

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76128

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	E Griffin
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	19 & 20 February 2008
<u>Date of Decision:</u>	26 March 2008

DECISION

[1] This is an abridged version of the decision. In this appeal, certain particulars appear in truncated form or have been removed in total pursuant to s129T of the Immigration Act 1987. Those parts which have been truncated appear in square brackets. Those parts removed altogether are identified by an ellipsis and also appear in square brackets.

[2] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of Bangladesh.

INTRODUCTION

[3] The appellant claims to have a well-founded fear of being persecuted in Bangladesh arising from his activities for a Buddhist charitable organisation and because of his status as a Buddhist monk in the Chittagong region of Bangladesh. What follows is a summary of his evidence in support of his claim. An assessment will follow thereafter.

THE APPELLANT'S CASE

[4] The appellant was born in W, a small village in the Chittagong region of Bangladesh in the late 1970s. He attended the local Buddhist temple and decided at an early age that he wanted to become a monk. When aged about 13 the appellant left his home and began training to become a monk. He continued with his secular education. While at school he encountered isolated and minor harassment and discrimination on an occasional basis. The appellant completed his college education at the end of 1997.

[5] In February 1998, the appellant received his ordination as a monk after completing a course held at a training and meditation centre established by a Buddhist welfare organisation, OOO. After his ordination, the appellant became a monk at a temple in X village (X temple), a position he held until his eventual departure from Bangladesh. He was given the responsibility of running the orphanage as well as performing some administrative tasks surrounding the novices.

[6] In 1999, the appellant enrolled at a University. He considered a tertiary education essential if he was to be able to achieve his goal which was to dedicate his life to the advancement of the Buddhist community in Bangladesh. Student wings of Muslim groups were very active on campus and the appellant was often insulted by them while on campus, as were other Buddhist monks. Nevertheless, he graduated in 2002.

[7] Also in 1999, the appellant joined the OOO. He had been attracted to this organisation because it was engaged in charitable works in support of the Bangladeshi Buddhist community. Shortly after joining, the appellant approached the OOO committee and sought approval for a project he wished to undertake [...].

[8] He outlined his proposal to the OOO committee [...]. The OOO committee warned him that he might face difficulties in establishing this programme, but supported him and agreed to fund the project.

[9] The appellant began approaching monks at village temples situated across the region. The monks he spoke to were generally very enthusiastic about this initiative [...].

[10] By August 2000, the appellant's initiative had taken hold in [many] villages throughout the CHT region. At around this time the appellant and other monks

involved began experiencing problems with the local Muslim branch of *Jamat-e-Islami* Party (JIB). In July 2000, AA, the local JIB leader and Union Chairman, together with a number of JIB associates, came to X temple. AA told the appellant that he must stop the activities at X temple and all the other temples throughout the region. The appellant protested [...]. AA replied that Bangladesh was not his country and that he could not simply do what he wanted. The appellant ignored AA and continued with the programme [...].

[11] Over the next few months, AA and other JIB members came back to X temple on two occasions and again repeated their demands. On the second occasion they were armed and pushed the appellant. They said that if they had to come a third time he would be killed. The appellant was aware of visits to a number of other monks running the programme throughout the region but the programme continued in spite of this intimidation. The situation escalated towards the end of 2000. [...]. The appellant received reports, including reports from X village, that [members of the Buddhist community who took part in the programme if they continued to do so].

[12] This issue was discussed with the OOO committee. They decided that it would be best if the programme was shut down. They saw no point in raising this issue with the Bangladeshi authorities because they did not expect any help from them. Over the next few months the programme was wound down and ceased.

[13] In 2000, the OOO began developing orphanages attached to four temples in the CHT region. With funding from an Italian missionary organisation, the existing bamboo structures were to be rebuilt in brick. The appellant was [given a role in this]. On one occasion in March 2001 when visiting a particular temple, LL was approached by the local branch of the *Jonghi Muslim Bahini* (JMB) – a Muslim extremist group – who demanded money from him. As a result of this, LL ceased going to the construction sites. The appellant continued to attend in his absence and on another occasion the appellant was approached by the local JMB leader and told that he must have LL send them the money. As a result, the appellant stopped attending this particular site.

[14] Having still not received the money, the local JMB members in this area attacked the workers on the site and work came to a stop. The particular temple abbot, GG, went and saw CC, the local JMB leader who was also the local Member of Parliament. CC demanded money from him as condition of being

allowed to continue with the construction of the orphanage. An agreement was reached and the orphanage was eventually completed. However, GG did not pay the money as promised and in mid-2002 he was murdered at the temple. In the wake of his murder, a committee was established to seek justice. Various rallies and demonstrations were held in the CHT area and in Dhaka. The appellant was involved in these demonstrations and protests although he did not undertake a prominent role. Nevertheless, as a result of his involvement in these protests, the appellant was threatened by the local JMB members in X village that if he continued with the activities he would be harmed. He was not assaulted by the group at this time.

[15] At the end of 2002, the appellant was appointed [to a particular position in] the OOO. [...]. [The OOO's] activities included the assistance of individual Buddhists who were widowed or disabled with their everyday survival needs and the provision of financial support for Buddhist students to attend higher education. The OOO also undertook community-oriented development projects.

[16] In late 2002, the OOO began [another community project]. The appellant was given [a prominent role in this]. He encountered problems with the local Muslim settlers in the region who did not want to see anything which benefited the development of the local Buddhist community. They intimidated him by asking him questions such as "Are you coming here to die?" or "Are you willing to die for this?". He also felt harassed by the local army units stationed at a camp near to where the project was being undertaken. The appellant was often stopped on his way to the camp and, despite carrying his robes, subjected to intrusive searches and felt as if he was being treated as a criminal.

[17] On one occasion while visiting the site a group of people associated with the *Shanti Bahini Army* (SBA), the armed wing of a political organisation dedicated to safeguarding the CHT region from Bengali migration, tried to extort some money from the appellant. The appellant refused to pay them any money and he suffered a minor assault. He raised this issue with the OOO president who discussed the issue with the local Union Chairman. The appellant encountered no further problems with the SBA.

[18] While the SBA never bothered him again, the appellant continued to face harassment from the army and Muslim settlers. The appellant decided to cease his regular attendance at the construction site. Although the [facility] was

completed, it was subsequently burnt down by local Muslim settlers.

[19] In mid-2003, the appellant established a [facility] for Buddhist children in X village, located in a room that had been rented for this purpose. [...]. The appellant believed this would be a way of preaching their religion and would allow the local Buddhist community to hold on to their culture. Shortly afterwards, AA (the local JIB leader and Union Chairman) asked the appellant to come and see him. The appellant did so and when he went there AA, and BB, who was associated with the local JMB, demanded that they be given 50 percent of the funds that the OOO [...]. The appellant explained that no overseas funds were involved. AA said he was sure the money was coming from overseas and demanded 50 percent of it. The appellant later discussed this event with the OOO vice-president who said that they should pay a small sum of money. [...].

[20] Although the [facility] was established, the local JMB and JIB members tried to make its operation as difficult as possible. Whenever the OOO printed leaflets or made banners encouraging Buddhists to attend, the banners were destroyed. Also, they were not allowed to have a sign indicating the presence of the [facility] and were not able to purchase a house.

[21] It was the appellant's dream to build a [larger facility]. In 2004, the appellant went to a Buddhist conference [...] and went to the headquarters of a particular Buddhist institution there. After discussing the matter with various senior people within that organisation, he was promised financial assistance for this project.

[22] The appellant returned to Bangladesh in late February 2004 and discussed the project with the OOO committee. Although no money had as yet been provided, the committee identified some land that the OOO owned which would be ideal for such a community centre. Confident that the money would be received, the appellant had some workers begin marking out the provisional boundaries [...] on the vacant land and begin construction of a basic boundary wall. Approximately two weeks later, the appellant was told that local members of *Islami Chhatro Shabir* (ICS) – a Muslim student group – had come to the building site while he was not present and told the workers to stop working and threatened them. Three or four days later, the local ICS members returned to the building site again and beat the workers.

[23] As a result, the appellant and the OOO decided to relocate their community centre to X village. The OOO entered into preliminary discussions with the Buddhist community there. The OOO did not have any land there and the village would need to donate land for the construction of the community centre which would belong to the OOO. The community agreed but, in April 2004, before any construction could begin, the appellant was approached by AA and BB. They told him they knew he had obtained money to construct a community centre in X and demanded a substantial sum of money from him. They threatened that he would be killed like GG if he did not pay the money.

[24] Shortly thereafter, AA and BB came to X temple again but the appellant was not there. On this occasion, a message was left with the temple abbot that the appellant should go and see AA. The appellant did not, but rather discussed the matter with the OOO leadership. It was agreed that they did not have the money to pay the substantial sum which had been demanded.

[25] In May 2004, the appellant, while waiting for a bus, was approached by 10 or 12 people, some of whom he recognised as being local JMB people. Again, a substantial sum of money was demanded from him. Again, the appellant refused. Without warning, the appellant was attacked by this group. He was punched, slapped and kicked. He was also beaten with sticks. One of his assailants removed his robes and burnt them in front of the appellant. The appellant lost consciousness. When he regained consciousness he was in a local hospital. He suffered cuts and bruises all about his body as a result of this attack. This hospital was near to X village. He believed his attackers may have thought that he was dead and he was worried that if they found out that he was alive and in this hospital, they would come looking for him.

[26] He therefore telephoned his uncle and, after taking some medication, had his uncle come and take him from the hospital to [...]. The appellant asked his uncle to contact the OOO and tell them of his predicament. Approximately five days later, the appellant went to the local police station to lodge a formal complaint. The officer on duty asked the appellant to write a statement about what happened. The appellant did so and named the involvement of AA and BB. When the officer read the statement, he laughed and tore it up. The officer said that if the appellant wanted to live in Bangladesh in peace he should become a Muslim.

[27] The appellant spoke to both the OOO leadership and the local Buddhist

community in X. Both advised him to go into hiding. For the next five months the appellant stayed in various villages across the CHT region. Members of both the JMB and JIB continued to look for him throughout this period. Searches for him were made by them at X temple. His mother's house in W village was also searched during which both his mother and sister were threatened in an attempt to force them to divulge his whereabouts. Local villagers in both W and X villages were also threatened in this manner. No matter where he stayed, invariably members from either JMB or JIB were made aware of his presence through networks in the local Muslim communities in the area he was staying and, as a result, the appellant was forced to move.

[28] The appellant discussed his situation again with the OOO leadership and it was agreed that for his own safety he should leave Bangladesh and, through arrangements made on his behalf, in late 2004, the appellant departed Bangladesh for Thailand.

[29] The appellant lived in Thailand and began residing at a particular temple in Bangkok. He was based at this temple until late 2006. During this period he travelled to a number of South East Asian and East Asian countries for the purposes of attending Buddhist conferences. Also during this period, the appellant returned to Bangladesh on five separate occasions. [...].

[30] The appellant explained to the Authority that he returned on the first occasion because his mother had become ill and was very concerned that he was dead. He had not told her that he was to flee Bangladesh and at his uncle's request he therefore returned to Bangladesh to visit her. His second return was at the request of his maternal grandmother to whom he was very close and who was very unwell. Indeed, she passed away while in the presence of the appellant. The appellant's third and fourth trips were again to see his remaining grandmother who was also very sick. This grandmother also passed away while the appellant was back in Bangladesh on the fourth occasion. The appellant's fifth and final trip to Bangladesh was occasioned by an attack on his mother and sister by JMB members who were looking for him.

[31] The appellant returned to Bangladesh knowing that the Muslim groups had continued to look for him in his absence. He had received periodic news that visits were made looking for him while he was in Thailand enquiring as to his whereabouts. He therefore took precautions to ensure his safety. In particular, he

kept his movements to a minimum and when he did travel between places he went disguised as a Muslim. He never once visited his family home in W village or X temple.

[32] Despite these precautions, incidents with the JMB and JIB continued. In mid-2005, during the period of his second return, Muslims associated with JIB came to know that he was in the country and went looking for him at his family home. Upon ascertaining the appellant was not there the JIB members assaulted his mother and sister. His mother was choked and had an earring ripped from her ear.

[33] Towards the end of January 2006 during his fourth period of return, the appellant decided, on a whim, to visit the [facility]. This was special to him and he wanted to see it in operation. However, while there, local members of the JMB and JIB came to the [facility] and demanded that he be shown. [Persons using the facility] denied that he was there. They beat [them] and destroyed [various items]. The appellant hid in a storeroom and managed to avoid being discovered.

[34] In late 2006, his mother and sister were severely beaten by the JMB members. Upon his return to Bangladesh, the appellant saw that their heads and hands were bandaged and they had bruising all over their bodies. His mother told him that it was not fair that he kept on returning and exposing them to danger. It was this that persuaded the appellant to seek a permanent solution to his predicament. The appellant had not thought that things would escalate to the point where his mother and sister would be so brutally attacked. He returned to Bangladesh on these occasions in part because of his family circumstances, but also because he wanted to see if he could in fact remain in Bangladesh and carry out his work. Upon seeing the extent to which pressure was being placed on his family he realised that there was no possibility of him being able to do so

[35] After returning to Thailand after this visit to Bangladesh, the appellant spoke to the Buddhist authorities in Thailand about a permanent solution to his immigration status. He was told that, as a monk, the maximum amount of time he would be allowed to stay in Thailand would be five years. By this time he was already on his third extension of his visa and would only be able to stay in Thailand for a further two years. He therefore decided that he should seek asylum in a third country and arrangements were made for him to come to New Zealand.

[36] The appellant has remained in contact with his mother and sister since being in New Zealand. He advised the Authority that following the attack on them in late 2006, his mother moved to a village approximately 150 kilometres from W village in an attempt to avoid the Muslim groups. His sister has since married and now resides elsewhere in the Chittagong region with her husband.

[37] The appellant believes that if he returns to Bangladesh he will again be targeted by extremist Muslim groups. The appellant was careful to say that he did not believe that all Buddhist monks in Bangladesh were at risk of being persecuted. He distinguished between what he described as the following types of Buddhist monks:

- (a) “Meditative” monks – these monks spent their time in meditation only and do not engage in community works;
- (b) “Priest” monks – these monks are involved in administering Buddhist rituals and religious festivals. They may also engage in preaching; and
- (c) “Preacher” Monks – these monks not only get involved in preaching but also engage in humanitarian or social work on behalf of the Buddhist community.

[38] The appellant explained that there was no expectation that a monk would adopt any of these perspectives. Rather, it was a matter of individual choice. He himself was very much in the latter category. The appellant explained that it was these monks who attracted the negative attention and ire of extremist Muslim groups. These Muslim groups generally had no problems with ‘meditative’ or even ‘priest’ monks. Furthermore, they generally had no problem with ‘preacher’ monks undertaking charitable work on an individual basis, such as assistance for a disabled or widowed Buddhist. They were, however, very much opposed to anything which could be construed as community development or which contributed to the protection or advancement of Buddhist culture inside Bangladesh.

[39] The appellant also explained that from time to time even ‘priest’ monks could become involved in confrontation with Muslim extremists. Typically, these events took place in the CHT region where the government were settling Bengali

Muslim settlers into areas traditionally occupied by Buddhist tribal people. These villages often came under attack and when they did, the villagers would seek shelter in the temples. If this happened, the monk would be drawn into the local conflict.

[40] The appellant believes nowhere in Bangladesh is safe for him. As a monk he must reside at a temple. Although there are a small number of Buddhist temples in Dhaka, which is a large city, it would be relatively easy for Muslim groups to identify him if he were residing at such a temple. Monks have been killed and the appellant believes it is only a matter of time before he suffers some form of serious harm or is killed because of his activism.

Documents and submissions

[41] On 30 October 2007, the Authority received from counsel a written memorandum of submissions together with a supplementary statement from the appellant dated 17 October 2007 together with items of country information as per counsel's schedule. Counsel also submitted a decision from the Australian Refugee Review Tribunal 060711001 [2006] RRTA 191 (6 November 2006). On 17 February 2008 the Authority received a further bundle of documents from counsel comprising:

- (a) A letter from the OOO confirming the appellant's involvement with the organisation [...]. It confirms his various initiatives he described in his evidence and describes him as a "very enthusiastic and courageous monk";
- (b) A further bundle of photographs of the appellant at various Buddhist events including a religious event in a village in Bangladesh in 1996;
- (c) A letter from an Auckland branch of the [...] Buddhist organisation which the appellant visited in 2004 and which agreed to fund the [large facility]. The letter confirms his continuing relationship with the headquarters of that organisation; and
- (d) Further items of country information relating to attacks on Buddhist temples in the CHT area.

[42] During the hearing, counsel submitted the original copies of the

photographs which the appellant had submitted to the RSB, and the Authority, together with an original receipt book issued by the [facility] which he had established.

[43] During the course of the hearing, the Authority gave to counsel a number of items of country information relating to Islamism in Bangladesh and the government's response to extremist Islamic groups.

[44] At the conclusion of the hearing, counsel addressed the Authority orally. She submitted that the appellant presented as a credible witness and that because of his profile he remained a target for Muslim extremists in Bangladesh and ought to be recognised as a Convention refugee.

[45] All these submissions and documentation have been taken into account in reaching this decision.

THE ISSUES

[46] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[47] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[48] The Authority accepts the appellant as a credible witness. As can be seen from the appellant's proffered typology of Buddhist monks, he presented as a highly intelligent and articulate individual, well able to convey a detailed and nuanced understanding of his predicament. He presented as a person deeply committed to the advancement and protection of his Buddhist community which for him is a matter of the deepest spiritual obligation. While the Authority was concerned that the appellant had returned to Bangladesh on five separate occasions following his initial departure from Bangladesh, having seen and heard from him, the Authority finds his explanations for returning were both credible and compelling. His claim to have been actively involved with the OOO and undertaking various community development projects on their behalf are credibly corroborated by documentary and photographic evidence, as were the injuries to his mother and sister.

[49] The appellant's account is therefore accepted in its entirety.

A well-founded fear of being persecuted

[50] In *Refugee Appeal No 73548/02* (12 June 2003) the Authority allowed the appeal by a Buddhist monk from the Chittagong district. In a brief decision, the Authority held that there existed at the time a climate of religious intolerance and an absence of state protection for religious minorities in Bangladesh. In these circumstances the Authority concluded that a Buddhist monk, who would by virtue of his lifestyle and attire be highly visible, had a well-founded fear of being persecuted – see paragraphs [32]-[38]. In its decision declining this appellant's appeal, the RSB concluded that since the date of the determination in *Refugee Appeal No 75348/02* the situation in Bangladesh had substantially improved. In particular, the RSB found that the government had taken steps to control extremist Muslim groups operating within the country such that it could not be said a person such as the appellant faced a well-founded fear of being persecuted.

[51] To understand the well-foundedness of the appellant's claim for refugee status it is necessary to consider in more detail two different, but interlinked features of the Bangladeshi socio-political landscape, namely:

- (a) Islamism in Bangladesh;
- (b) The Chittagong Hill Tract conflict.

Islamism in Bangladesh

[52] Bangladesh is an overwhelmingly Muslim state. Of its population of 147 million, some 88.3 percent are Muslims. Buddhists, by comparison, comprise a mere 0.6 percent of the Bangladeshi population – see United States Department of State *Background Note: Bangladesh* (May 2007). It is, therefore, unsurprising that a portion of the political space within Bangladesh is occupied Islamic parties and movements. Given the nature of the appellant’s claim, some accounting of these parties and movements is necessary. To do so, these parties and movements need to be placed within a broader historical context.

[53] In a study of the Arab peoples, A Hourani *A History of the Arab People* (Faber and Faber 1991) at p451 observes that by the late 1970s:

“...any Arab government which wished to survive, had to be able to claim legitimacy in terms of three political languages – those of nationalism, social justice and Islam.”

[54] Hourani goes on to observe (at p452) that, although not new, the latest of these “political” languages to emerge was Islam. This development occurred in response to failures of the more secular nationalism that dominated politics in the Muslim world in the first half of the twentieth century. As noted by Hefner: “Modernity and the remaking of Muslim politics” R Hefner (ed) *Remaking Muslim Politics: Pluralism, Contestation, Democratisation* (Princeton University Press, 2005) at page 19:

“By the early 1970s, then, secular, socialist, and nationalist stars that had once shone so brightly had begun to lose their lustre.

It was during this period, then, that neighbourhoods across the Muslim world witnessed the steady expansion in the number of mosques and madrasas.”

[55] Although Hourani in particular was dealing with Islam in the Arab world, these observations are of relevance to Bangladesh. The important point to note is that, reflecting this broad historical process, Islamic movements and parties are not monolithic in nature and outlook. A useful overview can be found in J Esposito and J Voll *Islam and Democracy* (Oxford University Press 1996) at pages 194-195:

“The religious landscape of the contemporary Muslim world reveals the growth and proliferation of modern Islamic movements and groups who engage in social and

political activism. While some, such as Egypt's Gamaa Islamiyya, have directly threatened regimes and espoused violent revolution, many others, such as the Muslim Brotherhood, the Jamaat-i Islami, and the Islamic Salvation Front have demonstrated a willingness to participate within the system.

Although the 1970s and 1980s seemed dominated by fears of revolutionary Islam, from Iran's export of revolution to the hostage-taking and hijacking in the Middle East, the 1990s have revealed a more multilayered and nuanced religio-political landscape. Images of gun-toting Islamists and clandestine terrorists bent upon carrying their jihad to the West, blowing up the World Trade Centre and plotting other acts of urban terrorism, are accompanied by the clear and public image and record of Islamic activists and organizations that have been mainstream political and social actors. They are part of a quiet revolution; they function in civil society, creating their own social and political organizations or parties, forming alliances with other political parties or unions, and participating in national professional associations.

The economic and political failures of many regimes in the late 1980s and the fall of the Soviet Union have produced a more open political climate that not only enabled radicals to threaten governments but also provided opportunities for some Islamic organizations and parties in the late 1980s and early 1990s to demonstrate the extent to which they constituted viable social and political alternatives. They offered educational and social welfare services in Egypt and Algeria which often proved effective and efficient alternatives to faltering governments hampered by failed economies and corruption, bloated and inefficient bureaucracies, and entrenched elites. Politically, Islamist candidates also proved a viable alternative in local and national political elections as well as those of professional organizations and associations. Islamic activists have been elected mayors, parliamentarians, heads of professional associations (doctors, lawyers, engineers, and university faculty), and have served as government ministers in countries as diverse as Egypt, Israel, Pakistan, Algeria, Sudan, Lebanon, Turkey, Jordan, Kuwait, Pakistan, and Malaysia."

[56] Bangladesh became an independent Muslim nation during this time of change. By the time of Bangladesh's birth in 1971, an alternative radical Islamic framework had already taken shape which was increasingly informing the orientation of groups across the Islamic world. Informed by teachings by Islamic scholars such as Mawdudi and Qutb, these groups challenged the prevailing approaches of the established Islamic parties operating to varying degrees within the state's political system as being inimical to Islamic notions of the sovereignty of God – see Hefner (*supra*) at 23; Y M Choueiri *Islamic Fundamentalist* (Pinter 1997) at pp101-114; B Tibi *The Challenge of Fundamentalism: Political Islam in the New World Disorder* (University of California Press, 1998) at page 119.

[57] Within this fractured landscape it is possible to identify different types of contemporary Islamic movement or political organisation. Some understanding of the differences between two of them is critical to properly understanding the appellant's predicament. At the outset, the Authority makes clear that its following observations are limited to the Sunni branch of Islam.

[58] The first such grouping is what has been termed “Islamist” see – O Roy *Islamic Radicalism in Afghanistan and Pakistan* UNHCR Writenet Paper No 06/2001 (January 2002) at page 2. This type of Islamic group or organisation is alternatively described by the International Crisis Group as “political Islamism” – see International Crisis Group *Understanding Islamism* (2 March 2005) (the ICG Islamism report) at page 3. The nomenclature is irrelevant. What is important is that these types of movements have typically become engaged in the domestic political system of the state and thus give precedence to political action designed to bring about an “Islamicised” state. Such movements can take a variety of forms including “Western-style” political parties as well as religious and militant organisations and can, in the course of their history, oscillate between these various forms – see O Roy *The Failure of Political Islam* (Harvard University Press 1996) at page 46. Furthermore, although levels of accommodation vary across the group as a whole, compared to other types of Sunni Islamic movements, it is these groups which have typically gone furthest in embracing modernist and democratic norms previously considered “Un-Islamic” – see ICG Islamism report (*op cit*) at page 5.

[59] The second grouping is what Roy (*op cit*) at page 75 describes as “neo-fundamentalist” and which the International Crisis Group describe as “Jihadi”. In contrast to the state-centred orientation of the former, this type of movement’s orientation tends to be at an individual or grass-roots level. For such movements, individual practices must be reformed along Islamic lines which, in turn, will lead to a pure Islamic society. Such movements have an almost puritanical streak designed to lead to an Islamicised space in which daily life, as manifested by clothing and social restrictions on women and alcohol bans, is generally adapted to the practice of Islam – see O Roy (*op cit*) at page 80-81; Hourani (*op cit*) at 445-446. The ICG Islamism report notes, at page 14, three differing strategic aims within movements of this type, namely:

- (a) *Internal* in which “Jihad” is waged against nominally Muslim regimes which are considered by *Jihadi* movements to be impious. Examples here include Egypt and Algeria;
- (b) *Irredentist* in which the Jihadi groups struggle to redeem land considered to be part of the supernational Islamic state from non-

Muslim rule or occupation. Examples here include Tunisia and Palestine and, more recently, Iraq; and

- (c) *Global* the new “Jihad against the “West” and its allies as typified by Al-Qaeda and its affiliated or inspired movements.

[60] Given Bangladesh’s overwhelmingly Sunni Islamic population base it is to be expected that both types of Islamic movement are reflected within the Bangladeshi polity.

Islamic parties and movements in Bangladesh

Islamist parties

Jamaat-e-Islami (JIB)

[61] JIB in Bangladesh is an offshoot of the JI party formed in pre-independence India in 1941 by Mawdudi. The party supported the Pakistani military regime during the 1971 war of liberation. Following the success of the Bengali nationalist forces, the party was outlawed after Bangladesh gained independence and its leaders declared war criminals. The JIB was only legally established in Bangladesh in 1979. Since that time, it has gained in popularity and influence. By 2001, the JIB had gained 18 seats in the Bangladeshi parliament and constitutes the most influential Islamic party. It held two important ministries namely agriculture and social welfare. JIB is well organised and has people at all levels of Bangladeshi society including the village level – see International Crisis Group *Bangladesh Today* (23 October 2006) (The ICG Bangladesh report) at page 15; A Riaz *God Willing: the Politics of Islamism in Bangladesh* (Rowman and Littlefield 2004) at pages at 41-45.

Islami Chhatro Shibir/ Islami Chatris Shibir (ICS)

[62] ICS is the student wing of JIB. ICS has a significant influence within the education system. It is estimated that most of the 64,000 madrasas in Bangladesh are influenced or controlled by ICS. Whereas its parent organisation the JIB has officially rejected violence as a means of establishing an Islamist state, the ICS have been implicated in and accused of various acts of violence on campus particularly in the Chittagong – Cox’s Bazaar region – see Jane’s Intelligence Group Jane’s *Islami Chatris Shibir World Insurgency and Terrorism Report* (2006).

Islami Oikya Jote (IOJ) Islamic Unity Front

[63] IOJ was a junior member of the BNP ruling coalition having won two seats in the 2001 election. The group is rumoured to have links with more radical neo-fundamentalist organisations – see ICG Bangladesh report at page 16.

Neo-fundamentalist organisations or movements

Harakat-ul-Jihad-ul-Islami (HuJI)

[64] HuJI was formed in 1980 to fight the Soviet forces then in Afghanistan. Returnees from the war set up the Bangladesh wing of the group in 1992. The group is a signatory to the International Islamic Front's 1988 declaration of war on the United States (signed also by Osama Bin Laden) and is strongly influenced by conservative *Wahabi* teachings. It aims to establish a radical Islamic state in Bangladesh modelled on the *Taliban* regime in Afghanistan. HuJI is reported to use both political process and terror to further the establishment of a radical Islamic state in Bangladesh. Militants associated with HuJI are reported to have attacked non-Muslim communities with the aim of driving Hindus out of Bangladesh and to have targeted high-profile secularists and liberals who are critical of a political role for Islam. Its traditional strongholds are in the south-east along the border with Myanmar. It is estimated to have 2,000 core militants recruited mainly from madrasas – see ICG Bangladesh report at page 17; Jane's Intelligence Group *Harakat-ul-Jihad-ul-Islami* Jane's World Insurgency and Terrorism Report (March 2006) (The HuJI report).

Jamaat ul-Mujahadeen Bangladesh (JMB)

[65] Dates for JMB's formation vary between 1994 and 1998. JMB is committed to the establishment of an Islamic state in Bangladesh through armed struggle. It is opposed to democracy, the work of non-governmental organisations, cultural practises such as music and cinema and imposes strict Islamic codes on women. Banned by the Bangladeshi government under pressure from Western governments on 23 February 2005, the JMB nevertheless has continued its campaign of violence. The JMB claimed responsibility for the near synchronised detonation of 434 improvised explosive devices in all but six of Bangladesh's 64 districts in August 2005. Furthermore, suicide bombings in November and December 2005 have been attributed to the JMB as being designed to intimidate

the judiciary into releasing suspected JMB militants around 400 of whom had been rounded up and arrested following the August attacks. Estimates as to membership vary but it has been estimated that it could have an active base of several thousand members and is one which is likely to grow – see The ICG Bangladesh report (*op cit*) at p16; Jane's Intelligence Group – *Jamaat ul-Mujahadeen Bangladesh* (JMB) Jane's World Insurgency and Terrorism Profile (March 2006) (the JMB report).

Jagrata Muslim Janata Bangladesh (JMJB)

[66] Formed in 2003, the JMJB's long-term goal is an Islamic revolution through *Jihad*. The group is considered by some to be an offshoot of the JMB. It is led by the same three men who lead the JMB. It too was banned in February 2005. The JMJB reportedly has communities in villages which locals are forced to join and is reported to have carried out over 100 vigilante operations – see ICG Bangladesh Report at page 16-17; Jane's Intelligence Group *Shades of Islamism in Bangladesh* Jane's Affairs Analyst (October 2006).

Not an immutable distinction between two types of movements

[67] While it is possible to divide the groups in Bangladesh into these two broad categories based on the degree to which they operate within the framework of the Bangladeshi political system, it would be a mistake to conclude that there exists an immutable gap between them at an ideological or operational level.

[68] At an ideological level, both groups, while having important differences, nevertheless share common goals. Both seek to establish an Islamic state in Bangladesh guided by Sharia law – see T Hashimi "Failure of the Welfare State: Islamic Resurgence and Political Legitimacy in Bangladesh" in S Akbarzadeh and A Saeed (eds) *Islam and Political Legitimacy* (Routledge Curzon 2003) at page 105. Whereas the strategic aim – or goal – of the radical groups may be to topple what is seen as an "Un-Islamic" state structure through violence, as the ICG Bangladesh report (*op cit*) at page 15 notes:

"[JIBs] goal is to make Bangladesh an Islamic state governed by Islamic law. It aims to do this gradually by working within the parliamentary system".

[69] The Bengali War of Liberation was not a war about religion. Most Bengalis never fought for a secular socialist Bangladesh as envisaged by Sheikh Mujib and the political elite within the Awami League – Hashimi (*op cit*) at pages 108-113.

Thus, with the failure of Mujibism to alleviate poverty and restore law and order, Islam in Bangladesh, mirroring developments across many Islamic nations, became increasingly entrenched at the heart of the Bangladeshi polity – N Islam “Islam and National Identity: the case of Pakistan and Bangladesh” *International Journal of Middle East Studies* (1981) Vol 13 at page 64. Islam was used to justify and legitimise a continued military/bureaucratic rule. In Bangladesh, this process was exemplified by the securing of a constitutional amendment by General Ershad in 1988 declaring Islam the state religion in order to shore up his support. The salient point to note is that both the rehabilitation of JIB within the mainstream of Bangladeshi politics and the emergence of neo-fundamentalist/jihadi movements are part of a process of gradual Islamicisation of the Bangladeshi polity – see in this context, Riaz (*op cit*) at page 45.

[70] Importantly for this case, one area of public life in which this common ideological ground between JIB and neo-fundamentalist/jihadi groups manifests itself in relation to the issuing of fatwas by local Islamic clerics in response to the work of local and international non-governmental organisations (NGOs). The work of non-Islamic NGOs in Bangladesh is seen as a vehicle for the de-Islamicisation of Bangladeshi society – Riaz (*op cit*) at page 125. Riaz notes that development programmes aimed at enhancing the position of women, credit provision and education have all been contentious. Riaz argues that the education of minority religious groups has been particularly contentious. He notes that, in 1994, an anti-Christian NGO alliance called the Bengal Anti-Christian Organisation emerged in response to work by a non-denominational NGO. Supported by “Islamist parties”, this alliance systematically targeted educational and gender advancement programmes on the basis they would lead to a de-Islamicisation of society – see Riaz (*supra*) at pages 129-130.

[71] This conflict between Islamic groups and the NGO community came to prominence in the 1990s. The NGO community and donor governments took exception to the practices of traditional village courts known as *salish*, in which human rights abuses against women were perpetrated in the name of Sharia law. The issue came to a head in 2001 when the High Court declared such village *fatwas* illegal. Both the JIB and several other Islamic groups condemned the decision. There was widespread unrest. Significantly, the primary targets in the 17 August 2005 attacks were courts and judges. JMB leaflets, recovered from the blast sites called for the establishment of Islamic rule and threatened judges with

death if they failed to replace secular law with Koranic law – see Hashimi (*op cit*) at pages 116-118;

[72] Apart from some commonality in ideological orientation, there is also the suggestion in the country information available to the Authority that, at an operational level, it is believed that JIB and its student wing ICS, in particular, maintain links with fundamentalist militant groups – see, for example, Canadian Immigration and Refugee Board Documentation Centre *Bangladesh: Rise of Religious Fundamentalist Groups and Nature of their Relationship with the Authorities* (2005-2006) BGD101505.E (8 August 2006); ICG *Bangladesh Report* at page 15.

[73] This commonality in ideology, and possible operational linkage is vitally important in understanding and contextualising the state response to rising Islamism in Bangladesh. It is to this issue that the Authority now turns.

State responses to rising Islamism in Bangladesh

[74] It is widely reported, and *Refugee Appeal No 73548/02* picks up on this, that in the aftermath of the 2001 elections there was a wide-ranging up-swing in attacks by radical Islamic groups in which liberal Bangladeshi politicians, journalists, judges, as well as religious minorities, were targeted – see Jane's Intelligence Group *Shades of Islamism in Bangladesh* Jane's Affairs Analyst (October 2006); Canadian Immigration and Refugee Board Documentation Centre *Bangladesh: Rise of Religious Fundamentalist Groups and Nature of their Relationship with the Authorities* (2005-2006) BGD101505.E (8 August 2006).

[75] Such increasing activity by neo-fundamentalist or radical Islamic groups culminated in the detonation of hundreds of bombs across the country for which the JMB claimed responsibility. As a result of this event, and responding to concerns from other states that Bangladesh may be becoming a haven for Al Qaeda-linked groups keen to export their militancy abroad, in 2005 the Bangladeshi government banned the JMB, JMJB and HuJI. In the wake of the August bomb attacks, the Bangladeshi police and the Rapid Action Battalion – a para-military group whose members are drawn from various law enforcement agencies – arrested up to 400 suspected militants. In February 2006, 21 persons suspected of involvement in the August 2005 bombings were sentenced to death. By April 2006, the authorities had arrested approximately 1,000 suspected Islamic

militants across the country. By this time the leaders of the JMB had been captured and two, Bangla Bhai and Abdur Rahman, were sentenced to death – see Jane’s Intelligence Group “Shades of Islamism Report”; see also Refugee Board Documentation Centre Bangladesh: *Government action taken against militants allegedly involved in 17 August 2005 bombings (2005-2006)* BGD101508.E (31 July 2006). Arrests of JMB and members have continued – see “Five JMB men, four outlaws captured” *The Daily Star* (19 April 2007). Some members of HuJI have gone on trial – United States Department of State *Country Report for Human Rights Practices 2007: Bangladesh* (11 March 2008) at section 1a (“the 2007 DOS report”).

[76] There can be no doubt that there has been and continues to be, as the RSB rightly points out, a crackdown on Islamic groups by the Bangladeshi government since the Authority’s determination in *Refugee Appeal No 73548/02*. Two points, however, need bearing in mind. First, the action that has been taken in Bangladesh in response to the rise in Muslim extremism has only been taken in respect of a *particular type* of Islamic movement, namely, those of the neo-fundamentalist or radical variety whose actions have been directed *against the state*. Left untouched by these developments have been Islamist groups or movements such as the JIB, which are also committed to the establishment of an Islamic state governed by Sharia law, and the ICS, the JIB’s student wing, cadres from which have been implicated in attacks and campaigns against minority groups within Bangladeshi society.

[77] Second, it would be a mistake to conclude that because counter-terrorist measures have been taken, the threat posed by these groups has been eradicated once and for all. The formal banning of the JMB resulted in an upswing in its level of violence. Country information indicates that Bangladesh intelligence officials themselves believe the arrests of key figures are unlikely to undermine militant groups entirely and that statements of indicted JMB suspects suggest a country-wide network of bombers is still active and support structures remain largely intact – see Jane’s Intelligence Group *Captures fail to halt Bangladesh militants* Jane’s Security and Monitor (12 April 2006); B P Routray “The JMB Survives” South Asia Terrorism Portal, *South Asia Weekly Intelligence Review* Vol 5 No 30 (5 February 2007). This is reflected in the appellant’s own situation where local JMB members have continued to hunt for him and harass his family despite the formal outlawing of the group as a whole. Moreover, it is common in such circumstances for

members of the banned group simply to reform under another name, thereby avoiding the ban. This may already be taking place in Bangladesh. In May 2007, three bombs were detonated at railway stations around Bangladesh a month after six leaders of JMB were executed. A previously unknown group, Zadid Al-Qaeda, claimed responsibility. This incident was condemned by JIB leaders – see The Press Trust of India Limited *Jamaat-e-Islami Condemns Bangladeshi Blasts* (2 May 2007).

[78] In other words, the underlying process of the gradual Islamicisation which has empowered Muslim communities at the expense of minority groups remains a powerful force in Bangladeshi society, the government's crackdown on some radical groups notwithstanding. This process is most readily visible in the ongoing conflict in the CHT region, the next major dynamic relevant to this case.

The Chittagong Hill Tracts (CHT) conflict

[79] Riaz (*op cit* at page 31) observes, that from its inception:

“Bengali nationalism as envisaged by the ruling party sought to marginalise the Non-Bengali minority in general and tribal groups/nationalities in particular.”

This policy has found violent expression in the CHT region.

[80] A useful summary of this conflict can be found in the report by the Internal Displacement Monitoring Centre (IDMC) *Bangladesh: minorities increasingly at risk of displacement* (28 March 2006). Significantly, The IDMC report refers , at page 7, to the Islamicisation of Bengali political life and its becoming a central symbol of Bengali nationalism, as discussed in some length above, and states:

“Conflict-induced displacement in the Chittagong Hill Tracts and persecution of religious minorities should be placed in this historical context.”

[81] The report goes on to state:

“Conflict is also fuelled by the scarcity of land in Bangladesh due to chronic flooding, river erosion and environmental degradation. Competition for land combined with poor governance has disproportionately affected the poor and marginalised, including the minorities.”

[82] In other words, the conflict must be seen in the context of the country's demographic profile which is overwhelmingly Muslim. Competition for scarce resources has become expressed in terms of religious and ethnic identity which has led to conflict. The report observes that the largest occurrence of conflict-induced displacement is found in the CHT areas. The report states at page 9:

“Outbreak of civil war causes large scale displacement

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 August 1975, Prime Minister Mujibur (Sheikh Mujib) Rahman was assassinated in a bloody coup led by General Ziaur Rahman. Under his military regime, Bangladeshi nationalism incorporated Islamic ideals which excluded the cultural identities of the Chittagong Hill Tracts (Amena Mohsin, 2003, p. 24) 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).

Although access to the Chittagong Hill Tracts was denied during the conflict, the international community was regularly informed of human rights abuses by international NGOs...In 1990 the international Chittagong Hill Tracts Commission carried out an independent investigation in refugee camps in Tripura, India, and also managed to get into the Chittagong Hill Tracts. The ensuing report documented widespread human rights abuses and displacement of the indigenous population (Aarens and Chakma, 2000).

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 tribals to leave their homes. After 1980, ten minor 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.”

[83] While a peace accord came into effect on 2 December 1997, the IDMC report goes on to note that violent incidents have continued to occur. The report states, at page 17:

“No major episodes of violence leading to displacement were reported in 2005. However tensions exist between Jumma [as the indigenous Buddhist tribal peoples are referred to collectively] and Bengali settlers, political and criminal attacks, abductions, “anti-terrorist” military operations, and clashes between the PCJSS and UPDF militants have continued unabated and continue to create a climate of insecurity.”

[84] The report then goes on to note several instances where Bengali settlers have started clearing and building houses on land belonging to tribal people or where tribal villages have been attacked. Other country information also paints a picture of ongoing conflict. The report of the Asian Centre for Human Rights *Who*

Funds the Acts of Racism and Racial Discrimination in the Chittagong Hill Tracts (June 2005), at page 4-5, also details the continued appropriation of large tracts of land, including the destruction of some villages in the CHT area by both Muslim settlers and the Bangladeshi military which has continued to result in the displacement of indigenous families.

[85] The Canadian Immigration and Refugee Board Documentation Centre *Bangladesh, situation of Buddhists, particularly in the areas of Chittagong and Dhaka treatment by Muslim majority, Islamist groups, authorities and political parties* (2003-2005) BGD100462.E (16 August 2005) notes reports of increased harassment of Buddhist villages in the Chittagong area since 2001. It refers to attacks in August 2003 on a number of villages in the CHT area which left two dead, several injured, nine women sexually assaulted, and nearly 1,500 Buddhist tribal people homeless. Significantly, four Buddhist temples were reportedly damaged. The report goes on to refer to other reports of Buddhists in other areas of Bangladesh coming under similar pressure.

[86] As regards state protection in the CHT region, the IDMC report notes that six people accused of GG's murder have been arrested and sentenced to death. This, however, appears to run against the tide and no doubt the state response has been greatly influenced by the public campaign for justice in GG's name. On the other hand, an Amnesty International report *Bangladesh: Chittagong Hill Tracts: A call for justice at Mahalchari* (2004) ASA13/003/2004 cites evidence from witnesses to attacks on Buddhist tribespeople which state that the local police initially refused to accept complaints from tribal residents whose houses were burnt down or looted and that two cases were filed in connection with the attacks only after a court order had been issued. The Asia Centre for Human Rights report *The Ravaged Hills of Bangladesh* (25 August 2004) notes incidents in August 2003, 2004 and July 2004 where Muslim settler families were settled on land of indigenous Jumma people. The report states that illegal settlers are aided by the Bangladeshi army and the police and that, contrary to the 1997 Peace Accord, only a fraction of the temporary army camps have been withdrawn from the area. Similarly, the recent Human Rights Watch Report *The Torture of Tasneem Khalil: How the Bangladeshi Military Abuses its Power under the state of emergency* (February 2008) at Part II asserts that the Bangladeshi Military Intelligence agency, the DGDI, have been engaged in covert campaigns aiding "ethnic cleansing of ethnic minority communities in the Chittagong Hill Tracts". No

instances are, however, cited.

[87] The Authority recognises that the political coalition of which the JIB formed part is no longer in power. Since January 2007, Bangladesh has been governed under a State of Emergency by a military-backed interim government – see the 2007 DOS report at page 1. In March 2007, a total ban on politics was imposed, a ban that was only partially lifted by allowing politics “indoor” and only in Dhaka – see Human Rights Watch *Bangladesh: Partial Lifting on Politics Falls far Short* (12 September 2007). Concern has been raised by human rights NGOs that, under the guise of aiding a return to a less corrupt form of civilian rule, the military and police forces have engaged in arbitrary arrests, detention and torture – see generally the Human Rights Watch Khalil report; Asian Human Rights Commission *Human rights Report 2007: The State of Human Rights Bangladesh* (2007).

[88] As regards the conflict in the CHT area, the Authority observes the establishment of the military-backed interim government was primarily aimed at tackling the endemic corruption at a national level. It was not meant to address the underlying processes which contributed to the predicament of this appellant. This is reflected in the country information which establishes that Buddhist villages and temples in the CHT area have continued to come under pressure during 2007; that is, during the period the military-backed interim government has been in power. Various incidents are detailed in the Asian Centre for Human Rights report *Bangladesh: Army attacks Buddhism to facilitate illegal settlement in the Chittagong Hill Tracts* (23 January 2008). The report observes, at page 2 that:

“Indigenous Buddhist Chakmas and Marmas usually live in and around their temples. Once temples are destroyed the area can more easily be cleared for illegal plain settlers.”

[89] Apart from official interference with religious festivals, this report goes on to record, *inter alia*, that :

- (a) On 17 January 2008, the commanding officer of an army camp in Rangimati district threatened to demolish a temple if the priest did not leave;
- (b) On 14 January 2008, a Buddhist priest was arrested after a Muslim settler filed a complaint with the police accusing the priest and 500 indigenous people of various offences for erecting temporary houses within temple premises to accommodate monks;

- (c) On 31 December 2007, a Buddhist meditation centre in Khagrachari district was demolished by a group of army personnel, with the commander of the local army camp declaring:
- “We will not tolerate any Buddha house here; we want only Allah’s house.”
- (d) Between March and December 2007, settlers, with direct help from the army appropriated 399.22 acres of land belonging to 133 separate indigenous persons and a primary school in only 4 villages in the area.

[90] This report, together with another report by the Asian Centre for Human Rights *Bangladesh: Indigenous peoples living on edges of a riot* (29 August 2007), notes how the current administration has continued with the policy for forcibly settling Bengali Muslim settlers in the CHT area. Indeed, the latter report states that the programme of land appropriation has, if anything, *intensified* under the current administration and that indigenous activists and politicians have been subjected to arbitrary arrest and detention.

Conclusion on well-foundedness

[91] The appellant’s predicament stands at the epicentre of two powerful trends in Bangladeshi political life. There has occurred a gradual Islamicisation of the Bangladeshi polity in which Islamic parties committed to the establishment of an Islamic state ruled by Sharia law have gained increasing influence. Radical Jihadi or neo-fundamentalist groups have emerged. The synthesis of national identity with an Islamic religious identity has helped fuel violent conflict in the CHT area where Bengali Muslims have been settled at the expense of local Buddhist tribespeople. At the same time, this process of gradual Islamicisation has seen the work of non-Islamic NGOs attacked. While some action has been taken by the Bangladeshi state, it has only been taken against those Islamic groups which have targeted the institutions and functioning of the state. The conflict in the CHT area has continued despite the establishment of a military-backed interim government. Buddhist communities and some Buddhist monks continue to be caught up in the conflict in this area.

[92] For a monk with the appellant’s history and profile, there can be little doubt that if returned to Bangladesh, he would face a risk of being subjected to further

and possibly more serious violent attacks. His commitment to the advancement of his community and the protection of their culture is likely to once again bring him into conflict. He has not been able to access protection from the police when he has sought this in the past. There is no reason to suppose it would be any different now.

Internal Protection Alternative (IPA)

[93] However, in order to qualify as a refugee, the appellant must establish that he cannot obtain effective internal protection by moving elsewhere in Bangladesh. The decision of the Authority in *Refugee Appeal No 71684* (29 October 1999) requires another issue to be addressed, namely, can the appellant genuinely access domestic protection which is meaningful? In particular:

- (a) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (b) If so, is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?
- (c) If so, do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

[94] Only if all three questions are answered in the affirmative can it be said that there is an internal protection alternative available to the appellant.

IPA Issue One

[95] The Authority equally has no doubt that there is no viable IPA for the appellant. As a monk, he must live in a temple and as such would be easily locatable even in a large city such as Dhaka. The Authority is in no doubt that the undertaking of community development projects amounts to a manifestation of the appellant's sincerely held religious beliefs. As such, they are actions protected by Article 18(3) of the International Covenant on Civil and Political Rights 1966. Such activity goes to the core of his right to freedom of belief. There is no issue of lawful limitation that arises. The significance of this is that just as the appellant

cannot be compelled to avoid being persecuted by being discrete in the original site of his being persecuted – see *Refugee Appeal No 74665* (7 July 2004) at para [114] – he cannot be compelled to be discrete in a proposed site of alternative internal protection.

[96] In other words, his migration to another part of Bangladesh would not result in a reduction of the risk to below the real chance threshold – the first limb of the IPA inquiry would not be satisfied. There is no need to consider the remaining limbs of the IPA inquiry.

Convention ground and Nexus

[97] The appellant's predicament is contributed to by his religion. The second principle issue is also answered in the affirmative.

CONCLUSION

[98] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"B L Burson"

B L Burson
Member