 2006, although some statutory qualifications enacted since then may also be relevant.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) 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 Refugees Convention as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

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.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

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.

The applicant appeared before the Tribunal to give evidence and present arguments. A witness gave oral evidence. The applicant was represented in relation to the review by her registered migration agent.

The applicant claimed to fear persecution in Nepal for the Convention reason of religion and imputed political opinion (the latter "for being viewed as spreading foreign propaganda by both the state authorities and the Maoists"). She claimed to fear harm by the state, by Hindu fundamentalists and by Maoists (members of the CPN(M)). She feared harm specifically because of her conversion from Hinduism to Christianity and her duty to proselytise. She would be a member of a foreign-based evangelical church in Nepal.

She submitted a statement to the Department. She also submitted a Statutory Declaration to this Tribunal which contained identical information. Based on these documents, the details of her claims were as follows:

She was born and educated in Kathmandu. She was a member of a named caste and had grown up in a Hindu family. In [Year] her father had died in Nepal, leaving the family in financial difficulties.

The applicant met a female foreigner in Nepal who introduced her to Christianity. She became a Christian and, after finishing her education in [Year] left for overseas. In [Year] she was employed in overseas. She studied a college but could not complete the course.

In overseas she attended a Nepali-speaking church, which she named. Her job did not allow her to go regularly but she went as often as possible to Nepali-language services on Sunday afternoons. As most of the Nepalese at the church came from different background and she found it "a bit difficult to become fully part of the church".

When she visited her family in Nepal they realised she was a Christian. Her mother beat her and the family no longer accepted her as a member. She had to stay at the home of a close friend.

When her contract in overseas had finished she could not stay there. She had nowhere to go so came to Australia.

She submitted evidence that she had been attending church in Australia since her arrival. The Senior Pastor, person A, attested to the fact that the applicant had been attending his church and provided evidence that the church believed that it was necessary to evangelise even if that was against the law of the country. He also provided a report in which he set out information he had collected while visiting Nepal. That information made clear that in villages some Christians had suffered harm at the hands of fellow villagers or local Maoists. The applicant also submitted two Statutory Declarations. One was from person B. The author

said that he had known the applicant in overseas for a period of time while she worked there. She had invited him to church and he had agreed. He had continued to attend church with her here. The other was from person C, who wrote that the applicant was her room-mate and was a genuine Christian.

She claimed

- She had no place now in [Name] culture and could not live with her family. Her family might harm her. Members of her caste might attack her to make her revert to Hinduism.
- She would be harmed by militant Hindu political groups if she shared her beliefs with others. She had a duty to persuade people to become Christian.
- The Maoists harassed and killed Christians.
- The Maoists would try to extort money from her because they would assume she had a lot of money.
- If she spread the gospel she would face penalties. Also the government would not protect her.

The Tribunal hearing

The applicant gave oral evidence with the assistance of a Nepali-speaking interpreter. Her solicitor was present throughout the hearing. A witness, person B, also gave oral evidence.

Three documents were submitted at the hearing. These were a written signed statement from person B, a copy of the US State Department's country reports on human rights practices for 2005 for Nepal, and a document which the migration agent said he had compiled from various sources describing the political and religious situation in Nepal.

The applicant's oral evidence

The applicant's oral evidence was that her family members and relatives were all still in Nepal and lived in Kathmandu. She said that her siblings were married. One owned a small business and the other was not in paid employment - her husband was in paid employment. The applicant's mother was not in paid employment and was supported by the applicant's sibling. Of her late father's source of income she said that he had had his own importing business. She had been minor aged when he became too ill to work. After that the family had lived on the income from her mother's small business. Subsequently her mother had earned an income by doing work from home. The applicant said that she had been close to her siblings in Nepal but now was not close to any of her relatives there.

She stated that she spoke many languages. She was fully literate in English and Nepalese and could speak some other languages.

Of her mother's current whereabouts she said that she was renting a house in [Name of the place]. The applicant's most recent visit to Nepal had ended on [Date]. Her mother had been living at that address then. The family had often moved because they rented their accommodation.

Of her travel history she said that she had visited overseas for a short holiday in [Date]. [Applicant's employment history removed under section 431 of the Migration Act 1958]. She said that she had visited Nepal few times in the last few years and also said that she was just on holiday. She said that she had stayed at the family home both times - however during the last visit her family had thrown her out of the house, and so she had moved to a friend's house. She explained that her sister and her husband lived with her mother.

She said that she had last worked in overseas in [Month, Year]. Her contract was renewed every two years and she had been told that it would not be renewed.

I asked her if she would describe her family as middle class and she said that she would. I asked her if they were rich or poor and she said they were somewhere in the middle. I asked her if they had generally liberal democratic values. She responded that they were conservative because members of the [Name] caste were conservative. I put to her that, even so, people could vary enormously in their values and attitudes, between very conservative and more liberal. She did not dispute this but said that her family were conservative.

I asked her to clarify her claim that as a member of the [Name of the caste] she had "suffered discrimination at every step". She said that she did not mean she suffered discrimination from [Name of the caste] but had suffered it from other members of her caste.

I noted that she had claimed in writing that she had met a female foreigner in Nepal who had introduced her to Christianity and that as a result the applicant had become a Christian "in Nepal". I asked her what church this woman was from. She responded that she did not know. I asked what church the applicant had attended in Nepal. She responded that she had not attended church there at all. Of the female foreigner she added that she had come to Nepal to study Nepalese culture and had stayed with the applicant's close friend person D. The applicant added that it was with person D with whom she had gone to stay after her family threw her out of their home, and that friend was not a Christian.

I asked her why she had written that she became a Christian in Nepal given that she had not, for example, even tried to go to church there. She did not explain this, but said that she had felt very frustrated after her father died and that when she visited person D she had met a female foreigner who had told her about Jesus Christ and this had touched her heart. She had no conception of what Christianity was but when she was told about the Bible she had felt peace. She had visited this woman often over a period of time. She had made no contact with her after the woman left Nepal.

She stated that she was employed in overseas throughout her period of employment there. She had worked on a regular basis from Monday to Friday and had done no overtime.

I noted that she had claimed to have attended a Nepali-speaking church in overseas. I asked her how many times approximately she had done so during her whole time in country A. She said she was unsure but had gone there two or three times each month, because she was a Christian. However she said that the people who attended that church were Nepalese who had gone to country B and who no longer spoke the Nepali language. Therefore the only language she had in common with them was English. She added that their English was poor. She said she had done nothing in her own language at that church. I asked her why she had written in her statement that there was a Nepali-language service at the church on Sundays. She said that she had meant that there were people of Nepalese background there. I put to her that she had written that her job did not allow her to regularly go to church but she went as often as

possible to Nepali-language services on Sunday afternoons, and that as most of the Nepalese at the church came from country B and also spoke different language she had found it “a bit difficult to become fully part of the church”. I asked her why, under these circumstances, she had not gone to an English speaking church given that she spoke English. She responded that that church was close to her house. Also she had not found an English speaking church. The people at the church she went to were friendly and anyway she had a Bible that she could read.

I asked her about the problems she had had when visiting Nepal. She said that during her first visit in [Year] she had told her family that she was a Christian - she had tried to preach to her sibling, who had told her mother. Her mother had told her that the family were Hindu, had scolded her and tried to make her go to the Hindu temple. She had not wanted to do this. However her mother was not as angry as she was when the applicant visited on the second occasion. During that visit, on the first day her mother had received a letter from the Maoists and had told the applicant that in fact it was the second letter she had received. The applicant had told her mother not to worry and believe in God. Her mother and sister had beaten her and she had had to see a doctor. Her mother had made her leave the family home so she had gone to stay with her friend.

She said that she had tried to speak to her family again but her mother had said that she was no longer her daughter. She had had no further contact with them since then. I asked her if they knew that she was in Australia and she said that they did not because she had not told them. I asked her if she would expect to have any further contact with them if she were to return to Nepal. She responded that she would not contact them and they would not contact her. It would be as if she had no family.

Of the letters from the Maoists she said that she understood from her mother that one had arrived while she was overseas and the other had arrived after she returned to Nepal. She had seen the second letter. It was addressed to her mother and mentioned the whole family including her. Of her it said that “your daughter is working {applicant’s employment related information removed under section 431 of the Migration Act 1958} so is our enemy. Your daughter has worked there for several years so has earned lots of money and as we are raising donations for activities from everyone else we expect you also to donate to us”. They said they wanted a large amount of Nepalese rupees and that “unless you comply we will take action”. This was her recollection of the content of the letter. Her mother had told her she got the same letter but had thought it was a joke as many people got such letters - however she had been frightened by the second letter. She had told the applicant that she had not given the Maoists any money at any stage. The applicant confirmed that that letter had arrived on the same day as her mother had beaten her and told her to leave the house.

I noted that she was claiming that she had no place now in [Name] culture and could not live with her family. However according to the evidence available to the Tribunal there were over 40 protestant churches in Kathmandu and over 200 churches in total. Christianity was growing faster in Nepal than other countries in the region. I asked her why, under these circumstances, it would be unreasonable for her to live with fellow Christians in Kathmandu. The applicant indicated that she had not given this option any thought or made any enquiries about it. She initially said that because she was an evangelical Christian it would be dangerous for her but when I pressed her to say why she could not live with other Christians who shared her views she said initially that they were too proud and would not let her live with them. She then conceded that she actually did not know if other Christians would help her or not and that she did not know much about Christians in Nepal.

I told her that there was evidence that the way Nepalese Christians evangelised was “sharing the gospel over a cup of hot tea” - in other words in social situations. I asked if she would evangelise in a similar way, that is frequently and informally. She responded that she would. If she met someone socially she would tell them about her belief if she thought they would be interested. If they were not interested she would try to impress on them the importance of eternal life etc. However if they were happy with their own religion she would respect that and would not pursue the subject.

I asked her if she had evangelised during any of her visits to Nepal. She said that she had told her relatives and some friends but they had said that as they were [Name] they were born Hindu. I discussed with her evidence from other sources that those who convert to another religion at times face isolated incidents of violence in Nepal and occasionally are ostracised socially but generally they do not fear to admit their affiliations in public. She responded that she agreed to some extent because when one converted one had to maintain one's belief in religion.

I told her that the evidence suggested that incidents of harm of evangelical Christians by Maoists or by agents of the state were isolated and occasional, and were also most likely to occur in rural rather than urban settings. None of the information in the reports suggested that there was systemic harm directed at evangelical Christians in practice. She responded that maybe there was no evidence but the reality was that these things were happening. Many evangelical Christians did suffer at the hands of their family and society. Militant Hindu groups persecuted Christians. She feared that one of the “occasional” incidents might involve her.

I discussed with her the fact that the Constitution of 1990 stated that “everyone shall have the freedom to profess and practice his own religion as handed down to him having due regard to ancient practices; provided that no person shall be entitled to convert another person from one religion to another”. This law appeared to apply to everyone from any religion and there were also no reports of prosecution under this law. She responded that evangelists were beaten and sometimes killed by Maoists or kidnapped by Maoists or militant Hindu groups, who beat Christians in Kathmandu. I told her that the Tribunal had before it no evidence that this was occurring in any widespread manner in Kathmandu and she agreed to submit evidence on this point.

Of the claim relating to extortion threats by Maoists I asked her how anyone might know that she had been living and working abroad if she was no longer living with her family or in her own neighbourhood. She responded that they may not have her history but they targeted certain families and her family had become a target. They would try to find out about her. I put to her that if she was living in a Christian community and had no contact with her family, as she had said would be the case, no-one would know of her history unless she told them. She responded that she had been at home when the second letter from the Maoists arrived and the Maoists had seen her so knew what she looked like. I asked her why, if that had happened, they had not taken the money from her then and there. She responded that they had said the family had three days to pay. I asked her why she had not earlier mentioned that she was present when the second letter arrived and that she had been actually seen by the Maoists. She indicated that the Tribunal had not asked her.

I discussed with her further the fact that there had been no recent reports of Maoists harming people in Kathmandu and evidence that presently they were involved in peace negotiations and were forming a new coalition government. She responded that this evidence was not

reliable as they had participated in failed peace deals before. I told her that nevertheless even during 2005 there were no reports of serious harm to individuals by Maoists in Kathmandu. She responded that when she was there she had heard of skirmishes between Maoists and government forces. She also claimed that the Maoists killed people everywhere including in Kathmandu.

I told her that there was an office of the United Nations High Commission for Refugees in country A and that many people seeking asylum applied for it through that office. I asked her why she had not done so. She responded that she had not known that UNHCR had an office there. I asked her if she had made any enquiries at all in country A about ways in which she could gain asylum and she said that she had not.

Person B's evidence

Person B stated that he had met the applicant in [Month, Year] and that he had started working in overseas. He had worked there until [Month, Year]. I asked him how long the two had worked together and he said they had worked together for several months. However, when I put to him that she had left her employment only a month or so after he started working there he agreed that that was correct.

He stated that he was a Hindu who had converted to Christianity several years ago. He stated that he had last been in Nepal few months ago when he had visited [name of the place].

He said that the applicant was already a Christian when he met her last year and had told him that she went to church. I asked him if she told him which church and he said that she had said it was the [name of the church]. I asked him if he had ever been inside that church and he said he had not but had seen it while driving by. I asked him if he had gone to any church in Bangkok. He responded that he did not know where the churches were and that he had been too busy. I asked him why he had written in his letter to the Tribunal that the applicant had taken him to her church. He responded that she had and that he had gone inside that church. He had not gone inside any other churches. I asked him how many times he had entered her church and he said two or three times. I asked him if he had attended any Nepali language services and he said that the services were in foreign language so it was hard for him and the applicant to understand. I asked him to say the first few lines of the Lord's Prayer and he responded something like "if you look on me I will look at you". I asked the applicant if there was any question she wished me to ask her witness and as a result asked him if he could say what he knew about her telling him about visiting prisoners in jail in country A. He responded that she had told him that she had visited jails, had prayed with prisoners and had told them they "should not worry". He said that he himself had never gone to the jail with her.

I told the applicant that her witness's evidence about whether he had gone to church with her had been internally contradictory and I had some doubts that he was a Christian or that his evidence was reliable. She responded that she had taken him to church but he was not a devout Christian. The migration agent submitted that perhaps the witness had not wanted to announce openly that he was a Christian and perhaps had not understood that the Tribunal was asking if he had ever actually been to the [Name of the church]. He also submitted that even if the witness was not credible that did not mean that the applicant was not an evangelical Christian.

The Tribunal agreed to wait one week for any further evidence or submissions. A submission was received from the migration agent, accompanied by two documents already submitted, plus an extract from the Kathmandu Post with 21 August 2006, an extract from Time magazine of September 2004, a United Nations document of September 2006, and the US State Department report on international religious freedom relating to Nepal, issued in September 2006. The migration agent submitted that the applicant could not avoid the persecution she feared by residing in a major city such as Kathmandu, as there was strong feeling among some Hindus in or around Kathmandu against non-Hindus including Christians. There was evidence of anti-Christian violence. It was further submitted that the law against proselytising and against conversion had not been repealed. Given the evidence of prosecutions for proselytising or alleged proselytising, and the persecution suffered by those so charged, the applicant's fear of persecution by the authorities for reason of her religion was well founded. Further it was stated that she was a young female rejected by her family. It was claimed that Nepalese society was highly discriminatory against women. It was observed that the US State Department country information submitted by the agent stated, for example, that laws requiring a woman to obtain the permission of her husband before she could get a passport or sell property were only very recently repealed. The Supreme Court had only recently ordered that the government repeal a practice which required women to stay "in a cow shed" while menstruating. The US report referred to "the general unwillingness among police, politicians, citizens, and governmental authorities to recognize violence against women as a problem". It was claimed that Nepal was a society where support was tied to one's family, and through the family, to one's community. She was estranged from her family and, by her rejection of Hinduism, from her "community of birth".

Evidence from other sources

Hindu converts to Christianity

In 2006 the U.S. State Department reported that Nepal's Constitution provided for freedom of religion and permitted the practice of all religions. The constitution described the country as a "Hindu Kingdom," but did not establish Hinduism as the state religion. The Government generally did not interfere with the practice of other religious groups and religious tolerance was broadly observed. However there were some restrictions. Government policy continued to contribute to the generally free practice of religion. When King Gyanendra handed power back to the political parties in April 2006, the reinstated parliament declared the country to be a secular state. No laws specifically affecting freedom of religion were changed. Article 19 of the Constitution of 1990 states that "Everyone shall have the freedom to profess and practice his own religion as handed down to him having due regard to ancient practices; provided that no person shall be entitled to convert another person from one religion to another," thus effectively prohibiting proselytism. During 2005 members of minority religions occasionally reported police harassment. The "generally amicable relationship among religious groups in society" contributed to religious freedom. Adherents of the country's many religious groups generally coexisted peacefully and respected all places of worship. Those who converted to another religious group "at times faced isolated incidents of violence and occasionally were ostracized socially, but generally they did not fear to admit their affiliations in public". Although there were no registration requirements for religious groups, there were registration requirements for NGOs. As a result of the constitutional prohibition against proselytism, it appeared the Government did not allow organizations to register using religious words within their titles. Christian religious organizations claimed that, unless registered, such organizations were restricted from owning land, an important step for establishing churches

or burial sites. Other non-Hindu groups had not made similar claims. In view of the illegality of proselytism, there were officially no foreign missionaries. However for decades dozens of Christian missionary hospitals, welfare organizations and schools had operated in the country. These organizations did not proselytize and otherwise operated freely. Missionary schools were among the most respected institutions of secondary education; many members of the governing and business elite graduated from Jesuit high schools. Foreign workers in the missionary hospitals and schools entered the country with visas designating them as technical workers for local or international NGOs sponsoring the hospitals and schools. If foreign workers were found to proselytize, they were expelled from the country. The Government applied these laws on immigration closely. Many foreign Christian organizations had direct ties to local churches and sponsored pastors for religious training abroad. The law prohibited converting others and proselytizing; these activities were punishable by fines, imprisonment or, for foreigners, expulsion. However, personal conversion was allowed. NGOs or individuals were allowed to file charges of proselytism against individuals or organizations. Some Christian groups were concerned that the ban on proselytism limited the expression of non-Hindu religious belief. The Government investigated reports of proselytism. There were no incidents of punishment for conversion or proselytism during the reporting period. In April 2005 police arrested a couple and investigated them for allegedly forcibly converting children. After being held in custody for several days, they were released by police. No charges were filed against them.

The report went on to say that some Christian groups reported that Hindu extremism had increased in recent years. Of particular concern were the local affiliates of the India-based Hindu political party Shiv Sena, locally known as Pashupati Sena, Shiv Sena Nepal, and Nepal Shivsena. Government policy did not support Hindu extremism, although some political figures had made public statements critical of Christian missionary activities. Some citizens were wary of proselytizing and conversion by Christians and viewed the growth of Christianity with concern. There were unconfirmed reports that Maoists suppressed religious observance in areas under their control through intimidation and harassment.

Those who chose to convert to other religions, in particular Hindu citizens who converted to Islam or Christianity, sometimes were ostracized socially. They occasionally faced isolated incidents of hostility or discrimination from Hindu extremist groups. Some reportedly were forced to leave their villages. While this prejudice was not systematic, it was at times vehement and occasionally violent. Nevertheless, converts generally were not afraid to admit in public their new religious affiliations (2006, Nepal: International Religious Freedom Report 2005, U.S. Department of State, released by the Bureau of Democracy, Human Rights, and Labor, 15 September).

Of those who had had contact with missionaries and become Christian, who were living in isolated minorities in villages dominated by Hindus and Buddhists, the situation was “rather difficult ... because they are looked down by the other as impure. Exchange of food and marriages are just not possible between Christians and non-Christians... [T]he new Christian minorities do not yet feel fully secured either politically or juridically...[C]onversion is now legal; but proselytism is not; and are only tolerated” (Hussain, M. & Ghosh, L. 2002, Religious Minorities in South East Asia’ , Manak Publications, New Delhi, pp. 101-103).

The Tribunal notes that proselytising was expressly prohibited under Nepalese law. Clause 1 of the 1990 Constitution stated, in part, that “no person shall be entitled to convert another person from one religion to another”. Likewise section 3(A)(1) of 1992 Civil Code provided

that “[n]o person shall propagate any religion in a manner likely to undermine another religion, or convert any one into another religion”. Section 3(A)(1) of the Civil Code also provided that:

In case he [the offender] has only made an attempt to do so, he will be punished with imprisonment not more than three years. In case he has already converted any one into another religion, he shall be punished with imprisonment for not more than six years. If he is a foreign national, he shall be deported from Nepal after completing such sentence (Regional Centre for Strategic Studies 1999, *New Evangelical Movements and Conflicts in South Asia, Sri Lanka and Nepal in Perspective*, ‘Christianity in Nepal: A Brief Historical Outline’, December http://www.rcss.org/policy_studies/ps_5_4.html - accessed 4 April 2003).

However, as noted above, it appeared that the state did not normally initiate and conduct legal proceedings against people for proselytising. As indicated by the Asian Centre for Theology and Mission in 2000:

...of the many Nepali citizens who have been converted to Christ and baptized, only a very few have been arrested, brought to trial, and given jail sentences. His Majesty's government has chosen to take an attitude of “benign neglect” toward the law. Conversion to Christ is considered a “non-cognizable” offense, and arrest and prosecution will be made only if someone makes a definite and determined complaint and charge against the new Christian (‘Nepal’ 2000, The Asian Center for Theology and Mission - Resource Centre website <http://www.acts.edu/oldmissions/nepalhist.html> - accessed 24 August 2005).

This accorded generally with most recent reports of people being prosecuted for proselytising (‘Four Christians Released in Nepal’ 2001, Christianity Today website, 12 February <http://www.christianitytoday.com/ct/2001/107/37.0.html> - accessed 23 August 2005; US Department of State 2004, *Nepal: International Religious Freedom Report for 2004*, 15 September; ‘Indian couple arrested on charges of religious conversion’ 2005, *The Hindustan Times*, 30 April). In 2005 an Indian couple who ran a school for orphans in southern Nepal were arrested “for their alleged involvement in converting students to Christianity”. As indicated by the sources consulted, the couple “were taken into custody by district authorities after complaints were received that “the couple were forcing students of the school to adopt Christianity”. They were detained for about 2 weeks before being released (‘Indian couple arrested on charges of religious conversion’ 2005, *The Hindustan Times*, 30 April; ‘Indian couple held in Nepal for alleged conversions’ 2005, *The Hindustan Times*, 29 April; ‘Nepal “Releases” Christian Couple, But Hindu Militants Plan Protests, Human Rights Group Says’ 2005, Worthy News website, sourced from BosNewsLife Center, 13 May <http://www.worthynews.com/print.php> - accessed 25 August 2005; Page, S. 2005, ‘Nepal accuses couple of “forcibly converting minors”’: Bab and Sabitri Varghese imprisoned, await trial’, Human Rights Without Frontiers website, sourced from Compass, 10 May http://www.hrwf.net/html/2005PDF/Nepal_2005.pdf - accessed 25 August 2005). The best known case of prosecution for proselytising occurred in 2000 when a Norwegian national was arrested with Nepalese and Indian nationals, on the allegedly trumped up charge of proselytising. He was detained for three and a half months before the case against him was dismissed at trial. According to media accounts he was arrested after “being attacked by a mob. It was led by a man who claimed the Norwegian church had promised to pay him \$1,000 if he converted” (‘Four Christians Released in Nepal’ 2001, Christianity Today

website, 12 February <http://www.christianitytoday.com/ct/2001/107/37.0.html> - accessed 23 August 2005; 'Indian couple held in Nepal for alleged conversions' 2005, *The Hindustan Times*, 29 April).

Of social ostracism of converts, Christian sources report that "Christians still face ostracism and isolation from family members, neighborhoods and even entire villages in many cases" ('Where folks go to church on Saturday' 2004, Global Ministries website, September <http://www.globalministries.org/missionaries/sa10-wr3.htm> - accessed 31 August 2005). Christian sources also assert that the repercussions of converting can "include...being killed" ('Nepal' 2000, Mission Review website cache of <http://missionreview.com/index.php?loc=ct&ct=NPL&> - accessed 31 August 2005). The threat of social ostracism faced by Christian converts appeared to be particularly acute in south Asia because, as noted by the Regional Centre for Strategic Studies and others, evangelical movements in the region emphasised "total conversion, and a break from society, inclusive of its cultural ties" ('Conclusion: The Activities of Christian Evangelical Groups, and the Possibility of Conflict and Violence in South Asia?' u/d, Regional Centre for Strategic Studies website http://www.rcss.org/policy_studies/ps_5_5.html - accessed 31 July 2003; 'Gaborieau, M. 2002, 'Christian Minorities in the Hindu Kingdom of Nepal', in M. Hussain and L. Ghosh eds., *Religious Minorities in South Asia: Selected Essays on Post-Colonial Situations*, Volume 1, Bangladesh, Pakistan, Nepal, Sri Lanka, Manak Publications, New Delhi, p. 99). Writing about the evangelical movement in Nepal, the Regional Centre for Strategic Studies observed that the decision to become a Christian in Nepal is "wrought with fear, guilt, stress, and the constant worry of being ostracized" ('Conclusion: The Activities of Christian Evangelical Groups, and the Possibility of Conflict and Violence in South Asia?' u/d, Regional Centre for Strategic Studies website, http://www.rcss.org/policy_studies/ps_5_5.html - accessed 31 July 2003). A report by International Christian Concern demonstrated community antipathy to conversion in rural tribal communities of Nepal ('Murder and Forgiveness in Tribal Village' 2005, International Christian Concern website, 20 June <http://www.persecution.org/newsite/newsdetail.php?newscode=1010> - accessed 25 August).

There have been claims that the authorities were sometimes involved in the mistreatment of Christians, including converts and alleged proselytisers. Police had allegedly killed pastors ('Christians in Crisis Prayer Alert' 2005, Christians in Crisis website. May <http://www.christiansincrisis.net/pdf/May2005.pdf> - accessed 25 August 2005; 'Christians pressure on Hindu King' 1999, Nepal News website, 23 August <http://www.nepalnews.com.np/contents/englishweekly/awake/1-95/f-pagers.htm> - accessed 26 August 2005); police had arrested individuals for suspected proselytising of their own accord or on the basis of false allegations made by individual complainants ('Four Christians released in Nepal' 2001, *Christianity Today* website, 12 February <http://www.christianitytoday.com/ct/2001/107/37.0.html> - accessed 23 August 2005; Indian couple held in Nepal for alleged conversions' 2005, *The Hindustan Times*, 29 April).

Of reports of the Maoists targeting Christians, a variety of sources report that Christians and Christian institutions had been targeted by Maoist rebels in rural areas (see 'Pray for the Persecuted of Nepal' 2005, *Christian Monitor* website, 8 August, http://www.christianmonitor.org/documents.php?type=Prayers&lang=English&item_ID=216&action=display& - accessed 23 August 2005; 'Seven killed by Maoist ambush' 2005, *Gulf Times* online edition, 24 July http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=45655&

version=1&template_id=44&parent_id=24 – accessed 22 August 2005; Henderson, M. K. 2005, 'Nepal: Christianity growing in spite of a nation in turmoil', ASSIST News Service website, 9 July <http://www.assistnews.net/Stories/s05070030.htm> - accessed 23 August 2005; 'Pastor continues ministry even after beatings' 2005, John Mark Ministries website, 23 May <http://jmm.aaa.net.au/articles/15136.htm> - accessed 23 August 2005; Stephen, A, 2005, 'Terror on Top of the World' 2004, *Christianity Today* website, July <http://www.christianitytoday.com/ct/2004/007/24.21.html> - accessed 23 August 2005).

As to whether there were parts of Nepal, particularly Kathmandu, where Christians could safely live and practise their faith, the sources consulted mostly indicated that Christians could safely practise their faith in many parts of Nepal. As indicated by Christian Solidarity Worldwide:

In practice, there is relative freedom for Christians to assemble and worship. Non-Hindus are allowed to offer religious education and to sell religious books...

[However] Christians experience registration problems. Churches cannot be registered with the government or own property... Because the Christian community is not legally recognised, no land is provided for Christian burial. After experiencing great difficulties, a Christian School has been allowed to become the first Educational Trust to register in Nepal. But no body or organisation can be recognised with "Christian" in its name.

On the whole Nepal allowed non-Hindus to practice their religion and to maintain their places of worship. However, Christians suffer discrimination in every day life. For example, they are routinely denied employment in public services such as the police and army. While such discrimination still exists, it is inaccurate to assert that there is full religious freedom and equality for adherents of all faiths (Christian Solidarity Worldwide 2005, Country Profile - Nepal, June <http://www.csw.org.uk/Resources/Profiles/images/Nepal.pdf> - accessed 29 August 2005).

Another report by *Christianity Today* from 2000 provides the following account of religious freedom in Kathmandu:

It is Saturday in Nepal, and hundreds of people dressed in their best churchgoing clothes crowd together outside a large hall in the capital city [*sic*] of Kathmandu.

Saluting each other with folded hands and saying "Jai Masih" (the Nepali expression for "Praise the Lord"), they take off their shoes, making their way inside to squat on a carpeted floor just before 10:30 a.m. Except for a handful of expatriates, the Nepali Isai Mandali (Gyaneshwor) Church is filled with first-generation Nepali Christians who have braved social and religious constraints to follow Jesus Christ. Every inch of space is taken and those who are late reluctantly sit outside. At the first strains of a Nepali song, all 2,000 hands, young and old, lift in praise to God. This amazing sight brings tears to my eyes. Ten years ago an open church meeting of this nature would have been impossible. The days when government agents infiltrated churches as spies, and Christians were persecuted or imprisoned, are also long gone...

From 15,000 in 1970 to an estimated 400,000 Christians today, Nepal has one of the fastest-growing Christian populations among the 3.6 billion people throughout Asia's 51 countries, according to scholars in Christian missions...

Although there are thousands of Christians in Katmandu, their presence is barely discernible. The sole traditional churchlike structure in Katmandu is Catholic and lies secluded off a main road set among houses. After meeting informally for five decades in the Jesuit run St. Xavier's School, the Catholics registered as a nonreligious, non government organization in 1993, calling it the Nepal Catholic Society. This gave them the right to buy property for the community. ...

Other believers meet in homes and rented halls, but there are no signboards to announce the Christian presence. For example, Gyaneshwor Church is identified by a small sign at the gate, while Christian offices and bookshops are not identified at all. Christian groups are not allowed to register with the government as openly Christian...

The pursuit of religious freedom, outside of Hinduism or Buddhism, has had a painful history in Nepal. Hindu and Buddhist traditions formed a historic bulwark against the growth of Christianity...

Under Panchayat, Christians (as well as other distrusted groups) were persecuted and at least 300 pastors and Christians were jailed. Many Christians suffered police brutality, and at least one died because of it. Through this difficult time, the church was driven underground and Nepali Christians practiced secret lives of prayer...

Since most Nepali congregations are the result of work by Nepalis themselves, Christians from Nepal are evangelists at heart. Nepali Christians - many of whom are illiterate - share the gospel frequently and informally, sometimes over a cup of hot tea. Crusade-style evangelism is unknown to them...

Public criticism of Christianity is accepted and vitriolic. For the past year, Nepal's mass media have launched an extensive campaign against Christians, accusing them of destroying the Nepalese culture...

After suffering for years, the church in Nepal has found strength in spite of persecution. Now that overt religious persecution has declined, Christians in Nepal are reassessing their purpose and overall mission. One enduring realization is that Christians in Nepal remain vulnerable. There were several incidents of official harassment in 1999. If Nepali law is strictly enforced, severe restrictions on Christians could again be in effect. Faced with this dilemma, Nepali Christians ask themselves: Does the church in Nepal fear persecution in the future? It is a question that many do not want to consider. (Stephen 2000).

As to which evangelical Christian groups operated in Nepal and whether they reported harm, Nepal was apparently home to a plethora of Christian groups and had become "a mission tourist center" (Stephen 2000). According to Gaborieau "there are about 200 protestant churches of various denominations in Kathmandu" alone. Furthermore:

[n]ow that preaching is done openly, it is possible to locate the large variety of Protestant denominations who are active all over the country: Lutherians [sic], Baptists, Presbyterians, Methodists, Anglicans, Evangelicals, Adventists of the seventh day, Mormons, Witnesses of Jehovah, Pentecostists etc. There does not seem to be a common umbrella organisation uniting all these denominations: but three organisations which are actively engaged in uniting several of them, are The United Mission to Nepal (the oldest one established from the 1950s), The Nepal Christian Fellowship and the Nepal Bible Society (Gaborieau, M. 2002, 'Christian Minorities in the Hindu Kingdom of Nepal', in M. Hussain and L. Ghosh eds., *Religious Minorities in South Asia: Selected Essays on Post-Colonial Situations*, Volume 1, Bangladesh, Pakistan, Nepal, Sri Lanka, Manak Publications, New Delhi, pp. 101-103).

According to Christianity Today:

From 15,000 in 1970 to an estimated 400,000 Christians today, Nepal has one of the fastest-growing Christian populations among the 3.6 billion people throughout Asia's 51 countries, according to scholars in Christian missions...

...Today, more than a dozen American mission groups have more than 100 personnel in Nepal. In most cases, the Nepali government requires outside agencies to agree not to proselytize...

...Christians are encouraged to join small groups after their baptism. Nearly 300 such fellowships have mushroomed in Katmandu. But over the years, those fellowships have led to denominational association (which was unknown before 1990) and, in a few cases, splintered congregations... (Stephen 2000).

In its undated report on the evangelical movement in South Asia, the Regional Centre for Strategic Studies provided an "incomplete list" of 55 of the main evangelical/Protestant congregations operating in Nepal: United Mission to Nepal, Nepal Christian Fellowship, International Nepal Fellowship, Nava Jeevan Church, The Children of God, The Four Square Church, Assemblies of God, Baptist Missionary Society, UK, Christian Church (Disciples of Christ), Church Missionary Society, Church of North India, Church of Scotland, Church of South India, Lutheran World Service, World Vision, Committee for Service Overseas, Danish Santal Mission, Evangelical Free Church of Finland, Evangelical Lutheran Church in America, Finnish Evangelical Lutheran Mission, Gossner Mission, Interserve/ BMMF, Japan Antioch Mission, Japan Overseas Christian Medical Cooperative Service, Korea Christian Medico-Evangelical Association, Campus Crusade for Christ, Mennonite Board of Missions, Mennonite Central Committee, Norwegian Himal-Asia Mission, Orebro Mission, Presbyterian Church in Canada, Presbyterian Church in Ireland, Presbyterian Church in Korea, Presbyterian Church Synod of Mizoram, India, Presbyterian Church USA, Regions Beyond Missionary Union, Swedish Free Mission, Swiss Friends for Missions in India and Nepal, Tear Fund, United Church of Canada, United Church of Christ in Japan, United Methodist Church (USA), Wesleyan Church, World Concern, USA, World Mission Prayer League, Nepal Every Home Concern, Adventist Development and Relief Agency, Jehovah's Witness, The Evangelical Alliance Mission, The Mormon Church, Nepal Bible Society, Good News of Nepal, Bible Training Centre for Pastors, Morning Pastors Fellowship, Gathsamani Church (Regional Centre for Strategic Studies 1999, *New Evangelical Movements and Conflicts in South Asia, Sri Lanka and Nepal in Perspective*, 'Christianity in

Nepal: A Brief Historical Outline', December
http://www.rcss.org/policy_studies/ps_5_4.html - accessed 4 April 2003).

There appears to have been vigorous growth in Christian, and evangelical Christian, activity in Nepal over recent years. In 1999 Dr Sasanka Perera published a study of evangelism in South Asia (Centre for Strategic Studies, 1999). In it he stated that the number of Christians in Nepal rose from some 50 in 1950, to 25,000-30,000 by 1990, and that by 1993 there were over 100,000. By 2006 the US Department of State reported that Christian leaders estimated the number of adherents at approximately 400,000 and press reports indicated that 170 Christian churches operated in Kathmandu alone (US Department of State, 2006).

Dr Perera, discussing evangelism in Nepal, states:

... one important socio-political context to situate the expansion of evangelism in Nepal is the relaxation of the legal restrictions governing religious mobility. This has ensured that a significant expansion has occurred not only in the overall numbers of individual Christians, but also in the institutional presence and influence of the collective evangelical movement. For instance, in 1993 there were 150 different evangelical or Protestant churches organized under the umbrella organization Nepal Christian Fellowship ... Similarly, in 1990 the United Mission to Nepal alone brought together 37 separate evangelical churches from about 16 countries ... In 1997 that number had increased to 50 churches or church related organizations from 16 countries ... Similarly, in 1990 the International Nepal Fellowship claimed to have 100 members from approximately 15 countries with home councils in Australia, Holland, New Zealand, the Philippines, and so on ... By 1993, Christian sources suggested that there were at least one church in each of the 75 districts in Nepal, and in the same year the Kathmandu Valley alone is supposed to have had 100 churches and congregations ... Some evangelical sources have suggested that there are at least 80 churches in the Kathmandu Valley ... Nepali Jesuit sources in interviews suggested that the number of evangelical churches and para-church groups in the country in 1998 were over three hundred, even though it was not possible to acquire accurate figures from them or evangelical sources. On the other hand, Fr. John Locke of the Nepali Jesuits believes that in numbers alone, the collective congregations of evangelical/ Protestant Christians now outnumber Catholics in Nepal despite Catholicism's much longer institutional presence in the country.

A restricted search revealed that two of the abovementioned groups had filed reports of harm ('INF report escapes bus blaze' 2005, International Nepal Fellowship website, 5 April http://www.inf.org/news/20050405_01_01.html - accessed 31 August 2005; 'LWF regional office in Nepal damaged in bomb explosion' 2004, Lutheran World Federation website, 29 April <http://www.lutheranworld.org/News/LWI/EN/1442.EN.html> - accessed 31 August 2005; Stephen, A, 2005, 'Terror on Top of the World' 2004, *Christianity Today* website, July <http://www.christianitytoday.com/ct/2004/007/24.21.html> - accessed 23 August 2005).

In 2006 the U.S. State Department said that Christian denominations were few but growing. Christian leaders estimated the number of adherents at approximately 400 thousand. Press reports indicated that 170 Christian churches operated in Kathmandu alone.

Of harassment of Christians by Maoists, the report said that Maoist insurgents restricted religious freedom in parts of the country. There were regular reports of Maoists enforcing a

"people's calendar" in schools that did not allow for religious holidays. Maoists sometimes demanded the use of religious organization grounds for their indoctrination programs, threatening to padlock the buildings if their demands were refused. The National Churches Fellowship of Nepal reported several cases where Maoists extorted cash from churches. The Maoists threatened retribution against church property and church members if the congregations did not meet their demands. In 2004 a group of Maoists abducted a Royal Nepal Army priest from Ramechhap District. He was held for several days before being released unharmed. Also in 2004 Maoists exploded a bomb and forced the closure of St. Joseph's school in Pokhara. In 2004, Maoist threats prompted the temporary closing of twenty-one churches in one rural District. Of the Maoists attitude to Shiv Sena, the Hindu religious organization, the report said that in 2004 Maoists shot dead the Chief of Shiv Sena Nepal.

Recent political developments

The CPN(M) has signed a peace deal with the government. In a recent report, Georgia Southern University's Dr. Dharma Adhikari expressed the view that "after two failed peace deals, in 2001 and 2003, this [2006] accord offers genuine prospects of peace", while going on to express reservations about these prospects and to note that "[d]espite the accord, [Maoist] excesses, in the form of abductions, extortions, recruiting, and forced labor, continue". He wrote:

The news last month from Kathmandu, Nepal's capital, came as a rare and surprising bout of joy. The country's prime minister and the leader of an insurgent Maoist group signed an agreement to end the bloody 11-year civil war that has killed 13,000 people, displaced up to 200,000 more, and caused untold human suffering.

The joy is justified because, after two failed peace deals, in 2001 and 2003, this accord offers genuine prospects of peace for the nearly 30 million people who live in the impoverished, Himalayan country.

...The historic deal enjoins the government and the Maoists to lock up their arms under UN supervision. That should help create an environment for a free and fair election to the Constituent Assembly (CA), slated for June 2007.

...In recent months, Prachanda (which means "the fierce one") has dropped calls for a communist republic, settling instead for a competitive, multiparty democracy. He has admitted that a purely Maoist utopia is now geopolitically impossible. By all indications, he is going mainstream.

...Behind the overture and joy, however, is a more-complex message. Nepal's challenge now is to manage an insurgent democracy radicalized by the ultraleft. Democratic peace is far from won.

Monitoring arms and elections will not be easy. There is no guarantee that the Maoists will report all their weapons. Despite the accord, their excesses, in the form of abductions, extortions, recruiting, and forced labor, continue (Adhikari, D. 2006, 'Joy and caution in Nepal's peace deal', *Christian Science Monitor* website, 5 December <http://www.csmonitor.com/2006/1205/p09s01-coop.html> – accessed 5 December 2006).

Of recent activities by Maoist cadres in Kathmandu, there have been a few reports. On 1 December 2006 it was reported that college students were injured as members of the Maoist-affiliated All Nepal National Free Students Union (Revolutionary) clashed with those belonging to the Nepal Students Union, a pro-Nepali Congress students wing, after a verbal squabble with the NSU students. The Maoists beat the members of the student union ('Scores of college students in Nepal injured in clashes' 2006, *Press Trust of India*, 1 December). *BBC Monitoring South Asia* noted some reports in the local press of the activities of Maoist cadres in Kathmandu area, examples being that a group of cadres kidnapped and tortured three students affiliated to All Nepal National Free Students' Union about 10 kilometres east of Kathmandu ('Nepal press selection list 29 Nov 06' 2006, *BBC Monitoring South Asia*, source: Kathmandu Post, 29 November), and that five days after the signing of the Comprehensive Peace Agreement with the government, Maoist cadres entered the residence of a foreign national in Lalitpur and threatened those in the house with "stern action" if they failed to comply with the Maoists' demands ('Nepal press selection list 27 Nov 06' 2006, *BBC Monitoring South Asia*, source: Kathmandu Post, 27 November).

BBC Monitoring South Asia has regularly cited reports from the local press on the activities of Maoist cadres in areas outside the Kathmandu Valley. They report instances of both violations of, and actions in accordance with, the peace agreement terms ('Nepal press selection list 6 Dec 06' 2006, *BBC Monitoring South Asia*, source: Kathmandu Post, 6 December; 'Nepal press selection list 6 Dec 06' 2006, *BBC Monitoring South Asia*, source: Himalayan Times, 6 December; 'Nepal press selection list 6 Dec 06' 2006, *BBC Monitoring South Asia*, source: Rising Nepal, 6 December; 'Nepal press selection list 6 Dec 06' 2006, *BBC Monitoring South Asia*, source: Rajdhani, 6 December; 'Nepal press selection list 6 Dec 06' 2006, *BBC Monitoring South Asia*, source: Nepal Samacharpatra, 6 December; 'Nepal press selection list 29 Nov 06' 2006, *BBC Monitoring South Asia*, source: Kathmandu Post, 29 November; 'Nepal press selection list 29 Nov 06' 2006, *BBC Monitoring South Asia*, source: Himalayan Times, 29 November; 'Nepal press selection list 27 Nov 06' 2006, *BBC Monitoring South Asia*, source: Kathmandu Post, 27 November; 'Nepal press selection list 27 Nov 06' 2006, *BBC Monitoring South Asia*, source: Himalayan Times, 27 November; 'Nepal press selection list 27 Nov 06' 2006, *BBC Monitoring South Asia*, source: Nepal Samacharpatra, 27 November).

The [Name] caste

Of the [Name], the caste of which the applicant claims to be a member, the Tribunal notes evidence that in general Nepal is a country of multi-ethnic and multi-caste groups and cultures of which the *named caste* is one. The urban *named caste* are mostly educated, and commerce and business have become their main occupations which, according to this source, is why they are more capable of going abroad in order to gain higher education. The Significance of a Farm Labor Exchange System among Indigenous Peasants in Nepal", Master Program in Indigenous Studies, Thesis submitted for the degree: Master of Philosophy in Indigenous Studies, Faculty of Social Sciences, University of Tromsø, Norway).

FINDINGS AND REASONS

The applicant submitted a Nepalese passport in her own name. I am satisfied that this is her passport. I am therefore satisfied, and find, that the applicant is a national of Nepal.

I have concerns about the plausibility of some aspects of her account. Firstly, she claimed that she became a Christian while in Nepal. However she later gave evidence that, apart from her contact of two months duration with a female foreigner in early [Year], she had done little else in this regard, despite remaining in Nepal until late [Year]. She did not know the name of this woman's church, had not asked this woman to introduce her to local Christians, had had no subsequent contact with her and had not attended a Christian religious service while in Nepal. She provided no cogent explanation as to why she had not attempted to attend church in Kathmandu. At no time since then, whether during her subsequent visits to Nepal, or while in country A, had she tried to make contact with any Christian group in Nepal. It is apparent that, while she may have developed some interest in Christianity in Nepal, she did not become a Christian while there. Secondly, in writing to the Tribunal she claimed to have attended Nepali-language church services in country A, but later gave evidence that the services were not conducted in Nepali, or indeed any language she understood. She did not claim to have made any attempt to locate a church which offered services in a language she did understand, including in English, during her number of years in country A. I infer from this that she has exaggerated the extent of her interest in Christianity prior to her arrival in Australia. That in turn casts doubt on the plausibility of her claim that she had a serious falling out with her family while most recently visiting Nepal because of her attempt to evangelise within the family.

It is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. However this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention. Evidence has been submitted, and I accept, that the applicant has been attending church in Sydney since her arrival and is perceived by its pastor to be a genuine convert. Notwithstanding my view that she has exaggerated the extent of her interest in Christianity while in Nepal and country A, I am not able to make a finding with confidence that she does not now consider herself to be a Christian. I cannot be satisfied that she attended church here for the purpose of strengthening her claims to be a refugee. I have considered her claims on that basis.

I am satisfied that Nepal's Constitution prohibits activities of people who engage in the religious conversion of others, an activity punishable by fines or imprisonment for citizens of Nepal. I accept that such treatment has the potential to amount to persecution. However, I consider the evidence reliable that personal conversion is allowed (US State Department 2006), and that converts generally do not fear to admit their affiliations in public.

The applicant gave evidence that, since arriving in Australia (or at any time) she has made no enquiries about Christian communities in Kathmandu or her likely reception by them if she were to return to Nepal. However, on the basis of the evidence from other sources set out above (see the US State Department 2006, which refers to over 170 churches in Kathmandu, and over 400,000 Christians across the country), I am satisfied that there are numerous Christian, including evangelical Christian, communities in Kathmandu and that their members are predominantly Nepalese, like herself. I am satisfied that most have converted from other religions, including Hinduism. I infer from this that the applicant would be made welcome in such communities, and could live and worship among them.

I am satisfied, as noted above, that personal conversion from Hinduism to Christianity is allowed in Nepal, in the sense that there is no official penalty for such conversion. I am therefore satisfied that her personal conversion would attract no penalty.

As to societal responses to her conversion, I have expressed some doubt that the applicant was estranged from her family when she was last in Nepal after an argument about her conversion. However it possible that there was some disagreement because of her interest in Christianity, and I have considered the consequences for her if that claim were true, or if in future her family or community came to believe that she had converted. She has claimed in writing that her family members might harm her if she returns to Nepal because of her conversion. However, she has not claimed that her family ever threatened to seriously harm her after the argument during her most recent visit but, rather, that they told her to leave the family home. She told the Tribunal that she went to stay with a friend, but did not claim that her family members threatened or tried to harm her there. I am satisfied they did not. Further, she also told the Tribunal that she would not contact her family and they would not contact her if she returned to Nepal, and that it would be as if she had “no family”. In light of all this, I am satisfied that the chance of her family harming her in the reasonably foreseeable future is remote.

She has also claimed that members of her own caste might attack her to make her revert to Hinduism if she returns to Kathmandu. While I accept that she may have this concern, this appears to be no more than speculation on her part, as she received no such threats before her departure, has had no further contact with her family or members of her caste since then and does not claim that she intends to contact community members if she returns to Nepal. I have regard to the evidence from the US State Department (2006) that Hindus who convert to other religions are “sometimes ... ostracized socially”, that some have been “forced to leave their villages”, and that prejudice can be “vehement” and “occasionally” violent. However this evidence also observes that this prejudice is not “systematic”, refers primarily to problems which occur in rural areas, rather than urban areas like Kathmandu, and observes that nevertheless “converts generally are not afraid to admit in public their religious affiliations”. On the basis of this evidence I do not consider there is a real chance that any religiously-motivated ill feeling towards the applicant by members of her own caste might give rise to her being persecuted.

As to the written claim that she would be a member of a foreign-based evangelical church in Nepal, and would evangelise, as a result of which she would face persecution by the state, by Maoists and/or by Hindu extremists, I have had regard to the following. The applicant gave evidence that she would conduct the activities she considered to be “evangelical” in the way (according to the evidence from Stephen 2000) most Nepalese Christians do. As put to her at the hearing, this was “sharing the gospel over a cup of hot tea” - in other words, frequently and informally, in social situations. The applicant said that if she met someone socially she would tell them about her beliefs if she “thought they would be interested”. If they were happy with their own religion she would respect that and would not pursue the subject. In my view the applicant wishes to practise her religion in the same way as the vast majority of Christian converts in Nepal, who I am satisfied benefit from the “generally amicable relationship among religious groups in society” referred to by the US State Department (2006). Having considered the evidence from the various external sources above, I am satisfied that this is not the type of activity which has generally attracted either societal harm, by Maoists or extremist Hindus, or harassment or prosecution by the authorities in the past. It is not the type of “proselytising” activity which is regarded as illegal by the authorities. The

applicant was invited to submit any evidence to the Tribunal which might point to recent incidents of Nepalese Christians, including evangelical Christians, being subjected to serious harm in Kathmandu. One source submitted referred to an unconfirmed allegation of vandalism of a Christian cemetery near Kathmandu in 2006, which was attributed to Hindus in the area who did not want it there. However in my view the material submitted did not support the claim that Nepalese Christians, or evangelical Christians, in Kathmandu were facing “serious harm” and systematic and discriminatory conduct because of their religion, or because of a political opinion imputed to them.

I accept that some Christians, or converts to Christianity, face occasional discrimination in some areas of public sector employment, and from some members of the wider community. However for the reasons set out above I am satisfied that the applicant does not have a well-founded fear of persecution because of her conversion to Christianity, or because of the type of evangelical activity in which she wishes to be engaged in Nepal.

Of her claim that her mother had received two letters from Maoists demanding money, on the basis that the applicant was working abroad, I have considered the following. I accept that the Maoists routinely used extortion of money from civilians as a means of raising funds, and that during 2005 Maoists were regularly extorting money from businesses, workers and NGOs (2006, US State Department, Country Reports on Human Rights Practices - 2005). It is therefore plausible that the applicant’s family were among the numerous Nepalese who were being pressured to make “donations” to the Maoists during 2005.

The applicant claimed at hearing that the second letter, which was delivered in her presence, said that “your daughter is working [Employment history removed under section 431 of the Migration Act 1958]. [She] has worked there for several years so has earned lots of money and as we are raising donations for activities from everyone else we expect you also to donate to us”. While I accept that there continues to be some extortion activity by Maoists (see Christian Science Monitor 2006), despite the recent peace accord, the Tribunal has no evidence before it that there were any further extortion demands of the family after [Year] or that, even if there were, they are continuing. It is possible that they have ceased in some areas because of the political changes which have occurred in the last few months. The Tribunal has no way of knowing whether that is so in relation to the applicant’s family. However further, by 2005 most ordinary Nepalese were terrified of the Maoists, who were acting with impunity in much of the country and had killed numerous civilians. By 2003 they were operating inside Kathmandu and were “able to strike at anyone, anytime, anywhere” (Perry, A. 2003, ‘Living on the Brink’, Time Asia online edition, 8 September <http://www.time.com/time/asia/magazine/article/0,13673,501030915-483345,00.html> – accessed 29 April 2004). I accept that when individuals refused or were unable to pay the Maoists in 2005, retribution was often violent (2006, US State Department, Country Reports on Human Rights Practices - 2005). Under these circumstances, in my view, if the applicant had had personal contact with members of the CPN(M) when they delivered an extortion demand which was “frighten[ing]” and which described her as an employee of their then-“enemy”, the government, she would have referred to this immediately when asked during the Tribunal hearing about the problems she had had when visiting Nepal, and would also have referred to it in her written statement to the Tribunal, or through her adviser when preparing submissions to the Tribunal. As she did not do so, I do not consider plausible her claim that she had any contact with the Maoists, or that they have any interest in her or her whereabouts. The chance is remote that she would be harmed by members of the CPN(M) in

Nepal because of a political opinion imputed to her because of her past employment in a Nepalese embassy abroad.

As to the belated claim by the agent that women, or by implication women estranged from their families, face discrimination in Nepal, the applicant herself did not refer to any instances in which she had suffered from such discrimination in the past, and did not express a fear of any particular discrimination on that basis in future. Her evidence indicated that she had a reasonable level of education and been employed in a highly desirable position for some years. It was not explained how the evidence submitted in support of the contention that women in Nepal have faced discriminatory treatment might relate to the applicant, and nothing in her own account pointed to a real chance of her facing a real chance of persecution because she was a woman, or a woman estranged from her family. Therefore I am not satisfied that she has a well-founded fear of persecution on that basis.

For the above reasons the Tribunal finds that the applicant does not have a well-founded fear of Convention-related persecution in Nepal.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore she does not satisfy the criterion set out in s.36(2) for a protection visa.

DECISION

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.

Sealing Officer's I.D. PRIKSA