



# OPERATIONAL GUIDANCE NOTE

## AZERBAIJAN

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## 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Azerbaijan and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Policy Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Azerbaijan Country of Origin Information at:
- [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance set out below. 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 API on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers 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.

## Source documents

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

## 2. Country assessment

- 2.1** Azerbaijan is a republic of approximately 7.9 million persons with a presidential form of government. Ilham Aliyev, the son of former president Heydar Aliyev, was elected president in October 2003 in an election that did not meet international standards.<sup>1</sup>
- 2.2** The unicameral Parliament of Azerbaijan (Milli Majlis) consists of 125 members. The Parliamentary elections of November 2005 were the first elections organised after the 2002 Constitutional amendment that eliminated the proportional list element of the elections. As a result, all 125 members of Parliament are now elected in single mandate constituencies according to the “first past the post” system.<sup>2</sup>
- 2.3** The November 2005 Parliamentary Elections did not meet a number of Council of Europe commitments and standards for democratic elections. While there were improvements in some respects during the pre-election period, shortcomings were evident with regard to key aspects of the process such as voter registration, and continued restrictions on freedom of assembly which marred the campaign period. Voting was generally calm, but the Election Day process deteriorated progressively during the counting and, in particular, the tabulation of the votes. High level state authorities expressed the political will to improve the overall election process, as reflected in two presidential decrees. However, incoherent implementation by executive authorities, most notably with regard to provisions prohibiting interference by the authorities in the election campaign, or the abuse of administrative resources in favour of certain candidates, undermined the effectiveness of these decrees.<sup>3</sup>
- 2.4** However, since the elections the Azerbaijani government responded to international calls to rectify falsifications on election day by cancelling the results in several election districts, firing several local officials, and detaining four others.<sup>4</sup>
- 2.5** Azerbaijan has ratified a number of human rights instruments and in recent years the Government of Azerbaijan has taken some positive steps in the area of human rights including: The abolition of the death penalty (February 1998); the removal of censorship (August 1998); regular amnesties for prisoners; the establishment of an Ombudsman's Office (June 2002) and the establishment of a Constitutional Court. In December 2002, former President Heydar Aliyev signed the Constitutional Law on Regulating the Exercise of Human Rights and Freedoms in the Azerbaijan Republic (the 'Constitutional Law'). The object of the law was to bring into correspondence with the European Convention of Human Rights (ECHR) the exercise of human rights and freedoms in Azerbaijan.<sup>5</sup>
- 2.6** However, despite the positive steps noted above, the government's human rights record remained poor during 2005, and it continued to commit numerous abuses including: restrictions on the right of citizens to peacefully change their government, torture and beating of persons in custody, leading to four deaths, arbitrary arrest and detention, particularly of political opponents, police impunity and pervasive corruption in the judiciary.<sup>6</sup>
- 2.7** While censorship was formally abolished in 1998, the Government still exerted tremendous control over the media. The electronic media continued to be controlled by the State or people close to Government. In 2004, the authorities and serving (or former) government officials continued to bring large numbers of libel cases against journalists and newspapers critical of the Government. The expense of defending these cases threatens the commercial viability of the newspapers. In March 2005, Azerbaijan was shocked by the murder by persons unknown of prominent journalist and critic Elmar Huseynov. The Government of Azerbaijan has declared the murder a ‘terrorist act’.<sup>7</sup>

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<sup>1</sup> USSD 2005 (Introduction)

<sup>2</sup> CoE November 2005

<sup>3</sup> CoE November 2005

<sup>4</sup> HRW 2006

<sup>5</sup> FCO Country Profile 2005

<sup>6</sup> USSD 2005 (Introduction)

<sup>7</sup> FCO Country Profile 2005

- 2.8** Despite the adoption of new legislation designed to speed up the registration process, the Ministry of Justice continues to deny registration to many local human rights NGOs, hampering their work. On the positive side, prison conditions, while still poor, are generally acknowledged to have improved since Azerbaijan's accession to the Council of Europe.<sup>8</sup>

### **Nagorno-Karabakh**

- 2.9** The present phase of the Nagorno-Karabakh (NK) conflict began in 1988 after the Regional Soviet of Nagorno-Karabakh adopted a resolution on the transfer of N-K to Armenia. Following the break-up of the Soviet Union, N-K declared its independence. Azerbaijani forces then attempted to re-establish control but met fierce resistance. On 12 May 1994 a cease-fire was brokered in direct talks between Armenia and Azerbaijan and on 27 July 1994 the Armenian and Azerbaijani Defence Ministers and the Commander of the Nagorno-Karabakh Army signed an agreement consolidating it. With the exception of minor violations the cease-fire has held. Armenia, Azerbaijan and the authorities in Nagorno-Karabakh have all confirmed their readiness to continue it indefinitely until a political agreement is concluded. The number of deaths in the conflict probably exceeded 15,000 with at least 900,000 Azerbaijanis and 300,000 Armenians displaced.<sup>9</sup>
- 2.10** Armenian forces continue to occupy an estimated 16 percent of Azerbaijan's territory, including Nagorno-Karabakh. The Azerbaijani government did not exercise any control over developments in territories occupied by Armenian forces.<sup>10</sup> Minor outbreaks of fighting with Armenia over Nagorno-Karabakh occurred with increasing frequency, resulting in deaths of 24 civilians and combatants during 2005.<sup>11</sup>

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

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Azerbaijan. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. 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 API's, 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 claimant 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 API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant 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** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

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<sup>8</sup> FCO Country Profile 2005

<sup>9</sup> FCO Country Profile 2005

<sup>10</sup> USSD 2005 (Introduction)

<sup>11</sup> USSD 2005 (Section 1)

3.5 All APIs can be accessed via the IND website at:

<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

**3.6 Ethnic minorities: Armenians and those with mixed Armenian and Azerbaijani ethnicity and those involved in a mixed marriage**

3.6.1 Most claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Azerbaijani authorities due to their ethnicity/mixed ethnicity or involvement in a mixed marriage.

3.6.2 **Treatment.** The law provides for equal rights without respect to gender, race, language, disability, or social status, but the government did not always respect these provisions or effectively enforce them. Discrimination against ethnic Armenians was a problem in 2005.<sup>12</sup>

3.6.3 Many of the approximately 20,000 citizens of Armenian descent living in the country complained of discrimination in employment, schooling, housing, the provision of social services, and other areas. Azerbaijani citizens who were ethnically Armenian often concealed their ethnicity by legally changing the ethnic designation in their passports.<sup>13</sup>

3.6.4 While official government policy allowed ethnic Armenians to travel, low-level officials often extracted bribes or harassed Armenians who applied for passports. According to the International Organization for Migration (IOM), some Armenians of mixed descent reported to a local NGO that they had problems with officials in the passport and registration department when applying for identification cards; applicants who applied with Azerbaijani surnames encountered no problems except for having to pay bribes.<sup>14</sup>

3.6.5 **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.6.6 **Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities' relocation to a different area of the country to escape this threat is not feasible.

**3.6.7 Caselaw.**

**[2002] UKIAT03404 HX-31127-2001 Date heard: 12 June 2002 Date notified: 2 August 2002** The Tribunal took the view that the appellant is not at risk of persecution from the fact alone of being of Armenian ethnic origin. It is the individual factors of this particular case that put the appellant at risk on return. The IAT were not concerned with the situation in general save in so far as it impacts upon the risk to the appellant.

**[2002]UKIAT01257 HX-04173-2001 Date heard: 25 March 2002 Date notified: 29 April 2002** The IAT found that there may in the country at large be some discrimination against ethnic Armenians for a variety of reasons but the evidence does not establish that it is generally evident on a day-to-day basis or sufficient to cross the threshold of severity required for persecution. Our findings as to the background context are as stated above and lead us to the conclusion that an ethnic Armenian cannot now establish, even to the low standard of proof applicable, a well founded fear of persecution on return to Azerbaijan on the grounds of ethnicity per se. Of course each case must turn on its own facts and some may have merit.

3.6.8 **Conclusion.** There is some societal discrimination against ethnic Armenians, those of mixed ethnicity or those involved in mixed marriages in the areas of employment, schooling and housing. However, in general this discrimination does not amount to persecution and

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<sup>12</sup> USSD 2005 (Section 5)

<sup>13</sup> USSD 2005 (Section 5)

<sup>14</sup> USSD 2005 (Section 2)

will not breach Article 3 of the ECHR. Considering the above and the findings of the IAT a grant of asylum or Humanitarian Protection for claims based on persecution due to Armenian and/ or mixed ethnicity will not be appropriate.

### 3.7 Organised crime and corruption

**3.7.1** Some claimants will seek protection on account of ill treatment amounting to persecution or breaching their human rights at the hands of organised criminal gangs or corrupt officials and that the authorities can not offer sufficiency of protection.

**3.7.2 *Treatment.*** The law penalises corruption by outlawing bribery, however, there was widespread public perception of corruption throughout all facets of society, including the civil service, government ministries, and the highest levels of government. According to the prosecutor general's office, a number of criminal cases related to corruption were opened during 2005, specifically on bribery charges, however, these cases had little or no impact on the prevalence of bribery and corruption in the country.<sup>15</sup>

**3.7.3** In January 2005 a new anti-corruption law came into force that required public officials to report annual income, sources of income, property owned, and financial liabilities. It also prohibited nepotism and limited giving gifts and direct or indirect financial benefits to public officials or third parties however, this law is not applied.<sup>16</sup>

**3.7.4** The law provides for public access to government information by individuals and organisations, however, the government often did not provide access during 2005. Although government ministries have separate procedures on how to request information, they routinely denied requests, claiming not to possess the information. Individuals have the right to appeal the denials in court however, the courts generally upheld the decisions of the ministries.<sup>17</sup>

**3.7.5** Corruption within law enforcement organisations was a problem during 2005. Police often levied spurious, informal fines for traffic and other minor violations and extracted protection money from local residents. In 2004 and again during 2005, traffic police officers received a substantial pay raise to counter corruption, nevertheless, the low wages of other law enforcement officials continued to contribute to police corruption. The Ministry of internal Affairs (MIA) reported that during 2005 it opened 189 investigations into internal police corruption and prosecuted 142 of these.<sup>18</sup>

**3.7.6 *Sufficiency of protection.*** The high levels of corruption in Azerbaijan may limit the effectiveness of any protection that the authorities are able or willing to offer.

**3.7.7 *Internal relocation.*** The law provides for freedom of movement, although at times this was restricted by the authorities, particularly for internally displaced persons (IDPs).<sup>19</sup> Internal relocation to another part of the Azerbaijan may be an option where the claimant fears corrupt local police or local criminal gangs.

**3.7.8 *Conclusion*** The government has passed legislation to tackle corruption and has taken steps to prosecute those responsible however, corruption and organised crime continue to remain serious problems in Azerbaijan. If organised criminal gangs have connections and influence with the local police force or other state agents then claimants may not be able to seek the protection of the authorities or be able to internally relocate to another area of the Azerbaijan. In a very small proportion of cases where both adequate state protection and internal relocation are not feasible, the grant of Humanitarian Protection may be

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<sup>15</sup> USSD 2005 (Section 3)

<sup>16</sup> USSD 2005 (Section 3)

<sup>17</sup> USSD 2005 (Section 3)

<sup>18</sup> USSD 2005 (Section 1)

<sup>19</sup> USSD 2005 (Section 2)

appropriate. However, the majority of claimants are unlikely to qualify for Humanitarian Protection.

### **3.8 Involvement with opposition political parties/organisations**

- 3.8.1** Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of the Azerbaijani authorities due to their involvement with opposition political parties/organisations.
- 3.8.2 *Treatment.*** The main political parties are New Azerbaijan Party, Azerbaijan Democratic Party, Popular Front Party (Reformists), Musavat, Liberal Party and the Azerbaijan National Independence Party.<sup>20</sup>
- 3.8.3** During the Parliamentary election campaign (November 2005), the government continued to restrict freedom of assembly, refused to allow rallies to be held in city centres, and the police carried out mass arrests and beat protesters who attempted to gather for unauthorised meetings or rallies. The actual election was marred by numerous irregularities throughout the country. Local and international observers documented serious violations, including ballot box stuffing, repeat voting, and tampering with results or protocols. However, since the elections the Azerbaijani government responded to international calls to rectify falsifications on election day by cancelling the results in several election districts, firing several local officials, and detaining four others.<sup>21</sup>
- 3.8.4** The existence of political prisoners is a long-standing problem that Azerbaijan committed to resolving when it joined the Council of Europe in 2001. In the eighteen months prior to June 2005 Azerbaijan made progress on this issue, releasing more than one hundred political prisoners.<sup>22</sup> In 2005 the government pardoned most remaining political prisoners identified by the Council of Europe (CoE) who had been convicted in the aftermath of the flawed 2003 presidential election.<sup>23</sup>
- 3.8.5** On several occasions in 2005 Ministry of Internal Affairs (MIA) police officers pre-emptively detained members of the political opposition to prevent their participation in planned but unsanctioned political rallies, on grounds that the individuals were suspected of planning to incite civil unrest. Within hours of the detentions, judges sentenced the individuals to jail for periods of 10 to 12 days on those grounds.<sup>24</sup>
- 3.8.6** During 2005 both prominent and ordinary members of opposition parties were arrested and detained by the authorities including among others former internal affairs minister Iskender Hamidov, who was beaten by police while being taken him into custody. However, the authorities released Hamidov the same day.<sup>25</sup> On 17 October 2005, security forces arrested approximately 300 opposition party activists, including up to 20 parliamentary candidates, in connection with the anticipated return to Baku of exiled opposition leader Rasul Guliyev and an alleged coup. Overall, several hundred opposition party members were detained for short periods of between one day and two weeks during the pre-election campaign period.<sup>26</sup>
- 3.8.7** The Azerbaijani government's human rights record remained poor during 2005, and it continued to commit numerous abuses including torture and beating of persons in custody, leading to four deaths.<sup>27</sup> Between May and December 2005, the security forces used excessive force to break up both authorised and unauthorised demonstrations in Baku,

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<sup>20</sup> FCO Country Profile 2005

<sup>21</sup> HRW 2006

<sup>22</sup> HRW 2006

<sup>23</sup> USSD 2005 (Introduction)

<sup>24</sup> USSD 2005 (Section 1)

<sup>25</sup> USSD 2005 (Section 1)

<sup>26</sup> USSD 2005 (Section 1)

<sup>27</sup> USSD 2005 (Introduction)

kicking and beating protesters and journalists. Scores of demonstrators were detained, and some were reportedly beaten in custody.<sup>28</sup>

**3.8.8** During 2005 President Aliyev pardoned 215 prisoners, including 87 local human rights activists who were considered political prisoners. The pardon included all seven opposition political leaders arrested and imprisoned in the aftermath of the 2003 presidential election. Subsequently, on 30 June and 5 July 2005, the courts vacated the convictions of the seven opposition leaders, which enabled them to run for parliament in the November 2005 elections. During the summer, the president pardoned and released Azerbaijan Democratic Party's Secretary Taliyat Aliyev, who was detained in August 2004.<sup>29</sup>

**3.8.9** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

**3.8.10** **Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

### **3.8.11 Caselaw.**

**[2005] UKAIT 00147 GM (AZERBAIJAN) Heard 19.10.05, Promulgated 20.10.05**

The IAT found based on the background material found that senior members of the Democratic Party are at risk of arrest and detention. The background material also establishes members of opposition parties *and their families* were more likely to experience arbitrary arrest and detention than other citizens and that those held in detention are at risk of ill treatment.

**3.8.12** **Conclusion.** Those involved in opposition political parties and/or organisations are likely to face harassment and intimidation from the Azerbaijani authorities. The AIT found in **[2005] UKAIT 00147 GM** that members of opposition parties and their families were more likely to experience arbitrary arrest and detention than other citizens and that those held in detention are at risk of ill treatment. However, while there were numerous arrests of opposition party members in the run up to the November 2005 Parliamentary elections, the majority of those detained were released within a few days. The President also pardoned a large number of political prisoners including the leaders of the main opposition parties.

**3.8.13** While being involved with an opposition political party will increase the risk of arrest and detention and possible ill-treatment compared to other Azerbaijani citizens this does not necessarily mean that all those involved with opposition political parties will face such problems. For example low level activists are less likely to be detained for long periods of time compared to more prominent members and are therefore less likely to face ill-treatment.

**3.8.14** In some cases particularly those of prominent members of political parties who have been detained for long periods of time and who have suffered ill treatment at the hands of the Azerbaijani authorities a grant of asylum or Humanitarian Protection will be appropriate. However, in other cases such as that of a low level activist detained for few days and then released without charge the harassment suffered will not reach the level of persecution or breach Article 3 of the ECHR and therefore they will not qualify for grant of asylum or Humanitarian Protection.

## **3.9 Minority religious groups**

**3.9.1** Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of the Azerbaijani authorities and/or ordinary Azerbaijani citizens due to their belonging to a minority religious group.

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<sup>28</sup> AI Report 2006

<sup>29</sup> USSD 2005 (Section 1)

- 3.9.2 Treatment.** The Constitution provides that persons of all faiths may choose and practise their religion without restrictions. However, there were some abuses and restrictions during 2006. Some religious groups reported delays in and denials of registration and limitations upon their ability to import religious literature. However, other groups reported that they meet without government interference, received or expected to receive their registration and were able to import religious literature without any problems.<sup>30</sup>
- 3.9.3** Local authorities occasionally monitored religious services, and officials at times harassed non-traditional religious groups. There is popular prejudice within society against Muslims who convert to non-Islamic faiths and hostility towards groups that proselytise, particularly evangelical Christian and missionary groups. However, the generally amicable relationship among religions in society contributed to religious freedom.<sup>31</sup>
- 3.9.4** There are no reliable statistics on memberships in various faiths; however, according to official figures approximately 96 percent of the population is Muslim. The vast majority of the country's Christians are Russian Orthodox whose identity, like that of Muslims, tends to be based as much on culture and ethnicity as religion. Most of the country's Jews belong to one of two groups: the 'Mountain Jews,' and a smaller group of 'Ashkenazi' Jews.<sup>32</sup>
- 3.9.5** These four groups (Shi'a and Sunni Muslims, Russian Orthodoxy, and Jews) are considered traditional religious groups. In the last 10 years, a number of new religious groups considered foreign or non-traditional have been established, including 'Wahhabi' Muslims, Pentecostal and evangelical Christians, Jehovah's Witnesses, and Hare Krishnas.<sup>33</sup>
- 3.9.6** A number of legal provisions enable the government to regulate religious groups, including a requirement that religious organisations, including individual congregations of a denomination, be registered by the government. The State Committee for Work with Religious Associations (SCWRA) and its chairman have broad powers over registration, control over the publication, import, and distribution of religious literature, and the ability to suspend the activities of religious groups violating the law.<sup>34</sup>
- 3.9.7** The SCWRA continued to delay or deny registration to some religious groups, including Jehovah's Witnesses and two Baptist churches. However, three of the Baptists' five main churches have successfully re-registered. At the end of August 2005, the SCWRA had registered more than three-quarters of the number of religious communities previously registered. Some groups reported that SCWRA employees tried to interfere in the internal workings of their organisations during the registration process.<sup>35</sup>
- 3.9.8** Although unregistered religious groups continued to function, some, such as Seventh-day Adventists, Jehovah's Witnesses, and Baptists, reported official harassment, including disruption of religious services and police intimidation, fines, and occasional beatings of worshippers by police. Local law enforcement authorities occasionally monitored religious services, and some observant Christians and Muslims were penalised for their religious affiliations. Christians were often suspected of illegally proselytising.<sup>36</sup>
- 3.9.9** Jehovah's Witnesses reported that authorities regularly interfered with their ability to rent public halls for religious assemblies and on occasion fined or detained and beat individuals for meeting in private homes. On 12 June 2005, police raided a gathering of approximately 200 Jehovah's Witnesses in Baku, detaining 29 members of the group and then releasing

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<sup>30</sup> USIFR 2006 (Introduction)

<sup>31</sup> USIRF 2006 (Introduction)

<sup>32</sup> USIRF 2006 (Section 1)

<sup>33</sup> USIRF 2006 (Section 1)

<sup>34</sup> USSD 2005 (Section 2)

<sup>35</sup> USSD 2005 (Section 2)

<sup>36</sup> USSD 2005 (Section 2)



them after several hours in police custody. Local television stations also aired 'raids' of religious meetings for 'exposes' of religious groups.<sup>37</sup>

**3.9.10 Sufficiency of Protection.** If this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection. However, if this category of claimants' fear is of ill treatment/persecution by non-state agents then although individual police officers may at times not be able or willing to provide adequate protection there is no evidence that this is sanctioned by the authorities.

**3.9.11 Internal relocation.** If this category of claimants fear is of ill treatment/persecution by the state authorities' relocation to a different area of the country to escape this threat is not feasible. However, in general the law provides for freedom of movement, although at times this was restricted by the authorities, particularly for internally displaced persons (IDPs).<sup>38</sup> If this category of claimants' fear is of ill treatment/persecution by non-state agents then relocation to a different area of the country to escape this threat is feasible.

**3.9.12 Conclusion.** Although freedom of religion is enshrined in the Constitution, local authorities at times harassed and imposed restrictions on some non-traditional religious groups. There is also some popular prejudice within society against Muslim converts and hostility towards groups that proselytise, particularly evangelical Christian and missionary groups. However, this harassment and prejudice is not systematic or part of official government policy and does not amount to persecution or a breach of article 3 of the ECHR. In general there is an amicable relationship among the different religious groups and therefore it is unlikely that a claimant from this category of claim will qualify for a grant of asylum or Humanitarian Protection.

### **3.10 Prison conditions**

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

**3.10.2** 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 claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

**3.10.3 Consideration.** According to the US State Department prison conditions remained harsh and life threatening in 2005. Overcrowding, inadequate nutrition, and poor medical care combined to make the spread of infectious diseases a serious problem. Despite recent improvements to prison infrastructure, prisons, generally Soviet-era facilities, did not meet international standards. In maximum-security facilities, authorities limited physical exercise for prisoners as well as visits by attorneys and family members. Some pre-trial detainees were reportedly held in 'separation cells,' often located in basements, to conceal evidence of physical abuse and where food and sleep reportedly were denied to elicit confessions.<sup>39</sup>

**3.10.4** Harsh prison conditions resulted in 107 deaths during 2005. Reports indicated that at least four of these deaths were the result of torture or abuse. However, Tuberculosis (TB) remained the primary cause of death in prisons and the government reported that 66 inmates died of it during 2005. The International Committee of the Red Cross (ICRC) reported that the government treated 515 prisoners for TB during 2005. Due to the absence of systematic medical screening, such treatment often started after prisoners were seriously

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<sup>37</sup> USSD 2005 (Section 2)

<sup>38</sup> USSD 2005 (Section 2)

<sup>39</sup> USSD 2005 (Section 1)

ill. Many relied on families for medicine and food, who often paid bribes to prison officials to gain access to imprisoned relatives.<sup>40</sup>

- 3.10.5** On the positive side, prison conditions, while still poor, are generally acknowledged to have improved since Azerbaijan's accession to the Council of Europe.<sup>41</sup> In July 2005 the government dismissed the head of the medical unit of prison colony 2 after a prisoner complained about his conduct. On 1 February 2005, the government dismissed the deputy minister of justice for prisons on allegations of accepting bribes for awarding prison renovation contracts. After the deputy minister's dismissal, the Ministry of Justice (MOJ) disbanded the joint government-human rights community prison-monitoring group. A reconstituted monitoring group was established in August 2005 however, it did not meet before the end of 2005.<sup>42</sup>
- 3.10.6** The government permitted prison visits by international and local humanitarian and human rights groups. The ICRC also had unobstructed access to prisoners of war and to civilians held in connection with the conflict over Nagorno-Karabakh. Foreign observers were allowed to enter maximum-security prisons and to meet with alleged political prisoners. On 16 August 2005, the government authorised a select group of local human rights activists to visit MIA-run police stations and MIA pre-trial detention facilities in addition to prisons.<sup>43</sup>
- 3.10.7** During the year President Aliyev pardoned 215 prisoners, including 87 local human rights activists considered political prisoners. The pardon included all seven opposition political leaders arrested and imprisoned in the aftermath of the 2003 presidential election.<sup>44</sup>
- 3.10.8 *Conclusion.*** Whilst prison conditions in Azerbaijan are poor with overcrowding, inadequate nutrition, and poor medical care being particular problems, in general the majority of prisoners will not face systematic physical abuse and conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's 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.
- 3.10.9** However, those associated with opposition political parties may face an increased risk of ill-treatment while in detention including physical abuse and this coupled with other relevant factors such as the likely length of detention, the likely type of detention facility and the individual's age and state of health may lead to a breach of Article 3. (See section 3.8).

#### **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 API 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 API on Article 8 ECHR.
- 4.2** With particular reference to Georgia 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

<sup>40</sup> USSD 2005 (Section 1)

<sup>41</sup> FCO Country Profile 2005

<sup>42</sup> USSD 2005 (Section 1)

<sup>43</sup> USSD 2005 (Section 1)

<sup>44</sup> USSD 2005 (Section 1)

claim, not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave and the API 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 they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18<sup>th</sup> birthday, whichever is the shorter period.

### **4.4 Medical treatment**

- 4.4.1** Claimants may claim they cannot return to Azerbaijan 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** A few Western-type medical clinics, the quality of which is comparable to those in Western countries, are operating in Baku. However, medical facilities outside the capital remain inadequate, unsanitary, and unsafe. There is often a shortage of basic medical supplies, including disposable needles and vaccines.<sup>45</sup> The government provided a minimum standard of health care for children, but the overall quality of medical care was very low.<sup>46</sup>
- 4.4.3** The law prohibits discrimination against persons with disabilities in employment, education, and access to health care, or the provision of other state services, but discrimination in employment was a problem. It was commonly believed that children with disabilities were ill and needed to be separated from other children and institutionalized. Several international and local NGOs developed educational campaigns to change social perceptions and reintegrate disabled children.<sup>47</sup>

#### **HIV/AIDS**

- 4.4.4** In 2003 there were 1,400 people infected with HIV/AIDS aged between 15 and 49 years which equated to 0.1% of the population.<sup>48</sup>
- 4.4.5** 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 caseworker considers that the circumstances of the individual claimant 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** 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.

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<sup>45</sup> US consular Information sheet

<sup>46</sup> USSD 2005 (Section 4)

<sup>47</sup> USSD 2005 (Section 4)

<sup>48</sup> HIV In-site 2005

- 5.2** Azerbaijani nationals may return voluntarily to any region of Azerbaijan at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Azerbaijan. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Azerbaijani nationals wishing to avail themselves of this opportunity for assisted return to Azerbaijan should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

**6. List of source documents**

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