

FS and others (Iran – Christian Converts) Iran
CG [2004] UKIAT 00303

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 16th & 17th March 2004
Date Determination notified:
.....17/11/2004.....

Before:

The Honourable Mr Justice Ouseley (President)
Mr C P Mather (Vice President)
Mr L V Waumsley (Vice President)

Between:

SECRETARY OF STATE FOR THE HOME DEPARTMENT

APPELLANT

and

RESPONDENT

and

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

and

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

For the Secretary of State: Mr S Wilken, instructed by Treasury Solicitor
For FS: Ms A Weston, instructed by Switalski's Solicitors
For TB: Mr S Vokes, instructed by Richard Heynes & Coopers
For NS: Ms A Weston, instructed by Derby Law Centre

DETERMINATION AND REASONS

1. This is the determination in three appeals which raise similar issues concerning the risk of persecution and other breaches of human rights to Christian apostates, citizens of Iran, who might be returned there. Two appeals are by the individuals and one is by the Secretary of State for the Home Department. That is the case of FS which was remitted to the Tribunal by the Court of Appeal [2003] EWCA Civ 1562, on the grounds that the Tribunal's stance or guidance in relation to this issue was inconsistent and that it should reconsider what its guidance was.

2. Sedley LJ said at paragraph 29, dealing with the Secretary of State's argument that each case rather depended on its facts:

“I accept readily that it is not a ground of appeal that a different conclusion was open to the tribunal below on the same facts, or therefore that another tribunal has reached a different conclusion on very similar facts. But it has to be a matter of concern that the same political and legal situation, attested by much the same in-country data from case to case, is being evaluated differently by different tribunals. The latter seems to me to be the case in relation to religious apostasy in Iran. The differentials we have seen are related less to the differences between individual asylum-seekers than to differences in the Tribunal's reading of the situation on the ground in Iran. This is understandable, but it is not satisfactory. In a system which is as much inquisitorial as it is adversarial, inconsistency on such questions works against legal certainty. That does not mean that the situation cannot change, or that an individual's relationship to it does not have to be distinctly gauged in each case. It means that in any one period a judicial policy (with the flexibility that the word implies) needs to be adopted on the effect of the in-country data in recurrent classes of case.”

3. After citing what Laws LJ said in S and others v Home Secretary [2002] INLR 416 about the Tribunal's role in providing authoritative determinations in relation to the position for various classes of people in various countries, Sedley LJ continued in paragraph 31:

“The undesirability of such factual disparities was recently reiterated by this court in Gurung [2003] EWCA Civ 654: see especially the judgment of Buxton LJ at paragraph 12. Mr Kovats has argued that, while it may be proper to insist that good reasons be given for departing from an otherwise consistent line of factual decisions of the present kind, there can be no such requirement where, as here, there is no consistent line. But this does not answer Ms Webber's point that it is the very inconsistency of the decisions which is inimical to justice.”

4. We respectfully acknowledge and agree with what Sedley LJ had to say and accept that he is right that the Tribunal on this issue had been inconsistent in its approach, even though over time on a problematic issue there had been a growing consistency.

5. We were provided with a number of previous Tribunal decisions, which exemplified not just the evolution of the Tribunal's thinking but also its inconsistency, at times, which we have already noted. We see no point, in the light of the comprehensive and up-to-date evidence which we have heard in drawing upon them, let alone trying to reconcile them. Where the parties placed particular reliance on a Tribunal decision in relation to risk on return of failed asylum seekers, or on what foreign Tribunals have said about the risk on return of converts, we do deal with them.

6. We would add the comment that although S&K [2002] UKIAT 05613* was a starred decision, it was starred for the point of statutory interpretation which arose in it. The system of starring decisions relates only to points of law and in that way marks them as binding authority for the Tribunal and Adjudicators. The giving of guidance in relation to country conditions or issues is of the same nature for this area as the sentencing guideline cases for the criminal courts. They are expected to be followed unless distinguishable by reference to individual circumstances or unless changes in conditions have occurred; see paragraphs 21 (curiously to be found between 8 and 9), 72 and 73 of DK [2003] UKIAT 00953 (Croatia).
7. For ease of reference, we shall refer to each of the individuals as Appellants even though one (FS) is a Respondent in this Tribunal.

The facts in FS

8. He is now 30, arrived in the United Kingdom in July 2001, claiming asylum shortly afterwards. His claim was summarised in the Court of Appeal and in the Tribunal in the following way. The Appellant's father had spent five years in the early 1980s as a political prisoner. His brother-in-law, who, with the Appellant's sister, had been a member of the Mojahedin, had spent six years in prison. His own home had been searched several times by the security or intelligence service, with whom his activities in a radical theatre group had earned him a file. He had been injured and arrested in a student demonstration in 1999. Released after a day, he was rearrested and menacingly interrogated for four days, and was made to sign a document professing repentance. On release he went into hiding. On learning that the authorities were again looking for him and had a warrant out for him, he fled the country.
9. On a holiday to Turkey in 1995, the Appellant had become interested in Christianity when he visited a church and discussed Christianity with a priest. He did not explore Christianity in Iran, but soon after coming to the United Kingdom he began to attend a Church of England congregation in Pontefract. He was baptised there on 19th December 2001. The certificate of baptism was produced to the Adjudicator. Thereafter the Appellant began to experience difficulties with Moslems in Pontefract and he was relocated to Birmingham. There he attended another Church of England congregation, whose vicar is the Reverend Goss. Reverend Goss produced a witness statement and attended the hearing to give oral evidence to the Adjudicator to the effect that he believed the Appellant's conversion to be genuine.
10. The Adjudicator, Mrs N A Baird, in a determination promulgated on 20th August 2002, accepted that a warrant had been issued for his arrest even though she said that she had no idea what was in it. She doubted that the authorities in Iran already knew of his conversion. She referred to evidence relating to the evangelical churches, although she accepted that the Appellant was not an evangelical Christian. He attended a mainstream Church of England church. Indeed it is clear that he is not interested in proselytising as evidenced by his departure from Pontefract because he was afraid that Iranians there would find out that he was a Christian. Illogically, as the Court of Appeal said, she found that he would not be persecuted for

his political opinions but concluded that it would be a breach of his rights under Article 3 were he to be returned, because he would find it exceedingly difficult to practise his religion in Iran particularly because he had been baptised in the United Kingdom.

11. The Secretary of State is the actual Appellant in this case. He appeals on the ground that the Adjudicator, on those facts, ought not to have found that FS was at risk of a breach of his Article 3 rights and ought to have found that he would not be persecuted for a Convention reason. He did not pursue his challenge to the findings as to the genuineness of the conversion.
12. There are no findings by the Adjudicator as to how ES would behave upon return to Iran. Issues which would arise in cases of this sort are whether the Appellant would actually practise his religion eg by attending church and with other activities and if so, which denomination, and where; it would be important to know the extent to which he would make his conversion known in other ways such as by talking about it or by trying to convert others. We do not blame the Adjudicator for this; the importance of some of those issues only became clear as we examined the background material. Nonetheless, we had to make some assumptions for the purposes of this appeal. It is sensible that we should approach our assessment on the basis that he would be likely, at least initially, to seek to join the Anglican, also called the Episcopalian, Church as an ordinary regular worshipping member of the congregation, but that he would not set out to convert others or to draw attention to himself in connection with his religious conversion in other ways. The Adjudicator found that he was not an evangelical Christian.

The facts in NS

13. NS is a 39 year old woman who left Iran in November 2001. She said that she left because of the continual persecution which she faced as a sole female in Iran, harassed because of her failure on many occasions to satisfy strict Islamic dress requirements. She had been detained for a week in 1993, because her explanation of being at the bus station with a male friend was not accepted, and for which she received a suspended sentence of lashing. She could not rent a flat because she was a woman and she experienced discrimination in work because she did not practise her Muslim religion. She first became interested in Christianity in Iran through conversations with a friend and with many of her work colleagues who were Christians. Although fascinated by the religion she hesitated to embrace it there because of the implications which that would have. Her asylum and human rights claims were rejected by the Secretary of State in January 2002.
14. She said that in the United Kingdom she had regularly attended her local church, also a mainstream Church of England church. It was in February 2002 that the Appellant had approached the Minister, who was also her language tutor, after an English lesson to inquire about local churches and Christianity. She had been a regular and committed member of her congregation since June 2002. She had prepared thoroughly for her baptism and confirmation which took place in November 2002. Oral evidence was given by one of the Ministers at her local church who prepared her for her baptism and confirmation. The Minister supported the genuineness of her

conversion and her commitment to her faith describing how she was a regular worshipper, and a helper with church activities.

15. The Adjudicator, Mr P A Spencer, rejected this in a determination promulgated on 3rd April 2003, pointing out that her interest in Christianity in the United Kingdom commenced after the refusal of her claims by the Secretary of State, and rejecting as a recent story the suggestion that she had had any interest in Christianity in Iran. The Adjudicator noted the similarities between this claim and the claim of her sister who had also become a convert after refusal of her own claim to asylum. She appealed on the grounds that the Adjudicator's credibility findings were flawed; these were obviously the basis upon which the assessment as to risk was made.
16. At the appeal before us, the Secretary of State accepted that the conversion was genuine. This still left us in the position of not knowing what else that imported in terms of how she would behave in relation to her new faith upon return to Iran. As with FS, it is sensible that we should again assess matters on the basis that she would join, at least initially, the Anglican Church and participate as an ordinary member, worshipping regularly. On that basis her religious activities would be the same as those of FS.

The facts in TB

17. This Appellant is now 36. He claimed asylum upon arrival in the United Kingdom in July 2002 shortly after he left Iran where he had been living. His claim was based on his conversion to Christianity from Islam in August 2001. The Secretary of State concluded that the Appellant lacked credibility and refused his claim in September 2002. In November 2002, he was baptised into the Jesus Fellowship Church. His appeal was dismissed by the Adjudicator, Mrs V A Osborne, on both asylum and human rights grounds, in a determination promulgated on 14th January 2003. She accepted the genuineness of his conversion, but concluded that he would not engage in proselytising and evangelising and so would not be at risk on return. The grounds of appeal allege that a convert would be at risk, that the Appellant was an evangelical Christian and would be at serious risk.
18. The Adjudicator found that although he was a genuine convert, his interest was strongly influenced by a more liberal social order as opposed to the strict Islamic way of life which it was necessary to follow in Iran in order to obtain certain employment. The Appellant had given no evidence of any evangelising in Iran or of having joined a Protestant Church. Although he said that he had not been attracted by Orthodox ceremonial, his conversion in Iran occurred when he had met with an Armenian priest. He had also given evidence, about which the Adjudicator made no explicit findings but which we accept in the light of her generally favourable findings on credibility that he had spoken about Christianity to a cousin who, like him, was not a devout Muslim. The police had raided his home when he was not there, denounced him to his mother as a Christian and removed Christian material.

19. The Adjudicator continued in paragraph 27 and 28:

“I have given careful consideration to the background information particularly that contained in the CIPU Country assessment about the position of Christians in Iran and note that there is likely to be distinct discrimination against those who have converted from Islam to (particularly) evangelical forms of Christianity. Converts may be arrested (paragraph 5.02) there is a possibility of execution (5.51) and there have been reported incidents of government harassment (5.52). There is a significant danger to someone who has converted from Islam to Christianity and who preaches Christianity with a view to converting other Muslims – the penalty for this being execution (5.54). Since being in the United Kingdom the Appellant has joined and become an active member of an evangelical Church although he has not said at any point in his evidence that if he were to return to Iran he would feel it incumbent upon himself to take part in evangelical activities with a view to converting other Muslims. I have noted that since his “conversion” on the 15th August 2001 until his departure almost a year later the Appellant was apparently content to practice his religion in safety by restricting his activities to his personal reading and writing in the safety of his own home and he had never attempted to join an evangelical Church in his own Country. I therefore find that the Appellant had adopted a cautious and sensible approach to his wish to follow Christian teaching and philosophy and I can see no reason why if he were to be returned to Iran he would not behave in a similar manner. I accept that he would be proscribed from evangelising and attempting to convert other Muslims to his way of thinking but he has not described a need or a wish to do so.

I am therefore left to consider whether what transpired prior to the Appellant’s departure from Iran was likely to lead to persecution if he were to be returned. The Appellant has produced no evidence that he is of any ongoing concern to the authorities and I have noted that the penalties likely to be imposed for a failed asylum seeker upon return are unlikely to be unduly harsh (paragraph 5.94 and 5.95 of the CIPU Country Assessment).”

20. It was on that basis that the Adjudicator concluded that he would be unlikely to face persecution upon return. TB produced a subsequent statement; he had tried to spread the gospel in Iran, which the failings of his previous representative had caused to be omitted from his case before the Adjudicator. That had led to his cousin denouncing him. He had pledged himself to the Jesus Fellowship Church in June 2003 and he had attended evangelical events.

21. Mr Vokes, who appeared for this Appellant, sought to argue that the nature of the evangelical church to which the Appellant belonged in the United Kingdom would mean that he would behave in a different way from FS and NS upon return, though he would also seek to join the Anglican Church. He produced some notes on the Jesus Fellowship Church and evangelism. It purported to answer the question of whether or not the evangelical Church considered it part of an ordinary lay-member’s duty to proselytise in a foreign country, where to do so was against the law and could result in death. The answer, in so far as it was provided at all, was not explicit from the text. Mr Vokes, as we understood his answer, said ultimately that such proselytising was a part of the ordinary lay-member’s duty notwithstanding the risks. Nonetheless, it did not appear that there was a duty on him to seek out those who, in response, would persecute the evangelist, nor a duty to remain in a place despite persecution. But there were many scriptural passages referred to and support could be found for a variety of views from amongst them. The notes also drew a distinction between evangelising and missionary work and work as a pastor on the one hand, to which only some would be called by God, and the obligation on every church member, as it

was seen, whether of an evangelical church or not, to bear witness. This involved talking to one's family or work colleagues about the Christian faith and the way in which one lived one's life. It would also be impossible, submitted Mr Vokes, for someone who was a true member of an evangelical church and had embraced Christianity through such a church not to want to pass on the Gospel news to those around him so that they could share in the joy which that brought.

The background evidence: conversion

22. We shall deal first with the material which concerns Christianity and apostasy.
23. Although the Constitution declares that Iran is an Islamic Shi'ite state, it recognises Christians as one of three religious minorities to whom the right to religious practice and education is guaranteed, though there is evidence that that is often subject to administrative disruption. They could run their own charities, and their own schools including religious education. They have a number of seats reserved for them in the Majlis but otherwise, according to the US State Department Report on Religious Freedom in Iran 2003, are discriminated against in a number of ways. They cannot be elected to a representative body except for the reserved seats; they are barred from certain state employment; the requirements for knowledge of Islam restricts their entry into university and there are other forms of officially sanctioned discrimination in other areas of public service. There are various forms of discrimination in the legal system, although the inheritance laws have been changed so that the law of inheritance is that of the deceased and so the former position whereby any Muslim successor was preferred over any non-Muslim successor appears to have changed. Changes have been proposed (and subsequently passed) to equalise the blood money payable as between a Muslim and a member of a recognised religious minority. There is also a greater degree of acceptance that, for Armenians, decisions relating to personal status and family law can be dealt with by Armenian Courts.
24. There are varying numbers given for the Christian population in Iran, a problem compounded by the inter-reaction between an ethnic minority and its religious denomination. The Iranian Government estimated in 1997 that there were between 117,000 and 200,000 Christians in Iran. The US State Department refers to 300,000 Christians, the majority of whom are ethnic Armenians (the majority) and Assyrian-Chaldeans but Christians had been emigrating at 15,000-20,000 a year. These Christian groups are ethnically based and represent communities which have lived in Iran since before the Islamic era. Those groups conduct their services in Armenian or Assyrian, although there is an increase in the number of Farsi services. The absence of church services in Farsi has been seen by the Government as making it less likely that they would be proselytising. Tolerance of their activities requires them to refrain from anti-Islamic or anti-Republican activities and proselytising of Muslims is forbidden. Members of religious minorities have frequently been charged with crimes such as "confronting the state" and such trials have been conducted as national security trials, but this does not appear to have happened for some years on the evidence overall. The US State Department Country Report of 2002 referred to the close monitoring

of religious minorities by the Ministry of Intelligence and Security. Their organisations, activities, schools and events were monitored.

25. There is an important distinction between the ethnically-based Christian Churches which do not proselytise and rarely, if ever, admit converts, and which represent the continuance of ethnic minority communities centuries old in Iran, and the more recent Protestant or evangelical Churches which do evangelise, proselytise and admit converts from Islam, with varying degrees of enthusiasm. The position of the latter group is what we are concerned to assess here.
26. The context for this examination is that Iran is an Islamic theocratic state. The interests of the state and its religion are inseparable. Conversion from Islam is against the law, punishable as apostasy, in theory by death.
27. The CIPU Report for October 2003, para 6.48 said that the Government was *“highly suspicious of any proselytising of Muslims by non-Muslims and can be harsh in its response, in particular against Baha’is and evangelical Christians”*. At 6.54, it said that *“the authorities have become particularly vigilant in recent years in curbing what is perceived as increasing proselytising activities by evangelical Christians, whose services are conducted in Persian”*. It described the reaction of the authorities to this perceived activity. Churches had been closed and converts arrested. *“Government officials have reacted to this perceived activity by closing evangelical churches and arresting converts. Members of evangelical congregations are required to carry membership cards, photocopies of which must be provided to the authorities. Worshippers are subject to identity checks by authorities posted outside congregation centres. Meetings for evangelical services have been restricted by the authorities to Sundays, and church officials have been ordered to inform the Ministry of Information and Islamic Guidance before admitting new members to their congregations.”* This information is not specific as to number or time or the upshot of any arrests. It draws on the US State Department Report.
28. Paragraph 6.57 continued:

“Mistreatment of evangelical Christians continued during the period covered by this report. Christian groups have reported instances of government harassment of churchgoers in Teheran, in particular against worshipers at the Assembly of God congregation in the capital. Instances of harassment cited included conspicuous monitoring outside Christian premises by Revolutionary Guards to discourage Muslims or converts from entering church premises and demands for presentation of identity papers.”

29. Apostasy is a crime punishable by death. Paragraphs 6.59 to 6.62 state:

“6.59 Apostasy, or conversion from Islam to another religion, is not acceptable in Islamic law. It states that an innate-apostate, one whose parents were Muslims and who embraced Islam but later left Islam, if a man, is to be executed. If a woman, she is to be imprisoned for life, but will be released if she repents. A national apostate, a person converting from another faith to Islam, and then reconverting back to the other faith is to be encouraged to repent and, upon refusal to repent, is to be executed. The most prominent cases of apostasy appear to occur from Islam to Christianity although Baha’is have also been accused of it and the death sentence has been

carried out even though the accused have said that they had always been Baha'i and were not therefore apostates.

- 6.60 Proselytising apostate converts who have begun preaching Christianity are likely to face execution. 17 clerics are known to have been in detention in 1995. In that connection, a Western embassy said that there had been no reports of person being executed on the grounds of conversion from Islam since 1994. In the source's opinion, although a convert may still be sentenced to a term of imprisonment if the authorities hear about his conversion, it is very rare nowadays for a criminal case to be brought against a convert. The source stressed that converts often remain Muslim for official purposes.
- 6.61 The source thought that converts who are known to the Iranian authorities are summoned to an interview at the Ministry of Information in order to be reprimanded. They are then allowed to go after being warned not to talk about what has taken place at the Ministry. If a criminal case is brought against them, they will be accused of something other than conversion. Many individuals try to convert with a view to emigrating, considering that the opportunities for obtaining asylum in the West are thereby greater. The Christian churches send letters of recommendation to converts and to other persons belonging to the church on request. It would appear however, that at present the Government is not pursuing an active and systematic policy of investigation and prosecution of cases of apostasy.
- 6.62 In practice, Muslim converts to Christianity may face obstacles such, as not being admitted to university or not being issued a passport. Even Muslim converts, however, in reality appear able to practise their new faith up to a point. This means, for instance, that weekly church attendance is a possibility. On the other hand, those who actively display their new faith in public, in particular by proselytising, can expect to face severe repression, even if their conversion goes back decades."
30. The CIPU also notes, as do a number of reports, the deaths of eight evangelical Christians at the hands of the authorities, though says that there have been none since 1994.
31. The US State Department Report on Religious Freedom 2003 is to the like effect; it describes the threatening atmosphere for evangelical Christians and some other religious minorities. It refers to the refusal by those churches to comply with the Government's demands that they provide membership lists of their congregations. There have been demands that the leaders sign pledges that they would not proselytise nor admit Muslims to their services. On the other hand the Government appeared to wish to encourage at least among world religious leaders an interfaith dialogue.
32. Not surprisingly, the US State Department Country Report for 2002 (and indeed the preceding one) is in much the same vein and at times the same language, language which has also featured, properly attributed in the CIPU. The US State Department draws on non-governmental sources because it has no diplomatic representation in Iran.
33. The US State Department Report for 2000 referred to reports from one organisation that 8 evangelical Christians had been killed in the previous ten years by the authorities, and that in 1997-1998 between fifteen and twenty-three Iranian Muslim converts to Christianity had been reported by a Christian organisation as having disappeared, presumed killed by the authorities. The general background information which it contains is similar

to that in the later Reports. It added that two leading lay converts had been compelled to leave Iran as a result of harassment from the authorities; others were identified who had lost their jobs and had been beaten up by the authorised thugs of the Basiji and Hezbollah, or aggressively interrogated. The 1999 Report said that evangelical leaders were under pressure to sign pledges that they would not seek converts from Islam. Other reports pointed out that the Orthodox churches in Iran, by contrast, did not allow Muslims to attend their services, and that if any individual member sought to make a convert, he did so in great fear.

34. A Canadian Refugee Board Report in 1998 said that it was up to the alleged convert, facing charges of apostasy in court, to disprove his apostasy by proving his religious commitment to Islam. Another of its reports in 1996 said that Muslim converts who did not announce their conversion would not face problems but that they would if they did make it public.
35. In 1997, the Canadian Immigration and Refugee Board produced a report on Iran in which it drew attention to the pressures on the Protestant churches to stop conducting services in Farsi and to stop Muslims participating in them; their churches had been closed and converts arrested. Ethnically based churches which did not proselytise were not targeted. It referred to some restrictions imposed on Pentecostal clergy and to the extra-judicial killings of the three Pentecostal clergy in 1994, for which three women said to be members of the PMOI had been sentenced to long terms of imprisonment in 1995.
36. The Belgium Office of the Commissioner General for Refugees and Stateless Persons (CEDOCA) Report of a seven week mission to Iran in mid 2002 contains much relevant information intended to assist in the proper assessment of asylum applications from Iran. It does not claim to be an exhaustive picture of Iran, but endeavours to give, according to its authors, information to meet the needs of those making decisions in this area, using local contacts. The persons consulted in Iran included a number of Churches: the Assyrian, Assyrian-Chaldean, Armenian Gregorian, Russian Orthodox, and importantly for the Secretary of State's submissions, two Pentecostal Evangelical Assembly of God Churches (Armenian and Assyrian) as well as the German-language Evangelical Church. The Appellants are right that the Anglican Church was not one of those consulted.
37. The Report deals with the perceived greater degree of flexibility from the authorities since 1997. It described the situation generally as one which had improved for Christians over the last few years and said that "*Generally speaking there is no longer any repression or persecution*". Christians were able to practise their faith within their community but the economic crisis led many to leave the country, although the church leaders were trying to stem the outflow of those who saw no future in Iran. This trend towards flexibility is attributed by the CEDOCA Report to the freer atmosphere introduced by President Khatami in 1997 and Iran's growing concern about its international image.
38. It said that few churches in Iran proselytised; the most active in that respect were the two Assembly of God Churches and the Episcopal Church of Iran, the Anglican Church. Some other churches only admitted new members

upon marriage and the Armenian Catholic and Gregorian Churches, the Roman Catholic and Assyrian Churches never admitted converts.

39. It described the baptism process as a long process because the applicant had to be vetted by the Church to ensure that he was not a Government infiltrator; they had to take a course in Christian doctrine and participate in church activities so that they did not become members just to enable them to leave the country and claim asylum. The ceremony was carried out in most cases “*with the greatest discretion*”.

40. It continued:

“The authorities are often aware of conversions but do not do anything to oppose them. As long as the religion is practised privately and the person concerned is not too obtrusive, in principle there is no problem. It is only if the person practises his religion publicly and actively attempts to convert others that he could be in trouble. However, this applied more to small towns, where it appears that members are sometimes questioned, than to Teheran, where things are somewhat easier given the anonymity of this big city. One of the sources related that one of its members was currently in detention for distributing Bibles and because of open proselytising. None of the other sources we consulted had any knowledge of such cases.

Muslims regularly attend services in the different churches. In most cases this is known to the authorities, but they do not make any problems.”

41. The interviews and analyses of the individual churches are of some note. The Armenian Gregorian Church, which never admits converts, complained of the proselytising activities of certain evangelical churches, both of Muslims and of Armenian Christians. This Church, which did not encourage conversions of Armenians, was very reluctant even to have contact with non-Christians who wanted to discuss their faith. They could practise as they wished.

42. The Armenian Assembly of God Church has three churches in Teheran one of which holds its services in Farsi, the others in Armenian. They have seven other churches in Iran. They also hold meetings in private houses. They were a recognised religion but not registered as such and could build no more churches. The headquarters church had some 800 members of which 80 percent were converted Muslims and the rest were converted Armenian or Assyrian Christians. The assistant superintendent, who was the source of the information reported, said that there had been considerable improvements over the last few years, the pressure from the authorities had let up and members were rarely picked up for questioning. Those who had been picked up on the last large scale questioning in 1997 had not been frightened into returning to Islam, which was the object of the exercise. Only one member was currently detained because of his activities and he was a “*zealous evangelist*”. There were sometimes problems with the authorities in the smaller towns with minor forms of intimidation, with members held for a short while and then released and left in peace.

43. However, it said:

“If the authorities become aware that someone has been converted, this can lead to the person losing his job. This applies more to civil servants than to people who work for private businesses. Among the believers there is a general atmosphere of fear, so much so that they tend to restrict themselves in their proselytising

activities. Also members regularly stay away from the church to divert somewhat the negative attention of the authorities.

On the whole, the ordinary population have a positive attitude towards Christians. There are only rarely negative reactions. However, six or seven years ago the headquarters received a visit from a few members of the secret services who demanded that their Friday church services be stopped and that everyone who wanted to attend the church service on Sunday gave his identity. However, this demand was refused by the church authorities, and they simply continued as before, without any further problems. Of course, they are well aware that the authorities are very well informed of their activities and that there are probably also spies among their members.

According to Rev Avanesian, all the members of the church can at some time have problems with the authorities, even though the situation of most of the members is tolerably good. He understands that some choose to leave the country, but he rather puts this down to economic factors and the desire to lead an untroubled life. Those who have 'the true faith' choose instead to stay and to witness to their faith."

44. There had been no death sentence for apostasy in the last seven years. The civil law impact of conversion rather varied from judge to judge. The process of conversion was described and reflects what we have already set out above. The Church took some active steps to seek converts, eg through selling Bibles on the streets.
45. The Assyrian Assembly of God Church had one church in Teheran and also met in private houses. One pastor was a Muslim convert. Its pastors had experienced problems with the authorities. The interviewee described the situation as very bad economically, especially for Christians who were barred from certain jobs because of their religion. The church is not registered and the government disrupts the elections which it must hold every three years for its priests. The church is under constant surveillance. Young people in the army got no office jobs and recruits were often insulted. In the state schools where everyone is forced to study Islam, Christianity is portrayed in a negative light.
46. Its proselytising activities seem quite limited, depending on those who make contact or become interested through talking to a member. They do not issue any documents in support of an asylum claim.

"For the moment, because they have not been active in this field for very long, the church has so far had no problems because of its proselytising activities. As long as converts keep a low profile and are not very obtrusive about their new beliefs, in principle they have no problems [an exception was identified]. However, converts who want to get married have problems when it comes to registering their marriage. Also, they cannot go through the conventional Christian marriage ceremony."

47. The situation was much worse up to seven years ago when people were regularly summoned for questioning and sometimes detained for several days. The Sharia law on apostasy was now only used to frighten people. An incident was recounted in which 5,000 clandestinely printed Bibles were confiscated, but the pastor was told that no legal proceedings would be taken against him if he kept his head down.
48. The Assyrian Chaldean church was declining in numbers and cannot engage in active proselytising. The Assyrian Church, although acknowledging civil

and personal law discrimination, said that its church and religion was recognised by the Iranian Government. But it did not allow conversions, and had made none since the 12th Century. Although a few Muslims attended, they could understand little, for the services were conducted in Assyrian. The Russian Orthodox Church said that the period 1990-1995 had been a very difficult one for Christians; it was a small church; converts were rare and baptised in secret. A few Muslims attended services without problems for themselves or for the Church.

49. Under the aegis of the Council of the EU, a Danish fact-finding mission had been to Iran in September 2000, and reported in January 2002. It had been undertaken because of the relatively high number of Iranian asylum seekers in Denmark. Meetings were held with the relevant Iranian authorities and Western diplomats. They were focused on Teheran.
50. Western embassy information confirmed the decline in the numbers of Christians in Iran due to large-scale emigration, diminishing from 350,000 before the revolution to 150,000 in 2001. It emphasised the change between persecution at the start of the revolution and the discrimination now faced. A sign of the change was that now Christians were permitted to run schools with Christian principals. Conversion in Iran was a lengthy process, and churches were cautious about accepting converts; baptisms would be in secret. It was only the Protestant and Assembly of God Churches which accepted converts anyway and actively proselytised. Other material from this mission features in the CIPU Report, paragraphs 6.60-6.61.
51. A Netherlands Report to CIREA on the position in 2000, drawn from a number of sources, diplomatic, UN and NGO and others, painted the same picture of discrimination but not persecution facing Christians generally. Many had opted to go to the West in recent years. Likewise, it was the Protestant churches which sought converts and those who proselytised were intimidated; its comment was repeated in paragraph 6.62 of the CIPU Report of October 2003.
52. The CIREA papers for 1998 and 1999 on freedom of religion in Iran said that intimidation of those who proselytised as Christians continued, though there were no details of any actual prosecutions for that activity. The Armenian and Assyrian Churches were well-integrated, ethnically based, permitted to trade and follow their own rules in personal and family law, and were not seen as a threat to Islam by the authorities. They did not proselytise. Protestant churches did accept converts but with great restraint, save for the Pentecostal Assembly of God Churches. There had been no recent cases in which the death penalty had been imposed on converts:

“Those who, in the view of the authorities, offer Muslims alternative to Islam run the risk of falling victim to human rights violations. There have recently been fresh reports of threats and intimidation, including house searches, directed at churches which include converts among their congregations. Repression of Christians is directed particularly at leading members of the Anglican church and the Assemblies of God.”
53. Converts faced travel restrictions and other obstruction, instructions to cease church attendance, threats but not the fact of prosecution. Those who openly demonstrated their religious conviction faced serious repression; there had

been several murders attributed to fundamentalist elements who may have been within the government. But that had not occurred since 1997. It was estimated that there were a few hundred converts resident in Iran.

54. Mr Wilken made particular reference to a decision of the Refugee Review Tribunal (RRT) in Australia dated 2nd September 2003. The Claimant was an Iranian convert from Islam to an evangelical Christian church. He had started his interest in Christianity when he was still in Iran, had been arrested for expressing that interest, and had been inspired to learn more. However his full conversion did not take place until he arrived in Australia. He regarded sharing his views with others as an important obligation on Christians. He gave evidence to the effect that if he were to keep his religion to himself on return to Iran, it was possible that nothing would happen to him but that he had taken an oath to proselytise. The Australian Department of Foreign Affairs and Trade (DFAT) provided information from the Assembly of God Church in Teheran; this was information upon which Mr Wilken placed considerable reliance as well as upon its appraisal in this Review Tribunal decision.
55. We set out initially DFAT's earlier material of 1996 because of the contrast with the June 2002-February 2003 material, which was so significant to the RRT. The DFAT Report of 1996 referred to the discrimination faced by Christians and the difference between the traditional or orthodox churches and the evangelical churches in their attitude towards proselytising among Muslims. Attempting to convert a Muslim was a serious offence, the existence of which in the penal code was intended to harass. Converts were generally tolerated so long as they kept a very low profile. Workplace harassment and dismissal would be possible if they worked for the government or revolutionary organisation, but the most common source of pressure was from "concerned" family members. Churches felt that they were infiltrated with "suspect" members there to intimidate and monitor the others, and especially converts. There were no accounts however of ordinary converts being tortured or killed because of their beliefs.
56. The picture painted of the Orthodox and ethnic Churches reflects what we have already described, although there were limitations and discrimination.

"2.3.17.8 Despite constitutional guarantees of religious freedom for Christians, those denominations which fall outside the historically well established Armenian and Assyrian traditions have been subjected to a greater degree of officially sponsored intimidation. Those churches which did not have what the Government regarded as indigenous roots at the time of the Revolution have been accused of espionage, collaboration with foreign powers and cultural imperialism. The majority of non-Iranian clergy have had their visas revoked or have been pressured to leave.

2.3.17.9 While the violent excesses of the past have abated, a process of attrition remains. For example, in 1993, the Anglican church was divested of its substantial property holdings. The Anglicans appear to have fared badly under the current regime. At present the most virulent threat to the maintenance of an Anglican presence here remains insolvency. In the early days of the Revolution, all Anglican property under the name of the then Bishop was frozen, comprising land, schools, hospitals and homes. Previously frozen assets have been confiscated and title deeds amended to preclude

any future assertion of interests. No compensation has been proposed. The confiscation was conducted without prior consultation. No paper trail is available to the aggrieved thus rendering the pursuit of judicial redress impossible. The legal justification for the latest act relates to the apostasy of the former Bishop, in whose name the property was formerly invested. Property rights enjoyed by the individual are extinguished and revert to the Islamic State. The Anglicans have changed their name to 'Episcopal' and now have an entirely indigenous clergy. The Catholic Church has also had most of its property seized since the Revolution."

57. It then went on to refer to the murder of the three clergy in 1994. It concluded that among those who were candidates then for an imputed political profile were Christians involved in proselytising activities and converts from Islam who publicly witnessed their new faith.
58. This is part of the material which the Review Tribunal thought out of date in the case cited above. An earlier Refugee Review Tribunal in Australia (NOO/36328) had held in June 2002 that an evangelical convert who had expressed an interest in Christianity in Iran was entitled to refugee status. This was in line with earlier decisions.
59. We now turn to the DFAT material from June, August and November 2002 and February 2003. DFAT was the source through its diplomatic channels in Teheran for the information which the Country Information Service provided to refugee decision-makers. The questions provided some background information about the applicant. He had attended an Assembly of God Church in Teheran for about two years, attending Friday service and did not have to go through any formal process in order to be able to attend services. The actual answers were drafted by the DFAT based on information supplied by a single unidentified source described in the Tribunal's decision as a senior member of the clergy of the Assembly of God Church in Teheran.
60. Visitors to the church were welcomed but it took normally between two and three years to progress to baptism. It commented on the reference in the 2001 USSD Report to increasing vigilance and identity checks by the authorities outside church. Checking outside church was said to be unusual or unlikely unless outside contacts had given rise to such questioning. There was a suspicion that churches were infiltrated by the authorities. When members were called in for questioning they were asked to sign a declaration that they would not continue to be involved in proselytising; this was rarely followed up and prison sentences were no longer passed and members continued with their unashamedly proselytising activities. Some 80 percent of its members were Muslim converts, (at least of this particular church in Teheran). Pressure had eased considerably since the election in 1997, but there was still discrimination in employment and the need to declare religion when applying for a passport, about which members were not allowed to lie, led to restrictions on travel; government jobs were lost and the negative attention which conversion led to had caused many converts to go abroad.
61. The more positive tone of this report contrasted with earlier reports of the not so distant past and this softening was queried by CIS: was this a genuine softening by Iranian authorities or a local and informal response? The answer was that further enquiries had led to the conclusion that conversions

from Islam were being increasingly tolerated by the authorities. There were Assemblies of God and other evangelical churches which were very active in proselytising among the traditional churches as well as among Muslims; the figure of 200 plus baptisms for 2001 in three such active churches is not broken down as between the different sources of potential converts. A leader of one church which had not baptised converts for 10 years had now dared to resume that practice.

62. It continued:

“Overall, Muslim converts currently seem to be able to function reasonably well in Iranian Society, without much fear of persecution. Muslim converts to Christianity share some of the same problems of those of other recognised religions, such as Jews, and those who are ‘born’ into Christianity. Muslims routinely attend church services (particularly at Christmas and Easter), often out of curiosity, and often they are attracted by the ritual associated with the services, including music and singing. Many subsequently register for and attend Bible classes.

The current tolerance toward Christians and proselytising could mark a genuine improvement in human rights in Iran, attributed to President Khatami’s influence and that of former Minister for Culture and Islam Guidance, Attaollah Mohajerani. We do not know of any recent arrests or sentences on the basis purely of proselytising or apostasy (MORTAD). However, the prospect for charges of this nature being imposed in political trials remains (see for instance the case of Eshkevari who, in late 2000 was accused of apostasy as part of broader political trial). Those who change their faith do remain vulnerable to a change in the domestic political climate, and their conversion could be used subsequently to prosecute them if they attract negative attention from authorities for other reasons.”

63. The November 2002 material dealt with the question of whether other reports including a US report showed a different picture and a more reliable one. They referred to the pressure to sign pledges that the churches would not convert Muslims or allow them to attend church services, and the active harassment of worshippers outside church with conspicuous monitoring by Revolutionary Guards. DFAT replied that it did not consider that assessment to be accurate. The interlocutor said that the legal position in relation to existence of the death penalty for apostasy was unchanged but the reality was very different. There was a “*relatively benign environment ... evidenced by growing number of Muslim conversions ... and rising attendance at church services*”. He thought that there might well be a political element to the assessments which he criticised, an element composed of NGOs who worked actively with refugee organisations which had an interest in painting a bleak picture of the position in the source country. DFAT thought that its source was credible and that what he had to say was borne out by others with whom they had regular contact, and pointed to the advantage which those in Iran had over others in assessing the human rights situation.

64. In February 2003, in response to a claim that there had been a summons to face charges issued to a senior member of an Assembly of God church over the distribution of CDs of Christian songs, DFAT’s interlocutor said that he had no knowledge of any questioning or charges over the distribution of proselytising material, although there had been a distribution of 2000 Bibles, religious films and CDs in buses and taxis in Teheran at Christmas 2002. There had been no deterioration for Christians in Iran, although he

acknowledged that the position of converts who make their position known publicly is more complex than of those who do not. This later arose from the evidence that a convert who had made his conversion known had suffered from some harassment from his neighbours in a Kurdish dominated city but who had moved to Teheran and there made his conversion known without consequence and was able to attend church freely in Teheran.

65. The RRT concluded that the applicant would be able to return to Iran and practise his religion, even though he could be subjected to some harassment and discrimination were he to be open about his conversion and proselytise. The RRT analysed the evidence as follows:

“In the past, the independent evidence has suggested that Muslims who convert to Christianity and who proselytise Muslims could be at risk of persecution in Iran. However, there is now strong evidence before the Tribunal suggesting that members of the Assembly of God Church, which has a congregation consisting largely of Muslim converts, are able to attend church and engage in evangelical activities without encountering serious harm, either from the government or the community. This is a different picture to that portrayed in a report published by Iranian Christians International earlier this year. It also differs from views expressed in reports such as those written by the US State Department. However, I am of the view that the information provided by the Australian Embassy as a consequence of recent and direct discussions with senior Christian clergy in Teheran is much more reliable than the information (much of it quite dated) of the kind contained in the ICI report. I am also of the view that the US State Department is not a reliable source on the current situation for Iranian Christians in Iran, given that the US does not have diplomatic relations with Iran and is therefore in no position to directly obtain information from Iranian Christian clergy in Iran. The advice given to DFAT by the Church is not in the form of a public statement, but as a result of a number of private discussions with an Australian diplomat. I am of the view that this information is credible, reliable and reflects the actual situation for Muslims who have converted to Christianity.

However, no information is provided which suggests that members of the Church have in fact been seriously harmed because they had been involved in proselytising. On the other hand, the information provided to DFAT indicates that church members have been involved in specific proselytising activities (handing out Bibles in public transport in the lead-up to Christmas last year) without encountering serious harm. The independent evidence indicates that Christians have engaged in proselytising activities without encountering serious harm notwithstanding the disparaging view of such activities expressed in the newspaper article provided by the applicant’s adviser.

It appears that the contents of the DFAT reports are now well-known in the Iranian Christian community. The applicant in this case was aware of the reports prior to the hearing. I have been told in other cases that the Assembly of God Church in Australia is in contact with the Assembly of God Church in Teheran. In my view, if the DFAT reports were incorrect or misleading it would have been open to the Assembly of God Church in Teheran – having been made aware of the situation by the Church in Australia – to take this up with the Australian Embassy. This could be done without the church putting anything in writing. I am satisfied that if this had been done the Australian Embassy would have passed on the information. The fact that no such information has been provided strongly suggests that the leadership of the Assembly of God Church in Teheran accepts that the DFAT reports are correct. In the circumstance, I prefer the DFAT reports to the information provide by the applicant in his latest statutory declaration.

I accept that the applicant would not be able to obtain government employment if he were open about his conversion to Christianity and engaged in proselytising activities. The independent evidence does not suggest that the applicant would have any particular difficulty obtaining employment in the private sector nor being

self-employed because of his conversion to Christianity. I am not satisfied that the applicant would be denied the capacity to earn a livelihood because of this conversion to Christianity.

I accept that the applicant would not be able to study at university if he declared his conversion to Christianity or engaged in proselytising activities.

The applicant indicated that his conversion to Christianity would prevent him from registering his marriage if he married in the future. There is independent evidence before me which indicates that in February 2000 following a change in the law the head of the judiciary issued a circular letter to all registry offices throughout Iran that provided for any couple to be registered as husband and wife without being required to state their religious affiliation.”

66. We turn from various Government sources to UNHCR. The 1995 UNHCR background paper confirmed the killing of three evangelical clergy in 1994; proselytising converts from Islam were especially at risk; those converts who practised their faith openly suffered harassment and intimidation, and official restrictions. In 1994, it reported that there had been a fierce campaign against Christians, public expression of hatred from the authorities, torture and imprisonment, with converts especially at risk. The Assemblies of God Churches had been especially targeted.
67. A UNHCR Paper on Iran in 1998 said that those Christians who belonged to distinct ethnic groups, which accounted for the vast majority of Iranian Christians, were allowed to maintain their own schools and cultural activities but were subject to discrimination if they took their activities outside their own community. This occurred especially in the education, employment, housing and the court system spheres. It contrasted their position with that of the 10,000 to 15,000 members of Protestant groups in Iran especially Evangelicals whose origins dated back to Western missionary activity in the 19th century and whose traditions were based on proselytising, services conducted in Farsi, and the dissemination of religious texts. Their links with European and especially US churches fuelled the suspicions of the Iranian Government. There were reports from Iranian Christians International that converts from Islam and leaders of the churches were arrested, threatened, detained and tortured, activity which in 1998 was said to have increased.
68. The UN Commission on Human Rights considered a report of January 2002 on Iran. It noted in the summary that there had been little change in the official and societal discrimination experienced by religious and ethnic minorities, treatment which sometimes escalated in to open persecution. Officially recognised religious minorities had the status of second class citizens. It continued in paragraphs 80 and 81:
 - “80. However, their lot is considerably better than that of the unrecognised, that is, the non-ethnic Christians. These are those groups of Christians who are for the most part ethnic Persians. Evangelical Christians such as members of the Assemblies of God have been harshly persecuted over the years, apparently on the grounds that they had been or might be proselytising. Some of them are said to have been convicted for apostasy. Some have been sentenced to death and a few have been executed. The Special Representative has been informed that only three small Persian-speaking churches may remain in operation and that they have had to agree not to evangelize Muslims. The printing of Christian literature is prohibited and Christian bookstores are banned. A number of Christian activists have reportedly fled the country.

81. In the Special Representative's opinion, the situation of the Christians, particularly the non-ethnic Christians, does not seem to have improved since the 1996 report of the Special Rapporteur on religious intolerance on his visit to Iran (E/CN.4/1996/95/Add.2). The Special Representative again calls on the Government to implement the recommendations of the Special Rapporteur on religious intolerance."
69. Reference was also made to the 7th UNHCR/ACCORD Country of Origin Seminar of June 2001, which provided reports on Iran for the purposes of assisting in the decision-making on asylum claims. Whilst the organisers said that the views in it were comprehensive, they were not necessarily those of the two organisations.
70. Although the 1997 election of President Khatami had been seen as a major development, there had been a conservative backlash and in any event the country continued to be far from a democracy and to experience widespread abuses of human rights. Even Islamic clergy who question the prevailing orthodoxy or the role of the clergy in the state were liable to face vague charges of "*insulting*" religion which could lead to the death penalty; journalists could also face such charges. There was no evidence of the death penalty having been carried out for those offences.
71. For apostates from Islam who were born to Muslim parents, the penalty was death. Although there had been executions for that offence, particularly in the early years of the revolution, it appeared that in 2001 the Government was not pursuing an active and systematic policy of investigation and prosecution of cases of apostasy. It drew a distinction between those who converted before their departure from Iran, who had taken a very great risk, and those who converted outside Iran. It continues:
- "It is important to add that conversion abroad could also be perfectly genuine. Iran is a place where people are fine as long as they do what they do behind closed doors and within their own four walls. People may drink, practice homosexuality and their religious faith after conversion. Yet, if a person who converted abroad walked down central Teheran wearing a cross, s/he would certainly have to face difficulties. S/he may not be at risk if s/he keeps a low profile. In general, however, it is very difficult to assess what is going to happen to a person who converted to another faith upon return. In such cases, a case by case assessment would need to be made taking into account the ultimate reasons for conversion and the degree of publicity surrounding the case. In addition, although Iranian embassies may well monitor activities of Iranian exile communities it would be highly unusual if they kept track of Iranian baptisms abroad."
72. Proselytising was said to be an activity which all churches were extremely cautious about with the possible exception of the Assemblies of God Churches. In 1994, three prominent evangelical Christian clergy had been killed, after having been accused of seeking Muslim converts. It was not thought that intra-Christian proselytising would lead to adverse reactions from the state; proselytising was said to be a fundamental aspect of practising a universal and evangelical faith, although it was difficult to prove that anyone carried out such activities if they were said to have been carried out in the privacy of the home.
73. A US Immigration and Naturalization Service Note of November 2002 on conversion from Islam to Christianity reported the views of NGOs such as

HRW. It said that HRW had reported numerous cases in which the death penalty had been handed out for apostasy, as well as other severe penalties and lesser sanctions later in the 1990s. It noted an improvement in the lifestyle for those Christians who were not converts or engaged in converting Muslims. Evangelical Christians could face harassment and sometimes persecution.

74. An International Christian Concern Report last updated in May 2003, identified individuals who had suffered at the hands of the various authorities in Iran because of their conversion from Islam to Christianity. One had been tortured in 2001, another in 1999; two lost their jobs in 1999. In 1998, another family were harassed, one lost his job, his car was burnt and he was beaten and threatened. In 1997, members of an Assembly of God church were made to promise that they would meet only in churches and would not allow Muslims to enter and that guards would check on their identity. In Autumn 1997, several converts were tortured and many disappeared; twenty to thirty had been arrested on another occasion and treated badly. A pastor had been sentenced to death in 1995 for apostasy but he had since been released. In 1996, pastors and church leaders had faced severe harassment and one had been killed by police. Charges of espionage and adultery were brought against a convert because of his conversion but he had been released after international pressure and had left the country.
75. Mr Wilken placed some weight on the optimistic note struck by some Iranian newspaper reports. The December 2003 Teheran Times reported that the President urged a dialogue between Islam and Christianity. The "*Iranian*" noted the Christians of Teheran were celebrating Christmas in their own way and acknowledged the deep roots which Christianity had in Iran.
76. We turn now to the evidence of the Appellants. FS and NS each produced a report from an academic who was suitably qualified to provide the report relied on. We were provided with the necessary details, and accepted an application from these two Appellants that the expert, for reasons which we were given, should remain anonymous, to be known as AB. The report for NS was an earlier one.
77. The Report includes an analysis of the background papers produced by various bodies. Much of what it says is consistent with the material relied on by the Secretary of State. It refers to the difference in approach to proselytising of the ethnic Christian churches which generally discourage conversion, the Catholic Church which is small and wary of proselytising and the Protestant churches into which most conversions take place. The terms "*evangelical*", "*Protestant*", and "*converts*", tend to converge in the Iranian context for that reason. Only three Protestant Churches remained in Iran – the Assembly of God, the Episcopalian or Anglican Church which was on the evangelical wing, and the Armenian Evangelical Church. The report concludes that those who are most at risk as Christian converts from Islam in Iran belong to the evangelical communities. Christian apostates who were executed in the early 1990s judicially or extra judicially were all Pastors at these churches. But other forms of harassment and persecution suffered by ordinary converts were more probably linked to the fact of conversion and membership of an evangelical congregation. There had been a sharp reduction in numbers among the Christian communities since the 1979

Revolution but there were indications that the number of converts to Christianity since 1979 had increased substantially. Nonetheless, such conversions were said to be relatively rare. It was difficult to estimate the number of evangelical Christians or Muslim converts in Iran because many were forced to worship in private. A 1990 estimate was that perhaps half of the various Protestant congregations of 30,000 people might be Muslim converts; but there had been substantial emigration during the early 1990s when persecution of evangelicals was at its worst. The Report made three specific points of relevance when assessing the available information.

78. First, documentation of harassment and discrimination against Christian converts was likely to underestimate rather than overestimate the position because minorities often maintained silence for fear of attracting greater persecution for their community as a whole. This had specifically happened in 1994 following the killing of three Pastors.
79. Second, the Report commented that the reports of official western fact finding delegations were likely to be limited by the fear which individuals approached for information in Iran might have in speaking frankly to them. The report gave two examples of what had happened in 2003 following visits to Iran by UN human rights monitors examining alleged abuses of political prisoners.
80. Third, the political and human rights situation in Iran had fluctuated considerably over the last few years with periods of relative relaxation being followed by periods of pressure for one or other of the groups at risk. It referred to the tenuous nature of President Khatami's position and the conservative opposition to him. It quoted a US State Department Report of 2002 suggesting that it was only for the non-evangelical or non-convert Christian groups for whom life under Khatami had improved.
81. The Report then turned to apostasy. It commented on the CIPU Report of October 2003 noting that it omitted the reference in the 1999 US State Department Report on Iran to between fifteen and twenty-three disappearances of Muslim converts in the year November 1997 to November 1998 and the comment in the 2002 US State Department Report that most or all of those were believed to have been killed. This was seen as contradicting the CIPU comment that there had been no deaths of evangelical Christians at the hands of the authorities since 1994. It was necessary also to examine the role of extra judicial killings in this respect. The law of Islamic punishment would allow a Muslim to murder a convert to Christianity or other evil people with impunity if the sin could later be proved in court. Examples of this were given: one was that of a convert Christian pastor found hanging in 1996. Formal charges of apostasy were not routinely brought against converts but the law was an ever present threat and there were other forms of harassment to which converts were subject. The fact that the Iranian codified criminal law did not specifically include apostasy as a crime did not mean that it could not be charged as a crime. An insult to or denial of the Prophet gave rise to charges of blasphemy and an accusation of apostasy would lead to the court turning to such sources outside codified law as the judge might regard as authoritative.

82. The Report then turned to other forms of persecution and discrimination. It pointed out that Muslim converts were excluded from the protection of Article 13 of the Iranian Constitution which guaranteed religious freedom to Christian Iranians. Indeed, an accusation of apostasy could be levelled at those who did not observe the obligatory practices of Islam as seen by the ruling clerics and even those campaigning for the introduction of modern norms into Islamic society could be regarded as apostates; apostasy involved a renunciation of Islam rather than conversion necessarily to another religion. It referred to the January 2002 Report of the UN Special Representative for Iran, and said that in 2001 the UNSR had reported that the evangelical Christians did not enjoy the limited rights of ethnic Christians and that their services were subject to harassment and that *“from time to time they had suffered persecution and even death for their beliefs”*.
83. AB’s Report then referred to what the CIPU and US State Department said about registration and monitoring of services, the closure of churches, the banning of Farsi in sermons, and the prohibition on the sale of the Bible in Farsi. It referred to evidence that Iranian authorities monitored Christian communities outside the country. It reported that in 2003 two German Christian pastors believed that Iranian converts in their congregation had been informed on by Iranian intelligence and beaten severely in the street. It pointed out as the other reports had done that converts to Christianity could be deprived of the right to work in the Civil Service or in Government owned companies which formed a large proportion of the job market and that many important private sector institutions also in practice observed that selection process. The vetting system would exclude a known convert to Christianity from State employment and large private companies.
84. Christians and converts were vulnerable to arbitrary arrest and ill-treatment at the hands of paramilitary vigilantes such as the Basiji, Islamic fundamentalists allowed by the Iranian authorities to enforce religious law. Examples were given of two people in 2001, one of whom was detained and tortured by the Basiji and another who was abducted on a number of occasions by secret police; he and his family were forcibly evicted from their home in the provinces, but having fled to Teheran found that fellow believers from his home area were being arrested and questioned about his own whereabouts, so he had fled Iran with his family.
85. The Report said that this kind of conduct was a principal source of arbitrary persecution and was sanctioned by the Islamic requirement to commend the good and forbid the evil. The Basiji, the Revolutionary Guard and Ansar e Hezbollah saw giving effect to that requirement as part of their religious duty. Murder in the course of such actions was effected with impunity and an example of the Iranian courts giving effect to those principles was cited. Examples of arbitrary arrest and imprisonment were given. In 1996 and 1997 three groups of members of the Assembly of God Church in Sari, Shiraz and Teheran were arrested, detained and although released, had been dealt with violently with torture. Other examples were given of arrests and beatings in 1996 to 2000 of those who were converts or related or working with the Protestant churches.
86. The Report then turned to proselytising. It agreed with the comment in the April 2003 CIPU to the effect that the government was vigilant in curbing

those activities by evangelical Christians whose services were conducted in Persian and that a Christian who was caught trying to convert another would be treated harshly. This Report commented that while an active proselytiser would be particularly vulnerable to persecution, "*persecution is not necessarily linked to individual proselytising activities*". Most of the examples of ill treatment given involved members of evangelical congregations and there had been no evidence that they had been engaged in active proselytising. "*What, however, they have in common in most cases is that they belong to congregations suspected as a group, of proselytising by the Iranian authorities*".

87. It pointed out that those who were suspected of proselytising or propagating the Christian faith might be charged under laws other than those relating to the law of apostasy but yet might be subject to harsh and disproportionate punishment. An example would be the provisions in the penal and press Codes which precluded the insulting of religion and which could lead to death or imprisonment. Writings against Islamic standards are also subject to a criminal penalty. Other examples of laws which might be used to harass Christians included "*corrupting public morality*", "*the dissemination of false information*" or "*spreading corruption on earth*". The penalty for such offences included imprisonment, fines and flogging. The punishment for corruption on earth included death, crucifixion, amputation or imprisonment, a charge related to "*warring against God*" in the Iranian penal code.
88. The Swedish Aliens Appeal Board had reported on conditions in Iran in 1995 stating that those in Iran who converted from Islam did not normally risk the kind of prosecution prescribed in the Shari'a and that there was no significant chance that they would be the target of any action from the authorities or serious harassment. That report was criticised by this expert. The Christian church sources who said that there was no real chance of persecution upon return to Iran were speaking at precisely the time when pastors were being harassed and killed, spreading fear amongst evangelicals and traumatising the community. HRW likewise reported a disruption in the flow of information at this time. There would have been pressure to produce positive information from the authorities; it could take no account of the persecutions from mid 1996 which post dated the report; it did not deal clearly with the position of a person whose conversion came to the knowledge of the Iranian authorities. AB's Report points out that converts must register with the Iranian authorities, that they are monitored and that most converts must make their conversions known; the CIPU and US State Department Reports said so. It continued: "*the issue is not simply how often the law of apostasy has been invoked and a convert executed. Christian converts can, as the evidence shows, become the victims of severe persecution of various kinds, all sanctioned, in one way or another by legal framework prevailing in the Islamic Republic.*" It was very difficult to determine what circumstances specifically determined risk. Although most cases concerned those who became evangelical Christians or Pastors of those denominations, it was wholly unknown whether in the case of ordinary members of evangelical Christian congregations "*individuals were targeted because they were, as individuals, proselytisers, or simply because they were converts who were (as most converts are likely to be), affiliates of a Protestant evangelical congregation*".

89. The report summarised the factors putting a Muslim convert at risk in Iran as follows:
1. A legal framework which included apostasy and blasphemy as offences punishable by death, and which allowed Muslim converts to be harassed and killed by Muslim extremists with impunity. It afforded no protection to them. We add that the summary could usefully have included the range of vague offences with which a convert or suspected convert could be charged.
 2. If a known convert were to have other problems with the authorities, of whatever level or type, that fact would lead to worse ill-treatment.
 3. Even if the situation had improved over the last few years, despite the views of the UNSR, the conservative Guardian Council exercised strong political opposition to Khatami and he had a very tenuous hold on power; a deterioration in the climate could very easily occur.
 4. Neighbours, colleagues and others could very easily denounce a convert, maliciously or for ideological reasons, to any of the various forms of authority in Iran, state or religious, formal or informal; they could lay complaints directly with the courts which would trigger a hearing. This made generalisations very difficult about what factors would cause a person to face such problems. The 7th UNHCR/ACCORD Report on Iran, which we have already referred to, supported this point.
 5. The judiciary was active and influential and in alliance with other conservative elements had become a source of challenge to the Khatami Government.
90. A further Report from AB was put in, although it related to a different case. It was dated shortly after the one to which we have just referred. It dealt specifically with the Belgium CEDOCA Report relating to July 2002 and the Danish fact-finding mission of 2000. AB pointed out that the UNSR, in a Report of January 2004 which had only just become available, and an Amnesty International Report of November 2003, both made the same point that the fear induced by systematic repression of free speech would lead to self-censorship rather than frank speaking when the representatives of Western countries visited Iran and sought information; once the visitor had gone there were known reprisals of some severity for those seen as speaking out of line. Those who did included the Bishop, who was Head of the Council of Protestant Churches; he had been murdered as a consequence in 1994.
91. It emphasised that there was a vital distinction to be drawn between those who were converts to Christianity and those who were “*ethnic*” Christians. Although it was generally agreed that the position of recognised minorities had improved since Khatami came to power, it was also generally agreed that the position of the Protestant communities had not improved since 1996 when pressure on them was at its height.
92. However, the Report recognised that two Pastors of one of the Protestant Churches, which had a congregation of which 80 percent were Muslim converts, had said to a number of interlocutors that the situation of his church members was good and much better than six or seven years ago, from 2003. Members were rarely picked up for questioning. Although it was

agreed that there had been no formal charges of apostasy since the first half of the 1990s, there may have been extra-judicial killings and disappearances later than that. There was evidence of persecution and harassment although it appeared that even Muslim converts were able to practise their faith to some degree but could not actively proselytise without severe repression. Nonetheless, there was an atmosphere of fear and insecurity because of surveillance, spies in the congregation, negative attention, the occasional detention and the risk of losing one's job if it were a Government job.

93. 2003 had, however, seen a deterioration in the political situation in Iran, as Khatami became more exposed with the success of religious conservatives in the recent elections. The reformist MPs had had limited success in liberalising legislation which had often been blocked by the Guardian Council. The only legislation of note had been the very recent eventual equalisation of blood money as between Muslims and non-Muslims. There had in fact been a general deterioration in the human rights position of many.
94. Human Rights Watch had reported in 1997 that the religious minorities were among those likely to be the target of abuse and that the courts were not a reliable protection for them regardless of what rights the constitution might afford them in theory. It contrasted the position of the 10,000-15,000 Protestants with the ethnically-based Christian Churches as other reports do. These do not merely hold their services in Farsi and seek to disseminate biblical material in Farsi; they are churches built on a nineteenth century Western missionary tradition of proselytising in Iran. This is allied to continuing links with Western churches in the USA and Europe which fuels suspicions about their true intentions and hostility. The Report asserts that not merely are they subject to institutionalised discrimination, as are all non-Muslims, but they are also subject to persecution because of their religious activities. Shortly after the Revolution, there was extensive persecution of Protestant clergy; the persecution of the evangelical Churches intensified in the 1990s, (although the instances cited relate to the early 1990s, up to 1994). It refers to the Government forcing Christian leaders to sign statements saying that their treatment was satisfactory and the evangelical Churches which refused to do so were dealt with severely. It elaborated on the trial of a member of an armed resistance group who was accused of the murder of Protestant leaders in 1994; the suggestion was that this was a show trial of those who were innocent of that crime, in order to put the regime in a better international light. These killings had resulted in the drying up of information about religious persecution but there had been sporadic reports of subsequent attacks including the killing in 1996 of a Protestant convert Pastor. Pastors had been intimidated, arrested on false charges, and pressured to renounce proselytising. This was contrasted with the position of the Orthodox churches, which experienced a lower level of discrimination or persecution.
95. The Report of the Special Rapporteur to the UN Commission on Human Rights, January 2004, followed a visit to Iran in November 2003. This has already been referred to in the Report of the expert relied on by the Appellants. It confirmed concerns about the climate of fear induced by the systematic repression of people expressing views critical of the authorised political and religious doctrine and the severe and disproportionate

sentences which that created; this had led to self-censorship, thus impeding freedom of expression. It is clear that that is not a reference to the unwillingness of people to talk to the Special Rapporteur but rather is making a wider point about the effect of a repressive regime. The disruption to the free expression of opinion was not confined to positive acts of censorship, but covered the less readily assessed effect of self-censorship. The Special Rapporteur acknowledged that he had received the assurances of the Government that those who spoke to him would not be subject to any reprisals but he recorded that one such person, shortly after speaking to him had disappeared; he had been returned to the notorious Evin Prison according to the authorities from which he had been briefly on leave. The Report has little to say about religious freedom as such and nothing about proselytising Christians.

96. There were other documents to which we were referred, but they repeat or rely on the material which we have set out above.
97. The Appellant NS also produced an expert report from Rev Dr Dehqani, the Commissary to the Anglican Bishop in Iran, the Rt Rev Iraj Mottahedeh. She also gave oral evidence. Her report and evidence were based, for the most part, on discussions which she had had with the Bishop during his recent visit to the United Kingdom and on earlier occasions. But she was always cautious about fax and telephone calls from Iran during which people might be careful about what they said. Her father had been the previous Bishop, but her family had been in this country since 1980; her father's position had become unbearable shortly after the revolution. Her brother had been murdered in 1980 and she did not consider that it would be safe for her to return. She had not been there since 1980. She considered that an important factor in the current Bishop's ability to lead the Church was that he was not a convert from Islam but from Judaism.
98. She noted the legal difficulties under which the Church laboured and the difficulties of a Christian convert, even such as the Bishop, owning property. Its position was precarious and becoming increasingly so. The Anglican Church accepted converts but did so with care because of the consequences which that could have for the convert and for the Church as a whole.
99. The situation for Muslim converts had become more risky in recent times, particularly since the summer of 2003 when five key members of the church in Isfahan had been arrested and similar measures had been taken in Shiraz and Teheran. The Report said nothing about what had happened to them but Rev Dehqani added orally that they had been released, perhaps after a few weeks detention if they had been detained at all (about which she was uncertain), on several conditions which included ceasing contact with the church and moving to a different town, with re-arrest as the penalty for breach. She had no further details and could not say if they were converts. A statement produced for TB's appeal said that what we take to be the same Church leaders in Isfahan and Shiraz had been arrested; one was charged with evangelism and banished; an evangelical centre in Teheran had been closed. Rev Dehqani was perhaps aware that there had been rioting, unconnected with the church in summer 2003 but no-one knew what had provoked the arrests of the clergymen.

100. There was no monitoring by the Church of how converts were treated; many stayed away from church as a result of threats which were made to them. There had been instances of false charges of eg “*espionage*” or “*immorality*”. This was because, as the Church perceived it, it was seen as an agent of the West or as a means used by the West to undermine the state. Conversion was an affront to the regime. No Muslim convert could function in a leadership capacity, ordained or lay. The Anglican Church was viewed and treated rather differently from the local ethnically based Churches.
101. The Church identified as risky activities which could lead to harm, albeit unpredictably: attendance at Church, associating with Church members, baptism, outward signs of devotion, Bible study and the promotion or public approval of Christian values or beliefs. There were spies who reported on their activities. The Church as a whole felt targeted. There was great fear and uncertainty. Anyone returning as a convert would face a risky future, and it would be dangerous if they were unable to conceal their conversion or to refrain from associating with members of the Church. Someone who was baptised and attended church faced risks of harassment, prejudice, discrimination, arrest and even death and the fact that she did not know of a case involving the death penalty did not mean that it had not happened.
102. She disagreed with the view expressed in the DFAT material that it was unlikely that people would be checked as they went to and from church; she said that to her knowledge that was very common. Any decrease in surveillance had not applied to Muslim converts, and any perceived easing of pressure since 1997 had gone since the summer of 2003; life was now much more difficult for Muslim converts. Government actions were often arbitrary since the revolution. She thought that the DFAT interlocutor, being a member of an Assembly of God Church, might find life easier than others because it would be seen as an ethnic minority rather than as a Western church. Baptism was the moment of apostasy rather than church attendance, and the Anglican Church had always been very cautious about baptism because of the risk that the candidate was a spy rather than a genuine believer. She accepted that at least in the 1990s the Assembly of God Church had been less cautious than the Anglican Church about baptising converts and proselytising. She had only spoken to the Bishop for fifteen minutes in her last call and she had not raised the DFAT material with him. She had not appreciated that the DFAT conversations related to September 2003. That Church might have had the motive of encouraging members in the answers it gave and the Belgium CEDOCA Mission, whilst it had the advantage of being in Iran, might have not been given full information because of fear.
103. NS’ bundle also included some US news reports of views expressed by Christian groups in the US which painted a bleaker but more generalised picture of the position of the Protestant Churches in Iran than others.
104. TB produced a report from a Sunderland based “Attorney at Law, Legal Adviser”, Mr Kakhki, of July 2003. He said that the threat of the death penalty for apostasy was real as he had personally defended converts charged with that offence and they had been sentenced to death. He had witnessed their execution. He does not say when this was. They could not

get a fair trial, but it was not uncommon for them to be released on bail while investigations were made and for them then to leave the country.

105. TB produced a report from Maria O'Shea, a Research Fellow at SOAS, with an interest in Middle East minorities and especially those of Iran. Her report paints the picture of a repressive society in which human rights are ignored routinely; torture was common and the death penalty carried out for some offences; trials were not fair. She too noted the position in law of the crime of apostasy. Christian leaders had been forced to sign statements that they would not proselytise. Persecution of evangelical Christians had increased in the 1990s; an organisation of Iranian Christians had estimated that in 1992 there were 6,700 Muslim converts in Iran. She gave the same figures, seemingly from the same Christian paper source, as set out later for the number of Christians in the Protestant Churches in Iran. There was, she concluded, a steady trickle of converts despite the dangers. She recorded the US State Department note of disappearances in 1997 to 1998, the deaths of eight evangelical Christians in the 1990s, and the murders of Pastors, to which we have already referred. She referred to an ICC press release of 2000 saying that pastors were regularly interrogated, barred from contact with Muslims or converts or with international organisations. Individual instances of persecution were noted; these appear to be the same as those to which we have already referred.
106. In her assessment, like others, she draws a clear distinction between those who are born Christian as a result of their ethnic identity, who are generally tolerated, and those who convert from Islam. They were limited to attendance in missionary Churches which were associated with imperialist endeavours of the past and foreign influences of the present. This opened up the risk of charges of espionage or unpatriotic activities. Converts were viewed with suspicion at all levels of society, even among those who were not observant Muslims who saw such an act as a rejection of social and religious values. She found it hard to see how a known convert could function in Iran as they would be victimised, attacked and discriminated against. Although a Muslim could practise another faith discreetly, a known conversion would force the authorities to act against him. It would be difficult for a convert to remain in Iran as even those with a high profile and protection were often forced to leave, or had disappeared or been executed or imprisoned.
107. Dr Spellman, whose doctoral thesis research included interviews with Iranian converts in this country between 1995 and 2000, said that many were worried about the harsh and adverse reaction of friends and family as well as the government when they learned of their conversion. There had been monitoring, threats and detentions by the authorities and vigilante groups. A campaign against Pentecostal Churches had gathered strength in the first half of the 1990s, with the gradual eradication of churches under various legal pretexts. The authorities were mainly concerned with the leaders and converts who actively proselytised, but converts generally were afraid to practise Christianity because of the likelihood of some form of persecution. Charges of apostasy had been brought since the revolution and several converts reported being temporarily detained, threatened and discriminated against at their place of work without actually being charged or treated violently.

108. Mr Joffe produced a report of July 2003. It dealt at some length with the legal nature of apostasy, the various spheres in which Christians experienced discrimination, and individual acts of persecution, which have been covered in other reports. He concluded that the general political situation in Iran was deteriorating leaving Khatami powerless. As a result, he said, TB would face a severe and very real danger of arrest, torture, imprisonment and execution were he returned to Iran, regardless of any evangelical activities in which he might engage. Killings were also carried out by Hezbollah, who had covert official authority for their acts.
109. A letter from Mr Roshdi, an Iranian convert who came to this country in 1994 having held offices in the Assembly of God Church in Teheran, said that Muslim converts did not systematically face the death penalty but were subject to persecutions of a social nature, with the loss of public sector jobs and difficulty finding them in the private sector, educational discrimination and problems in obtaining official forms eg passport, where religion had to be declared. An outspoken convert would face social problems and arrest and prison if he proselytised. Merely attending church and keeping quiet might lead to no problems. However, outside Teheran and in smaller towns in particular, all such matters were dealt with more harshly. Proselytising churches were seen as potential spies through their relationship with foreign countries. Christian organisations such as study centres were harassed and closed. Persecution could take place sporadically for reasons which would be unknown to the persecuted. Sometimes members had been summoned to the secret police, questioned and threatened not to attend church meetings. But no physical abuse had been reported from those interrogations.
110. We were also provided with material by Scudamores, solicitors for A, an Iranian asylum seeker in another case, the facts of which made it perhaps unsatisfactory to join it with these three cases; A had experienced the interest of the authorities because of an intention to convert expressed before leaving Iran. We permitted them to make what representations they thought would assist us, however, because there was a clear overlap. Scudamores wrote to the US Center for Religious Freedom seeking material which would support her case. It replied in July 2003 saying that Iran continued to arrest and sentence apostates to death; tremendous pressure from the state often led family members to take matters into their own hands to punish apostates but the state did not hesitate to imprison or execute those who deviated from the prevailing religious orthodoxy including apostates. Immigration Counsel at the US Commission on International Religious Freedom, a statutory body, took issue with assessments such as those cited above which claimed that Iran no longer sought to arrest and persecute apostates; by contrast it said that there continued to be severe violations of religious freedom. Converts continued to be subject to the death penalty and women who were accused would have fewer procedural protections than men. Legislation proposed to prevent the use of torture had not been acceptable to the Council of Guardians but even that rejected measure had not prohibited the use of torture on apostates.
111. The Barnabas Fund, a Christian evangelical charity, produced a pamphlet which highlighted the religious and Shari'a law base for the treatment of converts from Islam as apostates and as persons who could be killed without the protection of the law, through the Islamic world generally. It produced a

further document on Iran, dated 2002, which estimated that about 30,000 Muslims had converted to Christianity since the Islamic Revolution. It said that the policy of the regime was that converts were subject to the death penalty and that they were particularly targeted. It gave examples of the increased persecution faced by the Protestant Churches and converts; but these related to the early 1990s. A more specific paper on apostasy in Islam, but covering Islam generally, noted the many Islamic countries or areas in which converts were persecuted or discriminated against with varying degrees of severity.

112. The World Evangelical Alliance produced a paper dated March 2002 enclosing a Report from the magazine '*Christianity Today*'. It quoted Iranian Christians International (ICI) as saying that persecution of Christians had increased in Iran. A number of Christians had been detained, eight had died since 1988 and between fifteen and twenty-three had disappeared in 1997 and 1998, presumed dead, and three had disappeared in 2000. This has already been referred to.
113. A Bethany World Prayer Center paper on Iran dated 1997 said that the Protestant Churches claimed about 5,500 communicant members, although the figures were not entirely clear from other material in the paper. More were affiliated. The largest was the Evangelical Church (3,000) and the Episcopal (1,000 plus 1,000 expatriates). These latter are not those abroad but resident non-Iranians. These are nineteenth century foundations of missionary origin. There are six other smaller denominations with a twentieth century origin with largely expatriate congregations. Two of the eight denominations were shrinking fast while the rest were static. The Evangelical Church was largely composed of ethnic minorities but fifteen per cent were Muslim converts; the Episcopal Church was fifty per cent expatriate and thirty percent Muslim convert. The churches face the problems of discrimination at all levels of life, persecution of their leaders, emigration of members and leaders, shortage of religious materials and the closing down of churches. The paper regretted the impossibility of missionary work in Iran.
114. Christianity Today in 2002 reported that in 2001 the Basijis had detained and tortured a convert in Teheran. ICI reported that harassment was no longer confined to the arrest of key leaders but entire house churches of twenty to forty people were arrested at a time and that ordinary Christians were harassed.

The background evidence: return

115. It is convenient now to turn to the material which deals with risk on the return of failed asylum seekers. This element cannot be treated as an entirely different element from risk to converts in Iran.
116. DFAT material of 1996 said that imprisonment for illegal exit was rare. The seeking of asylum would lead to no more than verbal abuse on return, if it were known, unless the individual had a high political profile. Deportations to Iran of failed asylum seekers were now routine, and there was no evidence of any adverse reaction from the authorities. The Government was welcoming back those who had left; some refugees returned temporarily on

refugee travel documents and had no adverse experiences. Many minor outstanding matters were dealt with swiftly at the airport on return. Apostates would suffer if they declared an intention on return to carry on with the practise of their new religion. The DFAT Report of 1996 described the concept of “*taghieh*”, which was relevant to the way in which the Iranian authorities would view someone who returned as a failed asylum seeker and had asserted that he had converted to Christianity in order to advance his cause. “*It was justified to lie or to conceal your beliefs when circumstances are not favourable for you or to fool your enemy ... even if you were not in physical danger, to mislead enemies or advance your cause.*” Taghieh was not a question of denying the faith but went to the degree of plausibility with which answers as to why someone had been abroad and claimed asylum or converted could be answered.

117. The CIPU Report of October 2003, paragraphs 6.101 to 6.106, says that the penalty for illegal exit, such as on a falsified document, ranges from a fine to between a month and three years in prison. Other reports said that a prison sentence was not in practice imposed. On return from abroad, citizens are searched for certain western products and will be more stringently questioned if returning from a western country such as the USA, but are unlikely to be detained for long. People will be asked why they went abroad, subject to what documentation exists on the returnee and the practice in the returning country, and an answer along the lines that the person simply sought a job would be likely to lead to his being allowed to go. Government attitudes towards those who returned as failed asylum seekers appeared to more pragmatic. Observers reported that there was no evidence that those who exited illegally faced any significant problems on return. It is not an offence to apply for asylum abroad and the government has stated that it would welcome the return of its citizens from abroad.
118. The passport did not show religion although there was evidence that the identity cards would. It was possible to marry in a registry office without stating religious affiliation; CIPU 6.81.
119. The US State Department Report on 2002 said that those returning were sometimes searched and subjected to extensive questioning about anti-government activities abroad. The Danish fact-finding mission of 2000 said that on return the computer at the airport was checked for any “*outstanding matters*” with the authorities but was not explicit as to what constituted such matters. Some countries send rejected asylum seekers back to Iran. Thousands of Iranian citizens return voluntarily every year. In September 2002, the Iranian government announced that it would grant passports to those Iranians abroad; illegal exit would not lead to difficulties; the relevant forms should be filled in, the money paid and after a while the individual would be able to return.
120. Mr Wilken relied in particular on the Iranian Government announcement of 2002 that expatriates would be given passports, and a research paper from the Canadian Immigration and Refugee Board of 1999 which referred to a 1998 document from Canadian immigration officials in Iran saying that they had seen no evidence that failed asylum seekers, those who left illegally, or those who were deported faced any significant problems upon return; nor were measures taken against the family members in Iran of those who

claimed asylum abroad. He also relied on a September 2002 letter from the British Embassy in Teheran which stated that a failed Iranian asylum seeker who returned voluntarily on his own passport, was known to have faced no difficulties. The official had consulted the Australian Embassy because it had returned some one hundred failed asylum seekers over the two years to September 2002 and it had had no confirmed reports of ill-treatment. One returnee had complained of ill-treatment but that had not been verified. Illegal departure resulted in a spot fine. The Dutch did not know of problems whether from voluntary returns or from the two per month involuntary returns which it had made. They had had one report of a detention, but another lived and traded successfully in Teheran. Many who were returned kept coming to the Embassy to plead their case which, the Dutch thought, showed that they were not facing serious problems. Some had been returned on their driving licences and only one had been refused entry by the Iranian authorities. Canadian experience was that those who were returned faced no problems and indeed there were some who had been granted asylum who had been able to return for family or vacation purposes without difficulty.

121. AB's report for FS said that it was extremely difficult for those who left Iran without the proper papers to conceal that fact when seeking new travel documents from the Iranian Consulate in London. Those returning on temporary documentation were likely to face prosecution at least for violation of travel regulations, questioning and a court hearing. AB reported Amnesty International's evidence that some had been arrested on return for exit violations in 2002, and denied access to their families amid fears of ill treatment or torture. Although applying for asylum abroad was not an offence within the Penal Code, there were other charges which could be brought were a judge so minded. There was very little practical evidence about the way in which these violations were in fact dealt with. There was some evidence from two who had been returned from Australia that they had been interrogated and monitored by Iranian authorities. There was no monitoring by Western countries or international organisations of what happened to those returned to Iran. If there were detention, prison conditions were harsh, at times abusive of rights; torture was used to elicit confessions and not just on political prisoners; the judiciary lacked any structural independence whether in the revolutionary courts or in the public courts.
122. TB also produced a range of background material. A Melbourne newspaper, 'The Age', 29th April 2002, reported the arrest in Iran of two failed asylum seekers returned from Australia, one of whom was a convert to Christianity. One had made contact with the paper and said that Teheran was not safe for returnees especially if they were Christians; they had been exiled by their families and harassed by the authorities. One was interrogated for six hours and ordered to appear before a revolutionary Tribunal because of criticism which he had made of the regime when in Australia. A paper of 1998 from Iranian Refugees at Risk criticised the assumption by western countries, the Netherlands in particular, that they were able either to monitor or at least verify the fate of those returned; that was not possible in Iran: there were no independent NGOs or investigatory bodies and fear would prevent allegations being made against the authorities of human rights violations. There had been one suspicious death in that period.

123. A Farsi newspaper published in London said that refugees deported to Iran faced arrest at the airport and torture. Converts faced the greatest danger. Ms O'Shea's report also commented that as TB was the subject of official interest before he left Iran, he could expect on return that there would be increased interest, perhaps detention while enquires were made, during which time ill treatment was always a possibility. Mr Joffe said that travel documents would require investigations in Iran and that would alert the security services to him and to the outstanding allegations against him. Returnees who had been abroad for more than six months tended to face arrest while they were questioned about any matters which might touch upon Iranian security, unless they had good reasons for having been abroad. Mr Joffe points out that the risk to asylum seekers on return depends upon whether they had good objective grounds for seeking asylum; if so and if they were nonetheless returned they would be inevitably of interest to the authorities who might take them into custody where ill treatment was likely. There were now few people returning to live permanently in Iran and the assumption in the Netherlands Reports that many Iranians returned without difficulty related to a period now past. The more uncertain political climate in Iran also made it more difficult to predict what the reaction of the authorities would be to any individual returning; there was now a stricter attitude towards those who were seen as opponents of the regime. An Iranian Pentecostal Pastor in Germany in a newsletter of January 2003 referred to the danger faced by Iranian Christians deported from Germany, and by Christians in Iran who were seen as trying to convert Muslims; they all faced prison.

Submissions

124. Mr Vokes for TB submitted that the background material showed that there was an important distinction drawn between the ethnic and the Protestant or evangelical churches. Church attendance made someone of interest to the authorities; even attempting to spread the faith discreetly put one at risk. TB's Church in the United Kingdom was one in which a member would be expected to spread the word of God. Even if no charge of apostasy was brought, there were other charges or false charges which could be brought; disappearances could easily recur, even if there had not been any recently. The CEDOCA Mission did not cover the Anglican Church. It showed the difference between the private and public practice of religion in terms of the level of risk run. The pastors of the Armenian Assembly of God Churches would be guarded in what they said. The Assyrian Assembly of God and the Assyrian Church were not active proselytisers among Muslims. The DFAT material was over-optimistic and related to just one Church in Teheran. It was a single unnamed source. The Bishop from whom Rev Dehqani obtained her information would have an overall view of what was happening in Iran. Its language showed continuing vulnerability and there was the risk that the informal state forces such as the religious police would harass converts or worse. The evidence showed that only if a person were to keep his religion entirely private would he be able to avoid the attention of the authorities. This would not be possible for someone who converted, the essence of whose belief was the need to communicate the good news which his conversion experience had led him to. That would be a sufficient public face to bring a convert to the attention of the authorities.

125. The basic nature of the regime had not changed over time although there had been fluctuations in the way in which Christians and converts had been treated. There was now, as Rev Dehqani showed, presently a deterioration in conditions. The state did not accept conversion and saw it as a threat; there was a general atmosphere of fear and the past persecutions were relevant to the assessment of future risk.
126. TB would not and could not be one of those who would keep his beliefs and faith to himself; he would be engaged in active Christian activity. It would not just be church attendance, which could possibly lead to questioning or detention. Expressing the good news to friends and relations, his desire to speak of his faith as a born-again Christian, the communication of his joy, unable to deny his faith, would put him at risk. A Christian needed to bear witness. He would not necessarily be distributing material on the streets, although that would lead to more severe repression. He would be a member of the Anglican, evangelical, Church. It appeared that Mr Vokes' submission was that there was no duty to take the risk of going to Iran to evangelise but, if in Iran, there was a duty to evangelise and to run the consequent risks. Evangelising or bearing witness would be inevitable.
127. Mr Vokes said that Article 9 ECHR was engaged because TB could practise his religion here but not in Iran. Even if he were not persecuted, he would be severely discriminated against if unable openly to proclaim his faith, because he would be restricted to solitary Bible reading. He accepted that a flagrant violation of the right had to be shown. Mr Vokes made a broader submission to the effect that there would be a breach of Article 9 were TB to be removed from the United Kingdom where he could practise his faith to one where he could not, even if he were not persecuted. Mr Wilken said that the cases did not reach the level of persecution and that was an end to it. Following the decision of the House of Lords in R v Special Adjudicator ex parte Ullah and Do v SSHD [2004] UKHL 26, 17th June 2004, it is clear that Article 9 of the ECHR can be engaged by the removal of a foreigner, although it was pointed out, paragraph 21, that it was difficult to envisage facts which would not have already engaged Article 3 or the Geneva Convention. Although these submissions preceded the decision of the House of Lords, there was nothing sufficiently new in what their Lordships had to say to warrant seeking further submissions on the point. The fact that fear or temporary state disruption might cause a convert to cease church attendance for a while would not lead to a breach of Article 9 sufficiently grave to preclude his return.
128. The submissions by Miss Weston for the other Appellants agreed with Mr Vokes, in large measure. She emphasised the way in which the persecutor would see those who were members of Western churches as a threat to the state rather than members of ethnic minority Christian churches, although the Armenian Assembly of God Church also proselytised. Those who were members of evangelical Churches would face particular discrimination, though the ethnic Assembly of God Churches were not targeted as harshly as were Protestant or Anglican Churches. She emphasised the self-censorship, and under-reporting of acts of persecution, together with the variability of the political climate. This posed particular problems where the religion was so bound up with the state and there was no system of fair trial. Women in

particular had fewer due process rights. There would be no state protection against discriminatory treatment. There were also the activities of those who were permitted by the state to abuse the rights of others in the name of religion, such as the Basijis. The risk that conversion would become known to the authorities on or before return posed a risk at the point of return itself.

129. There was a continuum of harm which converts faced: harassment, surveillance of churches, discrimination, living in fear, extra-judicial punishments or beatings by para-statal such as the Basijis, adverse attention and ill-treatment from the state, a discriminatory failure to protect converts, judicial charges of a vague nature or false charges, arbitrary detention in conditions where ill-treatment was likely to include gender-related violence and possibly death. It was not necessary to proselytise to be at risk. If the conversion was made public through church attendance or through informants or monitoring, the ordinary expression of one's faith, in particular through its association via the Protestant tradition with the West, would lead to a risk of persecution. Conversion would be seen as an anti-state activity. Ideological denunciation by neighbours, colleagues or even family members was a risk, or exploitation because of it. The Australian Country assessment of 1996 was too optimistic because there were widespread abuses in 1996, but it was useful in pointing out that candidates for an imputed political opinion were those converts publicly witnessing their new faith.
130. The later DFAT material relied on by the Secretary of State, from June 2002 to February 2003 predated the arrests in August 2003 spoken of by Rev Dehqani. It was from a single source and did not cover the position of the western Protestant Churches. In part it was vague as to the negative attention to which individuals were subject. The proselytising of the Armenian Assembly of God Churches was directed to the more traditional Christians rather than to Muslims. The climate of tolerance to which it referred was no longer current in the light of Rev Dehqani's evidence and there had been political changes since. It could not outweigh the position set out in the US State Department Report. It was not clear what "*more complex*" meant in the context of those who publicly declared their conversion or which converts were being referred to. The CEDOCA Report did not add to the information in DFAT because it came from the same limited source and did not cover the position of the Anglican or Western Protestant Churches. The evidence showed that they should be considered differently because the Iranian authorities perceived them differently and as a threat to the state because of their western origins and connections. The risk was not that they would come to attention because of proselytising, but from identification as a convert participating in the Protestant Church in Iran.
131. NS would engage in ordinary church attendance, as a regular and committed church member, and talking to friends. The risks on return and those faced by converts there were not discrete; how she would be treated on arrival was unknown, but she faced a risk for gender reasons as well. Her history and associations did not pose additional risks.
132. FS should be seen as having an imputed political profile. Kiani [2002] UKIAT 01328 concluded that someone who returned to Iran after two years

abroad would be regarded with suspicion, and would be at a real risk of detention and ill treatment. Even without that latter ingredient, there could be persecution for an imputed political reason. The Iranian claimant was granted refugee status. Reliance was placed on that case by Appellants. It had been followed in another Tribunal decision in 2003.

133. FS would be under suspicion of being against the state. His past activities, accepted by the Adjudicator, would be the trigger for him coming to the attention of the authorities on return, being viewed with suspicion, detained and ill-treated. His past could affect his treatment should he later be arrested for his conversion. He would face the gamut of risks, including extra-judicial punishment, unfair trial and serious ill treatment in prison.
134. We were referred to a decision of the Federal Court of Australia, W68/01A v Minister for Immigration and Multicultural Affairs [2002] FCA 148, Lee J, paragraph 35. He noted that it was not just the risk of the death penalty for apostasy which could constitute persecution but also that the risk of discovery, apprehension and punishment which would be a continuing fear could be sufficient to ground a well-founded fear of persecution. Substantial harm through deprivation of liberty, assaults and continuing harassment could amount to persecution. An assessment of the degree of commitment to the conversion would not determine the extent of persecution because it would not determine necessarily the way in which someone would be perceived by the various authorities in Iran.
135. Mr Wilken, for the Secretary of State, submitted that in the case of FS there was no evidence of past persecution in Iran, a finding which he said was unchallenged; the warrant was irrelevant. Alternatively he argued that the conclusions of the Tribunal in paragraph 9 of the determination (which was overturned on appeal but not because of anything in paragraph 9) should be adopted as sound. This agreed with the Adjudicator that there was no evidence of past persecution; there was no evidence as to what was in the alleged warrant issued two years after the demonstration to which it presumably related and there was no evidence of any adverse interest in the Appellant by the authorities in the two years before its issue. That simply could not establish a real risk of persecution for any political opinion. If charged with an offence arising out of it, the trial and treatment in prison would not breach his protected rights.
136. Mr Wilken submitted that TB, on the Adjudicator's findings, could not be said to be one who was active in converting people. He had already been baptised into the Jesus Fellowship Church when the Adjudicator reached her conclusions about his likely religious activities. He had never said that he would be active in converting people, and he could manifest his joy through attending services. Accordingly, the question in TB's case was simply whether he would be at risk as a convert who would not engage in proselytising.
137. Shortly, Mr Wilken argued that if the Assembly of God Churches' membership was not persecuted, the same would apply to those who were members of the Anglican Church. He accepted that there was evidence of persecution before 1997 but contended that that had changed with the election of President Khatami in 1997. There was no intention to proselytise

in any of these cases and where that was so there was no real risk of persecution; indeed there was no such risk even if there were an intention to proselytise. It was necessary to draw a distinction between the theoretically harsh position in Iranian law and the actual position which converts would face.

138. He conceded that all three should be regarded as refugees *sur place* if Article 33 of the Geneva Convention would be breached by their return to Iran. They would constitute a social group consisting of Christian converts liable to the death penalty. No issue arose between the parties on this point. However, it is worth picking up at this point a comment made by Sedley LJ in his judgment in the appeal, paragraph 19. He pointed out that a person who is abroad for a non-Convention reason may find that he is nonetheless outside his country of nationality and is unable to return for a Convention reason. But that reason must be at least one reason why he is unable to return; if he is solely here for other reasons his case falls outside the Geneva Convention altogether and his stay must depend on the ECHR. Thus, there must be a causal link between the Convention reason relied on and the claimant's inability or unwillingness to return. If he is unwilling to go back essentially for other reasons then he is not a refugee. This is a causal issue which should be explored in such cases. But it is conceded here.
139. Mr Wilken submitted that the terms "*Protestant*" and "*evangelical*" were used interchangeably in this context, as for example in the HRW paper relied on by FS and NS. The Protestant Church there referred to was the Armenian Assembly of God Church. The distinction between ethnic and non ethnic churches was not relevant once they were in the category of Protestant or evangelical. The relevant distinction was whether the Church sought to convert or not or indeed accepted converts.
140. The Special Rapporteur's view in 2002 that there has been no improvement in the lot of non-ethnic Christians since 1996 was not borne out by the opinions of others, eg the CEDOCA Report and the DFAT material. The Assembly of God Churches did attempt to convert and would be seen as having a western taint through their links to the USA. This made the DFAT material very relevant to the position of the Anglican Church.
141. The DFAT material was very useful because it was from a source in Iran, whereas the USA had no diplomatic representation there and had to rely on others. The same was true of the Barnabas Fund relied on by TB. There was no problem of under-reporting which could affect the DFAT material because it was based on private conversations. It was up to date. Unlike some US sources, it had no interest in expressing a particular point of view. The source was active in the Assembly of God Church in Iran, and would know what he was talking about. He had direct evidence to give. The leader would know of action against his church members. The church engaged in proselytising and had been persecuted in the past and therefore had experience directly relevant to these cases. The information had been obtained specifically to assist in the assessment of asylum claims and so there was no reason for the interlocutor to paint an unduly rosy picture. Persecution did not happen now, even though there was a high proportion of Muslim converts, active distribution of materials, baptisms and increasing numbers of Muslims attending service. There were no recent arrests

although converts were sensitive to changes in the political climate. The experience of that Church was applicable to other Churches and if not then the Appellants could join the Assembly of God Church.

142. The DFAT material was consistent with the CEDOCA Report and with what Mr Roshdi said; he had been in Iran for twenty-four years and had not been persecuted and was the indirect witness to only one such unspecific act. There was no problem if the convert kept quiet and the DFAT material showed that there was no real risk, even if there were proselytising, and none of the present cases involved someone who would engage in proselytising. There was no historical evidence that there had been under-reporting in view of the material available in the early 1990s which related to that period. There was no evidence that those who spoke to the CEDOCA Mission had been the subject of reprisals. The RRT decision of September 2003 was the best summary of the position.
143. There had been no deaths of evangelical Christians since 1998; direct enquiry of the churches had led to no expressed knowledge of current state persecution of the churches or their members; rather the picture was that they could practice undisturbed, including weekly attendance.
144. He contrasted this with the Appellants' experts who he said were remote from the position on the ground in Iran, largely drew on the reports of others, notably the US State Department, UNHCR and HRW, and much of what they dealt with predated the freer regime after 1997. AB had not been in Iran since 1979 and Rev Dehqani left in 1980. Occasional visits, if there had been any, could not provide material equivalent to that of CEDOCA or DFAT. Many reports simply repeated the same negative information and as Dr Spellman said, some views may have been coloured by adverse experiences or views of the revolution. He rejected the arguments about the fluctuating background, saying that there had been no evidence of deaths or disappearances since 1998, no evidence of a change on the ground since the 2004 elections, there was no reason identified for the arrests in Isfahan and the arrest of five pastors did not show a swing of the pendulum. Almost all of the incidents relied on by those experts predated 1998, and much of what they had to say was very general. The discussion of proselytising was irrelevant as TB had been found not to be someone who would proselytise and there was no evidence that FS or NS would do so either. The figures showed that there had been a steady increase in the number of Protestant Christians. The material produced by Scudamores for A was out on a limb and was contradicted by the expert evidence of AB in terms of the extent of severe reaction by all against converts.
145. Treatment would not breach Article 3 if it involved mere distress, or poor economic conditions, low level harassment or deprivation of social rights. Discrimination rarely if ever could by itself show a breach of Article 3. The threshold for a breach of Article 3 was high. The Tribunal determination in Fazilat [2002] UKIAT 00973, paragraph 15, took the view that prison conditions in Iran, whilst harsh, did not cross the threshold for Article 3.

Later material

146. After the close of the hearing, further evidence was submitted on behalf of the Appellants. We were asked to postpone our decision so that it could be received and considered. There was no reason why the material should not have been submitted to the hearing. It was served on the Respondent in early May who objected to its reception. Leave to adduce it was sought in a letter of 26th May on grounds set out in an earlier letter. Those were that it reflected growing concern among this country's clergy about the position of Christians in Iran; it included material from the Archbishop of Canterbury, Mr Clark, who is the Director –Mission and Public Affairs – of the Archbishop's Council, and other material dated March 2004, the source of which the Appellants asked should not be publicly identified. The parties and the Tribunal know the identity. We have not had the Autumn 2003 letter from that same source although we have the Respondent's comments on it. We assume that it is regarded by the Appellants as superseded. The Respondent has had the opportunity of commenting on the material.
147. We see no advantage in not considering the material, late though it is in arriving after the conclusion of the hearing. If it is of real significance, we would be producing a determination which would shortly thereafter have to be reconsidered and which could afford no useful guidance. If it were of no real significance, little would have been lost by its reception.
148. The source, CD as we shall call him, refers to threats and intimidation mounting for the Christian congregation in Iran, which he sees as increasingly vulnerable. He ponders a dilemma as between promoting the interests of asylum seekers and those of the congregation in Iran, without explaining why the two might conflict. He would prefer life not to be made more difficult for those in Iran but does not explain in what way that would happen were asylum seekers to be returned nor does he add to the material about the specific difficulties they would face. He may fear the impact of more converts but it is difficult to see how that creates a dilemma over which group should be supported. It is clear that services continue.
149. Mr Clark supports Rev Dehqani's assessment and adds little more detail, unsourced, of his own. The five pastors arrested in Isfahan were accused of proselytising based upon the activities of an agent provocateur; one was beaten and banned from Isfahan and feared death; others were banned from church attendance. In Shiraz there were similar pressures of surveillance and warning; only regular churchgoers were allowed in to the services by the authorities; one recent convert was badly beaten and left the country. In Teheran, in 2003 September, five families were told not to attend church; others lost their jobs, or were warned, questioned or asked to inform. This all creates a climate of fear among what was a congregation of at most a few hundred. The Archbishop of Canterbury added nothing of substance but, drawing on Rev Dehqani and CD, adopted their assessment that the situation for those who converted had worsened in Iran since August 2003.
150. We have also examined the April 2004 CIPU Report. This notes the victory of religious conservatives in the February 2004 election and the continuing struggle between them and supporters of the more reforming views of Khatami. There had been demonstrations in late June 2003 by students

which had been attacked by religious conservatives; several thousand students had been arrested after the demonstrations. It added in comparison with the earlier Report, though relying on the same sources, that intimidation of evangelical Christians was rife. Dwindling religious minorities remained particularly vulnerable. There was no change in what it said about those who returned as failed asylum seekers or who had left illegally.

151. Further late evidence was submitted by TB on 12th October 2004. It considered first a Peyke Iran news agency report of June 2004 reporting another news agency, Vox Dei, as saying that a Muslim convert who had become a Christian Minister, and his family, had been arrested. There was concern but no details of their treatment, and there is no follow-up information. Second was an item dated 10th September 2004 from Compass Direct, which disseminated news of Christians worldwide, persecuted for their faith. The annual general conference of the “Assemblies of God Church” at its centre outside Teheran had been broken up by police who arrested at least eighty Church leaders there. They were blindfolded, disoriented and interrogated individually by security officers, who had very detailed personal information on them. All but ten were released later that day; the ten were all Pastors. Those released were forbidden “*to attend church services today*”. A source said that it was the biggest crisis for evangelical believers since 1994.

Conclusions

152. There are a number of important distinctions to draw between different Christian groups and activities. The first is between those who are ethnic Christians, ie members of ethnic Churches which do not seek converts or even reject them, carrying on their worship in a language other than Farsi, and other Christians who are members of Protestant or evangelical Churches.
153. The evidence shows that those Christians who are not converts from Islam and who are members of ethnic minority Churches are not persecuted, at least as a general rule. They are accepted but nonetheless suffer from societal discrimination and a second class status in the eyes of the state and its institutions, such as the substantive laws and the administration of justice, the Majlis, public sector employment and university entrance. The attitude towards them of the state in its various manifestations may vary over time, as may the attitude of Muslims where they live, but at present those Christians do not face a real risk of persecution even though they face real discrimination. Persecution after the Revolution had given way to discrimination. The relevant evidence is in particularly the CEDOCA Report, the UNHCR Reports of 1998 and 2002, which contrast their position, difficult though it is, with that of Christians in other Churches, the 1996 DFAT Report to the same effect and also AB’s Report. HRW regards them as the objects of institutionalised discrimination but not of persecution. They are in this less disfavoured position because they do not proselytise or conduct their services in Farsi which would make them more accessible to Muslims; some even refuse converts and resent the proselytising activities of the other Churches which cause them to lose members. The Report of Christmas celebrations in Teheran, relied on by Mr Wilken, may be no more

than a reflection of that less disfavoured position. Certainly, a desire for an Islamic-Christian dialogue is of little help in understanding the degree to which domestic tolerance for the latter was a state objective. It reflects a desire to improve Iran's international standing.

154. The evidence with which we are concerned relates to the different position of converts, a position which itself embodies differences of degree. But the background evidence must be read with that distinction firmly in mind to avoid over-generalisations about the position of Christians in Iran. We now turn to those Churches which accept converts, to consider whether a distinction should be drawn between ethnic but evangelising Churches, which seek converts, ie the Assemblies of God Churches, and the Anglican Church in particular. Some papers drew no distinction at all of the sort which we refer to, whilst not necessarily denying it either. Rev Dehqani drew this distinction but so also did the HRW Report of 1997 and the UNHCR Report of 1998.
155. We consider that there is some force in the Appellants' point that the material which relates to the Assembly of God Churches, in particular the DFAT material from 2002-2003, and the CEDOCA Report cannot simply be applied across to the position of the Anglican Church. Of course, the Assembly of God Churches are evangelising and proselytising Churches and seek Muslim converts as well as others; Muslim converts may be among those who engage in proselytising in view of their 80 per cent proportion of the headquarters membership of one Church. Their services are in Farsi. The Anglican Church in Iran is on the evangelical wing of the Church; it includes 30 percent Muslim converts, according to the Bethany World Prayer Center paper and plainly is willing to take converts. But it has been more cautious than the Armenian Assembly of God Church in seeking converts in the 1990s, according to Rev Dehqani, and we assume in the light of her evidence, continues to be. The Evangelical or Presbyterian Church according to that same paper included some 15 per cent Muslim converts. Likewise their services are in Farsi. These latter two Churches have a missionary or imperialist past, at least in the eyes of many of their beholders among the Iranian Muslims and they maintain a connection with the United Kingdom and the USA.
156. The comments about the way in which they are perceived with suspicion for those reasons and regarded as a possible source for anti state or anti Islam activities struck us as valid. Although the Assembly of God Churches have connections with the West, they do not appear to be as close as those of the Anglican Church or other "Western" Churches. It means that those who are members of those "Western" Churches are likely to be viewed with greater suspicion, targeted more often, more frequently harassed or ill-treated. They are perhaps the more vulnerable to any false accusations of vague anti-state offences. It is a matter of modest degree because the far greater evil in the eyes of a theocratic Islamic state is the act of apostasy and the proselytising of other Muslims, or support for those who do.
157. All evangelical Churches and their members are likely to be more exposed to formal and informal harassment in smaller or more conservative towns than in Teheran, where there are more Christian churches; its size may enable a convert to find greater support and to keep himself to himself more readily.

There is support for that in the CEDOCA Report dealing with the Armenian Assembly of God Church, and the latest DFAT material; and it is a point which makes sense. Only NS appears to be from Teheran, though FS was at university there. Apostates, whose conversion is known, may find moving home more difficult.

158. Turning to the position of the individual convert, plainly that will be affected to some extent, in the light of those differences, by which of the Churches he or she is a member of, if any. It is reasonable, in the light of the evidence about the Orthodox or ethnic but non-evangelical Churches, to suppose that the three Appellants would have to join one of the evangelical Churches. If there is a greater risk associated with the Anglican Church because of its origin and connections, or one of the other Churches seen as having “Western” connections in the eyes of the Iranian authorities, it is difficult to see why the Assembly of God Churches would not provide a safer place of worship or membership which would enable the Christian faith still to be practised. Membership of the more cautious Anglican Church could also inhibit any practices which might increase the risk to other members of the congregation, and could add to their concern about accepting one whose unguarded fervour could endanger them.
159. There are obvious gradations of potential risk to converts in general which need to be considered. There will be some converts whose conversion is unknown to the authorities or to employer, even to family; the principal risk to them is what would happen to them after discovery. We regard it as appropriate to assess the risk to these Appellants on the basis that their conversion would become known to the authorities, to friends, family and colleagues. They will probably be asked why they have been abroad, either when seeking travel documents or on return; they may be asked at some stage in that process about conversion. The Secretary of State’s reliance on the concept of “taghieh” is not warranted on the evidence about these Appellants. Were they to lie about their conversion and say that it was not genuine, done only for temporal advantage or to deceive the United Kingdom authorities, taghieh might well be relevant; but there is no finding that they would so behave, if returned. We do not regard it as right or sensible, in the absence of a finding of fact to that effect upon the evidence, that it should be assumed that a convert would deny his religion to officials when asked. There are also many later occasions when their religion could well be asked for, eg marriage, civil dispute, or seeking employment, when the position would be revealed if it had not been revealed before. CIPU suggests that identity cards reveal the holder’s declared religion. The Adjudicators’ determinations here, and the Secretary of State’s concession in NS, mean that even if their entry to Iran or the normal incidents of life did not lead to the discovery of their conversion, they would be likely to seek to attend Protestant or evangelical Church services. In the absence of a positive contrary finding, that would be regarded as likely behaviour for a convert to such a Church in the United Kingdom. Attendance at such services would be likely to be discovered through the monitoring and surveillance which occurs, or at least occurs not so infrequently that it can be discounted. To our mind the evidence suggests that the Protestant or evangelical Churches are or at least can be subject to such monitoring, even though the degree of intrusiveness or intimidation which may accompany it may vary from time to time; the CIPU Reports make that point although it is to some degree

watered down by the CEDOCA Report and the DFAT material which give a rather happier view of the current monitoring and surveillance of the Protestant or evangelical Churches. It is accordingly realistic to assess risk on the basis that the fact of conversion is likely to become known sooner or later to the authorities and hence to friends, family or colleagues. It is possible, but by no means certain, that family and friends would keep it quiet.

160. In the cases of FS and NS, the findings and the effect of the Secretary of State's concession respectively, do not lead to the conclusion that they would seek to do more than attend Church services regularly, associating with fellow Christians and engaging with them in Bible study. There is no suggestion that they would aspire to a leadership role or to proselytise; nor that they would feel any compulsion from the nature of their conversion to discuss their beliefs with friends, family or colleagues.
161. The position of TB was said to be different to a degree from FS and NS, because although he would not actively proselytise, his conversion experience would impel him to share or expound his beliefs with those who had not yet received the Gospel. We do not think that this argument is open to him on the Adjudicator's findings as to how he would behave. Paragraph 27 refers to his cautious approach even after his membership of the Jesus Fellowship Church. We do not accept that the submissions as to the nature of his beliefs should lead us to a different conclusion. We do not accept that the Adjudicator has failed to understand the difference between proselytising in an active sense and the behaviour which Mr Vokes described, which might be regarded as "bearing witness in one's daily life". That latter is covered by the Adjudicator's reference to evangelising. In any event, the distinction between proselytising and bearing witness, for want of a better expression, is one which is likely to be lost on the hearer and any suspicious or zealous Muslim. Both would be likely to be perceived by those in authority, the religious zealots, and those Muslims unaware of the distinction which Mr Vokes tried to explain, as people who were trying to persuade the hearer of the theological correctness of Christianity, and of the joy of adhering to it. It is but a short step from proclaiming the advantages and joy which it has brought and suggesting that others should likewise benefit. Neither proselytising nor bearing witness or evangelising, however, could be regarded as cautious approaches in Iran. We do not consider that TB's subsequent statement substantially alters matters: on the Adjudicator's findings, he would still practice cautiously, privately at times and careful in his conversations. The way in which he practises his faith here, is not a sound guide to the way he would practise in Iran, on the evidence. He would accept the impact on his outward demonstrations of faith of the repressive regime, short of denying or abandoning his faith. Mr Vokes' eloquence must yield to the Adjudicator's findings on the evidence.
162. Accordingly, we have approached the three Appellants on the basis that in terms of their religious practices in Iran, there would be no significant differences. All would seek to be Church attenders, and would associate with Christians, perhaps attending study groups, but without leadership aspirations or a desire to proselytise, or to take other steps that would make their conversion ostentatious to the authorities, formal or informal, such as wearing a crucifix in public. All would be cautious.

163. It is clear, as we have said, that even ethnic Christians are treated as second class citizens and can experience quite severe forms of social, legal and economic discrimination. Those who are known converts, as the Appellants would be, would experience all of that discrimination as well. They may suffer additional discrimination, eg in the form of travel restrictions, as the Netherlands CIREA Report suggests. They are also and importantly subject to a legal regime in which their conversion is at least theoretically punishable with death, and the theocratic nature of the state enables conversion to be seen as both a religious crime against God and a political crime against the very foundations of the state. There are other related crimes with which they can be charged, apart from apostasy. The threat of such charges, in particular if they were under investigation for another matter, would induce a sense of fear probably absent from those who were members of the recognised ethnic minority Churches. They may also be more liable to be dealt with unfairly for ordinary offences. AB makes a sound point, showing up the vulnerability of converts, that they are liable to be denounced by friends, family, neighbours or colleagues; even where their conversion has not been a source of trouble with the authorities, such denunciation, which might be entirely malicious, could lead to harassment or worse. The climate of fear which Rev Dehqani spoke of is not represented in any measurable way in the reports, but we accept that the fear of denunciation, the fear of prosecution by a regime capable of grossly unfair trials and of inflicting the most severe penalty, the fear of harassment in its various forms and of random violence, and the loss of a job, would create such a climate and that it is a relevant factor in the assessment of persecution and treatment which might breach Article 3. The Appellants are correct to point out that the prospect of persecutory treatment for converts or of a breach of Article 3 must be judged in a climate where human rights in relation to trial, punishment and freedom of expression and association are routinely breached.
164. There is no evidence, however, that converts are unable to survive socially, for they have the support of their Christian community. Societal attitudes towards Christians may be less tolerant of converts than eg CEDOCA interlocutors suggest ordinary Muslims are of Christians generally. Economically they would find life more difficult because of the absence of government and public sector jobs for them, the size of that sector and the extent to which similar practices are found in the private sector. But there is no evidence that converts are forced to live a life of destitution.
165. They are able to practise their religion, “up to a point “ says the CIPU Report, which draws significantly upon the other sources to which we have referred and which do not require separate enumeration here. Their services may be monitored, there may be Church closures from time to time. The congregation may be checked with varying frequency and degree of intimidation. Bible study may be limited by the availability of materials. We have reflected this by describing what the Appellants would “seek” to do. There may be times when they might have to cease attending Church and confine themselves to house meetings or private devotions. This would be in keeping with their cautious approach.

166. The UNHCR, UNSR and US State Department Reports suggest a gloomier picture, but they are very generalised compared to the specific material in the reports of those who went to Iran or have spoken to those there. The well-reported refusal of evangelical churches at various times to sign pledges not to proselytise or to admit converts has not led to converts ceasing to practise at those churches; they undoubtedly do hold services and have converts attending them, as indeed the US State Department Reports imply. The refusal has not led to the Churches being closed certainly on any long term basis. AB's Report shows that converts do practise although they may do so in some fear, and may face harassment at times or even persecution; but there is no analysis of the degree of serious ill-treatment as opposed to discrimination and harassment. Certainly, according to her, there had been an increase in Muslim converts and quite high proportions of congregations were constituted by such converts; although this was counterbalanced by the evidence of emigration of Christians. The CEDOCA Report notes this emigration too, but one Pastor put that down to economic conditions and a desire for a less troubled life; it is not clear whether those emigrants declared their religion for travel purposes or whether they maintained their official religious status as Muslims, which is often done.
167. The CIPU Reports indicate that members of evangelical congregations have to carry identity cards and are subject to identity checks. Material such as the CEDOCA Report and other European missions shows that these are not features of every Church all the time, but appear to vary with time and place, according to what may be a particular incident or according to local attitudes. But the authorities' concern is chiefly with evangelical activities. There is evidence of harassment which can include arrest, but there is no evidence that for the ordinary convert that is of any frequency or duration or that serious ill-treatment occurs routinely during such arrest. There is evidence from AB that torture was used on some of the few who were detained in 1996 and 1997 but there was for example no such allegation in respect of the September 2004 arrests. The evidence is scattered with references to arrests and detentions but many did not go beyond serious questioning, which may have been threatening but did not involve serious ill-treatment. For example, CIPU refers to converts being summoned for an interviews at which they would be reprimanded; paragraph 6.61. The US State Department Reports cover a considerable period of time and circumstance and, although a CIPU source, do not differentiate enough or provide enough detail to enable them to be regarded as conveying an accurate picture of the position now, because of the degree of historical material which they include. We can draw from them the fact that there are adverse reactions to some converts and Pastors by the authorities and the vigilante groups but the scale is very difficult to gauge. It is dangerous to generalise from what may be isolated incidents. The International Christian Concern Report is an example of individual acts, some of which were persecutory, but from which it cannot be deduced that converts generally face a real risk of persecution.
168. The legal position in relation to apostasy is clearly different from the way in which converts are dealt with in reality. There is no evidence of any executions for apostasy since 1994, and the killings then were extra-judicial. The Report of Mr Kakhki is too vague for what he is saying to carry weight: it says nothing about when the events to which he refers occurred or what

happened to cause such charges to be brought or how representative is his experience, on an unstated number of occasions, of what was happening. The CIPU Report quotes a source as saying that a criminal case is rare. We accept that converts may face charges of a vague but serious nature inspired by hostility to their conversion, and may be more vulnerable to the harassing effect of arrests for offences which may not lead to charges at all or which may be false. The evidence, however, is that that is not routine, but occasional at worst. CIPU, paragraph 6.61 suggests that there is no current active pursuit of prosecutions for apostasy; UNHCR/ACCORD is its source. Rather, it is striking that the evidence of vague charges, which we would have expected to have been available if it occurred more than very rarely, is not there. The UNHCR Report of 2002 contains no time or detail when it refers to instances of apostasy convictions and the death penalty. Nor is there evidence that in fact Christians are at a real risk of conviction for trumped up offences. The evidence suggests that converts may face harassing arrest and detention at times when the authorities crack down on their activities, but it is chiefly those broadly describable as in a leading or very public position who would be the targets for such conduct by the State; CIPU paragraph 6.62 draws this distinction in commenting on the position of those converts who actively proselytise.

169. We accept that the repressive activities of the state have to include those of the vigilante groups such as the Basiji. These extend from threats to kidnapping and beatings, torture and killings. It is difficult to assess the extent of these activities but they are likely to reflect the extent of prevailing hostility to converts in time and place. The risk of facing their malevolence would be a cause of real and pervasive fear. There is no effective system of state protection against those groups, because they are implicitly authorised politically or by the sanction of religious authorities. It cannot be said, however, that the evidence shows that their actions are of such an extent that they amount to a real risk of persecution for the ordinary convert. Again it is more likely that it is the higher profile convert who would really risk their wrath.
170. There have been isolated acts of killings in 1994 and there is evidence that there were disappearances, presumed killed, in 1997-8. Those in 1994 were extra-judicial killings, and by their nature so were those in 1997-8. We accept that these do not feature in the CIPU Report and that there is evidence in the US State Department Reports that they occurred; we accept that that happened although the Reports do not say any more about who they were than that they were Muslims who had converted to Christianity. That tempers the weight to be given to other comments in the CIPU Report which do not reflect that continued persecution. It affects the Netherlands Report of 1997 likewise. There have been other sporadic acts of violence against converts but reports are few. Although their actions would add to a climate of apprehension, the evidence is quite clear that converts are able to practise their religion.
171. AB suggests, as does HRW, but it is inherently difficult to prove, that the effect of repression is an under-reporting of persecutory incidents. They attribute such an effect to the killing of the three Pastors in 1994. There was another killing in 1996 of a Protestant convert Pastor. We do not accept that there would be a significant pool of unreported incidents of serious ill-

treatment, in view of the reports which do come out and which contain general comments about what is happening and could readily be more specific without identifying source or individual. Those Iranians who have come out of Iran seeking asylum have not brought with them evidence of repression on a scale not realised before. There have been sufficient missions and there is sufficient diplomatic representation and contact for the overall picture to be reasonably clear. There may be some incidents which are not reported to anyone through fear, but we can see no reason why those reported to church leaders would not find their way out over time and no reason why significant incidents would not come to their attention. Even allowing for a possible chilling effect in 1994 which lasted until after the 1998 disappearances, there have been a number of years in which the unreported past events could have been made public, when there are no reported killings or disappearances. We note a Report of three disappearances of Christians in 2000, but with the number and commitment of US based evangelical bodies, we are not persuaded that serious events have gone unnoticed, even though there may be a time lag or a lack of specific details. We note the September 2004 arrests were reported quite quickly.

172. AB regards the crucial distinction as that between those who attend an evangelical church and those who do not, between the ethnic minority Churches and the evangelical Churches, rather than between those who actively proselytise and those who do not. She says that the fact of membership of such a Church can be the trigger for the attention of the authorities, because it is those Churches which are seen as the proselytising Churches, and the member is seen therefore as in fact a proselytiser. She said that the evidence did not show whether the targeting of individuals was because they were proselytisers or because they simply were members of an evangelical Church.
173. This is not in our judgement the crucial distinction on the evidence. This shows that evangelical churches do exist, do hold services, with the attendance of Muslim converts, and ordinary congregants. They do accept them with greater or lesser degrees of caution or enthusiasm. Many reports draw a distinction, and it is the one which we regard as the most important, though the degree to which it is done explicitly varies, between the ordinary convert and those who proselytise. This is reflected already in what we have set out above, eg CIPU 6.62, CEDOCA, UNHCR/ACCORD. Sometimes it is a matter of emphasis only. AB recognises that there is a greater degree of risk for those who do actively proselytise. Most of the specific persecutory acts, which are referred to by her, are directed at Church leaders and active proselytisers. Dr Spellman draws attention to the difference in treatment between the leaders or proselytisers and the ordinary convert. Miss O'Shea and Mr Joffe's Reports do not draw any distinction, but are of less value because they do not address any question of whether such a distinction exists at all; and whether crucial or not, it is clear on the evidence that there is a considerable difference of degree in their treatment. Granted as Lee J put it, in W68/01A, the degree of commitment does not necessarily determine the degree of attention, because it is necessary to look at the way in which the authorities would perceive a convert. The evidence, however, which we have examined looks at how the authorities would react to someone manifesting their commitment in various ways. If the crucial distinction were the one drawn by AB, the institutions carrying on those activities, as well as all the

ordinary congregants, converts or not, would be far more repressed than they are. AB recognised in one Report, as did CIPU, that converts were able to practise to some degree but could not actively proselytise without severe repression. Rev Dehqani pointed out that there were general difficulties for the Church; but the arrests of five key members, who it appears were leaders and who were later released under measures, strict and prohibitive of their resuming contact with their church, illustrates that it is the leaders who are at risk. The same is true of the September 2004 arrests. That is not to say that converts operate without restraint and are free to practise their religion without fear. It is that the point at which there is a real risk of treatment at the level of severity which engages international protection obligations is not at the level of treatment which the ordinary convert is at a real risk of facing. The evidence of targeting of those who were known to be no more than ordinary congregants or converts, not themselves actively proselytising, is thin. There is for example, evidence from ICI that in about 2001 house churches of twenty to forty people were arrested and that ordinary Christians were harassed, but the report is silent as to what happened to those arrested, or what was an ordinary Christian in this context and what constituted the harassment. It is far clearer that leadership and active proselytising have led to greater targeting in the past.

174. In fact, there is now some evidence that even that level of activity does not lead to targeting. It is the Armenian Assembly of God Church in the CEDOCA Report, which appears to be the same one as provided the DFAT material, which says that not even proselytising converts are at a real risk of persecution. This is useful evidence but, although in this instance we do not regard the lack of precise identification of the source as detracting from its weight, in view of the reliable evidence as to his position and authority, it is a single source within a single church. It does not cover the Anglican Church which clearly is more cautious about converts, and to a degree may face a different attitude from the authorities. It is more specific than CD in the Appellants' later evidence, and Rev Dehqani's discussions with the Bishop. However, with the general tenor of all the other evidence, the other evidence is sufficiently weighty to mean that the full extent of the DFAT material cannot be regarded as a sound basis for the return of those converts who would proselytise or evangelise, "bearing witness", or who would occupy leadership positions. In the light of the Appellants' evidence, we are not as confident as the RRT that the DFAT material has not been to some extent contradicted or reduced in the weight which can confidently be put on it. It may be that in another case there will be additional material dealing with those who proselytise actively as converts, covering other Churches. But the general weight of the evidence is too strong to put such crucial reliance upon the DFAT material. However, the generally upbeat tone of what it says about the position of the ordinary convert and the Church is generally consistent with much of the other evidence and can be given weight to that extent. A cautious approach allows it to be given weight dealing with the ordinary convert whilst maintaining reservations about the safety of relying on it for those, fewer and more readily targeted, who would be at the greater risk.
175. On the current state of the evidence, we would draw a distinction between those converts who would simply attend Church, associate with Christians and study the Bible, and those who would become leaders, lay or ordained, or Pastors, or who would actively and openly proselytise or who would wear

in public outward manifestations of their faith such as a visible crucifix. We would put into this category those who, whether seen by the Churches as proselytisers or not, would be so overt in their discussions of their faith with Muslims that they would be likely to be seen as proselytisers by the various forms of authorities in Iran; these might be called evangelists.

176. There is some evidence, which we accept, that there has been a considerable change in the way in which Christians, and particularly converts, have been treated or perceived in reality. This was confirmed by the 1997 election of President Khatami, the liberalising which followed and Iran's desire to improve its international image.
177. This is suggested by paragraphs 6.60 to 6.62 of the October 2002 CIPU, and borne out by the CEDOCA Report, which points to Iran's concern about its image. Although the Assyrian Assembly of God Church is distinctly less positive than the Armenian Assembly of God Church, they, with the Assyrian-Chaldean Church, put the early 1990s as worse, with an improvement subsequently. The DFAT material, contrasting 1996 with 2002-3, is along the same lines. We accept that reservations are required about the breadth of knowledge of the DFAT interlocutor and the applicability of what he says to all Protestant Churches; the differences between what the Churches are recorded as saying in the CEDOCA Report bears that out. But as it is by no means the sole support for the change, it can legitimately be treated as adding support to it. It is also supported by what is not now being reported in contrast to what previously was reported. Reports which did not differentiate the periods which they are dealing with are of little value in this respect as are reports which are too close to 1997 for any real change to have been observable.
178. The Appellants' evidence also offers some support for the change; for example, Mr Roshdi. AB reported similar views of two Protestant Pastors, but also said that it was an improvement principally for the recognised ethnic Churches. It pointed to the fifteen to twenty-three disappearances in 1997-8, and to individual incidents of torture or serious ill-treatment, in 1996 to 2001. The recent UNHCR and UNSR also rejected such a change at least so far as converts were concerned. The US State Department likewise drew no such general distinction over time.
179. This change has benefited more than simply ethnic Christians. There has been a degree of liberalising for Protestant Churches and for Muslim converts, even though there have been isolated reports of acts of individual persecution. The DFAT material and the CEDOCA Report on the Armenian Assembly of God Church (which appear to relate to the same Church) is in the same vein, even if the full extent of its optimism for active or convert proselytisers may be to some extent over-stated, or not generally applicable.
180. The Appellants' evidence, notably Rev Dehqani, Maria O'Shea and AB, suggested that in any event the situation had subsequently worsened again, with the arrests of Church leaders in Isfahan, Shiraz and Teheran. There have been arrests of house churches in about 2001; President Khatami, is now less influential; religious conservatives won a considerable election victory over his reformist supporters. They also pointed out with justification that this theocratic regime, with differing religions and political

power structures is inherently unstable or volatile, and any predictions as to its long-term behaviour, unless clearly having taken root, is unwise.

181. There is some force in the characterisation of Iran as unstable or volatile. It certainly cannot be said that the reformist approach of President Khatami is a change well-embedded for the longer term. There have been incidents suggestive of a reverse of the trend, although the evidence shows that there have been isolated incidents of persecution through the late 1990s. The latest material from TB continues that reverse; but however grave a crisis one source might think it to be, two points stand out. First, the evangelical Churches felt able to hold their AGM openly. Second, all but ten of the leaders were released the same day and it was Pastors who remained in detention, although those released were forbidden to attend Church services for a period which the report leaves unclear. There is no evidence, however, of problems for the ordinary congregant, convert or not, save those which attend the detention of Pastors and an ensuing climate of fear and anxiety.
182. Those who would be at particular risk from any such reverse change, however, would be those converts with a higher profile, ie the proselytising convert, the Church leader who had converted, and the Protestant or evangelical Church leaders or activists, whether converted from Islam or not. It is only sensible to recognise that there has been a recent retrenchment from the more liberal atmosphere from about 1995/7 to 2003. Its degree and nature are hard to assess, but it involves sporadic and seemingly random persecutory acts on evangelical congregants or leaders, and a more concerted repression of leaders and Pastors of evangelical Churches.
183. We should make here some general observations about some of the background material. There is a significant problem over much of the material which emanates from US sources: the USA has no diplomatic representation in Iran, which reduces the number of informed contacts which it can report and so it is more reliant on indirect sources; it is possible that an element of political hostility affects the religious sources which seem at times to differ from every other source. The material from Scudamores is in that vein; whatever may be said in that appeal, the allegation that there continue to be people sentenced to death for apostasy is not supported by any detail of the sort which we would expect to be available, and is not supported by any other reliable material. Likewise the Canadian Report of 1997 is too gloomy and general in its comments, at least for them to be applicable now, for the evangelical churches do hold services and have not all closed. It is possible that some of those to whom western intermediaries have spoken tried to give a rosier picture than was justified, to avoid official disfavour; but there is no sound evidence to support that view especially as the most favourable material was given in confidence to DFAT. There is no pervasive evidence either of reprisals for talking to western visitors about religious matters; there is some very limited evidence in relation to political prisoners that that may have occurred but nothing of sufficient clarity to suggest that there has been a bias in what was reported. There is no evidence that the September 2004 disruption of the Assemblies of God AGM was a reprisal for the DFAT material. If it were, the reprisal might reflect the boldness and openness of the asserted proselytising activity, rather than the communication of harassment. That is rather a different point.

184. The evidence on the return of failed asylum seekers is, to our mind, clear; there is no real risk on return for someone who has been an asylum seeker, on that account alone. What the evidence is less clear about is the position at the point of return of those who are known to the authorities have converted. The evidence does not strongly support the view that the Iranian authorities monitor baptisms abroad although there may be some who have left upon whom they keep tabs. Assuming that the fact of conversion becomes known before or at the point of return, the evidence does not show that that by itself would lead to ill-treatment. It may lead to questioning as might attendance at a church; it may lead to warnings. Family and associates may be told. Local police may be informed, even vigilante groups. There is not very much evidence as to the position of converts being returned and it is unwise to generalise from the position of those who return merely as failed asylum seekers. There is some rather uncertain general evidence exemplifying family hostility but that depends on each case and does not create persecution, though it may make life more difficult. TB, his cousin apart, does not appear to have had difficulties with his immediate family; he kept Christian materials openly in his room. NS appears to have had no difficulties from her family nor FS.
185. The position to us is determined by the way in which the authorities behave towards those whom they know to be converts in Iran anyway. The Iranian Pentecostal newsletter seemed to adopt that line. We can see no reason as to why they should be treated significantly differently. If the person returning is thought to have made contacts in the west with anti-Iran forces, it is difficult to see that much the same suspicion would not also fall upon anyone who converted and was a member of an evangelical Church. We do not therefore regard the fact of return as an additional factor which leads to a different conclusion under either Convention. Here we are dealing only with those who converted outside Iran, and not with those who converted in Iran and were the subject of persecutory treatment in Iran.
186. We now draw those threads together to reach our conclusion in the individual cases. Persecution for Geneva Convention purposes is not confined to acts of individual brutality or imprisonment. Some discrimination, continuing harassment and a climate of incessant fear are constituent parts as well. All Christians suffer from significant legal, social and economic discrimination. All known converts live in a society where those forms of discrimination are reinforced. The legal regime in theory can be very harsh; they can be seen as enemies of the theocratic state, and their lives and well-being can be threatened by the apparatus of the state and the violent attentions of covertly sanctioned religious zealots. There is no state protection. There would be a pervasive climate of fear, varying in degree, from time to time, and place to place.
187. For the ordinary convert, who is neither a leader, lay or ordained, nor a Pastor, nor a proselytiser or evangelist, the actual degree of risk of persecution or treatment breaching Article 3 is not sufficient to warrant the protection of either Convention. The reality is that a social and economic life can be maintained; Christianity can be practised, if necessary, cautiously at times, by Church attendance, association with Christians and Bible study. There may well be monitoring of services and identity checks. They would be able to practise, however, as most Iranian converts do. It is realistic to

expect that there may sometimes be questioning, disruption, orders not to attend Church, which may require the convert to stay away for a while. But there is no evidence of a real risk of ill-treatment during such questioning or of anything more than a short period of detention at worst. There is evidence of random or sporadic violence by the likes of the Basiji, but at too infrequent a level to constitute a real risk to the ordinary convert. The longer official questioning, detentions, and the greater risk of charges, trumped up or menacingly vague or simply threatened are not a real risk for the ordinary convert.

188. We would, on the present evidence, regard them as not at a real risk of persecution or treatment breaching Article 3. We allow in that assessment for some recent worsening in the current climate.
189. We would regard the more active convert, Pastor, church leader, proselytiser or evangelist as being at a real risk. Their higher profile and role would be more likely to attract the malevolence of the licensed zealot and the serious adverse attention of the theocratic state when it sought, as it will do on some occasions, to repress conversions from Islam which it sees as a menace and an affront to the state and God.
190. Where an ordinary individual convert has additional risk factors, they too may well be at a real risk. We have already said that we accept that the conversions would become known to the authorities, but that is not of itself an additional factor because it is the very assumption upon which we are assessing risk. These risk factors may not relate to religious views at all. It is the combination which may provoke persecutory attentions where, by itself, the individual conversion would have been allowed to pass without undue hindrance. A woman faces additional serious discrimination in Iran, though it falls short of being persecutory merely on the grounds of gender. But for a single woman, lacking such economic or social protection which a husband or other immediate family or friends might provide, the difficulties she faces as a convert are significantly compounded. Her legal status in any prosecution is much weaker; the risk of ill-treatment in any questioning is increased. This factor tips the overall nature of the treatment and risk into a real risk of persecution. We would regard NS as falling into that category; she is at a real risk of persecution for her religion, or of treatment which breaches Article 3. The role of family as a source of protection should be examined carefully in individual cases. Similar support might also be provided by close friends or colleagues in employment.
191. In FS' case, it is submitted that there would be an increased risk to him of having a political opinion attributed to him because of past activities and the arrest warrant; this led to reference to Kiani. We accept the submissions of Mr Wilken as to the significance to be attached to that document and do not regard it as an additional risk factor. Although the Adjudicator makes no specific finding, she appears to have accepted him as credible and therefore his radical theatre activities should be accepted. Discounting the arrest warrant, FS has a past adverse political profile, from his family and his own activities. It is not one which of itself would cause any significant difficulties, and it is not contended that it would suffice for a great of international protection. There is a real risk, however, that this would be known to the authorities in conjunction with his conversion; and that it would lead them

to target him for questioning and a higher level of harassment, more akin to that which might be experienced by a proselytiser or evangelist. This, we have said, would currently generate a real risk of persecution or treatment breaching Article 3.

192. In TB's case, the Adjudicator found that the police raid on his parents' house while he was away would not lead him to be of any continuing interest to the authorities. It may lead to his conversion being discovered earlier than it might have been, perhaps on return at the airport, but we do not regard that potential point of discovery as a factor which would lead to a greater degree of risk to him. TB, therefore, has no added risk factor. It appears fairly clearly that from the openness with which TB displayed Christian materials in his room at home that his parents were aware of his interest and at least quiescent about it. We do not accept, in the light of the Adjudicator's findings, and notwithstanding his pledged membership of an evangelical Church, that he would be an evangelist in Iran. Instead, he would be cautious. An issue which primary fact-finders will need to consider carefully is the likely way in which a genuine convert would practise if returned. It does not follow at all that the particular practices adopted in the United Kingdom would be those followed in Iran, nor that any inhibitions dictated by the caution of many converts would prove persecution or severe ill-treatment.
193. Accordingly, the Secretary of State's human rights appeal in FS is dismissed. Insofar as there is no formal cross-appeal against the illogical dismissal of the asylum appeal, we consider that in the light of all the debate in the Court of Appeal and before us that we ought to treat there as being a cross appeal from FS on the asylum claim, which we allow. The appeal of NS is allowed and the appeal of TB is dismissed, in relation to both Conventions.

MR JUSTICE OUSELEY
PRESIDENT

Appendix A

This Appendix lists the background material before the Tribunal in March 2004. It does not include the various expert reports, nor the post-hearing material, which are all identified in the determination. It does not include the previous Tribunal determinations which were also before us.

UNHCR, European and Government Reports, Bulletins and Fact Finding Missions

1. International Religious Freedom Report 2003 released by the Bureau of Democracy, Human Rights and Labor, US Department of State, 18th December 2003.
2. Iran Country Report, Country Information and Policy Unit, October 2003.
3. US State Department Bureau of Democracy, Human Rights and Labor: Country Report on Human Rights Practice for 2002. 31st March 2003.
4. The Kingdom of Belgium's CEDOCA Report on the Mission to Iran, 16th May to 6th July 2002. Published September 2002.
5. The European Country of Origin Information Seminar, Berlin, 11th to 12th June 2001. Final Report UNHCR Vienna and ACCORD, November 2001.
6. The Danish fact-finding mission to Iran, 8th September to 17th September 2000. Sent from the General Secretariat to CIREA, Brussels, 16th January 2002.
7. The Dutch Report – Situation in Iran, August 2000. Sent to the General Secretariat to CIREA, Brussels, 26th April 2001.
8. Freedom of Religion, European Union – 20th July 1998 & 2nd February 1999, CIREA 13 & 63.

News Items on Christianity

9. Khatami Says Dialogue Between Islam and Christianity Inevitable, Tehran Times, 13th December 2003.
10. Vatican minister meets Christian in Iran, BBC News, 7th March 2001.
11. Iranian Christians celebrate Christmas in the middle of Ramadan, The Iranian, 24th December 1997.

Commonwealth Caselaw on Christianity

12. **RRT Reference: NOO/36328**
13. **RRT Reference: NO1/40938**
14. **Y v. Refugee Status Appeals Authority**

Source material for the paragraphs on Christians and Apostasy/Conversions (6.54 to 6.62) from the Iran Country Report, Country Information and Policy Unit, October 2003, not cited above.

15. Source 2c – Documentation, Information and Research Branch, Immigration and Refugee Board, Ottawa, Canada. Human Rights in Iran: Update on Selected Issues, May 1997. Accessed via UNHCR Web Site. 11th September 2003.
16. Source 3b – UNHCR Centre for Documentation Research: Background Paper on Refugees and Asylum Seekers from Iran, Geneva, October 1995.
17. Source 100 – United Nations Situation of Human Rights in the Islamic Republic of Iran. A/56/278. Special Representative of the Commission on Human Rights, 10th August 2001.
18. Source 10p – Report on the Situation of Human Rights in the Islamic Republic of Iran. E/CN.4/2002/42. Special Representative of the Commission on Human rights, 16th January 2002.
19. Source 4 l – US State Department Bureau of Democracy, Human Rights and Labor: International Religious Freedom Report. For 2002, 7th October 2002.
20. Source 1a – Europa Publications. Europa Regional Survey of the World: The Middle East and North Africa 2003.
21. Source 3a – UNHCR Centre for Documentation and Research: Background Paper on Refugees and Asylum Seekers from Iran, Geneva, September 1998.
22. Source 4h – US State Department Bureau of Democracy, Human Rights and Labor: Country Report on Human Rights Practices for 2000, 23rd February 2001.
23. Source 4g – US State Department Bureau of Democracy, Human Rights and Labor: Country Report on Human Rights Practices for 1999, 23rd February 2000.
24. Source 4j - US State Department Bureau of Democracy, Human Rights and Labor: Background note: Iran. Bureau of Near Eastern Affairs June 2003.
25. Source 2s – Documentation, Information and Research Branch, Immigration and Refugee Board, Canada: REINFO, 22nd December 1998, IRN30744E, Armenian Christians and Proselytization.
26. Source 2p - Documentation, Information and Research Branch, Immigration and Refugee Board, Canada: REFINFO, 17th April 1998, IRN29210.E, Options open to a Muslim accused of being an apostate.
27. Source 2q – Documentation, Information and Research Branch, Immigration and Refugee Board, Canada: REFINFO, 4th January 1996, IRN22544.E, Consequences for converting to, or showing intention to convert to, Christianity from Islam.
28. Documentation, Information and Research Branch, Immigration and Refugee Board, Ottawa, Canada:
 - a. IRN22302.E 27/11/95
 - b. IRN256268.E 7/10/96
 - c. IRN24845.E 24/09/96
 - d. IRN32836.E

EIN Search

29. EIN search on 22nd December 2003 using key words **Iran** and **Christianity**.
30. Letter from the British Embassy in Tehran dated 5th September 2002.

31. 'Iran: Foreign Ministry official says expatriates will be given passports', 2nd September 2002, BBC Monitoring ME1 MEPol bg.
32. Documentation, Information and Research Branch, Immigration and Refugee Board, Ottawa, Canada: IRN32264.E 09/07/99.

Most Recent Australian Jurisprudence and source material cited.

33. **RRT NO2/41315**
34. DFAT Country Profile for use in Refugee Determination: Islamic Republic of Iran 1996.
35. DFAT, CIR No. 186/02 19 June 2002 CX65406.
36. DFAT, CIR No. 294/02 19 August 2002 CX67771.
37. DFAT, CIR No. 346/02 26 November 2002 CX70351
38. DFAT, CIR No. 31/03. 11 February 2003 CX73314.

Objective Evidence Served on Home Office by Messrs Scudamores in 'A'

39. UNHCR: Country of Origin and Legal Information: Iran: Information on Conversion from Islam to Christianity – November 2002.
40. International Christian Concern: Iran – Christian Persecution in Iran, 8th May 2003.
41. Amnesty International Press Release: AI Index: MDE 13/040/2003. News Service No:263. 19 November 2003.
42. Letter from Mr K Behbahani, Messrs Scudamores, Solicitors, dated 8th March 2004 enclosing the letter for Mr Justice Ouseley dated 8th March 2004 with the following enclosures:-
 - i. E-mail from Nina Shea of the Centre for Religious Freedom to Messrs Scudamores, Solicitors, dated 30th July 2003.
 - ii. E-mail from Mark Hetfield of the United States Commission on International Religious Freedom dated 6th August 2003.
 - iii. 'Iran: Veto on Torture Bill Condemned', Human Rights Watch, 12th June 2002, New York. (Referred to in Mr Hetfield's e-mail).
 - iv. 'Japan violating refugee anti-torture conventions'. Iranmania.com, 27th January 2004, Tokyo, AFP.
43. Amnesty International: 'Iran' Jan-Dec 2002
44. Human Rights Watch, 'World Report 2003: Iran' 01/03
45. Human Rights Watch, 'Briefing to the 59th Session of the UN commission on Human Rights: Iran' 27/02/03
46. Voice of America News, 'Rights Group: US should seek UN action on Iranian religious persecution' 27/02/03

47. Human Rights Watch, Iran: UN fails to condemn rights abuses' 2002
48. Human Rights Watch World Report 2001: Iran, 'harsh sentences against Iran Reformists condemned' 2001
49. Human Rights Watch, 'Iran – Religious and Ethnic Minorities: Discrimination in Law and Practices' 12/11/03
50. Article: The Guardian: Dan de Luce in Tehran, 'Price of Dissent' 31/05/03
51. Article: the Washington Times 'Iranian converts pray for homeland' 30/12/03
52. US Dept of State, 'Country Reports on Human Rights Practices 2002: Iran' 31/03/03
53. US Dept of State, 'International Religious Freedom Report 2002: Iran' 07/10/02
54. CIPU IND 'Asylum in the UK' – extract Undated
55. Commission on Human Rights: Ethnic and Religious groups in the Islamic Republic of Iran' 05/05/03
56. Letter from Scudamores solicitors to IAT with enclosures 08/03/04
57. World News – Extract 'Japan violating refugee, anti-torture conventions' 27/01/04
58. Bastanipour v Immigration and Naturalization Service 1129 (7th Cir 1992)
59. W68-01A v Minister for Immigration and Multi Cultural Affairs [2002] FCA148
60. CIPU report – pages 29 and 30
61. US Statement Department, Human Rights Reports for 2002 – Iran Religious Freedom
62. Suspicious Death of Iranian Returnee must stop further deportations (from Iranian Refugees at Risk Winter 97/Spring 98)
63. The Age (Melbourne) "Detainees Arrested on return to Iran" 2002
64. Article – Keyhan Newspaper – August 2002, together with translations
65. Christus Pro-Orient, dated 8th January 2003
66. Jubilee Campaign – The Persecution of Christians in Iran
67. Booklet entitled "Free to Choose" by the Barnabas Fund
68. Report of Barnabas Fund on Iran, dated May 2002
69. Barnabas Fund Report entitled "Conversation from Islam to Christianity, undated
70. Article entitled "Christianity Solidarity Worldwide", undated
71. Article – Christianity Solidarity Worldwide entitled "Iran", undated
72. Iranian Asylum Seekers face persecution upon 'returning' to Iran, dated 5th May 2002

73. Barnabas Fund Report, Christian life worth only a twelfth that of a Muslims, dated 23rd April 2003
74. Apostacy (Irtidad) in Islam, dated 13th May 2003
75. Leaflet entitled “no longer my son”
76. swipnet.se dated 7th October 1999
77. Christian Iranian documents
78. peykeiran.com documents and translation
79. ChristianityToday.com dated 11th March 2002
80. Case Notes
81. Journey into Life Leaflet
82. Jesus Fellowship – Brief Statement of Faith
83. Jesus Fellowship – Church Alive Booklet
84. Article – What is an Evangelical
85. The Alliance Mission and statement of faith
86. The Evangelical Relationships Commitment
87. Notes on the Jesus Fellowship Church and Evangelical December 2003