

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75999

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for INZ:</u>	No Appearance
<u>Dates of Hearing:</u>	26 and 27 February 2007
<u>Date of Decision:</u>	26 March 2007

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 a decision of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ) declining the grant of refugee status to the appellant, a national of Iran.

[3] The appellant claims a well-founded fear of being persecuted by reason of his having become involved in low level political activities in Iran. What follows is a summary of the appellant's evidence before the Authority. An assessment will follow thereafter.

THE APPELLANT'S CASE

The evidence of the appellant

[4] The appellant was born in X in the Kurdish region of Iran. He is an ethnic Kurd of the Sunni Islamic faith.

[5] He undertook all of his schooling in X, finishing in 1999. Throughout his education, the appellant encountered difficulties because of his ethnic origin. He was given instruction in Farsi, even though the language spoken at home was Sorani. Neither of his parents can speak Farsi and both are illiterate. This made it difficult for the appellant to comprehend the instructions given in his classes throughout his schooling.

[6] As the appellant progressed through his schooling, the restrictions placed upon him by the Islamic education authorities became more severe. While at primary and intermediate school, no objections were taken to the Kurdish children speaking Kurdish amongst themselves in the playground, at high school, the authorities would insist that only Farsi was spoken. Additionally, by the time the appellant reached high school, the education authorities insisted that the children no longer wear traditional Kurdish clothing, but must wear attire deemed appropriately Islamic by the authorities.

[7] During his high school years, the appellant complained to a teacher about the fact that he and the other Kurdish children were not allowed to be taught in their mother tongue. In response, the school authorities made his mother attend the school and he was told that if he continued to make such complaints, he would have marks deducted. Also at high school, the appellant came under pressure to grow a moustache and beard. He resisted this pressure as best he could but occasionally was forced to comply with the requirements when visiting officials were attending the school. Be that as it may, generally the appellant did his best to comply with the requirements of the school because his parents had told him that he should not do anything to breach the rules. They told him that he was there to study and not to cause trouble.

[8] While at high school, the appellant and his classmates began talking about the situation of the Kurds in Iran. He became aware through discussions with AA and other classmates of the 30 years of oppression that the Kurds had faced in Iran under the Islamic Republic. However, when he tried to raise these subjects with his father after school, his father was reluctant to engage in any substantial discussion. While he talked in generalities about the miseries that the Kurds had faced, his father always told the appellant that nothing good would come of trying to struggle against it. In the course of these discussions, the appellant's father reminded him that two of his own cousins had been imprisoned and tortured for a number of years because of their involvement in a demonstration some years previously, commemorating the death of Abdul Rahman Qasimlu, a former leader of the Kurdish Democratic Party of Iran (KDPI) who had been assassinated by the regime in Europe. He told the appellant that he would encounter difficulties if he struggled against the regime and advised him to simply get on with his studies

[9] The appellant's mother was of the same view. As a result, not wanting to show disrespect to his parents' wishes, the appellant did not engage in any political activity while at school or take part in any of the demonstrations that occasionally took place in X, at which the local Kurdish population demonstrated against the discrimination they faced or commemorated the assassination of Qasimlu.

[10] After completing high school in 1998, the appellant passed the requirements to gain entry into a year long pre-university preparation course. At the end of this course, the appellant obtained sufficient grades to allow him to apply for a university place. The appellant passed the written test and was invited for an interview. At this interview, he was questioned about the Islamic Revolution and about matters relating to his faith. Two months later, the appellant received a letter rejecting his application. No reason was given. The appellant applied again in 1999 but again he was made to answer questions about the Islamic Revolution and about his beliefs as a Sunni. Again he was denied entry.

[11] At the appellant's high school, there were approximately 40 Kurdish students in his class. Of these, the appellant knows of no one who obtained

entry to a university. The appellant believes this is part of a long-standing pattern of discrimination against Kurds in getting access to higher education.

[12] Thereafter, the appellant began helping his father in his father's fruit shop, situated in the main street of X. Of his school friends, he only kept in touch with AA, his closest friend at school, who lived nearby and with whose family his own family had a social relationship. AA's father had, in fact, been in prison for some years while the appellant was at intermediate school. The families maintained their close relationship throughout the four or five years of AA's father's imprisonment but the appellant never found out at the time why AA's father had been detained.

[13] After finishing work at his father's shop, the appellant would often go to AA's house. There, the two of them would talk about various things which included the situation of the Kurds and general political matters. From time to time, AA's father engaged in discussions of a political nature with them. He regaled them with tales of Kurdish *Peshmerga* who had fought against the regime and against the Shah. AA's father told them how important it was for the Kurds to preserve their culture, language and traditions. AA's father also told the appellant about the famous Kurdish figures, including Qazi Mohammad who had formed the KDPI many years before and who had established for a brief period, an autonomous Kurdish republic centred on the city of Mahabad. Although nothing was ever said about AA's father's political affiliations, from the discussions that they had, the language AA's father used caused the appellant to think that he was probably associated in some way with the KDPI, as opposed to *Komala*, which was more Communist in its tone and rhetoric.

[14] The appellant continued working in his father's shop and associating with AA. Following the invasion of Iraq and the ousting of the Ba'ath regime, a Kurd, Jalal Talabani, was made president of Iraq in 2005. There were a number of celebrations by Kurds in various cities around Iranian Kurdistan that were violently suppressed by the Iranian regime. Many people were arrested. Soon afterwards, images appeared on Kurdish websites of a young man, SG, who had been detained, tortured and killed by the Iranian authorities. SG's body had been dragged around the streets.

The appellant was able to view these images on the Internet using software that he obtained to block filters that had been placed by the regime to restrict access to these websites.

[15] Soon afterwards, copies of the images of SG began appearing in print form throughout Iranian Kurdistan. This incensed the Kurdish population and soon demonstrations were being held in a number of Kurdish cities in Iran. These too were violently suppressed by the Iranian regime and many people were arrested. One such demonstration occurred in X. The appellant told his father that he wanted to attend but his father expressly forbade him to do so. Not wanting to disobey his parents, because he was living in his parents' house and working in his father's shop, the appellant decided not to go to the demonstration.

[16] The appellant and AA discussed what had happened with AA's father. In contrast to the cautious attitude of his own father, AA's father told them that something must, in fact, be done to protest the killing of this young man. Subsequently, AA told the appellant that he was preparing to distribute some pamphlets that his father had obtained, demanding that the perpetrators be identified and brought to justice. AA asked the appellant if he wanted to help.

[17] The appellant had by this time faced discrimination going about his daily business because he was a Kurd. He noticed that all of the public officials were non-Kurds. They often made derogatory remarks and made the business of getting even simple things done, difficult by causing excessive delays or making him come back the following day. These things, together with the problems he faced in his schooling and other restrictions Kurds generally faced, caused a feeling of resentment and bitterness to grow ever stronger inside him.

[18] Despite these feelings, the appellant felt obliged to respect his father's wishes and stay out of trouble. At the time of AA's inquiry as to whether he wanted to become involved the appellant decided he could no longer keep his anger inside him and that he should act. He therefore agreed to help AA and AA's father.

[19] The appellant did not tell his parents what he was doing. Over the next seven or eight months, the appellant and AA distributed pamphlets that they obtained from AA's father. There was no set pattern as to when they would distribute the pamphlets – sometimes they distributed them only once a week, on other weeks they distributed them two or three times. On each occasion, they distributed between 200-300 pamphlets, always at night time. They did not distribute the pamphlets on a door-to-door basis but rather distributed them by leaving them in public places. They left them under the seats in cinemas and sometimes left them on the roofs of buses or apartment buildings in order that the pamphlets would be dispersed as the bus moved or the wind blew across the roof.

[20] The pamphlets the appellant distributed concerned not only the death of the young man in the demonstration, but also included a pamphlet talking about the past of the current president, Ahmedinejad, and how he had been involved in killing prominent Kurdish politicians. A third pamphlet concerned a demonstration in a town called Z, which had been held to protest the death of the man. During this demonstration, many people had been arrested and detained.

[21] The appellant began delivering pamphlets in late 2005 and continued doing so until early 2006.

[22] One morning, the appellant was at his father's shop as usual, setting it up for the day's business. His mother telephoned the shop and told him that while she had been standing in a queue outside the bakery, a neighbour of AA had informed her that the previous night AA and his whole family had been taken away by the authorities. The appellant became very frightened. His father asked him what was wrong and initially the appellant said "nothing". His father sensed something was upsetting him. Eventually, the appellant told his father what had happened. He also confessed to him that he had been involved with AA and AA's father in the distribution of the pamphlets. His father became very angry and upset. He remonstrated with the appellant that he had told him on a number of occasions not to get involved in any such activity. The appellant closed the shop and hid in the next-door shop. His father went away and returned approximately half an hour later. His father said that the appellant must leave the city

immediately. He told the appellant he must travel to Y to stay with the father's cousin. The appellant did so immediately.

[23] A couple of days later, the appellant telephoned the shop but got no reply. The appellant then rang a maternal aunt and spoke to his cousin. His cousin informed him that the previous night, his father had been arrested and detained by the authorities. He was also told that his mother had been taken to hospital as a result of the stress reaction she suffered at this turn of events. The appellant became very upset at this news.

[24] A few days later, the appellant received a telephone call during which he spoke to both an uncle and his father. His uncle informed him that he had managed to secure his father's release from detention by using the shop's title as a bond. The appellant then spoke to his father who told him that he had been held for a few days and repeatedly questioned as to the appellant's whereabouts and activities. His father told him that he had informed the authorities that he did not know of the appellant's actions, or of his whereabouts, and that the appellant had simply fled. His father told him that he could not return to X and that arrangements would be made for him to leave the country.

[25] The appellant remained in Y for over two weeks, during which time his father made an arrangement with an agent. The family paid 10 million *tomans* to the agent to secure the appellant's exit from Iran to Turkey and then on to a safe country. The appellant gave the agent a passport photograph. A short time later, the agent returned to Y and, together with the appellant, travelled illegally from Iran into Iraqi Kurdistan. They did not pass through a normal border crossing and encountered no problems. Thereafter, the appellant and the agent travelled through Iraqi Kurdistan to the Turkish border where the officials began asking questions as to the purpose of their travel. The agent had to pay a bribe to secure entry into Turkey. From Turkey, the appellant travelled through a number of countries before arriving in New Zealand.

[26] The appellant has spoken to his parents on a number of occasions. He has learned from them that his father has been taken in for questioning on seven or eight occasions since the appellant departed Iran. On each occasion, he was held for a few hours and questioned about the appellant's

whereabouts and activities. He was made to promise to tell the authorities of the appellant's whereabouts once he became aware of them. The appellant's father also told him that, on two occasions, his elder brother had also been questioned in a similar way.

The evidence of [...]

[27] The Authority also heard from [...]. He has held this position for the last four years. The [...] is an umbrella group representing Kurds from Turkey, Iran, Syria and Iraq which aims to maintain and preserve the Kurdish culture in New Zealand for the members and their children. The New Zealand immigration authorities take it upon themselves to inform the Society whenever a Kurdish person arrives at the Mangere Resettlement Centre as a spontaneous refugee claimant or as part of the United Nations quota system. [...] confirmed that the appellant was known to the [...] for this reason.

[28] [...] confirmed that he first met the appellant approximately two months ago and since then he has had a number of telephone conversations with him. He confirmed to the Authority that the appellant spoke to him in Sorani, this being one of the main Kurdish dialects. He stated there is no doubt in his mind that the appellant is a Kurd as claimed.

[29] [...] told the Authority that the [...] has different committees, one of which is devoted to keeping abreast of political developments through the Kurdish regions in the Middle East. He told the Authority that the information being provided to this committee from the Kurdish region in Iran revealed a level of heightened suspicion and mistrust of the Kurdish population generally as the Iranian regime is concerned that they would support any American-backed attempt to oust the regime.

The evidence of [...]

[30] The Authority heard from [...] who is the current chairman of the New Zealand branch of the Democratic Party of Iranian Kurdistan (the NZ branch). The main headquarters are in Paris.

[31] The NZ branch was formed at the request of the main headquarters of the party in 2003. [...].

[32] [...] stated that from time to time, they are made aware that persons have arrived in New Zealand claiming to be Iranian Kurds associated with the party. Being aware that the regime may be using this as a ruse to obtain information about the party's activities inside Iran, the NZ branch, along with other branches overseas, conducts a vetting exercise on all such persons. This includes checking with the main office in Paris to see if they are aware of the person's claimed activities.

[33] [...] confirmed that this is what occurred in relation to the appellant. He indicated that he contacted the party's main office in France. The main office confirmed to him, after making some investigations, that while the appellant was not a formal member of the party, he had been carrying out low-level activity on behalf of persons associated with the party itself. He explained that, as a rule, the main office will not give specific details of operations lest this information somehow cause danger for other people involved in the various activities with which the party is engaged. Asked to confirm what activities are usually meant by low-level activities, [...] confirmed this would be in the nature of writing slogans on the walls or distributing pamphlets.

[34] [...] confirmed that the party was aware of a heightened degree of tension at the moment between the Iranian regime and the Kurds because of the United States presence in Iraq and because of their dispute with the Iranian regime. [...] believes that any person caught undertaking such activities for the party would face imprisonment, torture and possibly death.

The evidence of [...]

[35] The Authority also heard from [...]. He is a member of the organising committee of the NZ branch.

[36] [...] confirmed that he received a telephone call from the appellant last year and, along with his uncle and father, went to meet the appellant. The purpose of doing this was to vet the appellant's claim that he was both an Iranian Kurd and had some involvement with the party. The party is very

Careful about endorsing persons who claim to be involved with the party because the regime may use this process to gain information on its activities. [...] therefore spoke with the appellant at length. As a result, he and the others were satisfied that he was both Kurdish and was honest in his account of having some involvement with the party. Thereafter, the party contacted its head office in Paris to ascertain if the appellant was known to them. The French office indicated that while the appellant was not a member of the party himself, he had been carrying out some activities in association with people who were members of the party.

[37] [...] confirmed that there was still unrest happening in the Kurdish region of Iran. Approximately two to three months ago there were large protests in a particular city about fuel shortages, which resulted in many Kurds being arrested. He believes that anybody the regime suspected of doing low-level activities would be imprisoned and tortured by the regime.

Submissions and documents received

[38] The Authority received from counsel a written memorandum setting out his submissions in support of the appeal. In addition, counsel addressed the Authority orally at the conclusion of the hearing.

[39] The appellant filed a letter signed by [...] addressed 'to whom it may concern' as representatives of the Democratic Party of Iranian Kurdistan, New Zealand. On 27 February 2007, counsel filed with the Authority a copy of a report entitled "CIA Funding Terrorists to Topple Tehran" *The New Zealand Herald* (26 February 2007) sourced from The Telegraph Group (UK) together with a copy of the decision of the Australian Refugee Tribunal RRT N99/27823 (19 October 1999).

[40] All of this material has been considered in reaching this decision.

THE ISSUES

[41] 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."

[42] 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

[43] Having examined the appellant closely over two days, the Authority finds he is a credible witness. The Authority also notes the evidence of the three witnesses in support of his appeal. It observes that country information confirms that the KDPI is also known as the Democratic Party of Iranian Kurdistan, the party to which [...] are members – see B Szajkowski *Revolutionary and Dissident Movements of the World* (John Harper, London 2004) at p194. The appellant's account is therefore accepted in its entirety.

Country information

The Kurds in Iran – General

[44] In *Refugee Appeal No 1222/93* (5 August 1994) the Authority set out in some detail the historical background of Kurds in Iran up to that date. In so doing it relied on three reports available at the time, namely Martin van Bruinessen, *Agha, Shaikh and State: The Social and Political Structures of Kurdistan* (1992 Zed Books); David McDowall, *The Kurds* (1991 Minority Rights Group) and David McDowall, *The Kurds: A Nation Denied* (1992 Minority Rights Group). Since that time, other material of a general nature has become available, particularly the book by David McDowall *A Modern*

History of the Kurds (I B Taurus 2000 Chapters 10, 11 12 and 13) G Chaliand (ed) *A People Without a Country: Kurds and Kurdistan* (Zed Books, London 1993 Chapters 3 and 4); and Human Rights Watch *Iran: Religious and Ethnic Minorities – Discrimination in Law and Practice* (1997) (the HRW Report).

[45] As with the appellant in *Refugee Appeal No 1222/93*, this appellant's case is bound up with his Kurdish identity. It is impossible to fully consider the appellant's claim to have a well-founded fear of being persecuted without placing his activities in their wider socio-political context. Although what follows is, therefore a lengthy quotation from *Refugee Appeal No 1222/93*, it is helpful to draw heavily upon it before considering what, if anything has changed for Kurds in the intervening 13 years and how this impacts upon the appellant's refugee claim.

[46] As to the Kurds generally, it was noted in *Refugee Appeal No 1222/93* at pp 1-2:

"The preface to David McDowall's "The Kurds" is written by Alan Phillips who at page 5 observes:

"The Kurds are one of the major peoples of the Middle East. Unlike the Palestinians, who became a minority only because of specific political events in the mid-20th Century, the Kurds have always been divided between empires and states in the mountainous borderlands which are a cultural, geographical and political watershed. Although divided between different dialect groups, following different religious practices, and tribal confederations with varying political allegiances, the Kurds are undoubtedly a distinct community. Whatever state they live in, or are forced to flee to, they are a minority."

The introduction to the original 1975 MRG report on the Kurds began:

"The Kurds are the fourth most numerous people in the Middle East. They constitute one of the largest races, indeed nations, in the world today to have been denied an independent state. Whatever the yardstick for national identity the Kurds measure up to it."

The principal problem faced by the Kurds is summarized by David McDowall in *The Kurds* at 6:

"... the Kurds continue to claim that by race, language, and lifestyle - and perhaps above all by geography - they form a distinct community. Put quite simply they are more like each other than anybody else and they feel it.

The vast majority still live in a mountainous region, concentrated today between the Turks, Iraqi Arabs and Iranians. The governments of Turkey, Iraq and Iran, which have difficulty agreeing on a number of regional issues are utterly agreed on one point: not one of them views with any favour at all a separate Kurdish nation in their midst. With the present exception of Iraq, they view with profound disquiet any form of autonomy since this is suspect as a stepping stone to self-determination.

As nation-states themselves, with their own ideology grounded in race, or in the case of Iran in Shi'i Islam, and in defined borders, they understand very well the dangers of allowing too much head to Kurdish national

feeling. It is as easy to see why they should feel thus, as it is to see the strength of the Kurdish case. Strategic security, historical experience, the difficulties already experienced with their neighbours, and the vital question of unexploited minerals leave the Kurdish case for independent nation status as unnegotiable as its justice may seem unanswerable."

As at 1991, it was estimated that the Kurdish population of Iran alone was 5,500,000, or ten per cent of the total population: David McDowall, *The Kurds: A Nation Denied* 12."

[47] The history of the Kurds in Iran in the 20th century, like the history of Kurds generally, is intimately bound up with the post-World War I carve up of the Ottoman Empire by victorious allied powers and their ensuing competition for spheres of influence in the region. After noting the repudiation in the 1923 Treaty of Lausanne, of assurances given to Kurds under the 1920 Treaty Of Sevres that an autonomous Kurdish region in what is now Turkey would be established with a right to vote for full independence a year after its formation – as to which, see Chaliand (1993) at pp33-4 and 46-51; McDowall (2000) at pp137-142. The Authority in *Refugee Appeal 1222/93* observed in relation to Kurds in Iran, at p3:

"The Kurds in Iran fared little better. Between the two world wars Reza Khan, the founder of the Pahlevi dynasty, suppressed separatist tendencies throughout Iran, among the Turkic tribes, the Arabs of Khuzistan as well as the Kurds. Lands were confiscated and sometimes whole tribes moved off their ancestral lands: McDowall *op cit* 22.

During World War II the Russians occupied northern Iran, and the British occupied the south. The occupying forces of both powers were scheduled to withdraw from Iran by March 1946. In December 1945, Azerbaijanis captured Tabriz with Soviet encouragement, and declared a Democratic Republic of Azerbaijan. Following the Azerbaijani lead the Kurds declared the Republic of Mahabad a few days later, and in January 1946 formed a government under the Presidency of Qazi (judge) Muhammad, a respected member of a leading family of Mahabad: David McDowall *op cit* 22. The Mahabad republic sought complete autonomy *within* Iran's frontiers. Within the republic Kurdish became the official language, periodicals appeared, and the economy benefited from direct trade with the USSR. The Mahabad government expected the USSR to stand by them but this expectation ignored widespread Kurdish suspicion of the Soviets, based on Russian's incursion into Azerbaijan in the Nineteenth Century, and the way in which Russians had laid bare parts of Kurdistan, including the sacking in Mahabad during World War I. A number of Kurdish political groups were hostile to Qazi Muhammad's Soviet connections. The Mahabad government also badly miscalculated Soviet interests. Although the Soviets had encouraged both Azerbaijan and Mahabad to declare autonomous republics, they were not prepared to defend them. The interests of the USSR lay in its overall relationship with Iran.

By late May 1946, the Soviets had left Iranian soil and provided no military help to the Kurdish republic. In addition, a majority of Kurds under their tribal chiefs were unwilling to support the republic given its Soviet connections. In December 1946, the Iranian army advanced on Azerbaijan where the republic collapsed almost without resistance. Soon afterwards Iranian troops entered Mahabad unopposed: David McDowall *op cit* 22-23.

After the fall of Mahabad the Kurdish nationalist movement went underground, and expression of Kurdish identity was banned. However, following the Iraqi revolution of 1958, Iranian Kurds became increasingly active politically, and were increasingly harassed by the authorities. In the meantime, the Kurds in Iraq who were in receipt of aid from the Shah of Iran refused to help Kurds operating inside Iran.”

[48] The significance of this historical background for the purposes of the present appeal is that the KDPI has played a central part in these post-World War II developments. Indeed, the KDPI was only created by Qazi Mohammad in September 1945 upon his return from a meeting with the Soviet Consul who had encouraged him to form a new political party. It was under the mantle of this new party, the KDPI, that the manifesto demanding “national independence within the borders of Persia” was adopted and the Republic of Mahabad established.

[49] Since that time, its fortunes have acted as something of a bellwether for the degree of liberalisation in Iranian social and political life afforded by the central authorities during the Pahlavi era. Thus, after the suppression of the Republic by Reza Shah’s forces and execution of Qazi Muhammed, the KDPI ceased to openly operate. By the early 1950s, however, as popular disenchantment grew with the authoritarian tendencies of Reza Shah, and the entry into office of a more liberally minded Mussadiq, the KDPI began to openly recruit once more. When Mussadiq was ousted in a coup and the Shah restored to power by a CIA backed coup in 1953, the KDPI, like other democratic movements, was forced underground. Following the ousting of the Hashemite monarchy in neighbouring Iraq in 1958 and the proposal that the Iraqi-based Kurdistan Democratic Party be merged with the KDPI, Reza Shah had 250 suspected KDPI activists arrested by his newly formed secret Police – SAVAK – see McDowall (2000) at pp249-254; Fereydoun Hoveyda *The Fall of the Shah* (Wiedenfeld and Nicolson, London 1979) at pp91-93.

[50] The antagonism of central government in Tehran towards the KDPI and its calls for Kurdish autonomy within the Iranian state did not, however, disappear with the collapse of the Pahlavi dynasty in 1979. As noted by the Authority, in *Refugee Appeal 1222/93*, at pp3-5:

“The downfall of the Shah in January 1979 and the disintegration of the state apparatus provided an unrivalled opportunity for Kurdish demands for autonomy, far greater than that offered to the people of Mahabad, since Soviet or other Great Power interest or physical presence was not involved. To back their demands the Kurds took over police and army

barracks in the area from the erstwhile Shah's troops, acquiring a substantial amount of arms and ammunition. However, as observed by McDowall at *op cit* 24:

"The Revolutionary Government in Tehran was virtually bound to reject Kurdish autonomous demands. Its mandate and the revolutionary tide on which it had risen to power, was Islamic, and central to its beliefs was the unity of the Islamic community (*umma*), a concept more religious than secular in nuance, and therefore less negotiable. Self-administration perhaps, but autonomy never. The only minorities recognized in the new Islamic constitution were religious ones.

The dispute was also religious. Those Kurds who were Shi'i in Kermanshah area, tended to support Khomeini in Tehran. Shaikh Izzedim Husaini, the Kurdish political and religious (Sunni) leader, opposed Khomeini's theological justification to power since its basis was the clergy's role of active participation in government rather than that of guides and interpreters of Islamic law to government. ...

From early 1979 until Iraq invaded Iran eighteen months later, the Kurds and Tehran played out a struggle through negotiation and armed clashes

...

The government was uncertain whether it wished to placate or punish the Kurds. Ever since the fall of the Shah there had been clashes between the *Pasdaran* (Revolutionary Guards) and Kurdish peasants backed by Komala [Revolutionary Organization of the Kurdish Toilers] and the Kurdish members of Fedayin Khalq who were seizing land previously belonging to traditional landlords around Sanadaj and Merivan. ... Throughout spring and summer the clashes between Kurds and government forces intensified, with accusations being hurled to and fro.

Major clashes in July, when government troops sought to reoccupy a police post close to the Turkish border, and in August when the government attempted to reassert its authority over Merivan, persuaded the government in favour of a military solution. On 16 August 1979 the Kurds had captured the town of Paveh. Two days later Khomeini assumed powers as Commander in Chief of the Armed Forces, and sent the army, with helicopter-gunships, phantom jets and tanks and artillery to attack and occupy Paveh, Sanadaj and Saqqiz.

The fall of these towns was a sharp reminder that the Iranian army was not in disarray, and that its defeat in conventional warfare was not a Kurdish option. The arrival of Ayatullah Khalkhali's revolutionary court, and its summary execution of at least 70 people, was likewise a sharp reminder of the consequences of capture. Kurdish troops withdrew to the hills, and on 4 and 5 September Iranian troops reoccupied Mahabad and Sardasht.

From that time the Kurdish forces lost all the towns to the government, but retained at least freedom of movement in the countryside"

Throughout the Iran-Iraq war, Iranian forces continued fighting the Iranian Kurds. The KDP-Iran [Kurdistan Democratic Party of Iran] and Komala [Revolutionary Organization of the Kurdish Toilers] became increasingly dependent on Iraqi logistic, financial and other support, but never co-operated militarily with the Iraqi army. Iran, on the other hand, gave increasing support to the Iraqi KDP. The real victims were the civilian population on both sides of the border, who had to endure the harsh counter-insurgency methods employed by their own governments as well as the bombings and shelling by the other side. Both the KDP-I and Komala still controlled vast parts of the Kurdish countryside. In 1983, KDP and Iranian forces succeeded in jointly expelling the Iranian Kurds from their last "liberated areas" inside Iran. Henceforth, both the KDP-Iran and Komala had their headquarters and base camps in the evacuated zone of Iraqi Kurdistan, although their *peshmergas* continued carrying out operations, sometimes very successfully, deep inside Iran: Martin van

Bruinessen, Agha, Shaikh and State: The Social and Political Structures of Kurdistan 38-39.

By the end of the Iran-Iraq war, the Iranian government seemed willing to negotiate with the Kurds seriously. In 1989, the KDP-Iran was invited to a round of negotiations in Vienna. It proved to be a trap. The Kurdish leader and two other Kurd representatives were shot dead while they were sitting at the negotiating table. Since there was little doubt that the killings had been carried out by the very Iranian delegates with whom the Kurds had been negotiating, it put the whole feasibility of negotiations in doubt: Martin van Bruinessen, *op cit* 42; David McDowall, *The Kurds: A Nation Denied* 78.

It is also to be noted that at the end of 1988, many of those Kurds already imprisoned perished in waves of mass killings which took place at the end of the year. The prime victims were members of Komala, for which the state had particular repugnance, deeming its Marxism to be atheistic: David McDowall, *The Kurds: A Nation Denied* 78.

[51] The socio-economic implications of this fractious history are summed up by Amnesty International *Iran: new government fails to address the dire human rights situation* (MDE 13/010/2006 16 February 2006):

“...as a result, the Kurdish population has long been viewed with suspicion by the Iranian authorities, and have experienced decades of official neglect in regard to the development of the Kurdish area and the provision of basic services essential to the realisation of human rights.”

The Kurds in Iran – 1990 onwards

[52] Country information available to the Authority for this period presents in less comprehensive form. However, what is available establishes that the picture remains substantially unchanged. The recent Report of the UN Commission on Human Rights Special Rapporteur on Adequate Housing *Country Mission to Iran 19 to 31 July 2005 Preliminary Findings* www.ohchr.org/english/press/docs/20050809PreliminaryNotesonSRMissiontolran.doc (accessed 16 March 2007) at p4, states that the field visits carried out by the Special Rapporteur pointed to a:

“...significant degree of neglect in relation to the housing necessities of ethnic minorities (Kurds Arabs Laks) that seem to have been suffering from a poor and uneven distribution of development resources...regions historically occupied by Kurds...seem to suffer from disproportional inadequacy of services such as water and electricity and unsatisfactory reconstruction efforts.”

[53] The Committee on the Elimination of Racial Discrimination in its *Concluding Observations: Iran (Islamic Republic of)* (CERD/C/63/C/6 (December 2003) at para 14, notes with concern the “reported discrimination faced by certain minorities” and that “certain provisions of the

States party's legislation appear to be discriminatory on both ethnic and religious grounds". Echoing the concern of the appellant in this case, the Committee goes on to recommend that the States party permits students of different origins to register in universities "without being compelled to state their religion."

[54] It would, however, be a mistake to conclude that Kurds are wholly shut out of Iranian political and economic life. Moreover, in terms of language, the Minority Rights Group report *State of the World's Minorities 2006* (December 2006) (the MRG report) notes that some Kurdish expression has been tolerated in recent years in publication and broadcasting. However, a ban on the teaching of Kurdish in schools remains in place.

[55] The UNHCR, in its *Background Paper on Refugees and Asylum Seekers from the Islamic Republic of Iran* (UNHCR Centre for Documentation and research Geneva September 2001) (the UNHCR Background Paper), observes at pp31-32:

"Ethnic Kurds can be found in all walks of life in Iran, both in the private and public economic sectors as well as in Iran's military and civilian establishments."

[56] It goes on to record the fact that there are Kurdish MPs in the *Majles*, the Iranian Parliament aligned to both the Conservative and reformist factions. Indeed it observes:

"The Committee on the Elimination of Racial Discrimination noted with appreciation, in its concluding observations adopted on 18 August 1999, that "ethnic and national minorities, in particular the Kurds", are represented in the parliament in proportion to the demographic composition of the country."

[57] Iran's recent submissions to the Committee on the Elimination of All forms of Racial Discrimination, (CERD/C/431/Add.6 (1 November 2002), noted that the then current Iranian Parliament had some 14 Kurdish deputies out of some 290 along with deputies from other ethnic groups. That Kurds are active in parliament currently is also reflected in Amnesty International *Iran: Ethnic minorities face new wave of human rights violations* (26 February 2007) which notes that in March 2006 Kurdish Members of Parliament wrote to the Iranian President demanding an

investigation into the killing of Kurds by security forces during a demonstration by Kurds in February 2006.

[58] The Committee, in its *Concluding Observation* (at para 6), noted with approval the high rates of participation in elections in 1998, 1999 and 2000 of ethnic groups. McDowall (2000) at p279 charts the enthusiasm with which the Kurds embraced the candidacy of President Mohammed Khatami as a mechanism to achieve greater economic and social liberalisation. As had happened with the Revolution itself, an early optimism gave way to a more sobering realisation that despite the election of a reformist President, certain types of overt pro-Kurdish political activity remained forbidden. He states:

“Kurdish hopes of liberalization were raised by the election of the Islamic reformer, President Mohammad Khatami in 1997. Indeed, 76 per cent of the electors in Kurdistan province supported his candidacy. His vision of social and political pluralism offered an escape from the stifling conservative local authorities imposed on the region. Khatami appointed a Western-educated ethnologist, Aba Allah Ramazanzadeh, as governor to oversee the rehabilitation and reconciliation of Sunni Kurdistan. Ramazanzadeh was the first Kurd to hold this post since the revolution. He got off to a good start, allocating substantial funds from Tehran for infrastructural development of this much-neglected province. He also sought to empower local communities, holding town meetings with local residents and actively promoting Kurds within his administration.

It was not surprising, therefore, that in the local elections in February 1999 reformist candidates were swept into office all over the province. Later that month this political impulse was more overtly expressed as news broke of Ocalan’s capture in Nairobi. Major demonstrations took place in all the major towns and cities of the region.

It was now that the limitations of Khatami’s reforming process suddenly became apparent. Neither he nor his Kurdish governor would brook disorder. Both supported the harsh crackdown in which at least 30 were shot dead, hundreds wounded and possible 2,000 arrested.”

[59] What is also clear is that the regime continues to draw very definite boundaries around Kurdish political discourse and activity. The Human Rights Watch Report also confirms the suppression of political activity by persons suspected of having links to Kurdish political groups, such as the KDPI, throughout the 1990s. The HRW report notes that in addition to the blocking of the candidacy of Kurdish politicians who associate with the KDPI:

“Kurdish political leaders have been the targets of political assassinations by the government inside and outside Iran. The government deals with Kurdish political groups through arbitrary detention, torture and execution of prisoners after unfair trials, according to Kurdish opposition groups. The

KDPI regularly releases names and details of the cases of its supporters allegedly subjected to such treatment. For example:

* Kazem Mirzai, son of Adel, died in Orumieh prison as a result of torture on June 19, 1996. He had been detained since 1994 on suspicion of being a supporter of the KDPI.

* Mohammed Ali Nawruzi from the village of Yonesian, Nagadeh region, was detained for ten days and subjected to torture. He died the day after his release in 1995.

* Khoda Karam Ibrahim died in a hospital in Kermanshah in August 1995 after being tortured. He had been sentenced to two years of imprisonment for membership in the KDPI.

The KDPI also releases names of its supporters executed for their political and military activities. Each year the KDPI publishes the names of dozens of execution victims and of deaths in custody allegedly caused by torture. However, the true extent of these violations is difficult to gauge because the authorities have not permitted journalists or independent human rights monitors access to this part of the country for many years.”

[60] Similarly, the UNHCR Background Paper states:

“The Islamic regime deals “harshly” with rebellious Kurdish leaders seeking autonomy –notably those of the Kurdish Democratic Party of Iran (KDPI) and the Marxist Komalah– and their militant supporters. However, few Kurds seek outright independence and the slogan of the KDPI is “autonomy for the Kurds and democracy for Iran”. Yet the government remains convinced that any form of autonomy will lead to the progressive break-up of Iran. Iranian troops are permanently stationed in Kurdish areas and also monitor the activities of members of the Iraqi Kurdish Democratic Party in these areas.”

[61] Although there is no one report of which the Authority is aware that deals with the Kurdish situation in the new millennium, a number of smaller reports paint a picture of continuing suppression of organised Kurdish political activity and limitation of activities by Kurdish civil society organisations and journalists.

[62] Reporting on the unrest that followed SG’s death, Human Rights Watch *Iran: Security Forces Kill Kurdish Protestors* (11 August 2005) notes that some of the demonstrations involved attacks on government buildings and offices. HRW indicates that it has obtained a list of 17 demonstrators killed by the security forces in different locations across Iranian Kurdistan. The MRG Report (*op cit* 170) notes that following SG’s death, two Kurdish newspapers were shut down and activists and journalists arrested; see also in this regard International Federation of Human Rights *Briefing Note on the Human Rights situation in the Islamic Republic of Iran 2005* www.fidh.org (accessed 16 March 2007); Amnesty International *Fear of Ill*

treatment/arbitrary arrest Adnan Hasssanpour-Journalist (AI Index MDE 13/017/2007).

[63] Amnesty International *Kurdish Human Rights Defenders and Journalists Appeal Case* (July 2006 AI Index MDE 13/080/2006) also reports on the upcoming trial of two Kurdish activists. One, Sa'id Sa'edi was accused of involvement in organising the demonstrations that took place in Iranian Kurdistan following the death of SG. He had established a non-governmental organisation, the East Kurdistan Cultural Research Institute. This organisation was denied official recognition but nevertheless called for an investigation into SG's killing. It also took part in a peaceful demonstration. The other, Ajlal Qavami, was a member of the editorial board of a journal *Payom-e-Mardom-e-Kurdestan* (Peoples Message) who was charged with "supporting dissident groups by writing articles" and "insulting the system's leadership". The magazine was closed. Qavami then established the Kurdistan Human Rights Organisation. He was subsequently arrested on 2 August 2005. He claims he was tortured during detention. A third Kurdish activist, Roya Toloui, the founding member of the Kurdish Women for the Defence of Peace and Human Rights, fled to Turkey after being released from detention on bail. She too has made allegations of being tortured during her detention – see also Amnesty International *Iran: Threats against Kurdish human rights defenders must stop* (3 March 2005 AI Index MDE 13/101/2005).

[64] The United States Department of State *Iran: Country Report on Human Rights Practices 2005* (8 March 2006) at section 5 notes:

"On September 6, Kabudvand announced that Ismail Mohammadi, arrested three years ago for collaborating with the Kurdish independence organization Komala, and Mohammad Panjbini, convicted of membership in a Kurdish separatist organization, were executed on September 3. According to Kurdish groups, several other Kurdish political activists have been condemned to death."

[65] Amnesty International *Iran: Ethnic minorities face new wave of human rights violations* (26 February 2007) reports on a number of instances over the past year. It notes the reported killing of three Kurds in a demonstration in Mahabad in February 2007; and demonstrations in Maku and other towns in Iranian Kurdistan in February 2006, resulting in nine deaths and "scores, possibly hundreds of arrests". The report goes on to

state that some of those detained received prison sentences of between three and eight months.

[66] This report also places the suppression of Kurdish political and civil society activity in the wider domestic context of increasing ethnic unrest in Iran, particularly concerning its Azerbaijani, Baluchi and Arab populations – as to the latter, see also Human Rights Watch *Iran: Reports of Ethnic Violence Suppressed* (10 May 2005).

The general human rights situation in Iran

[67] This continuation by the current regime of suppression of Kurdish aspirations for autonomy within Iran has been accompanied by a generally poor human rights record. Human Rights Watch *World Report: Iran (2007)* notes:

“Since President Ahmadinejad came to power, treatment of detainees has worsened in Evin prison as well as in detention centers operated clandestinely by the Judiciary, the Ministry of Information, and the Islamic Revolutionary Guard Corps. The authorities have subjected those imprisoned for peaceful expression of political views to torture and ill-treatment, including beatings, sleep deprivation, and mock executions. Judges often accept coerced confessions. The authorities use prolonged solitary confinement, often in small basement cells, to coerce confessions (which are videotaped) and gain information regarding associates.”

[68] Similar observations are made in the United States Department of State *Iran: Country Report on Human Rights Practices for 2007* (6 March 2007) at section 1 and Amnesty International *AI Report: Iran (2007)*.

Conclusion on country information

[69] The Kurds of Iran form part of a wider Kurdish population dispersed among the neighbouring nation-states of Turkey and Iraq, as well as Syria, that emerged in the aftermath of the collapse of the Ottoman Empire after defeat in World War I. They are a minority in each country and aspirations for even some limited form of autonomy have been firmly and violently suppressed by the non-Kurdish governments of each.

[70] In the case of Iran, an early optimism that the demise of the Pahlavi dynasty in 1979 would see long-standing demands for Kurdish autonomy within Iran come to fruition, was soon replaced by realisation that Iran’s new

rulers were as opposed to the idea as the regime it had replaced. Fearing this would be a step towards full Kurdish independence, like the Pahlavi dynasty before it, the regime moved quickly to stifle Kurdish demands for autonomy. This resulted in open armed conflict for a number of years between the current regime and the KDPI, the principal Kurdish political movement in Iran, and armed wings of other Kurdish parties throughout the 1980s. With the end of the Iran – Iraq War in 1988, the regime was able to exert control over the whole of Iranian Kurdistan.

[71] While not barred from taking part in the economic and social life of the country, Iranian Kurds nevertheless remain the victims of socio-economic discrimination. Mass demonstrations have broken out from time to time in various towns and cities in Iranian Kurdistan which have resulted in violent clashes with the security forces. A number of persons have been killed and many more arrested and detained.

[72] Moreover, the regime continues to control and violently suppress any Kurdish political and civil society activity in Iranian Kurdistan which it views as a challenge to Persian political and Shia religious hegemony over a largely Sunni Kurdish population. This has included the arrest, detention, torture, and execution of persons associated or suspected of associating with the KDPI or other Kurdish political parties, as well as Kurdish civil society activists and journalists.

[73] This suppression evidences a continuing concern on the part of the regime that organised activity may yet again fuel a separatist impulse among its Kurdish population. It is here that the history and the role of the KDPI becomes important. Although lasting not quite a year, the symbolic significance of the Mahabad Republic with which it is associated resonates loudly with the central government. As noted by McDowall (2000) at p245:

“However, Tehran recognised that the very orderliness of the Mahabad Republic and the new Kurdish nationalism were infinitely more dangerous to its authority than tribal rebellion.”

[74] Since that time, the KDPI has represented one of the main, if not the main, focal point for Kurdish political and cultural aspirations inside Iran, both under the regime of the former Shah and, more significantly for present purposes under the current regime.

Application to the present case

[75] The Authority is satisfied that the appellant has a well-founded fear of being persecuted if returned to Iran. The Iranian authorities have become aware that he has been involved in distributing pamphlets which are critical of the regime. He has undertaken this activity with persons associated with the KDPI, a well-known party fighting for Kurdish political autonomy. The person with whom he had been conducting this activity remains in detention. The suspicion that the appellant had about AA's father being a member of the KDPI is borne out by the investigations made by the New Zealand branch of the KDPI. The representatives of this party have confirmed that the appellant was involved with someone who was a member. This can only be AA or AA's father. The fact that the appellant has been involved with someone who is a member of the KDPI means there is a real chance the appellant will also be viewed by the Iranian authorities as a member of the same party.

[76] There is credible evidence that the Iranian authorities are actively looking for the appellant. If returned he is likely to be detained like his co-activist AA. Country information confirms that Iran's general human rights record, and its human rights record in respect of politically active Kurds, remains poor. There is, therefore, also a real chance he would be subjected to serious ill-treatment in breach of his rights under Article 7 of the International Covenant on Civil and Political Rights, amounting to his being persecuted for the purposes of Article 1A(2) of the 1951 Refugee Convention.

[77] This risk to the appellant is likely to be heightened at the moment due to tension between the United States and Iran. Iran fears American attempts to destabilise the regime through sowing ethnic discord, fears which appear to be corroborated by reports in the press recently – see "CIA Funding Terrorists to Topple Tehran" *The New Zealand Herald* (26 February 2007). No doubt the fact that the Iraqi Kurds were willing participants in the US-backed invasion of Iraq in 2003 which toppled a regime also notable for its suppression of the Kurds will weigh heavily on the minds of Iran's ruling clerical elite. This will only serve to increase the

risk the appellant faces of being subjected to some form of ill-treatment amounting to his being persecuted.

[78] He therefore currently has a well-founded fear of being persecuted. The first issue is answered in the affirmative.

Convention ground and nexus

[79] The appellant's predicament is clearly as a result of his perceived political opinions. The second issue is also answered in the affirmative.

CONCLUSION

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

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B L Burson
Member