

# **N03/46534 [2003] RRTA 670 (17 July 2003)**

REFUGEE REVIEW TRIBUNAL

DECISION AND REASONS FOR DECISION

RRT Reference: N03/46534

Country of Reference: Iran

Tribunal Member: Lilly Mojsin

Date decision made: 17 July 2003

Place: Sydney

Decision: The Tribunal remits the matter for reconsideration with the direction that the applicants are persons to whom Australia has protection obligations under the Refugees Convention.

## **BACKGROUND**

The applicants are husband, wife and their children. They claim to be citizens of Iran. They arrived in Australia and lodged an application for protection (class XA) visas with the Department of Immigration and Multicultural and Indigenous Affairs under the Migration Act 1958 (the Act). An applicant for a protection (class XA) visa is entitled to be considered against the criteria for each of its subclasses: 785 (Temporary Protection) and 866 (Protection). A delegate of the Minister for Immigration and Multicultural and Indigenous Affairs refused to grant protection (class XA) visas and the applicants applied for review of that decision.

## **THE LEGISLATION**

Under s.65(1) of the Act a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied.

Subsection 36(2) of the Act provides that a criterion for a protection visa is that the applicant for the visa is either:

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;

or

a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Refugees Convention and (ii) who holds a protection visa.

“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 Minister for Immigration & Ethnic Affairs* (1989) 169 CLR 379, *Applicant A & Anor v Minister for Immigration & Ethnic Affairs & Anor* (1997) 190 CLR 225, *Minister for Immigration & Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559, *Chen Shi Hai v Minister for Immigration & Multicultural Affairs* (2000) 201 CLR 293, *Minister for Immigration & Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1, and *Minister for Immigration & Multicultural Affairs v Khawar* (2002) 187 ALR 574.

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 files, which includes the protection visa application and the delegate’s decision record. The Tribunal also has had regard to the material referred to in the delegate’s decision, the decision of the previous Tribunal, and other material available to it from a range of sources.

The applicant husband and wife gave oral evidence to the Tribunal at a hearing.

In the original entry interview the applicant wife stated to the Department that she had worked in a particular vocation in Iran. When it was discovered she was a Sabean Mandaean she was dismissed. She eventually gave up looking for work. Her husband had been dismissed from his jobs after it was discovered he was a Sabean Mandaean.

In his PVA the applicant husband stated that he and his family left Iran on a passport issued in his name listing the other applicants. The passport was obtained for him by an agent. He does not know if the passport was genuine. He states that he had been dismissed and threatened by his employer a month before leaving Iran. He had

worked in his job for the last few years but was sacked from his job when his employer discovered that he was a Sabean Mandaean and not a Muslim. The employer was outraged by this discovery. The employer was disgusted that he had allowed a non-Muslim to handle and prepare food for Muslims. The employer threatened to kill him. He told the applicant that he would teach him a lesson he would never forget.

The applicant husband believes that the reason his employer did not kill or otherwise harm him before he left Iran was because the employer had some domestic issues at the time. He spent the month before his departure at a relative's house. His employer had not discovered that he was not a Muslim during his employment because he had not socialised with fellow employees or his employer. He had not been asked his religion when he started there.

The applicant husband is also concerned that he will not be able to find work or support himself and his family if they return to Iran. When he started in his particular industry, before the revolution, it was all right for non-Muslims to work in the industry. Since the revolution Sharia law does not allow it. It is difficult for Sabeans to find employment.

The applicant husband also claims that he might be punished as an apostate. Because he had pretended to be a Muslim, he might be treated as a Muslim who had left the faith. He also fears that he and his family will face societal discrimination and harassment. There is a lack of respect for Sabean Madaeans. There is little tolerance for non-Muslim beliefs, and no protection for Sabean Madaeans under Iranian law.

The applicant wife stated that she is a Sabean Mandaean. She fears that her husband may be killed by his former employer because he had been a non-Muslim working with food. She believes that her husband's employer may see them in the city if they returned. She does not believe that they could relocate as they would have no shelter in another city. They had lived in other places during the Iraq war but that had been temporary.

Sabean Madaeans in Iran they face constant discrimination and intolerance. The children are forced to learn the Koran at school. They are all insulted and called dirty Sabeans. Several years ago she had a clash with a Muslim neighbour. He had made insulting remarks to her as she left her home. Another day this neighbour ran into her while riding his motorbike. She was injured.

The applicant wife does not like the dress regulations in Iran. Other Iranian children will not play with her children because she does not cover her hair.

A submission from the applicant's adviser indicated the Archbishop of the Mandaean Community in Australia recently returned from Iran after conducting religious ceremonies.

At a hearing the applicant husband and wife confirmed they are Sabean Mandaean. At the time the applicant gained his education and training, application forms did not require religious identification. The current form provides questions about religion. The applicant husband got a job when he finished his compulsory conscription. He

worked for several months in the food industry. He left Iran as Sabeen Mandaean are considered unclean and do not have the right to work in the food industry. At the time he had not told them he was Sabeen Mandaean but when the employer found out he threatened him and sacked him. Because of the threats he was scared he will be killed. He received no support and the government does not protect them. If he were killed as a non Muslim there is no price payable. He made no effort to obtain another job as he was hiding, both in his own family and his relative's home. His wife and children were with him. The children did not go to school.

The applicant husband states the major reason he left Iran was that the government would not protect him. If local Muslims harmed them there was no way to defend themselves. Prior to the hearing, his wife telephoned Iran. Two police persons had gone to the neighbours asking questions about him. They asked if he was Sabeen Mandaean or Muslim and wanted to know his current whereabouts.

Their life in Iran as a Sabeen Mandaean is a low life. They feel they have no rights whatsoever. They have no support or protection; they do not employ Sabeen Mandaean and do not let them work. In his own family a few years ago a female relative was raped by a Muslim man and was forced to become a Muslim. Another relative was kidnapped from his business and his remains were never found. It is an example of their lives and they live in fear. They fear for their family left in Iran.

Sabeen Mandaean are able to sell property with the assistance of real estate agents. Most Iranians do not sell property to Sabeen Mandaean as they are unclean. Sabeen Mandaean usually trade among themselves. Some persons in real estate try to buy Sabeen Mandaean's houses for a low price. If any problems result when selling or buying property, only Muslims have legal rights. The majority of Sabeen Mandaean have been forced to work only in the goldsmith or turning or the boat industry. In Iran their children cannot achieve anything, they are oppressed. There is no right of employment and the people have been forced to go into the gold industry. His children cannot enter university without conversion. In many cases they have been forced into Islam in order to achieve jobs and education.

The applicant wife stated she has suffered as a woman in Iran. She is not comfortable going out. The Muslims touch her body, dirty words are uttered and she always feels depressed. She was unable to continue her studies. When she goes out of the home to shop in the area they know she is not a Muslim. In the crowded bazaar, Muslims males touch her and she cannot stand up for herself. If she screams there is no support. When she is with her husband she fears he will be attacked if she were to scream. She observes the Islamic dress code but the people know her, even when she picks up her children from school. Sometimes motor bikes being driven by Muslim men rush past and push them over. These men are of all ages. They come with such force she cannot see them. She lives where there are more Sabeen Mandaean.

Sabeen Mandaean children are treated very badly in Iran. When the children play outside, as soon as arguments start the Sabeen Mandaean children are called dirty. At school they suffer. Those children that have Muslim names are praised and receive merits and there is so much propaganda of Islam. The Sabeen Mandaean children do not get merits in school. When she asked at school she was told the children who can recite the prayers received merits. Her children ask her to teach them the Koran so

that they too can receive merits. Once her child had spilled ice cream on herself in the street. She asked a shop owner for water, as she was dirty. He did not allow the child to wash her face. Without teaching the children Islam she is not able to survive. She has to either teach them Islam or leave. Even the Muslim children approach them and harass them with Islamic propaganda. Their children are not allowed to use the water fountain at school, they must take water from home.

When Sabeen Mandaean say their prayers and are baptised the Iranian authorities stop them from practising their religion. In the Mandi there is a pond to baptise. The authorities took the pond away. They are forced to be baptised at river shores. When this happens the Muslims try to harm them. They throw dirt, they swear at them, look at them and throw stones at them.

Testimony from a staff member from a Detention Centre states that she is horrified by the treatment of Sabeen Mandaean women. She referred the Tribunal to previous evidence she had given to the Tribunal in relation to the treatment of these people in the detention centres by the Muslims.

The applicants' adviser submission refers to the treatment of Sabeen Madaeans and details a trip to Iran by the Archbishop of the Sabeen Madaeans in Australia.

## FINDINGS AND REASONS

The applicants claim they are nationals of the Islamic Republic of Iran and of no other country. While they claim to have destroyed their passports they have consistently claimed to be Iranian. I am satisfied that they are Iranian nationals.

The applicant husband and wife claim they are of the Sabeen Mandaean religion. The applicant husband claims that he lost his position in the food industry and fears being killed by his previous employer. The family claims they suffered persecution for their religion and will suffer discrimination and persecution in the future for their religion.

The delegate was not satisfied that the applicants were persons to whom Australia has protection obligation.

By way of background Iran is a large country of 1.6 million square kilometres (almost the same size as Queensland). It has common borders with 6 countries Iraq, Turkey, Armenia, Azerbaijan (then the Caspian Sea), Turkmenistan, Afghanistan and Pakistan. To its immediate south lie Kuwait, Saudi Arabia, the Gulf and the Gulf States and the Gulf of Oman. Less than 300 kms to the East lay Syria (Department of Foreign Affairs and Trade, Refugees, Immigration and Asylum Section).

Iran was ruled by the Shah. The revolution against the Shah brought about the imposition of a theocracy with which Iranians are increasingly uncomfortable and to which they are increasingly resistant. In a summary of the situation in Iran, the United States Department of State Country Report on Human Rights Practices (1999) describes Iran in this way:

"The Islamic Republic of Iran was established in 1979 after a populist revolution toppled the Pahlavi monarchy. The Government is dominated by the Muslim

clerics. Ayatollah Ali Khamenei is the Supreme Leader of the Revolution and functions as the Chief of State and the Commander in Chief of the armed forces. Seed Mohammad Hamati was elected to a four-year term as President in a popular vote in February 1997. A popularly-elected 270 seat unicameral Islamic Consultative Assembly, or Males, develops and passes legislation. All legislation passed by the Males is reviewed for adherence to Islamic and constitutional principles by a Council of Guardians, which consists of six clerical members, who are appointed by the Supreme Leader, and six lay jurists who are appointed by the head of the judiciary and approved by the Males. Candidates for most elective office are screened carefully for their ideological beliefs by the regime. The Government seeks to conform public policy to its political and socio-religious values, in particular the tenets of She's Islam, but there are serious factional differences within the leadership. The judiciary is subject to government and judicial influence." (April 1999, p.1660)

Sabeen Mandaeans (Sabaean and Mandaean) are also known as Sobbis. Dr Jorunn Jacobsen Buckley, a Bowdoin College professor, in an article entitled "The Mandeans: An Unknown Religious Minority in the Near East" (sourced from the Institute of Near Eastern and African Studies internet site, 31 August 2001), writes:

"The Mandeans (literally, "the knowers") are the only surviving Gnostics from the time of late Antiquity. They have dwelled for the past eighteen hundred years in southern Iraq and southwest Iran, and increasingly, as a result of recent wars, in other parts of the world. They adhere to the typical Gnostic doctrines and mythologies regarding the soul's entrapment in earthly life and the existence of a heavenly Lightworld, the soul's true home. Being Baptists, the Mandeans consider John the Baptist their main prophet and renewer of the religion, which, they say, ultimately stems from Adam himself. The Mandeans live next to but remain apart from their (mostly Moslem) neighbors, and throughout the centuries they have preserved their traditions to a remarkable degree.

According to the Encyclopaedia of the Orient Mandeans are:

The only surviving Gnostic religion, now with no more than 20,000 adherents, living in southern Iraq and southwestern Iran. Their main city is Nasiriyya. They are often called the Christians of Saint John, as he is held as a very sacred person, but not indispensable, in their theology. Their name is Aramaic for 'knowledge', i.e. a translation from the Greek 'gnosis'.

John the Baptist is central in their teaching, as a representative for their faith. Jesus is also central, but he plays a totally different role than in religions like Christianity and Islam, and is a false prophet, almost depicted as evil. The central religious book to Mandeans is the Ginza, 'Treasure', containing mythological and theological moral and narrative tracts as well as hymns to be used in the mass for the dead.

Baptism is central to the cult of Mandeans, and the Mandaean sanctuary, Mandi is a very simple and small house with slanting roof. In front of it is a pool which is connected to a nearby river. The river is called 'Jordan' and is used for baptism. The whole area is surrounded by a high fence or a wall. Baptisms are performed on Sundays, and every believer pass through this several times every year. Mandaean baptism can be compared to the Christian communion, and the Muslim prayer, salât.

Traditional Mandaean graves are unmarked, as what is buried is only the dark body. But in modern times these customs have adjusted themselves to Muslim customs. Monogamy, dietary laws, ritual slaughtering and alms-giving are all central acts.

The religion's origin is difficult to reconstruct, as there is so much unknown. They could be a continuation of traditions from Mesopotamia, or Palestine, or both. The Mandaean religion could be pre-Christian, or it could date to 1st or 2nd century AD. It could actually be John the Baptist

who founded the sect, or they could be a continuation of the Jewish sect that John the Baptist belonged to (guessed to be the Esseneans). However, elements of their language indicate that the community is of Jewish origin

. ... With the arrival of Islam in Iraq in 636, the Mandeans were considered as the third 'people of the book', as the mysterious Sabians of the Koran. But the Mandeans still faced a difficult relationship with Islam, and Muhammad is in their writings called the 'demon Bizbat'. The Mandeans moved from the cities to the marshlands in Southern Iraq. It is first in modern times that the Mandeans have moved back to the cities, especially Nasiriyya, Baghdad and Basra, where many of them work as gold and silver smiths, iron smiths and boat builders. Mandeans are also found in medium-sized towns between Baghdad and Basra. Some small groups of Mandeans even live in Iran, in cities like Ahvaz and Shushtar in the southwestern corner of the country.

Today Mandaean theology is seriously threatened, as recruiting new priests is difficult, and many offices are vacant. Mandaean laymen are often highly educated, but know little of the old language and the scripts, and they attend ceremonies only seldom, as in weddings. Yet, there is a strong

feeling of pride of their heritage, and they often claim to belong to a religion older than Judaism, Christianity and Islam. [from: "Mandeans" by Tore Kjeilen, article in the Encyclopaedia of the Orient, Oslo, Norway. Last modified November 22, 2000, website: URL: [http://lexicorient.com/cgi-](http://lexicorient.com/cgi-bin/eo-direct.pl?mandeans.htm)

[bin/eo-direct.pl?mandeans.htm](http://lexicorient.com/cgi-bin/eo-direct.pl?mandeans.htm) ]

According to DFAT

The Mandeans are not an officially recognized minority religion in Iran. The Qur'an exempts them, as a "people of the book," from forced conversion to Islam.

After the revolution in 1980, however, the government stopped supporting this protection. Since then, the Mandeans have worked to regain it. About two years ago, the Iranian President, Khamenei issued a fatwa, an opinion, about the Mandeans, stating that they seemed to be monotheists with a holy scripture and a prophet and should therefore be recognized as a protected religion. Since the fatwa, Mandeans have had their hopes strengthened. I visited Iran in April, 1996. On What happened to be Easter Sunday, I saw my first Mandaean baptism as I sat on the bank of the Karun, the largest river in Iran. It was brown and flowing rapidly, swollen by melted snow from the mountains. Mandeans practice repeated baptism, and full immersion must



take place in flowing, fresh water, which is the form that the Lightworld takes on earth." (CX56920)

According to DFAT CX53482, Sabeian Mandaean sources gave the following information:

"There are about 25 000 Sobbis in Iran, mostly living in Ahvaz. The Sobbis originally came to Iran from Iraq, but have been in Iran for a very long time ("since the time of Adam", according to the source). The Sobbis in Iran usually refer to themselves as "Mandeans" or "Mandeas" - this word can be roughly translated as "someone who has faith or belief".

In Ahvaz the Sobbis are concentrated in an area known as "old Ahvaz", near Khosravi Street. Most are involved in the goldsmithing and jewellery trades. The Sobbis are all native Farsi speakers although some also speak Arabic. Some Sobbis speak an ancient Sobbi language that has its own script, but this is mainly used in religious ceremonies. The Sobbis have their own "holy book" (called "Adam's book") which is written in this language. The Sobbis usually dress in the same way as Moslem Iranians, although they have special garments that are worn in religious ceremonies. The only thing distinctive about their appearance is that they either shave their beards completely or let them grow long (unlike many Moslem males in Iran who have short beards or "stubble").

Religious practices are very important in the life of the Sobbi community. Most ceremonies and rituals involve running water, which represents purity. The most important figure in their religion is John the Baptist, but the Sobbis consider their religion to be distinct from Christianity. In Ahvaz there is one main Sobbi temple (called a "Mandee") and 2 other buildings used for festivals and ceremonies. The religious leader of the Sobbis in Ahvaz is Sheik Jabbar Choheili (he is known as a "Genzeror" which is the highest rank in the Sobbi priesthood). After him the most senior leaders are Sheik Taleb Porajee and Sheik Neijo Choheili (both have the title of "Tarmendeh", which is the equivalent of a priest). The Ahvaz Sobbi society looks after the "social" interests of the community - the leader of this organisation is Salem Choheili. (NB: it is not clear whether the 3 Choheili's are related). There is a large Sobbi community in Iraq that has its own "Genzeror". The communities in Iran and Iraq have some links, but maintaining contact has been difficult since the Iran - Iraq war.

The Sobbis in Ahvaz very much keep to themselves although there is some interaction with the wider community. Marriages outside the Sobbi community are rare, and Sobbis who marry Moslems or even associate with the wider community too much are "disowned". The Sobbis do not, however, have problems with members of the general community - they get along well with most ordinary Iranians. The Sobbis do not get involved in politics and are a law-abiding community. The main concern of the Sobbis in Ahvaz is to preserve their religion and their separate identity, which they feel are under threat.

The Sobbis feel threatened mainly because of discrimination by the Iranian authorities, which results from the fact that their religion is not officially recognised in Iran. Sobbi children are able to attend Iranian government schools, but they are

obliged to study Islam as part of the general curriculum (NB: recognised religious minorities such as Christians are able to attend classes in their own religion at school, but Sobbis do not have this privilege). Because of their religion Sobbis cannot be employed in government jobs and it is very difficult for them to enter university. (NB: only members of recognised religions are able to sit university entrance exams in Iran.) Some Sobbis are able to enter university by claiming to be Moslems (Sobbis are prepared to conceal their religion when necessary, this is not contrary to their beliefs). Sobbis can have similar problems if they work in non-government jobs alongside Moslems. One source said that he worked for a meat processing company in Ahvaz for 8 years, and felt obliged to conceal his religion from his workmates. He said that if it had become known that he was a Sobbi, he could have lost his job. Other Sobbis who have worked with Moslem Iranians have been put under pressure to convert to Islam.

Sobbis in Iran have their own ceremonies for marriages, births and deaths and their own procedures for registering these events. Sobbi marriages are recognised by the Iranian authorities. (NB: it is unclear why this is the case given that they are not an official religion - Bahai marriages, for example, are not recognised. The sources were not able to explain this). Also, different rules apply to Sobbis for the payment of "blood money" in cases of murder, accidental death or bodily injury. (NB: under the Iranian legal system, if a person kills or injures someone accidentally or otherwise, they must pay "blood money" to the victims family in addition to any other punishment they are liable for. The " blood money" payable for injury or death of Christians or other official religious minorities is less than for Moslems.) Because Sobbis are not a recognised religion, no blood money is payable if one of them is killed or injured.

In some respects Sobbis do not receive the same level of protection from the authorities that other Iranians enjoy. The police will generally protect Sobbis and generally do not discriminate against them, but Sobbis often have problems in the courts. If there is a legal dispute involving Sobbis and Moslems, the courts will often side with the Moslem party, especially if the judge is religious. They also said there can be problems in cases of marriages between Sobbis and Moslems (although these are rare), because if a "mixed" couple are separated or divorced, custody of the children will always go to the Moslem partner. (NB: in Iran a Moslem man can marry a non-Moslem woman, but a Moslem woman cannot marry a non-Moslem man. Children of "mixed" marriages are considered to be Moslems. It is unclear how this situation affects Sobbis any more than it would any other religious minority in Iran).

The Sobbis also experience interference in their religious practices, but they only gave one example of this. They said that one of the premises they use for religious ceremonies in Ahvaz was confiscated by the authorities as a result of complaints by the local Basij (a fundamentalist Islamic militia that operates throughout Iran). The Sobbis are trying to get the property returned through the courts, but they are not confident they will be successful. The title deeds of Sobbi community properties are in the names of private individuals rather than being registered to the Sobbi community itself, to make it less easy for the government to interfere with these properties. (our sources stated that economic conditions for Sobbis in Ahvaz are " generally good, not bad").

Our source stated that community leaders are strongly opposed to illegal migration as this has the potential to further deplete their small community. Leaders have advised community members of the risks involved and have told them not to take this option. He said that many Sobbis want to leave Iran as they feel there is no future for them there, because of the problems of discrimination mentioned above and especially because they feel that their children's futures are limited.

The information provided suggests that as a religious minority, the Sobbis experience discrimination in employment and education and in the way the legal system operates. However the sources did not say anything to suggest that the Iranian government actively harasses or routinely persecutes the Sobbis as a community": Background information on the Sobbis (Mandean) and their situation in Iran CX53482 dated 11 June 2001).

The US State Department reports:

The UN Special Representative for Human Rights in Iran noted in his September 1998 report frequent assertions that religious minorities are, by law and practice, barred from being elected to a representative body ( except to the seats in the Majles reserved for minorities, as provided for in the Constitution) and from holding senior government or military positions. Members of religious minorities are allowed to vote, but they may not run for president. All religious minorities suffer varying degrees of officially sanctioned discrimination, particularly in the areas of employment, education, and housing.

Members of religious minorities generally are barred from becoming school principals. Applicants for public-sector employment are screened for their adherence to Islam. The law stipulates penalties for government workers who do not observe "Islam's principles and rules." Religious minorities may not serve in the army, the judiciary, or the security services. The Constitution states that "the Army of the Islamic Republic of Iran must be an Islamic army, i.e., committed to an Islamic ideology and the people, and must recruit into its service individuals who have faith in the objectives of the Islamic Revolution and are devoted to the cause of achieving its goals." Baha'is are prohibited from government employment. University applicants are required to pass an examination in Islamic theology, which limits the access of most religious minorities to higher education (despite the fact that public-school students receive instruction in Islam).

The Government allows recognized religious minorities to conduct the religious education of their adherents. This includes separate and privately funded Zoroastrian, Jewish, and Christian schools, but not Baha'i schools. The Ministry of Education, which imposes certain curriculum requirements, supervises these schools. With few exceptions, the directors of these private schools must be Muslim. Attendance at these schools is not mandatory for recognized religious minorities. All textbooks used in course work must be approved for use by the Ministry of Education, including religious texts. Religious texts in non-Persian languages require approval by the authorities for use. This requirement imposes sometimes significant translation expenses on minority communities.

Recognized religious minorities may provide religious instruction in non- Persian languages but often come under pressure from the authorities when conducting such instruction in Persian. In particular, evangelical Christian and Jewish communities suffer harassment and arrest by authorities for the printing of materials or delivery of sermons in Persian.

Recognized religious minorities are allowed by the Government to establish community centers and certain cultural, social, sports, or charitable associations that they finance themselves. This does not apply to the Baha'i community, which since 1983 has been denied the right to assemble officially or to maintain administrative institutions. Because the Baha'i Faith has no clergy, the denial of the right to form such institutions and elect officers has threatened its existence.

Religious minorities suffer discrimination in the legal system, receiving lower awards in injury and death lawsuits, and incurring heavier punishments, than Muslims. Muslim men are free to marry non-Muslim women but marriages between Muslim women and non-Muslim men are not recognized ". ( US State Department, 2000, 2000 Annual Report on Religious Freedom: Iran, September 5 2000, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/irf\\_Iran.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_Iran.html) -)

A DFAT Country Information Report (CIR No.77/01) [CX50330] dated 26 February 2001 on the 'Treatment of Sobjian Mandeans by Muslim Community in Iran' states:

There is only limited information about the Sobjian Mandians available in Tehran. Our assessment of the circumstances in which Sobjians live remains unchanged from that reported previously [cx46890].

We are not aware of any incident other than the unverified report [ CX46890] of specific or systematic harassment of Sobjians in Iran. To the best of our knowledge there is no systemic basis for harassment or persecution of Sobjians other than that referred to previously [cx46890]. The extent to which members of the Sobjian community are exposed to harassment or worse is difficult to ascertain as it is confined to the remote Khuzestan province. We cannot comment on the behaviour of individual Iranian authorities in their daily interactions with the Sobjian communities. While legal protection exists for all individuals who encounter such harassment within Iran, we cannot comment on willingness of the local authorities to act to offer such protection. We are unable to comment on the circumstances in which authorities would refuse to offer protection to Sobjian victims of serious offences.

As we have no evidence to support or refute these claims, the questions posed largely go to the state of mind and behaviour on a case-by case basis of individual authorities and we are of course unable to comment on this. We are reluctant to speculate on these matters as this is a highly inaccurate means of providing input and may mislead refugee determination processes."

The Columbia Encyclopedia [Sixth Edition, 2001] states of Mandeans that the sect is diminishing because younger members tend to apostatize.

According to US State Department Report 2000 members of all religious minorities suffer varying degrees of officially sanctioned discrimination, particularly in the areas

of employment, education, and housing. Applicants for public-sector employment are screened for their adherence to Islam. The law stipulates penalties for government workers who do not observe "Islam's principles and rules." Religious minorities cannot serve in the army, the judiciary, and the security services.

I accept that the applicant husband lost his employment due to his religion and I accept that he fears punishment from his employer. I accept that Sabean Mandaean males have a distinct appearance and are easily distinguished from the general Muslim populace.

The Sabean Madaeans or Sobbis feel threatened mainly because of discrimination by the Iranian authorities, which results from the fact that their religion is not officially recognised in Iran. Sabean Mandaean children are able to attend Iranian government schools, but they are required to study Islam as part of the general curriculum. I note that recognised religious minorities such as Christians are able to attend classes in their own religion at school, but Sabean Mandaean do not have this privilege. There are claims and I accept that Sabean Mandaean children suffer discrimination in schools from other pupils and teachers and constant attempts to convert them to Islam by a variety of means.

Because of their religion Sabean Madaeans cannot be employed in government jobs and it is very difficult for them to enter university as only members of recognised religions are able to sit university entrance exams in Iran. Sabean Madaeans can have similar problems if they work in non-government jobs alongside Muslims. Other Sabean Madaeans who have worked with Moslem Iranians have been put under pressure to convert to Islam.

Sabean Mandaean marriages are recognised by the Iranian authorities. They are able to buy and sell real estate but I accept that if they sell to a non member of their religion, they are easily the victims of unscrupulous practices with little redress by the legal system where the word of a Muslim is paramount to the word of a Sabean Mandaean. Different rules apply to Sabean Madaeans for the payment of "blood money" in cases of murder, accidental death or bodily injury. Because Sabean Madaeans are not a recognised religion, no blood money is payable if one of them is killed or injured.

In some respects Sabean Madaeans do not receive the same level of protection from the authorities that other Iranians enjoy. DFAT states the police will generally protect Sabean Madaeans and generally do not discriminate against them, but I note that DFAT also states that it is unable to comment on the willingness of local authorities to act to offer protection. Sabean Madaeans often have problems in the courts. If there is a legal dispute involving Sabean Madaeans and Muslims, the courts will often side with the Muslim party, especially if the judge is religious.

There can be problems in cases of marriages between Sabean Madaeans and Muslims (although these are rare), because if a "mixed" couple are separated or divorced, custody of the children will always go to the Muslim partner. In Iran a Muslim man can marry a non-Muslim woman, but a Muslim woman cannot marry a non-Muslim man.

I accept the claims of the applicant wife and her treatment as a Sabean Mandaean woman when going about her daily life. I accept as being true that Sabean Mandaean women are touched and felt in crowded places such as the bazaars and are unable to do anything about this treatment. I note her claims are consistent with the information on the treatment of minority religious groups and of the Sabean Mandaean community itself.

I note the claims that the Sabean Madaeans have suffered harassment from the Muslim Iranian population in the detention centre. I note a report by Father Jim Monaghan, of the Woomera-Roxby Downs Catholic Parish, dated 26 January 2002. This letter points out that the discrimination suffered by Mandaean children, at the hands of Muslims at the detention centre in Woomera, has caused psychological harm. Father Monaghan further states:

...during July and August of 2001, it was almost impossible for Mandaian people to access showers in the ablutions blocks of the Main Compound, due to the aggressive actions of such a group of hostile Muslims. These people would warn the Madaians to stay away, saying that the particular blocks were 'their blocks', and that they would not tolerate 'dirty people' like Madaians using them. The threats were backed up with action, in that when the Madaians defied the warnings, the persecutors simply turned off the water supply from outside the blocks.

in the November Compound the torment of choice involved defecating in the doorways of the bedrooms inhabited by Mandarins in the dormitory buildings of this Compound. In a more serious incident, an elderly, blind Mandaian man was assaulted during a night time visit to the toilet block, and defecated upon by his attackers. In each situation these attacks were accompanied by a consistent verbal harassment in the context of the queues for meals, encounters at ablution blocks and the like.

Mandaian children are constantly subjected to verbal harassment by both adults and peers. Sometimes it happens that Mandaian children and Muslim children develop a friendship. On these occasions, it is not uncommon for the Muslim child to be instructed by his or her parents to inform the Mandaian child that the Mandaian is not to touch the Muslim, nor to share food, or to be in any sort of contact, as this would render the Muslim child 'unclean'. This has a serious psychological impact on the Mandaian child, amounting substantially to persecution.

I have seen the 'Country Information' provided by DFAT and other organizations, but I find it hard to accept this information, in light of the attitude of those persecuting bigots who plague the lives of the Madaians in the Woomera Detention Centre. I see this information as largely reflecting an official version, the formal stance of the gradually liberalising national government culture of Iran. At regional and local level, this sort of tolerance and respect for law seems to be non-existent. While there may be occasional instances of helpful police, the Madaians seem to be consistently denied the protection of the law at the local level. The influence of local religious bigots in positions of power in the courts and local government is commonly destructive. Of course, the local level, rather than the national level, is what counts where the physical safety of one's family, the safety of one's marriage, and the chances of earning a livelihood in one's chosen profession are concerned.

I also note reports of numerous incidents in the detention centre of unacceptable behaviour directed at Sabeen Mandaean. Such behaviour in my view reflects the general views of Iranian society where low level harassment of Sabeen Mandaean is part of the general norm. I accept that whilst President Khamenei has made positive public comments that Sabeen Mandaean should not suffer discrimination I accept that this type of harassment is unpunished behaviour in Iran. I note there are no avenues for complaint by Sabeen Mandaean if they feel they have a grievance. I note that such an institution as an Ombudsman does not exist in Iran.

According to UNHCR CX79596 Iranian jurisprudence is dependent on denunciation and raises issues of fair trial. There is a lack of judicial independence in Iran and the vaguely worded laws have led to erosion in the delivery of justice. Unfair trials frequently fall short of international standards for fair trial. The report indicated there were levels of arbitrariness and inconsistency in the application of the legal system. This view is supported by DFAT and the US State Department reports.

Therefore, the core of the applicants' claims, that the applicant husband is a Sabeen Mandaean who has with his family suffered a history of discrimination against which he feels he cannot effectively invoke the protection of the Iranian Government appears credible and plausible.

I accept there is sufficient country information corroborating the applicants' claims that Sabeen Mandaean suffer ongoing abuse and discrimination, and that the authorities are complicit with this discrimination for example, the closure of their Mandi or chapel is evidence of official involvement.

I note that the independent evidence (cited above) indicates that Iran's religious minorities reported imprisonment, harassment, and/or intimidation based on their religious beliefs, there is societal and official discrimination against non-Muslims. Sabeen Mandaean are unable to work in the public sector as they are screened for adherence to Islam, they are barred from being elected to a representative body (even the seats in the Majles reserved for minorities, as provided for in the Constitution do not include the Sabeen Mandaean). University applicants are required to pass an examination in Islamic theology and as Sabeen Mandaean is not an official religion, are denied entrance to university. There is throughout Iran strict adherence to Islamic standards of social behaviour, enforced by the government and there are government tolerated Islamic religious groups. Sabeen Mandaean have no right to have their own schools or teach their religion at school as they are not a recognised religious minority. Religious minorities encounter discrimination in the legal system. All religious minorities suffer varying degrees of officially sanctioned discrimination, particularly in the areas of employment, education and housing.

According to the U.N. High Commissioner of Refugees Background Paper on Iran, the

Mandaean are included among the country's recognized religious minorities. The small community faces discrimination similar to the country's other pre-Islamic religious minorities"; there is a report from 1992 that "In Iran, however, Sabeen/Mandaean do not share the same conditions as their cousins in Iraq. Our

source advised that any Sabean from Iran would be a legitimate refugee claimant as Sabean/Mandaeans are severely persecuted in that country";

Of concern is a DFAT cable indicating the Sabean Mandaean sources interviewed did not say anything to suggest that the Iranian government actively harasses or routinely persecutes the Sabean Mandaeans as a community. This does not concur with the information provided by the local Australian Sabean/Mandaean Association or other submissions provided to the Tribunal.

Member Keher in another decision N01/40271 expressed his concern in relation to the same DFAT advice and stated:

Having considered the above examples of the type of harm and discrimination suffered by the Sabean/Mandaean Mandaean community and other information it is apparent that most of the Sabean/Mandaean Mandaean community attempt to live as quietly as possible so as to not attract adverse attention from the Iranian authorities, groups such as the Basij, and their Muslim neighbours. The nature of some of the independent evidence is of concern in that the types of matters being reported appears at times vague and general, in particular the more serious matters which are claimed by applicants and some commentators are not reported by the Sabean/Mandaean leadership in Iran itself (from whom it appears DIMA and DFAT have obtained information). I have considered why that may be and note that the leaders of the community do not want members to leave, they are also in dialogue with the Iranian leadership to have official recognition, and undoubtedly they would not want any official comeback for any criticism they may make. These matters could have the effect of the Sabean/Mandaean leadership in Iran failing to report the extent of their concerns.

I concur with his view. There is a lack of information in relation to the situation of Sabean Mandaeans. This is confirmed in a number of DFAT reports including those mentioned above and CX61417. This information further states that the private and insular nature of the Sabean Mandaean community makes it difficult to provide authoritative answers.

There is conflicting evidence as to whether Sabean Mandaeans are considered to be part of the officially recognised Christian minority in Iran. I accept that Sabean Mandaeans do not regard themselves as Christian (see DFAT report cited above) and I accept that Christian churches would not consider them to be part of the Christian community. I accept that they are not one of Iran's officially recognised minority religions, though they are clearly mentioned in the Koran and recognised as "people of the book" by Ayatollah Khamenei.

The independent information generally about the situation for minority religions in Iran indicates a pattern of harassment and discrimination and a lack of willingness on the part of the Iranian authorities to protect minority religious groups. Religious persecution in Iran is a matter of public record and the subject of frequent comment from human rights observers and from the U.S. State Department.

I note one submission to this Tribunal in relation to the situation of the Sabean Mandaeans in Iran. There is a lack of recognition of the Sabean Mandaean religion in



Iran. I accept that Iran is an Islamic State with an Islamic Government governed by Islamic law. I accept that there is discrimination of non-Muslims.

I note that in *Chan v MIEA* (op cit) McHugh J said,

The threat of harm need not be the product of any policy of the government of the person's country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution.

I also take note of the views of the Full Court of the Federal Court in *MIMA v Khawar* (2000) 101 FCR 501 that

persecution" can take the form of a discriminatory withholding by the state from the members of a particular social group of goods or services that the state provides to other persons

The Constitution of Iran does not officially recognise the Sabean Mandaean. On the evidence from both DFAT and the US State Department I accept that the Sabean Mandaean suffer discriminatory withholding by the Iranian state because of their religion of

tertiary education

government employment

service in the judiciary, army and security services

housing

remedies within the legal system

election to a representative body

positions as school principals

religious instruction to their adherents in the same manner as other minority religions

ability to establish community centres or other community associations in the same manner as other minority religions

These services and positions are available to other persons.

I am of the view that the Iranian government has failed to protect the Sabean Mandaean from localised harassment and is thus condoning agents of persecution. I note that religious affiliation of every Iranian citizen is registered in a national ID card. I note that a Bill for the Elimination of Discrimination against Women was introduced to Parliament in mid-2002 but strong opposition was voiced by some of Iran's religious leaders and the Bill was not passed.

I note a report about the Mandaean Archbishop recently returning from a visit to Iran. I place little weight on its contents. His report is not a personal report but has been provided by the Sabean Mandaean community. I am satisfied the Iranian government does not prevent the practice of the Mandaean religion as evidenced by the ability of the Archbishop to travel to Iran, remain there and conduct ceremonies.

I am satisfied that whilst the Iranian government does not have an affirmative action policy of threatening harm to the Sabean Mandeans. But the applicants have a real chance of suffering from the failure of the government to take any measures to prevent local Muslims and Imams from harassing and vilifying Sabean Mandeans generally.

I note at <http://www.state.gov/g/prm/refadm/rls/rpts/2002/13892.htm> a report from the US State Department Proposed Refugee Admission for 2003 Report to Congress

In Iran, particularly severe persecution of minority religions, including executions of Mandeans and of Baha'is, continues.

I have found no other reports suggesting that Mandeans are executed in Iran.

I accept the applicants would be particularly vulnerable and sensitive to discrimination and abuse, if they were to return to Iran. The State, since the religiously inspired revolution, restricts the extent to which they can fully practise their religion, for example, by teaching it. I accept that Sabean Mandaean children and women who are molested, harassed, attacked or abused are not guaranteed the same treatment by the Iranian legal system to redress any wrongs. I note that Sabean Mandeans claim they are not adequately treated in hospitals and did not have their complaints to police acted upon and because of their alleged 'uncleanness' it is difficult for them to obtain medical attention.

I have considered whether the applicants could relocate to another area of Iran. I consider that this is not reasonable considering my findings relating to the Sabean Mandaean community, because of the geographical location of other members of the applicants' religion, that the applicants would encounter similar problems as previously encountered wherever they went in Iran.

I find that Sabean Mandeans are at risk in Iran for reason of their religion. I have found no new independent evidence since my decision N01/40980 that suggests that the situation has positively altered for the Sabean Mandaean community in Iran.

I find, when viewed in combination with the independent evidence, that the applicants have a well founded fear of serious harm in Iran amounting to persecution as explained by section 91R (1) and (2), and that such harm can be directed at them by various people motivated in their intention to harm for reasons of their religion - Sabean Mandaean.

## CONCLUSION

The Tribunal is satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees

Protocol. Therefore the applicants satisfy the criterion set out in s.36(2)(a) of the Act for a protection visa. They will therefore be entitled to protection visas, provided they satisfy the remaining criteria.

#### DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicants are persons to whom Australia has protection obligations under the Refugees Convention.