



# OPERATIONAL GUIDANCE NOTE

## IRAN

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## 1. Introduction

- 1.1** This document provides UK Border Agency caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Iran, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to

fail.

## **2. Country assessment**

- 2.1** Caseowners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>

### **2.3 Actors of protection**

- 2.3.1** Case owners must refer to the Asylum Policy Instruction on 'considering the protection (asylum) claim' and 'assessing credibility'. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.3.2** Several agencies share responsibility for law enforcement and maintaining order, including the Ministry of Intelligence and Security (MOIS), the Law Enforcement Forces under the Interior Ministry, and the Islamic Revolutionary Guards Corps (IRGC). The Basij and informal groups known as the Ansar-e Hizballah (Helpers of the Party of God) were aligned with extreme conservative members of the leadership and acted as vigilantes. In October 2009 the government announced the merger of the Basij into the IRGC ground forces. While some Basij units received formal training, many units were disorganised and undisciplined. During government-led crackdowns on demonstrations, the Basij were primarily responsible for the violence against the protesters.<sup>1</sup>
- 2.3.3** The MOIS is Iran's intelligence and state security service. The agency is responsible for fighting opposition to the regime not only at home but also abroad. Some Iranian intelligence agents have operated in foreign locations under diplomatic cover, as part of a drive to collect intelligence on Iranian opposition elements operating outside Iran. The MOIS has had a particular focus on the Mujahideen e-Khalq (MEK) opposition militia group and its allied political group, the National Council of Resistance of Iran (NCRI). Monarchists, Iranian Kurdish dissidents and left-wing groups have also come under the scrutiny of the MOIS. It is believed that the MOIS has a particular focus on Iran's turbulent neighbour, Iraq, where there is a large Shia population. Prior to the 2003 US-led invasion, there were indications that the MOIS liaised with the Iraqi opposition group, the Iraqi National Congress, which was seeking the overthrow of the Saddam Hussein regime. Counter-intelligence is part of the MOIS mission, and in February 2007 the MOIS claimed to have identified 100 spies working

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<sup>1</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

for the US and Israel in border areas of Iran.<sup>2</sup>

- 2.3.4** There were reports during the year (2010) that the MOIS arrested and harassed family members of political prisoners and human rights activists, banning them from speaking to foreign media or travelling abroad, blocking their telephone conversations, making false criminal charges against them, and blocking their access to higher education.<sup>3</sup>
- 2.3.5** The Law Enforcement Forces (Niruha-ye Entezami-ye Jomhuri-ye Islami) (LEF) was created in 1991 through a merger of the police, gendarmerie, and the revolutionary committees and is charged with combined duties: law enforcement, border control, and maintaining public order. Although nominally under the leadership of the Ministry of the Interior, the Supreme Leader has to approve a nominee that the president proposes as LEF chief. Units within the LEF have overlapping responsibilities. The Social Corruption Unit of the LEF deals with social behaviour of an immoral nature. However, there is a similar unit in the LEF called the Edareyeh Amaken Omumi (Public Establishments Office), which concerns itself with the type of music people listen to, the interaction of people of the opposite sex in public places and various forms of perceived lewd behaviour. Maintaining security along Iran's borders is an important role of the LEF. Iran has been stepping up security on its borders, with the LEF using what has been described as 'modern technologies' in order to counter drug trafficking, smuggling and the movement of individuals considered to pose a threat to state security.<sup>4</sup>
- 2.3.6** The IRGC, commonly known as the Pasdaran (Guardians), is composed of five main branches – Ground Forces, Air Force, Navy, Basij militia and the Qods Force special operations branch. There is also an Intelligence Directorate. The IRGC has a cultural and military mission. Its cultural role is in safeguarding the achievements of the Islamic Revolution, while its military role lies in supporting the regular forces when required.<sup>5</sup>
- 2.3.7** The intelligence arm of the IRGC reportedly conducted arrests during the year (2010), sometimes without a warrant. Additionally, security forces executed general warrants to arrest protesters or those perceived as opponents of the government. The use of these general warrants precluded the need for individual warrants.<sup>6</sup>
- 2.3.8** The Basij Force is the instrument used by IRGC to implement domestic security measures. The Basij Force also contributes to the gathering of intelligence. Now apparently based at more than 70,000 locations nationwide, members of the Basij are organised into five main elements: the Pupil Basij, the Student Basij, the University Basij, the Public Service Basij and the Tribal Basij. The diverse range of these units demonstrates the various roles of the militia, and the fact that the aim of the Basij is not just to forge a paramilitary force, but to reinforce support for the regime through ideological dissemination.<sup>7</sup>
- 2.3.9** The security forces were not considered fully effective in combating crime. Videos posted on the Internet in October 2010 documented two stabbing murders that occurred in public spaces while police failed to intervene. Corruption and impunity were problems. Regular and paramilitary security forces committed numerous serious human rights abuses, but there were no transparent mechanisms to investigate security force abuses and no reports of government actions to reform the abusers.<sup>8</sup>
- 2.3.10** By law the judiciary is independent from the executive and legislative branches; in practice it remained under the influence of executive and religious government authorities. According to the constitution, the Court of Administrative Justice, under the supervision of the head of

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<sup>2</sup> COIS Iran Country Report June 2011 (para 9.04) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi>

<sup>3</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

<sup>4</sup> COIS Iran Country Report June 2011 (para 9.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi>

<sup>5</sup> COIS Iran Country Report June 2011 (para 9.11) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi>

<sup>6</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

<sup>7</sup> COIS Iran Country Report June 2011 (para 9.20 & 9.23) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi>

<sup>8</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

the judiciary, investigates the grievances of citizens with regard to government officials, organs, and statutes. In practice citizens had limited ability to sue the government. Citizens were not able to bring lawsuits against the government for civil or human rights violations. Dispute resolution councils are available to settle minor civil and criminal cases through Mediation before referral to courts.<sup>9</sup>

## **2.4 Internal relocation.**

**2.4.1** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and Gender Issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

**2.4.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

**2.4.3** The constitution provides for freedom of movement within the country, foreign travel, and emigration, and repatriation. The government placed some restrictions on these rights. The government required exit permits for foreign travel for all citizens. Some citizens, particularly those whose skills were in demand and who were educated at government expense, had to post bond to obtain an exit permit. The government also restricted foreign travel of some religious leaders and individual members of religious minorities and scientists in sensitive fields, and it increasingly targeted journalists, academics, opposition politicians, and activist (including women's rights activists) for travel bans and passport confiscation during the year. A woman must have the permission of her husband, father, or other male relative to obtain a passport. A married woman must receive written permission from her husband before she leaves the country.<sup>10</sup>

**2.4.4** It may be practical for applicants who may have a well-founded fear of persecution in one area to relocate to other parts of Iran where they would not have a well-founded fear, and taking into account their personal circumstances, it would not be unduly harsh to expect them to do so.

## **2.5 Country guidance caselaw**

**SA (Iranian Arabs-no general risk) Iran CG [2011] UKUT 41(IAC).** In this country guidance case the Tribunal concluded that the Iranian state is suspicious of those Iranian citizens who are also Arabs and regards London as a centre of separatist activity. Being an Iranian Arab returned from the United Kingdom enhances other risk factors but an Iranian Arab does not risk persecution or other ill treatment solely by reason of ethnicity.

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<sup>9</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

<sup>10</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

**BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC).** In this country guidance case the Tribunal found that:

1. Given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain.
2. (a) Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally.  
(b) There is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country guidance case of **SB** (risk on return -illegal exit) Iran CG [2009] UKAIT 00053 are followed and endorsed.  
(c) There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognise up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home.
3. It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.
4. The following are relevant factors to be considered when assessing risk on return having regard to sur place activities:
  - (i) Nature of sur place activity
    - Theme of demonstrations – what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime?
    - Role in demonstrations and political profile – can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime?
    - Extent of participation – has the person attended one or two demonstrations or is he a regular participant?
    - Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?
  - (ii) Identification risk
    - Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc?
    - Regime’s capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?
  - (iii) Factors triggering inquiry/action on return
    - Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable?
    - Immigration history – how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?
  - (iv) Consequences of identification
    - Is there differentiation between demonstrators depending on the level of their political profile/adversity towards the regime?

(v) Identification risk on return

- Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?

**Supreme Court. HJ & HT v SSHD [2010] UKSC31 7 July 2010** In this case, the Supreme Court established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.
- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

**Boroumand, R (on the application of) v Secretary of State for the Home Department [2010] EWHC 225 (Admin).** Even if it is accepted that there is a real risk that the applicant will face execution on return to Iran it is not disproportionate to grant them a period of DL (6 months) and exclude them from HP. "In principle, if the Secretary of State is entitled not to give a person humanitarian protection because that person has committed a serious crime it is neither irrational nor disproportionate to limit the normal period of leave. Mr Southley accepted for the purpose of this case that there is nothing incompatible with Article 8 in granting leave for periods of six months provided, however, that applications are determined promptly" (paragraph 85)

**SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053**

- (i) Events in Iran following the 12 June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Persons who are likely to be perceived by the authorities in Iran as being actively associated with protests against the June 2009 election results may face a real risk of persecution or ill treatment, although much will depend on the particular circumstances.
- (ii) Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment. That remains the case even if they exited Iran illegally. Having exited Iran illegally is not a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, such a history could be a factor adding to the level of difficulties he or she is likely to face.
- (iii) Being a person who has left Iran when facing court proceedings (other than ordinary civil proceedings) is a risk factor, although much will depend on the particular facts relating to the nature of the offence(s) involved and other circumstances. The more the offences for which a person faces trial are likely to be viewed as political, the greater the level of risk likely to arise as a result. The degree of risk will vary according to the nature of the court proceedings; being involved in ongoing court proceedings is not in itself something that will automatically result in ill-treatment; rather it is properly to be considered as a risk factor to be taken into account along with others.
- (iv) Being a person involved in court proceedings in Iran who has engaged in conduct likely to be seen as insulting either to the judiciary or the justice system or the government or to Islam constitutes another risk factor.
- (v) Being accused of anti-Islamic conduct likewise also constitutes a significant risk factor.

**SZ and JM (Christians – FS confirmed) Iran CG [2008] UKAIT 00082.** The Tribunal concluded:

- (i) The conditions for Christians in Iran have not deteriorated sufficiently to necessitate a change in the guidance in FS and Others (see below). The Tribunal found it remains the case that it is the 'active evangeliser' in whom the authorities are primarily interested and

concluded that the number and frequency of attacks on ordinary converts are not such to show that there is a real risk of serious mistreatment to those who are not seen as the more active convert, pastor, church leader, proselytiser, or evangelist.

(ii) With regard to the distinction drawn in FS and Others between 'ordinary convert and those who 'proselytise' the Tribunal concluded that the more accurate description is that between the ordinary convert and those who undertake 'active evangelism'. Whilst acknowledging it is perhaps arguable that proselytising is a more robust form of evangelising, the Tribunal concluded that the terms should not be used as terms of art and no conclusion can be drawn by the use of one word in preference to the other.

**RM and BB CG [2005] UKIAT 00117.** The tribunal concluded that it is most unlikely, given the statistics and the problems of proof, that the death penalty for sodomy is anything other than an extremely rare occurrence. It did however find that those found guilty under the Penal Code face harsh punishments which can include long prison sentences up to six years and up to one hundred lashes. The tribunal also found that the interest of the Iranian authorities in homosexual offenders is essentially focused upon any outrage to public decency; and that the authorities would not simply ignore reports made to them of persons carrying out homosexual acts albeit in private. The tribunal was satisfied that if a complaint is brought to the authorities then they would act upon that to the extent that they would arrest the claimed offenders and question them and thereafter there is a real risk that either on the basis of confessions or knowledge of the judge which might arise from such matters as previous history or medical evidence or the evidence of the person who claimed to have observed the homosexual acts, that they would be subjected to significant prison sentences and/or lashing.

**TB [2005] UKIAT 00065.** This case is not a country guidance case but received a determination specific to the facts of the case. The Tribunal found the Appellant would be persecuted on return because she belonged to a particular social group viz., "Young Iranian women who refuse to enter into arranged marriages". The Tribunal reasoned (at paragraph 69 iv):

*"the real risk of this appellant suffering serious harm on return to Iran is primarily for non-Convention reasons (the vindictiveness and retribution of the appellant's father and the Mullah). However, as we consider there would also be a failure of state protection against that serious harm, we find that there is a causal nexus between the persecution (accepting that: Persecution = failure of state protection + serious harm) and her membership of a particular social group."*

Whilst the Tribunal considered that women in Iran may constitute a particular social group, it did not come to a finding on it and there is no conclusive statement on this point.

**FF Iran [2004] UKIAT 00191.** The Tribunal found that they "do not consider that the appellant as the sister of three women who have obtained asylum elsewhere, who has been out of Iran herself for over 3½ years, who left Iran in breach of regulations and is reluctant to wear the Hijab, is a person who faces a real risk of ill-treatment giving rise to a breach of her human rights on return to Iran."

**FS & Others CG [2004] UKIAT 000303.** The Tribunal made three main findings; an "ordinary" convert will not, without more, face persecution; an active convert, Pastor, church leader or proselytiser might face persecution; an "ordinary" convert with "additional risk factors" might face persecution. In the third category the "additional risk factors" in 2 of the cases were; a single woman who faces discrimination, short of persecution, on grounds of gender due to a lack of economic and social protection; and an individual whose radical theatre activities led to a past adverse political profile.

**HD [2004] UKIAT 00209.** In paragraph 23, the IAT noted, "In reality the background material shows that there is a clear distinction between political and non-political offences in the way in which the offenders are treated and ordinary offender conditions do not involve a real risk of torture or breach of Article 3." In addition, in the second part of paragraph 19 the Tribunal concluded, "It is to be noted that there is nothing about the UN finding evidence of torture, let alone torture in ordinary prisons or treatment which breaches Article 3 ECHR."

**BE Iran [2004] UKIAT00183.** The IAT stated that, "Whilst prison conditions in Iran are poor,

the Tribunal has not considered that they cross the threshold of serious harm: see Fazilat [2002] UKIAT 00973." (paragraph 12).

"... Certainly Evin prison has a record where torture and ill-treatment of inmates happens to a significant extent; but as the appellant's experiences demonstrate, such treatment is not necessarily routine in respect of all prisoners, and his offence was one of desertion, not of being active in political organisations bent on subversion." (paragraph 13).

**ZH CG [2003] UKIAT 00207.** The facts of ZH were that the appellant suffered domestic violence from a husband who was a drug addict. In ZH there was no evidence that the appellant faced a real risk of adultery charges from her husband or anyone else. Her concern was that her husband wanted her back with their child, and that his threat to kill her might then be realised. Although the Tribunal found that women per se do not form a particular social group, it went on to conclude:

*"We accept that the police are reluctant and unlikely generally to intervene in domestic violence cases against a husband but the evidence does not show such a reluctance in respect of drug or alcohol abuse, nor that the reluctance is marked where there is other supporting evidence, e.g. from parents. In this country, the attitude of the police towards domestic violence has been one of reluctant involvement, though we accept not to the same degree as in Iran, but it would still have been regarded as part of a system of protection.*

*The inability of the state to provide protection cannot always be tested solely by reference to the police, if as here, relief can be obtained through divorce. Lord Hoffmann looked at both criminal and civil or family court protection in the United Kingdom in Shah and Islam. In domestic violence, the availability and consequences of divorce constitute a relevant part of the system of state protection. It may be difficult to obtain, but the legislative provision exist, they are not simply ignored by the courts or made impractical for all to use, as the background material on custody and alimony shows. Relevant grounds apply to this claimant and she is not dependant wholly on her own evidence. The Iranian state, whatever its other discriminatory acts, is not unable or unwilling to provide protection in this instance. The evidence also does not support the conclusion that this couple cannot live apart, before divorce; they have at times done so. It does not support the conclusion that after divorce there would be persecution."*

**ME [2003] UKIAT 00166.** In this case an Adjudicator had found that the appellant on return to Iran would face persecution on account of his membership of a particular social group - *the group being men in Iran who have committed adultery which has been witnessed by at least three others*". The Tribunal allowed the appeal against the adjudicator's decision. The Tribunal found that neither the appellant's 'nationality nor his sex was a basis for any discriminatory treatment that he received. Thus, the principal factors relied upon to identify him as a "particular social group" amounted to no more than those which defined his persecution. He was persecuted because he was an adulterer who had transgressed Iranian law. However, the Tribunal concluded that a woman in the same position would be able to make an argument that she was a member of a particular social group. The Adjudicator had also allowed the appellant's appeal on human rights grounds and this was not challenged in the appeal to the Tribunal.

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Iran. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason -



i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on 'considering the protection (Asylum) claim and assessing credibility').

**3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

**3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

### **3.5 Credibility**

**3.5.1** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'establishing the facts of the claim (material and non-material facts)' in the Asylum Instruction 'Considering the protection (asylum) claim' and 'assessing credibility'. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to anon-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### **3.6 Illegal exit from Iran**

**3.6.1** Some applicants may base their claim for asylum, in full or in part on the consequences of their illegal departure from Iran. Although this is unlikely, of itself, to be a successful basis of claim, it may be an aggravating factor in other categories of claim and as such a risk factor to be taken into account.

**3.6.2** *Treatment.* The government required exit permits for foreign travel for all citizens. Some citizens, particularly those whose skills were in demand and who were educated at government expense, had to post bond to obtain an exit permit. The government also restricted foreign travel of some religious leaders and individual members of religious minorities and scientists in sensitive fields, and it increasingly targeted journalists, academics, opposition politicians, and activist (including women's rights activists) for travel bans and passport confiscation during the year. A woman must have the permission of her husband, father, or other male relative to obtain a passport. A married woman must receive written permission from her husband before she leaves the country.<sup>11</sup>

**3.6.3** Checks are carried out, at the time of passport issue, in relation to any other outstanding security issues, such as outstanding warrants, which could prevent either a male or a female from being issued the passport. This takes place at the time of the general passport application rather than when issuing any particular 'exit stamp'. This is done using a specialised database, which is also the same system used at the airport when conducting the final verification of eligibility to travel at the security checkpoint.<sup>12</sup>

**3.6.4** Permission to leave Iran might be revoked in cases where the authorities find it necessary. This may be because a person has outstanding issues with the government or other

<sup>11</sup> COIS Iran Country Report June 2011 (para 27.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>12</sup> COIS Iran Country Report June 2011 (para 31.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

reasons that may lead to the authorities revoking the permission. Hence, a person may not be allowed to leave even though he or she has permission to do so. The Immigration Police may revoke the permission to leave anywhere in the airport, since the airport is under the jurisdiction of the Immigration Police.<sup>13</sup>

- 3.6.5** According to Article 34, any Iranian who leaves the country illegally, without a valid passport or similar travel documents, will be sentenced to between one and three years imprisonment, or will receive a fine between 100,000 and 500,000 Rials (£6- £30). In order to proceed the cases relating to illegal departure, a special court is located in Mehrabad Airport in Tehran. Its branch number is given as 1610. If an Iranian arrives in the country, without a passport or any valid travel documents, the official will arrest them and take them to this court. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organisations or groups and any other circumstances. The judge will decide the severity of the punishment within the parameters of Article 34. This procedure also applies to people who are deported back to Iran, not in the possession of a passport containing an exit visa; in this case the Iranian Embassy will issue them with a document confirming their nationality. Illegal departure is often prosecuted in conjunction with other, unrelated offences.<sup>14</sup>
- 3.6.6** Other than being fined a person who has left Iran illegally and who is not registered on the list of people, who cannot leave Iran, will not face problems with the authorities upon return, though the person may be fined. A person who has committed a crime and has left Iran illegally will only be prosecuted for the crime previously committed and not for leaving the country illegally. If a person has outstanding issues with the authorities (other than leaving illegally) he or she may very likely be punished for these upon return. The punishment will be according to law, however, it may also come to a stricter punishment since the person has left Iran illegally.<sup>15</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)  
[Internal relocation \(section 2.4 above\)](#)  
[Caselaw \(section 2.5 above\)](#)

- 3.6.7** **Conclusion.** Illegal exit is not in itself a significant risk factor which would of itself give rise to a need to international protection. It may however add to the difficulties an applicant would face if they had attracted the adverse attention of the authorities for another reason.

### **3.7 Political opponents and opposition supporters**

- 3.7.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state due to being a political opponent or supporter of political opposition to the current Iranian regime.
- 3.7.2** **Treatment.** The constitution permits the establishment of political parties, professional syndicates, and other civic organisations, provided that they do not violate the principles of 'freedom, sovereignty, and national unity' or question the Islamic basis of the republic.<sup>16</sup>
- 3.7.3** Despite crackdowns on human and women's rights activists and restrictions on internet freedom in the months prior to the June 2009 presidential election, supporters of all candidates seemed to enjoy a relatively relaxed and politically vibrant atmosphere.<sup>17</sup>

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<sup>13</sup> COIS Iran Country Report June 2011 (para 31.15) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>14</sup> COIS Iran Country Report June 2011 (para 31.21) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>15</sup> COIS Iran Country Report June 2011 (para 31.22) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>16</sup> COIS Iran Country Report June 2011 (para 15.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>17</sup> COIS Iran Country Report June 2011 (para 15.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 3.7.4** Despite polls indicating a close race, Ahmadinejad was declared the winner soon after the election, credited with over 63 percent of the vote. Protests broke out on a massive scale as voters rejected the official results. In a rare show of defiance, high-profile political figures publicly broke with Khamenei's validation of the election, with Khatami going so far as to publicly call for a referendum on the government's legitimacy. The security forces violently cracked down on all public expressions of dissent and tightened government control of both online and traditional media, but protesters continued to mount periodic demonstrations for the rest of the year, using mobile-telephone cameras and the internet to document abuses and communicate with the outside world.<sup>18</sup>
- 3.7.5** Iranian authorities revealed that security forces arrested more than 6,000 individuals following the June 2009 presidential election. Many were detained either without a specific charge or on unfounded charges that do not meet international human rights standards, and without warrants or on the basis of generic warrants enabling authorities to detain anyone. Many reported being detained by unidentified persons and removed to unknown locations, and held incommunicado for long periods.<sup>19</sup>
- 3.7.6** The constitution provides for freedom of expression and of the press, except when the words are deemed "detrimental to the fundamental principles of Islam or the rights of the public." In practice the government severely restricted freedom of speech and of the press.<sup>20</sup> The number of journalists and bloggers now detained in the Islamic Republic of Iran is almost 30<sup>21</sup> and the government directly controls all television and radio broadcasting. Satellite dishes are illegal, and while they are generally tolerated, there have been increasing reports of dish confiscation and steep fines. The authorities have had some success in jamming broadcasts by dissident satellite stations based overseas, and cooperation with Persian-language satellite channels is banned. Even the purchase of satellite images from abroad is illegal. The Ministry of Culture must approve publication of all books and inspects foreign books prior to domestic distribution.<sup>22</sup> Iranian internet users suffer from routine surveillance, harassment, and the threat of imprisonment for their online activities, particularly those who are more critical of the authorities.<sup>23</sup> In January 2011 the formation of a new cyber police force was announced. Their targets specifically include anti-government websites and political dissidents using social networking sites.<sup>24</sup>
- 3.7.7** Following the disputed 2009 election the authorities disrupted mobile phone and internet communications, including social networking sites, to prevent information circulating. They prevented foreign journalists from covering demonstrations, expelling some, and security officials controlled the content of newspapers. Security forces raided university campuses, injuring students.<sup>25</sup>
- 3.7.8** Throughout 2009 and 2010, authorities tried hundreds of activists, opposition figures, journalists and human rights defenders, many in 'show trials,' and gave them lengthy sentences on vaguely worded offences including 'acts against national security,' 'insulting Islam,' and 'enmity against God.' The Iranian judiciary has generally become a tool of the state security establishment and an estimated 500 persons remain arbitrarily detained for peaceful activities or the exercise of free expression. Nearly all of these detainees have little to no access to their lawyers or case files and trials often fall below international due process standards.<sup>26</sup>

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<sup>18</sup> COIS Iran Country Report June 2011 (para 15.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>19</sup> COIS Iran Country Report June 2011 (para 15.11) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>20</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

<sup>21</sup> Reporters without borders, World report: Iran <http://en.rsf.org/report-iran,153.html>

<sup>22</sup> COIS Iran Country Report June 2011 (para 16.05) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>23</sup> COIS Iran Country Report June 2011 (para 16.26) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>24</sup> VOA news, Iran fights internet freedom 31 January 2011 <http://www.voanews.com/policy/editorials/Iran-Fights-Internet-Freedom-114949054.html>

<sup>25</sup> COIS Iran Country Report June 2011 (para 15.07) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>26</sup> COIS Iran Country Report June 2011 (para 15.12) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

**3.7.9** Although the constitution prohibits arbitrary arrest and detention, these practices continued during the year [2010].<sup>27</sup> Arbitrary arrests and detentions are increasingly routine and family members of detainees are often not notified for days or weeks. Suspected dissidents are frequently held in unofficial, illegal detention centres. Prison conditions in general are notoriously poor, and there are regular allegations of abuse, torture, and death in custody.<sup>28</sup>

**3.7.10** Arrests and clashes were reported in Tehran on the second anniversary of the disputed 2009 re-election of Iranian President Mahmud Ahmadinejad that led to mass street protests. Opposition websites and witnesses say dozens were arrested in the Iranian capital on 12 June 2011 while marching silently to mark the anniversary. The opposition Kalame website reported that several hundred Iranians were detained on Vali Asr Street while marching peacefully. "Demonstrators remained silent and calm even while they were being detained," Kalame said.<sup>29</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)  
[Internal relocation \(section 2.4 above\)](#)  
[Caselaw \(section 2.5 above\)](#)

**3.7.11 Conclusion.** There is a real risk that high profile activists and political opponent who have come to the attention of the authorities would on return to Iran face a real risk of persecution and should be granted asylum for reason of his or her political opinion.

**3.7.12** Depending on the particular circumstances, some persons who do not have a political profile- which would include for example student demonstrators or other anti-government protestors- are likely to be perceived by the authorities in Iran to oppose the regime and may similarly face a real risk of persecution or ill-treatment on return. Caseowners must consider carefully whether the personal circumstance of the individual concerned are such that he or she would face a real risk of persecution on return to Iran.

**3.7.13** Those who have engaged in opposition political activity in the UK might, depending on their level of involvement, similarly face a real risk of persecution on return to Iran on account of that activity and in such cases a grant of asylum will also be appropriate. The test to be applied in such cases is set out in detail in *BA (Demonstrators in Britain- risk on return) Iran CG [2011] UKUT 36 (IAC)*- see above **Caselaw section**.

### **3.8 Christians/Christian converts**

**3.8.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state due to their conversion to Christianity or actively seeking to convert others (proselytising).

**3.8.2 Treatment.** The constitution states that Islam is the official state religion, and the doctrine followed is that of Ja'afari (Twelver) Shi'ism. The constitution provides that "other Islamic denominations are to be accorded full respect," while the country's pre-Islamic religious groups--Zoroastrians, Christians, and Jews--are recognised as "protected" religious minorities. However, the fourth article of the constitution states that all laws and regulations must be based on Islamic criteria. In practice the government severely restricted freedom of religion.<sup>30</sup>

<sup>27</sup> COIS Iran Country Report June 2011 (para 9.33) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>28</sup> COIS Iran Country Report June 2011 (para 9.34) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>29</sup> Radio Free Europe/Radio Liberty *Silent Tehran protesters arrested on anniversary of disputed vote*, 13 June 2011, <http://www.unhcr.org/refworld/country,,,IRN,,4e142b3c8,0.html>

<sup>30</sup> US State Department Religious Freedom Report 2010; Iran <http://www.state.gov/g/drl/rls/irf/2010/148819.htm>

- 3.8.3** Iranian religious tradition differentiates between offences committed in the public domain and that which takes place within the confines of privacy. Offences that are in violation of Islam and that are committed in the public domain must be punished, while what takes place in the private sphere, and is thereby concealed, is tolerated to a greater extent. This can include, for example, drinking of alcohol, prohibited sexual relations, use of illegal films, books, music and religious practice. Irrespective of their ethnic and religious background, very many Iranians in practice live two lives, one in the public domain and another in private. As long as the private sphere remains private and Islamic rules and values are not visibly challenged or violated, the Iranian authorities will not normally intervene in citizens' private sphere.<sup>31</sup>
- 3.8.4** Since the disputed 12 June 2009 elections, human rights and religious freedom, conditions in Iran have regressed to a point not seen since the early days of the Islamic revolution. Killings, arrests, and physical abuse of detainees have increased, including for religious minorities and Muslims who dissent or express views perceived as threatening the legitimacy of the government. The Iranian government has repressed its citizens on the basis of religious identity for years. During the reporting period [1 April 2010 to 31 March 2011], the government continued to use its religious laws to silence reformers and critics, including women's rights activists, for exercising their internationally-protected rights to freedom of expression and freedom of thought, conscience, and religion or belief.<sup>32</sup>
- 3.8.5** Conversion in a Muslim context is related to the question of apostasy – the renunciation of Islam. Seen from a historical perspective and in a theoretical framework, according to traditional Islamic law, the world is divided into Dar-al-Islam, territory under Muslim rule, and Dar-al-Harb, territory at war with Muslims. Consequently, conversion is primarily renunciation of Muslim unity and, in Muslim history it has been compared with high treason or associated with political rebellion or opposition. This thinking also explains why Christian evangelical work aimed at Muslims is either prohibited or subject to strong restrictions in the vast majority of Muslim countries.<sup>33</sup>
- 3.8.6** Former Muslims who have converted from Islam are frequently persecuted, ill-treated and prosecuted for their beliefs. According to Islamic tenets, Prophet Mohammad was the last prophet of God and Islam the last and ultimate religion on earth. Any conversion from Islam to other religions is forbidden and considered as an act of apostasy. Even if a person was not a Muslim before conversion to Islam, but decided to give up Islam and convert back to his/her previous religion or another religion, s/he would be considered apostate.<sup>34</sup>
- 3.8.7** In recent years, the Iranian government and clerical leadership have viewed apostasy as an increasing threat to the structure of Iranian society as the result of a perception that the rate of conversion is accelerating rapidly. Proselytising of Muslims by non-Muslims is illegal. Evangelical church leaders were subjected to pressure from authorities to sign pledges that they would not evangelise Muslims or allow Muslims to attend church services.<sup>35</sup>
- 3.8.8** A letter from the Foreign and Commonwealth Office (FCO) dated 30 April 2010 stated that: 'Under Iran's strict interpretation of Islam, anyone converting to another religion could face the death penalty or at least life imprisonment'.<sup>36</sup> Associated Press recently reported that Iran had arrested about 70 Christians since Christmas in a crackdown that has targeted grass-roots Christian groups Iran describes as "hard-liners" who pose a threat to the Islamic state.<sup>37</sup>

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<sup>31</sup> COIS Iran Country Report June 2011 (para 19.09) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>32</sup> COIS Iran Country Report June 2011 (para 19.10) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>33</sup> COIS Iran Country Report June 2011 (para 19.21) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>34</sup> COIS Iran Country Report June 2011 (para 19.50) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>35</sup> COIS Iran Country Report June 2011 (para 19.28) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>36</sup> COIS Iran Country Report June 2011 (para 19.20) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>37</sup> Associated Press Iran rounds up Christians in crackdown, 11 January 2011  
<http://www.washingtontimes.com/news/2011/jan/11/iran-rounds-christians-crackdown/>

- 3.8.9** On 30 September 2011 The Telegraph reported that for the first time in 20 years, the Islamic Republic of Iran had issued a formal death sentence for a Christian. Pastor Youcef Nadarkhani, leader of the Church of Iran denomination in Rasht, was arrested in October 2009 while seeking to register his church. He has been on death row since being found guilty of apostasy, conversion from Islam, in September 2010. Pastor Nadarkhani's appeal against this conviction came to a conclusion on Wednesday, September 28. Iran's Supreme Court had refused to overturn his death sentence, referring his case back to local judges in Rasht to decide whether Nadarkhani had been a practising Muslim before converting to Christianity, something which Nadarkhani denied. Judges in Rasht ruled that although Nadarkhani had not been a practising Muslim, his Islamic heritage made him guilty of apostasy.<sup>38</sup>
- 3.8.10** The Telegraph report further stated that there have been over 300 arrests of Christians in 35 cities across Iran since June 2010. Detainees are typically held in unsanitary prisons, sometimes in solitary confinement, with evidence of torture and interrogation tactics being used against them on account of their faith. Excessively high bail demands, some as great as £18,700, see title deeds to detainees' houses being given in return for their liberty. Those inmates whose families cannot meet these demands, such as Pastor Farshid Fathi, who was detained in a brutal crackdown against evangelical Christians over Christmas of last year, remain detained.<sup>39</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)  
[Internal relocation \(section 2.4 above\)](#)  
[Caselaw \(section 2.5 above\)](#)

- 3.8.11 *Conclusion.*** According to the case law (**SZ and JM**), one of the fundamental questions to be determined in each case is whether there is a real risk that a Christian convert has already or will come to the attention of the authorities.
- 3.8.12** Converts who can demonstrate that in Iran or in the UK they have and will continue to practise evangelical or proselytising activities because of their character or their affiliation to evangelical churches or who would wear in public outward manifestations of their faith such as a visible crucifix, will attract the adverse notice of the authorities on return to Iran and should be considered at risk of persecution. In such cases a grant of asylum will be appropriate.
- 3.8.13** Moreover, there may be some Christian converts who can demonstrate that they have come to the attention of the authorities previously for different reasons and this in combination with their conversion will put them at real risk of persecution. The conversion plus additional risk factors may compel the authorities to show an adverse interest in the individual where knowledge of the conversion in itself would not be of interest. Where applicants are able to demonstrate such a risk, a grant of asylum is likely to be appropriate.

### **3.9 Adulterers**

- 3.9.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state and non-state actors due to their adultery
- 3.9.2 *Treatment.*** Book 2 of the Islamic Penal Code of Iran defines adultery and refers to

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<sup>38</sup> The Telegraph, 'Iran's Christians urgently need the West's support' 30 September 2011  
<http://www.telegraph.co.uk/news/worldnews/middleeast/iran/8799149/Irans-Christians-urgently-need-the-Wests-support.html>

<sup>39</sup> The Telegraph, 'Iran's Christians urgently need the West's support' 30 September 2011  
<http://www.telegraph.co.uk/news/worldnews/middleeast/iran/8799149/Irans-Christians-urgently-need-the-Wests-support.html>

punishments for committing adultery (Articles 63 to 102). Punishments include flogging, stoning and, in certain situations, death.<sup>40</sup>

- 3.9.3** Adultery remained punishable by death by stoning, but there were no reported executions by stoning during the year [2010]. The law provides that a victim of stoning is allowed to go free if he or she escapes. It is much more difficult for women to escape as they are buried to their necks whereas men are buried only to their waists. According to AI [Amnesty International], 10 women and four men were at imminent risk for death by stoning at year's end [2010].<sup>41</sup>
- 3.9.4** The majority of those sentenced to death by stoning are women, who suffer disproportionately from such punishment. One reason is that they are not treated equally before the law and courts, in clear violation of international fair trial standards. The age of criminal responsibility for women is lower than that for men and a woman's testimony is worth only half that of a man. They are particularly vulnerable to unfair trials because in Iran they are more likely than men to be illiterate and more likely to sign confessions to crimes they did not commit. Discrimination against women in other aspects of their lives also leaves them more susceptible to conviction for adultery.<sup>42</sup>
- 3.9.5** The Global Campaign to Stop Killing and Stoning Women website stated that most stoning sentences in Iran are issued not on the basis of testimony or confession but on the judge's 'knowledge' or 'intuition'. Article 105 of the Islamic Penal code of Iran allows a single judge to rule according to his personal opinion instead of hard evidence. As a result, most if not all adultery cases are unfairly tried.<sup>43</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)  
[Internal relocation \(section 2.4 above\)](#)  
[Caselaw \(section 2.5 above\)](#)

- 3.9.6 Conclusion** Adultery, given traditional and societal attitudes, can attract treatment amounting to torture, degrading treatment, and/or the death penalty. The key considerations in cases where applicants claim to fear persecution due to adultery are whether they did indeed commit adulterous acts under the Iranian Penal Code; whether this was known or likely to be made known to the public and the Iranian authorities; and whether persecution and serious harm would be among the likely consequences of this public knowledge.
- 3.9.7** Where an individual is at risk of being prosecuted for adultery a grant of Humanitarian Protection or asylum will be appropriate. A male adulterer who has transgressed Iranian law cannot be regarded as facing persecution on account of his membership of a particular social group. However women are not treated equally before the law and may therefore face persecution on account of their membership of a particular social group and the grant of asylum in these circumstances may be appropriate

### **3.10 Gay men, lesbians, bisexual and transgender persons.**

**3.10.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state as gay men or lesbians in Iran.

**3.10.2 Treatment.** Iranian law criminalises all sexual relations engaged in outside the traditional bonds of marriage. Same-sex conduct, whether consensual or forced, is specifically addressed in Iran's penal code. According to Iran's Islamic Penal Code, same-sex crimes

<sup>40</sup> COIS Iran Country Report June 2011 (para 23.38) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>41</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

<sup>42</sup> COIS Iran Country Report June 2011 (para 23.41) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>43</sup> COIS Iran Country Report June 2011 (para 23.42) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

are subject to hudud, a class of punishment that is fixed pursuant to Shari'a or divine [Islamic] law, where the claimant is deemed to be God. Individuals convicted of engaging in same-sex conduct are subject to severe punishment, including the death penalty.<sup>44</sup>

- 3.10.3** Iran's Islamic Penal Code defines lavat (sodomy) as consummated sexual activity between males, whether penetrative or not. Same-sex relations between women, or mosaheqeh, are also punishable. In both cases, the accused may only be punished if they are determined to be mature, of sound mind, and willing participants.<sup>45</sup>
- 3.10.4** Same-sex intercourse between two men is punishable by death if it is determined that both partners meet these criteria. The manner of execution is at the judge's discretion. If an adult male is convicted of committing same-sex intercourse with a minor he is to be executed, while the minor shall receive up to 74 lashes unless it is determined that he has not willingly participated in the act. Minors convicted of engaging in same-sex intercourse with one another will receive up to 74 lashes unless one of them is deemed not to have willingly participated in the act.<sup>46</sup>
- 3.10.5** Gay acts have been persecuted on a more or less regular basis since the Islamic revolution. Since President Mahmoud Ahmadinejad has been in office there has definitely been an increase in this persecution. The mere suspicion that someone may have engaged in gay or lesbian acts is enough for that person to be sentenced to a flogging in Iran. If caught more than once, the person in question can be sentenced to death. According to official statistics, 148 gay men and lesbians have been given a death sentence and executed thus far. [The timescale and exact source for this statement are unclear. In comparison, for example, a BBC article dated 13 March 2008 reported that more than 4,000 gay men and lesbians had been executed in the country since the 1979 revolution.] The true figure is doubtless much larger than this. Gay men and lesbians are almost always charged with other crimes such as rape, fraud, or robbery in order to be better able to justify their execution.<sup>47</sup>
- 3.10.6** Human Rights Watch (HRW) reported that abuse against sexual minorities on Iran's streets can range from verbal insults and harassment to beatings, arbitrary arrests, and even sexual assault. Roundups of individuals hanging out in parks and suspected of being gay have been reported. Sometimes sexual minorities are taken to detention facilities run by the basij or police, processed, and forced to sign a document called a ta'hod (promise), in which they pledge, for example, not to congregate in specific areas or appear in public wearing makeup. They are then released, but may be subjected to verbal harassment and physical assault by the officers. However, most times security forces stop short of actually arresting or transferring the individuals to formal detention facilities, but harass or abuse them on the streets.<sup>48</sup>
- 3.10.7** HRW further noted that they had not uncovered evidence suggesting that abuses perpetrated by Iran's security forces are part of a systematic targeting campaign to identify and root out Iran's sexual minorities. However, research reveals that harassment, arbitrary arrest, and abuse perpetrated by security forces against Iran's sexual minorities on account of their public appearance are not uncommon. Some of these abuses ostensibly occur under the pretext of enforcing Iran's penal code, while others are carried out by renegade security forces who take the law into their own hands.<sup>49</sup>
- 3.10.8** The law defines transgender persons as mentally ill, encouraging them to seek medical help in the form of gender-reassignment surgery. The government provided grants of as much as

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<sup>44</sup> COIS Iran Country Report June 2011 (para 21.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>45</sup> COIS Iran Country Report June 2011 (para 21.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>46</sup> COIS Iran Country Report June 2011 (para 21.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>47</sup> COIS Iran Country Report June 2011 (para 21.08) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>48</sup> COIS Iran Country Report June 2011 (para 21.22) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>49</sup> COIS Iran Country Report June 2011 (para 21.23) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>



4.5 million toman (£2900) and loans of as much as 5.5 million toman (£3500) for transgender persons willing to undergo gender reassignment surgery. Human rights activists and NGOs reported that some members of the gay and bisexual community were pressured to undergo gender reassignment surgery to avoid legal and social persecutions in the country.<sup>50</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)  
[Internal relocation \(section 2.4 above\)](#)  
[Caselaw \(section 2.5 above\)](#)

**3.10.9 Conclusion.** Case owners must refer to the Asylum Instruction on sexual orientation and gender identity in the asylum claim.

**3.10.10** The country evidence is that gay rights activists, who come to the attention of the authorities, are in danger of persecution at the hands of the state and should be granted asylum.

**3.10.11** If there is a real risk that a gay man, lesbian or bisexual sexual relationship will come to the attention of the authorities, the applicant would on return to Iran face a real risk of persecution and, as gay men, lesbians and bisexuals in Iran may be considered to be members of a particular social group, should be granted asylum.

**3.10.12** If an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well-founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation. In this regard caseowners should consider carefully the country evidence about the homophobic culture that rules Iranian society and that gay men and lesbians face ostracism and abuse from their families, friends and acquaintances.

**3.10.13** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well-founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well-founded fear of persecution due to their sexual orientation.

### **3.11 Women**

**3.11.1** Some women applicants may make a claim for asylum because they fear gender-based persecution (where the type of harm is related to their gender) or because the reason for persecution is their gender.

**3.11.2 Treatment.** The constitution nominally provides women with equal protection under the law and all human, political, economic, social, and cultural rights in conformity with Islam. Provisions in the Islamic civil and penal codes, particularly sections dealing with family and property law, discriminate against women. Shortly after the 1979 revolution, the government replaced those laws that provided women with increased rights in the home and workplace with a legal system based largely on Shari'a practices.<sup>51</sup>

**3.11.3** Women in Iran have the right to vote and run for public office but are excluded from holding leadership roles in the main organs of power, such as the office of the supreme leader, the

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<sup>50</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

<sup>51</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

Assembly of Experts, the Guardian Council, the Expediency Council, the judicial branch, and the presidency. These positions have been reserved exclusively for men, most of whom are also clerics.<sup>52</sup>

- 3.11.4** Social and legal constraints limited women's professional opportunities. Women were represented in many fields, including the legislature, municipal councils, police and fire-fighters, but a woman must seek her husband's consent before working outside the home. According to a 2009 World Economic Forum report, the unemployment rate for women, who constituted 33 percent of the workforce, was 15.8 percent, compared with 9.3 percent for men. Cultural discrimination remained a factor; one member of parliament suggested that banning women from the workplace could solve the country's unemployment problems. Women cannot serve in many high-level political positions or as judges, except as consultant or research judges without the power to impose sentences.<sup>53</sup>
- 3.11.5** The government enforced gender segregation in most public spaces, including for patients during medical care, and prohibited women from mixing openly with unmarried men or men not related to them. Women must ride in a reserved section on public buses and enter public buildings, universities, and airports through separate entrances.<sup>54</sup>
- 3.11.6** Head and body coverings for women are mandatory under Article 638 of the penal code, which stipulates that those who fail to comply with hijab shar'è (Shari'a-based veiling) face 10 days to two months in prison or fines between 50,000 and 500,000 rials (£3- £30). The law lacks specificity on what constitutes a violation, but in practice, women have been punished for all of the following: showing part of one's hair, using cosmetics, wearing sunglasses, wearing a tight or short manteau (coat or gown), showing skin above the wrist or ankle, showing neckline, and wearing boots over (rather than under) trousers. No private plaintiff is necessary for prosecution, as it is the state's prerogative to monitor and control women's apparel. Harsher enforcement has increased the number of arbitrary arrests and detentions in recent years. Immediately following the revolution, observance of head coverings and modest dress for women was enforced by a special police service in all public places, and women were harassed, arrested, fined, and detained for violations. During the reform era under President Khatami (1997-2005), this enforcement was relaxed considerably although not eliminated. However, since 2006, male and female officers have stopped, verbally scolded, physically attacked, arrested, or temporarily detained thousands of women and some young men for wearing insufficiently modest clothing, or bad hijab.<sup>55</sup>
- 3.11.7** Even with sex segregation, discriminatory laws, and state policies stressing women's domestic duties, women in Iran play a considerable and very visible role in the public sphere. Using any available spaces and legal rights, they have demonstrated their activism in both formal and informal political and civil society organisations. A growing women's rights movement, especially in the past 10 years, has been challenging discriminatory laws and policies in various areas of life, including those that prevent women from taking part in high-level decision-making and political power. Women's activities have been constrained by some cultural traditions and state repression, especially under the presidency of Ahmadinejad.<sup>56</sup>
- 3.11.8** Women's rights defenders, who have been particularly active in recent years, faced reprisals for their peaceful activities before and during the 2009 election, and the pattern of repression persists. Among those particularly targeted have been supporters of the Campaign for Equality, a women's rights initiative launched in 2006. Its volunteers are collecting a million signatures demanding an end to legal discrimination against women in Iran, such as exclusion from key areas of the state, including standing for the presidency,

<sup>52</sup> COIS Iran Country Report June 2011 (para 23.19) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>53</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

<sup>54</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

<sup>55</sup> COIS Iran Country Report June 2011 (para 23.53) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>56</sup> COIS Iran Country Report June 2011 (para 23.22) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

and in the areas of marriage, divorce, child custody and inheritance. Even though the Campaign for Equality conducts its activities in full compliance with the law, the authorities have impeded its work and repressed its activists. They have regularly blocked access to the campaign's main website, frequently denied the group permission to hold public meetings, prevented activists from travelling abroad or summoned them for interrogation, and apparently been behind threatening phone calls.<sup>57</sup>

- 3.11.9** The law does not specifically prohibit domestic violence. Spousal abuse and violence against women occurred. According to a study published in 2008 using 2005 data, 52.7 percent of women reported being physically abused during their married lives.<sup>58</sup> Iran has no public or private shelters for abused women. Due to legal shortcomings, societal attitudes, and the very nature of such abuse, domestic violence remains a private hardship. Victims who turn to the police are treated no differently from those who are attacked by a stranger. They can be compensated through the diyeh [diyat] system of the penal code, provided they supply witnesses and medical reports. Victims of bodily injury may also seek out retribution under Article 273 of the penal code. Sexual harassment in public places is outlawed under Article 619 of the penal code, which generally prohibits verbal or physical harassment of women or children in public places. If convicted under this statute, offenders face two to six months in prison and up to 74 lashes.<sup>59</sup>
- 3.11.10** The legal age of consent is 13 for girls and 15 for boys, but a permit may be obtained for the marriage of even younger girls or boys upon the request of a father or paternal grandfather to the court. Very young or widowed women, particularly those living in provincial and rural areas, may be forced into marriage either out of poverty or based on traditional and tribal customs. Although men may also be forced into marriage by their families, rural girls are far more susceptible to such practices. The validity of a woman's first marriage is contingent upon the approval of her father or paternal grandfather, regardless of her age. If she has no father or grandfather, or can argue that they refused her choice without justification, the daughter may appeal to the court and register her marriage with the court's approval. Such restrictions do not apply to men. It is uncommon and largely undesirable for a young woman to marry without parental (especially the father's) approval, as it may ostracise her from her relatives and community.<sup>60</sup>
- 3.11.11** Only men are permitted to marry multiple spouses. They can take up to four wives and engage in an unlimited number of temporary marriages (sigheh or mutá). In reality, polygamy is not a common practice, and most people disapprove of sigheh. However, because sexual relationships outside of marriage are criminalised under Article 63 of the penal code, sigheh is occasionally used by members of the secular and nonconformist youth to avoid punishment for otherwise illicit sexual activity.<sup>61</sup> A man can marry as many women as he wants through temporary marriage. A woman cannot be involved in more than one temporary marriage at once, and cannot enter into a new temporary marriage before completing a waiting period mandated by law.<sup>62</sup> The government does not recognise marriages between Muslim women and non-Muslim men or Baha'i marriages.<sup>63</sup>
- 3.11.12** A woman has the right to divorce only if her husband signs a contract granting that right, cannot provide for his family, or is a drug addict, insane, or impotent. A husband was not required to cite a reason for divorcing his wife. Traditional interpretations of Islamic law recognised a divorced woman's right to part of shared property and to alimony. These laws were not enforced. According to a study by the National Organisation for Civil Registration, quoted in a book by a women's rights activist, more than 89 percent of women did not

<sup>57</sup> COIS Iran Country Report June 2011 (para 23.86) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>58</sup> COIS Iran Country Report June 2011 (para 23.73) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>59</sup> COIS Iran Country Report June 2011 (para 23.74) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>60</sup> COIS Iran Country Report June 2011 (para 23.74) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>61</sup> COIS Iran Country Report June 2011 (para 23.28) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>62</sup> COIS Iran Country Report June 2011 (para 23.34) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>63</sup> COIS Iran Country Report June 2011 (para 23.29) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

receive their due alimony. The law provides divorced women preference in custody for children up to age seven; divorced women who remarry are forced to give the child's father custody. After the child reaches age seven, the father is entitled to custody (unless the father has been proven unfit to care for the child). The court determines custody in disputed cases.<sup>64</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)  
[Internal relocation \(section 2.4 above\)](#)  
[Caselaw \(section 2.5 above\)](#)

**3.11.13 Conclusion** The evidence is that those actively involved in women's rights groups are at risk on return of arbitrary arrest and detention as well as smear campaigns in the state-run media, verbal and physical harassment, travel bans, and other forms of suppression. As such they are likely to qualify for asylum for reason of their imputed political opinions.

**3.11.14** Iran is a strongly patriarchal society and despite some advances in the general position of women they remain discriminated against both in law and tradition. Women who have a well-founded fear of persecution as a result of their gender should be treated as being members of a particular social group as they are discriminated against in matters of fundamental human rights and may not be protected by the state. Women applicants who can demonstrate that they have a well-founded fear of persecution as a result of their gender and that they have no recourse to state protection or internal relocation should be granted asylum.

### **3.12 Kurds and supporters of Kurdish political parties (KDPI, Komala, or PJAK)**

**3.12.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state due to their ethnicity or political affiliation.

**3.12.2 Treatment.** The Kurdish population is one of the largest ethnic minority groups in Iran. The number of Kurds in the country varies considerably according to the available sources. The estimate ranges from five to twelve million people out of a total Iranian population of an estimated 70.5 million. The vast majority of the Kurds in Iran live in the mountainous region of Western Iran from the Turkish and Iraqi borders in the west to Lake Urumieh in the north east. The area covers approximately 95,000 square kilometres. The only province that is governmentally recognised as Kurdish is the province of Kurdistan. However, the area that is often called Iranian Kurdistan extends from Kurdistan province in the central area to Western Azerbaijan province in the north and Kermanshah province in the southern area.<sup>65</sup>

**3.12.3** Kurds are particularly vulnerable as a minority population in Iran for two main reasons: some Kurds have a long history of struggle for national autonomy in Iran and they are mostly Sunni Muslims (a minority in Shi'a Iran). The border areas they inhabit are relatively underdeveloped and they have suffered from violent repression before and since the [1979] revolution. The Islamic Republic of Iran has continued a pattern established by previous regimes of creating a strong centralised state that is intolerant of ethnic dissidents.<sup>66</sup> Although there are no specific anti-Kurdish laws in the constitution, the authorities find pretexts for persecuting Kurds who openly and non-violently profess their group identity. Once arrested many have experienced violations of due process that contravene Iranian law and fall far below international standards. Kurds are also denied rights to teach their language, and they face discrimination with respect to housing, public education and

<sup>64</sup> COIS Iran Country Report June 2011 (para 23.45) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>65</sup> COIS Iran Country Report June 2011 (para 20.08) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>66</sup> COIS Iran Country Report June 2011 (para 20.10) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

employment.<sup>67</sup> In the north-western provinces of Azerbaijan and Kurdistan, the government restricts cultural and political activities, including the organisations that focus on social issues. The government also restricts these minorities from promoting their cultures and languages.<sup>68</sup>

- 3.12.4** Although strong feelings of nationalism remain among some of the Kurds in Iran, most Kurds express their identity non-violently. However, journalists and historians who publish their thoughts or opinions on Kurdish nationalism have been tried, imprisoned and often sentenced to death. They are usually convicted of enmity with God<sup>69</sup>, a vague charge that is often used by the regime to silence its critics.<sup>69</sup>
- 3.12.5** The KDPI [Kurdish Democratic Party of Iran] supported the overthrow of the Shah and many Kurds participated in the 1979 revolution, but they were quickly marginalised by the new regime. When a popular referendum was held to vote on the creation of an Islamic Republic, most Kurds boycotted the vote. They objected to the draft constitution, which did not mention the Kurds or make provision for regional autonomy. Shortly thereafter, the KDPI helped to organise a rebellion in the region. The uprising was met with brutal violence. Human Rights Watch reported that more than 271 Iranian Kurdish villages were destroyed and depopulated between 1980 and 1992. An estimated 10,000 Kurds were killed in the two years after the revolution.<sup>70</sup>
- 3.12.6** The second main Kurdish party is Komala, who after the 1979 revolution, took up arms against the central government in an attempt to gain Kurdish independence. Komala unilaterally laid down its arms in the 1990s. According to Hassan Rahmanpanah, a member of Komala's central committee, the group did so after realising that government authorities were using the existence of an armed opposition as an excuse for suppressing the peaceful work of a range of activists. The Iranian government has not since alleged any armed activities by Komala members or sympathisers.<sup>71</sup>
- 3.12.7** Iranian Kurdish parties have also consistently fractured and there have been major splits in both the KDPI and Komala since early 2007. In December 2006 a significant number of members in the KDPI broke away, renaming themselves KDP (removing Iran from the name of the Party and returning to the original name as established in 1945). The change of name not only distinguishes the new party from the old but also relates to its more broadly nationalist approach.<sup>72</sup>
- 3.12.8** The Free Life Party of Kurdistan (PJAK), a separatist militant group linked to the Kurdistan Workers Party (PKK) of Turkey, has conducted a number of guerrilla attacks in recent years and was declared a terrorist organisation by the United States in 2009. Iranian efforts to combat the PJAK have included raids into Kurdish territory in neighbouring Iraq.<sup>73</sup> PJAK is the only group currently engaged in armed struggle against the Iranian government the KDPI and other Kurdish parties claim that they have no relationship with PJAK.<sup>74</sup>
- 3.12.9** Kurdish opposition groups suspected of separatist aspirations, such as the Democratic Party of Iranian Kurdistan (KDPI), are brutally suppressed.<sup>75</sup>
- 3.12.10** Politically active groups and individuals are considered a threat to national security by the Iranian government. If the Iranian authorities consider a person to be working against national security, (the person may for example be accused of being a spy or of cooperating

<sup>67</sup> COIS Iran Country Report June 2011 (para 20.13) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>68</sup> COIS Iran Country Report June 2011 (para 20.14) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>69</sup> COIS Iran Country Report June 2011 (para 20.11) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>70</sup> COIS Iran Country Report June 2011 (para 20.11) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>71</sup> COIS Iran Country Report June 2011 (para 15.86) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>72</sup> COIS Iran Country Report June 2011 (para 15.85) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>73</sup> COIS Iran Country Report June 2011 (para 15.94) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>74</sup> COIS Iran Country Report June 2011 (para 15.92) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>75</sup> COIS Iran Country Report June 2011 (para 15.84) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

with an oppositional religious, ethnic or political group), they may face severe punishment ranging from ten years imprisonment to execution. For instance, being in possession of a CD, a pamphlet or something similar made by the Kurdish Democratic Party of Iran (KDPI), Komala or other Kurdish organisations, may be considered as an act against national security. This form of persecution for political activities is a problem all over Iran. However, the authorities are watching Kurdish areas and Tehran more carefully than other areas.<sup>76</sup>

**3.12.11** Charges made against Kurdish activists often include allegations of unspecified breaches of national security or violating morality, which create a legal exemption from honouring human rights protections outlined in the constitution. For example, freedom of expression is allowed, except when it is detrimental to the fundamental principles of Islam or the rights of the public. Activities that count as being against Islam or the Islamic Republic can be very broadly defined to suit the purposes of the local or national government. Such charges are used as a pretext for cracking down on criticism, activism or dissent of any kind.<sup>77</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)  
[Internal relocation \(section 2.4 above\)](#)  
[Caselaw \(section 2.5 above\)](#)

**3.12.12 Conclusion** There is no evidence to suggest that an applicant of Kurdish ethnic origin, in the absence of any other risk factor, would on return face a real risk of serious mistreatment simply on account of his or her ethnic origin alone. Applicants who are able to demonstrate that they are members or supporters of the KDPI, Komala, or active members of PJAK, and who are known to the authorities as such, will be at real risk of persecution and a grant of asylum will be appropriate unless there are case-specific reasons why it would not be.

**3.12.13** Caseowners should also have regard to the fact that members of PJAK have been responsible for serious human rights abuses. If it is accepted that an applicant was an active operational member or combatant for PJAK and the evidence suggests that he/she has been involved in such actions, case owners should consider whether they fall to be excluded from the 1951 Refugee Convention under Article 1F. Case owners should refer all such cases to a Senior Caseworker in the first instance.

### **3.13 Smugglers**

**3.13.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state due to their criminal activities.

**3.13.2 Treatment.** The Islamic Republic of Iran is a major transit route for opiates smuggled from Afghanistan through Pakistan to the Persian Gulf, Turkey, Russia, and Europe. A large share of opiates leaving Afghanistan (at least 40 percent) transits Iran for domestic consumption as well as to consumers in Russia and Europe.<sup>78</sup>

**3.13.3** In 2010 Amnesty International noted an increased use of the death penalty against alleged drugs offenders. In October, the Interior Minister stated that the campaign against drug trafficking was being intensified, and the Prosecutor General stated in the same month that new measures had been taken to speed up the judicial processing of drug-trafficking cases, including by referring all such cases to his office, thereby denying them a right to appeal to a higher tribunal, as is required under international law.<sup>79</sup>

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<sup>76</sup> COIS Iran Country Report June 2011 (para 15.83) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>77</sup> COIS Iran Country Report June 2011 (para 20.16) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>78</sup> COIS Iran Country Report June 2011 (para 8.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>79</sup> COIS Iran Country Report June 2011 (para 8.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 3.13.4** A new Anti-Narcotics law was passed in December 2010 and came into force on 4 January 2011. Article 18 provides for the death penalty for drug traffickers and major traders and also foresees punishment ranging from one to fifteen years travel ban for carrying or smuggling any quantity of drugs. The new law classes drug addicted persons as criminals unless they are in possession of a certificate of treatment. On 27 December 2010, the Deputy Prosecutor General for Legal Affairs warned of a stricter approach in dealing with drug trafficking and stressed that drug traffickers and major drug traders will face execution under the new anti-narcotics law.<sup>80</sup>
- 3.13.5** Some sources estimate that Iran has executed 10,000 drug traffickers since the revolution of 1979, although a number of these are alleged to have been political dissidents who were charged with drug crimes. The country issued a judicial ban on executing minors for drug offences in late 2008.<sup>81</sup>
- 3.13.6** In 2010 Amnesty International received a series of credible reports that hundreds of alleged drug traffickers were being executed in secret in Vakilabad Prison, Mashhad. Those executed appeared to be amongst the most vulnerable sectors of society.<sup>82</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)  
[Internal relocation \(section 2.4 above\)](#)  
[Caselaw \(section 2.5 above\)](#)

- 3.13.7 Conclusion** Persons fleeing from prosecution or punishment for an offence are not normally refugees. Prosecution, however, can be considered persecution if it involves victimisation in its application by the authorities. Punishment which is cruel, inhuman or degrading (including punishment which is out of all proportion to the offence committed) may also constitute persecution. Few applicants will be able to demonstrate that they would be subject to a disproportionate punishment as a result of their criminal activities. However, for individuals who are able to demonstrate that they face the death penalty or a real risk of suffering severe punishment which is meted out to some smugglers in Iran a grant of Humanitarian Protection may be appropriate.
- 3.13.8** Caseowners should also have regard to the fact that a person's criminal activities may mean that they fall to be excluded from the 1951 Refugee Convention under Article 1F and that a grant of Humanitarian Protection or Discretionary Leave would not be appropriate. Such cases should be referred to a Senior Caseworker.

### **3.14 Former members of state security organisations**

- 3.14.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state due to their previous membership of state security organisations (such as the IRGC, Pasdaran or Basij) and having spoken out against abuses committed by those organisations.
- 3.14.2 Treatment.** Law enforcement in Iran is performed by a number of groups. The key duties fall to the Iranian police, the Intelligence Ministry, the Iranian Revolutionary Guard Corps and the Basij government-sponsored militia. The actions of each of these branches in the postelection protests of 2009 contributed to a climate of fear surrounding their activities and greatly reduced the confidence of ordinary Iranian citizens in their ability to enforce the law impartially.<sup>83</sup>

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<sup>80</sup> COIS Iran Country Report June 2011 (para 8.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>81</sup> COIS Iran Country Report June 2011 (para 8.05) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>82</sup> COIS Iran Country Report June 2011 (para 8.07) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>83</sup> COIS Iran Country Report June 2011 (para 9.07) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 3.14.3** Iran's Islamic Revolution Guards Corps (IRGC) was set up shortly after the 1979 Iranian revolution to defend the country's Islamic system, and to provide a counterweight to the regular armed forces. It has since become a major military, political and economic force in Iran, with close ties to the Supreme Leader, Ayatollah Ali Khamenei, and President Mahmoud Ahmadinejad, a former member. It also controls the paramilitary Basij Resistance Force and the powerful bonyads, or charitable foundations, which run a considerable part of the Iranian economy.<sup>84</sup>
- 3.14.4** The Islamic Revolutionary Guards Corps (IRGC), commonly known as the Pasdaran (Guardians), is composed of five main branches; Ground Forces, Air Force, Navy, Basij militia and the Qods Force special operations branch. There is also an Intelligence Directorate. The IRGC has a cultural and military mission. Its cultural role is in safeguarding the achievements of the Islamic Revolution, while its military role lies in supporting the regular forces when required. Because of its dual political and military role, the IRGC also has an internal security role, which includes local intelligence gathering; this role has grown in importance since the end of the war with Iraq. While co-operation between the IRGC and the national police is institutionalised, it is best to treat the IRGC predominantly as a military land force that parallels the regular army.<sup>85</sup>
- 3.14.5** There are also reports that the Revolutionary Guards have increased their already substantial stake in Iran's economy, with the purchase of a majority stake in the main telecommunications company. The Guards are thought to control around a third of Iran's economy through a series of subsidiaries and trusts. The Guards engineering wing, Khatam-ol-Anbia (also known by an acronym, GHORB), has been awarded several multi-billion-dollar construction and engineering contracts, including the operation of Tehran's new Imam Khomeini international airport.<sup>86</sup>
- 3.14.6** Known as the 'Mobilisation of the Oppressed', the Basij volunteer force is a paramilitary militia organised throughout Iran under the tutelage of the Islamic Revolutionary Guards Corps (IRGC). Basij personnel are the eyes and ears of the Islamic regime and are considered extremely loyal. The Basij have branches in virtually every city and town in Iran.<sup>87</sup> The Basij has taken a very active role in Iran's domestic security affairs. It maintains a formal presence in all government offices, universities, schools, trade associations, hospitals and factories. Formed on the orders of the Ayatollah Khomeini in November 1979 after the US Embassy siege, the Basij militia is designed to defend the Islamic republic against internal enemies and foreign intervention. Now apparently based at more than 70,000 locations nationwide, members of the Basij are organised into five main elements: the Pupil Basij, the Student Basij, the University Basij, the Public Service Basij and the Tribal Basij. The diverse range of these units demonstrates the various roles of the militia, and the fact that the aim of the Basij is not just to forge a paramilitary force, but to reinforce support for the regime through ideological dissemination.<sup>88</sup>
- 3.14.7** Since the disputed June 12, 2009 elections, human rights and religious freedom conditions in Iran have regressed to a point not seen since the early days of the Islamic revolution. Killings, arrests, and physical abuse of detainees have increased.<sup>89</sup> Although the constitution prohibits arbitrary arrest and detention, these practices continued during the year [2010].<sup>90</sup> Arbitrary arrest and detention are increasingly routine and family members of detainees are often not notified for days or weeks. Suspected dissidents are frequently held in unofficial, illegal detention centres. Prison conditions in general are notoriously poor, and

<sup>84</sup> COIS Iran Country Report June 2011 (para 9.09) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>85</sup> COIS Iran Country Report June 2011 (para 9.11) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>86</sup> COIS Iran Country Report June 2011 (para 9.13) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>87</sup> COIS Iran Country Report June 2011 (para 9.19) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>88</sup> COIS Iran Country Report June 2011 (para 9.23) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>89</sup> COIS Iran Country Report June 2011 (para 9.10) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>90</sup> COIS Iran Country Report June 2011 (para 9.33) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>



there are regular allegations of abuse, torture, and death in custody.<sup>91</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)  
[Internal relocation \(section 2.4 above\)](#)  
[Caselaw \(section 2.5 above\)](#)

**3.14.8 Conclusion** There is a real risk that those members of the internal security and intelligence services who have spoken out against abuses committed by those organisations and have come to the attention of the authorities would on return to Iran face a real risk of persecution and should be granted asylum for reason of his or her political opinion.

**3.14.9** Depending on the particular circumstances, former members of the internal security and intelligence services who are perceived to have spoken out against abuses committed by those organisations may similarly face a real risk of persecution or ill-treatment on return. Caseowners must consider carefully whether the personal circumstances of the individual concerned are such that he or she would face a real risk of persecution on return to Iran.

**3.14.10** Those applicants who have been members of the IRGC or Basij may have been witness to abuses and/or taken part in abuses whilst they were members. If it is accepted that the applicant was an active operational member of the IRGC or Basij and has been involved in such actions, case owners should consider whether the claimant falls to be excluded from the 1951 Refugee Convention under Article 1F. Case owners should refer all such cases to a Senior Caseworker in the first instance.

### **3.15 Prison conditions**

**3.15.1** Applicants may claim that they cannot return to Iran due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Iran are so poor as to amount to torture or inhuman treatment or punishment.

**3.15.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

**3.15.3 Consideration** Prison conditions were poor. There were frequent water shortages and sanitation problems. Prisoners were frequently subjected to harassment and discrimination. Many prisoners were held in solitary confinement or were denied adequate food or medical care as a way to force confessions. Overcrowding was a significant problem, forcing many prisoners to sleep on the floor.<sup>92</sup>

**3.15.4** According to a statement by the Student Committee in Defense of Political Prisoners (SCDPP) on 11 June 2010, Ward 4 of Gohardasht Prison (also known as Rajai Shahr) held more than 800 prisoners, but had a capacity for 240, with no bathrooms and only eight toilets. Numerous prisoners complained that authorities intentionally exposed them to extreme cold for prolonged periods and said they lacked access to medical care in prison. AI and Reporters Without Borders (RSF) reported on 16 July 2010 that many prisoners have had heart attacks or other cardiac problems in different prisons, especially Evin and Gohardasht. RSF also noted that prison authorities refused to transfer ailing prisoners to

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<sup>91</sup> COIS Iran Country Report June 2011 (para 9.34) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>92</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

hospitals even when the prisoners urgently needed treatment that can only be provided outside a prison and even when the prison doctors themselves recommended it.<sup>93</sup>

- 3.15.5** On 7 January 2010, the parliamentary special committee investigating reports of torture and abuse of postelection detainees in Kahrizak Detention Center in 2009 submitted its final report, which placed responsibility for the beating deaths of three detainees on then prosecutor general Saeed Mortazavi. Authorities transferred Mortazavi to head the country's task force against smuggling. On 22 August 2010, pro-government news sources reported that authorities had also suspended three top judicial officials at the Tehran prosecutor's office in connection to the case. In late July 2009 Supreme Leader Khamenei ordered Kahrizak detention center closed.<sup>94</sup>
- 3.15.6** In June 2010 the UK-based International Centre for Prison Studies reported that more than 166,000 prisoners in the country occupied facilities constructed to hold no more than 98,000 persons (170 percent of official capacity). There were reports of juvenile offenders detained with adult offenders. Pre-trial detainees occasionally were held with convicted prisoners. Political prisoners were often held in separate prisons or wards--such as Evin Prison, especially Ward 240, and Ward Eight of Gohardasht Prison, known as the IRGC ward--or in isolation for long periods of time. Human rights activists and international media also reported cases of political prisoners confined with violent felons.<sup>95</sup>
- 3.15.7** The government did not permit independent monitoring of prison conditions by any outside groups, including UN groups or special rapporteurs. A parliamentary committee investigating prison conditions paid a visit to Evin Prison in July 2009 and issued its report on January 10. According to press reports, the committee called for a complete investigation and blamed prosecutor Mortazavi for the rape and torture that took place in the prison. At the same time, the committee also blamed opposition candidates Mehdi Karroubi and Mir Houssein Mousavi for fomenting abuse; both previously expressed concern about sexual abuse in Evin Prison. The report claimed that reported sexual assaults did not occur, despite the testimony of numerous witnesses.<sup>96</sup>
- 3.15.8 Conclusion** Prison conditions in Iran are poor but in general are unlikely to reach the Article 3 threshold. Therefore, even where applicants can demonstrate a real risk of imprisonment on return to Iran a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be carefully considered to determine whether detention will cause a particular individual in his or her particular circumstances to suffer treatment contrary to Article 3, relevant factors being the reasons for detention, the likely length of detention, the likely type of detention facility, and the individual's gender, age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.
- 3.15.9** Prison conditions for political prisoners and perceived members of the political opposition in Iran are more severe and taking into account that political prisoners may be held in unofficial detention centres or prisons outside judicial control without access to legal defence and suffer violations of freedom of expression and other abuses, conditions for political prisoners and perceived members of the political opposition in Iran are likely to reach the Article 3 threshold. However as the imprisonment is related to one of the five Refugee Convention grounds – political, or perceived political opinion - a grant of asylum will be appropriate.
- 3.15.10** Where case owners believe that an individual is likely to face imprisonment on return to Iran they should also consider whether the applicant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where case owners consider that this may be the case they should contact a senior caseworker for further guidance

<sup>93</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

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<sup>96</sup> US State Department Human Rights Report 2010: Iran <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154461.htm>

#### **4. Discretionary Leave**

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Iran the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Iran. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.
- 4.4 Medical treatment**
- 4.4.1** Applicants may claim they cannot return to Iran due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** Iran's health outcomes have improved greatly over the past twenty years, standing currently above regional averages. Key to this success is effective delivery of primary health care. As a result of the prioritisation and effective delivery of quality primary health care, health outcomes in rural areas are almost equal to those in urban areas, with outcomes in terms of infant and maternal mortality nearly identical between urban and rural areas.<sup>97</sup>
- 4.4.3** There are two types of hospitals in Iran, private and governmental. Depending on the circumstances, both private and government hospitals can be used by anyone, although treatment can be considerably cheaper at a government run hospital. As in the UK, private hospitalisation, treatment and operations can be very expensive in Iran. If the patient belongs to a social security scheme whereby an employer pays the subscriptions for the employee, this then entitles them to subsidised medical treatment and medication. This insurance cover applies to all government hospitals and some private hospitals too.<sup>98</sup>
- 4.4.4** In Tehran and all other larger cities such as Shiraz and Isfahan there are many well reputed hospitals. These are staffed by physicians and specialists, most of whom are very experienced and internationally trained. There is an extensive range of specialist care found in Tehran, both in the private and governmental sector.<sup>99</sup>
- 4.4.5** For complex medical conditions where treatment is not available locally, the patients can apply to the Supreme Medical Council for financial assistance towards payment of medical

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<sup>97</sup> COIS Iran Country Report June 2011 (para 26.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>98</sup> COIS Iran Country Report June 2011 (para 26.05) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>99</sup> COIS Iran Country Report June 2011 (para 26.05) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

expenses overseas. The Supreme Medical Council consists of a group of specialist doctors who assess and examine each case to determine whether such assistance in funding should be allocated.<sup>100</sup>

**4.4.6** Iran has a rather developed pharmaceutical production capability but the country still relies on importations of raw materials and many specialised drugs. The Ministry of Health has the mission to provide access to sufficient quantities of safe, effective and high quality medicines at an affordable price for the entire population. Since the 1979 revolution, Iran has adopted a full generic-based National Drug Policy, with the local production of essential drugs and vaccines. Therefore, apart from very rare and special medicines, all medications are available in Iran. There are many private pharmacies all over the country. There are also four major governmental pharmacies that would provide any kind of prescribed medicine, but in small quantities to avoid the creation of [a] black market. There are thousands of pharmaceutical facilities in Tehran and hundreds more around the country.<sup>101</sup>

**4.4.7** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

**5.1** There is no policy which precludes the enforced return to Iran of failed asylum seekers who have no legal basis of stay in the United Kingdom.

**5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

**5.3** Iranian nationals may return voluntarily to any region of Iran at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

**5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Iran. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Iranian nationals wishing to avail themselves of this opportunity for assisted return to Iran should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

[www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx](http://www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx)

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<sup>100</sup> COIS Iran Country Report June 2011 (para 26.05) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>101</sup> COIS Iran Country Report June 2011 (para 26.10) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Country Specific Litigation Team  
Immigration Group  
UK Border Agency  
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