



OPERATIONAL GUIDANCE NOTE

IRAN

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1. Introduction

- 1.1** This document provides UKBA caseowners with guidance on the nature and handling of the most common types of asylum and human rights 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. Case owners 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.homeoffice.gov.uk/rds/country_reports.html

- 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 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/middle-east-north-africa/iran>

- 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/human-rights-report-2009>

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 Iran. It also contains any common claims that may raise issues covered by the Asylum Instructions 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 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 Asylum Policy 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 Asylum Policy Instruction on 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 a non-biometric visa. Asylum applications matched 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.*** Iranian male citizens have permission to leave the country until reaching the age of military service. When reaching the age of military service, a person has to apply for permission to travel outside Iran. The permission can be obtained through a bank or at the airport. When a person obtains a passport and permission to leave, the person can also return to Iran. When a person has completed his military service, he is free to travel, if he does not have any issues with the authorities. Members of minority groups may face difficulties in obtaining the permission to leave, which indicates that not all Iranian citizens may be granted the permission even though they may qualify for this according to law. Minorities may be discriminated against, and it may be more difficult for them to obtain a passport or permission to leave Iran. Iranian women must obtain permission from their husbands in order to acquire a passport. The husband's permission to obtain a passport is a legal requirement stipulated under Article 18 of the country's passport law. People who have a case pending before the court cannot leave Iran. They will be registered on a list of people who are not allowed to leave the country. The list appears in the computer system used by the airport personnel. Hence, an immigration officer sitting at one of the counters, examining the passport of the travelling person will see the list and will then prevent the person from travelling.¹
- 3.6.3 *Actors of protection.*** Caseowners 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. Caseowners 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. 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.
- 3.6.4** However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.6.5 *Internal relocation.*** 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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

¹ COI Service Iran Country Report January 2010

3.6.6 Iranian citizens are generally able to travel freely within the country and change their place of residence without obtaining official permission.² However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.6.7 Caselaw

[2009] UKAIT 00053 SB Iran CG (risk on return-illegal exit). In this country guidance case, the tribunal concluded that:

- (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 12 June 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.

3.6.8 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). Illegal exit is not in itself a significant risk factor. 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 Anti regime protestors and activists, including students

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 student active against the state or an anti regime protestor.

3.7.2 Treatment. The pressure for democratic reform in Iran changed dramatically after the student protests at Tehran University in 1999. These protests marked the beginning of the contemporary student movement. They began over the closure of the well known newspaper *Salam*. Students were violently attacked and at least one student was killed. President Khatami called for an investigation and trial of those responsible, but no convictions were ever returned. The date has been a flashpoint for violence and tension, and the authorities have tried to keep large crowds from gathering at the university campus in Tehran on the anniversary of the 1999 event.³

3.7.3 On 11 June 2003, around 80 students living in student dormitories in the Amir Abad area of Tehran demonstrated against draft proposals to privatize universities in Iran. They were joined by local residents and the demonstration reportedly escalated and became increasingly politicized. As the demonstrations grew over the following nights, Tehran's

² US State Department Human Rights Report 2007 & 2009: Iran

³ COI Service Iran Country Report January 2010

Special Forces (Nirou-ye Vjeh) were deployed to disperse demonstrators. There were reports, however, that the Special Forces permitted some militants to attack peaceful demonstrators and that in certain instances, excessive force may have been used to break up the demonstrations. The demonstrations lasted for ten days. According to a statement made by the head of the Tehran Justice Department Abbas Ali Alizadeh on 24 June 'the judiciary is intent on dealing firmly with the main perpetrators.'" About 4,000 people were arrested all over the country before and after the protests.⁴

- 3.7.4** According to the International Campaign for Human Rights in Iran (ICHR), at least 200 students in Iran were arrested between June 2007 and December 2008, and at least 160 students were suspended or expelled from universities in Iran between March 2007 and December 2008; many of those imprisoned were subject to torture and ill-treatment.⁵
- 3.7.5** At least 4,000 opposition supporters, probably many more, were arbitrarily arrested during the unrest that swept Iran after the election. Protests continued throughout the summer and into the winter, demonstrators flooded the streets on remembrance days, and the security forces continued to brutally suppress all expressions of dissent. Objection to alleged fraudulent elections gradually developed into broader expressions of dissatisfaction with the government. Over the course of a few months, the protests became less focused on the election and more on the general repressive nature of the regime. The majority of those detained were done so in Tehran, but arrests were recorded in other cities, such as Shiraz, Mashhad, Esfahan and Babol, as well as Ahvaz, Tabriz and Zahedan which have large minority populations. Most of those detained were released within days but many hundreds were held incommunicado for weeks. Possibly as many as 200 remained in jail in mid-November 2009, including some who were arrested after the unrest died down. Those arrested included many senior political figures associated with the campaign teams of presidential candidates Mir Hossein Mousavi and Mehdi Karroubi, as well as journalists, students, human rights defenders, women's rights activists and lawyers.⁶
- 3.7.6** Many people who took part in the demonstrations say that plain-clothed and armed personnel, whom they believed to be members of the Basij militia, used excessive force against them, including when the protests were entirely peaceful. Protesters were often greeted with tear gas, baton charges, motorcycle charges, beatings with truncheons, and sometimes live ammunition. The police acknowledged in August that 433 complaints had been lodged against police for their "wrongdoings" during the protests, although this figure is unlikely to have included complaints lodged against the Basij. The authorities have said that 36 people, including Basij personnel, died during the post election unrest; opposition figures put the figure at 72 as of 5 September. Documents of evidence collected by the opposition shown to the UK newspaper *The Times* indicate that at least 200 demonstrators were killed in Tehran and 173 in other cities. Over half of these were killed in the streets. Over 50 others were unaccounted for.⁷
- 3.7.7** Many of those arrested were threatened but released after a few days. However, many others faced torture, rape and sometimes death while in custody. Detainees were, and continue to be, subject to solitary confinement, lengthy interrogations, beatings, rape and other forms of torture. Many were not permitted contact with their families or lawyers, and many were coerced into providing public confessions. Well over 100 of those swept up in the post-election arrests were paraded on state television in a series of mass "show trials" that began on 1 August 2009. Some were shown "confessing" and apologizing. Among them were leading political figures, including former government ministers and journalists. In mid November, five had been sentenced to death and over 80 to terms of imprisonment.⁸

⁴ COI Service Iran Country Report January 2010

⁵ Immigration and Refugee board of Canada, Iran: Student protests in Iran; treatment by Iranian authorities of student protestors (December 2007 - December 2009), 5 January 2010

⁶ Amnesty International Report Iran Election contested repression compounded, December 2009; Enduring America, Iran: The IHRDC report on violence and suppression of dissent, 15 February 2010

⁷ Amnesty International Report Iran Election contested repression compounded, December 2009

⁸ Enduring America, Iran: The IHRDC report on violence and suppression of dissent, 15 February 2010; Amnesty International Report Iran Election contested repression compounded, December 2009

- 3.7.8** News sources indicate that students held demonstrations in September and October of 2009 at universities in Tehran, Esfahan, Shiraz, Karaj, Qazvin, Ahwaz, Mazandaran, Rasht and other cities. According to *The Guardian*, as a result of the demonstrations, hundreds of students were called before disciplinary boards, some were imprisoned and at least 20 were expelled. The IHRDC reports that government authorities also increased security presence at universities. The ICHRI reports that in November 2009, several Iranian students were arrested, prosecuted and detained in cities throughout Iran. The ICHRI reports details on over 50 students who were arrested and over 120 students who were summoned before disciplinary committees between 16 November 2009 and 23 November 2009. By December 2009, sources estimate that between 90 students and 100 students had been arrested.⁹
- 3.7.9** Media sources and human rights organizations report that thousands of students protested at universities across Iran on 7 December 2009. This day marks the anniversary of the killing of three students under the Shah in 1953 and students have traditionally used the occasion to demonstrate for greater respect of human rights. The Iranian government banned international journalists from observing these student protests in 2009, and shut down Internet and telecommunication services. Sources report that riot police surrounded Tehran University to prevent the protest from spreading. Security forces, including the Basij militia, reportedly used batons and tear gas and threw stones at demonstrators. Tehran's police chief, General Azizullah Rajabzadeh, reportedly stated that 204 protesters, including 39 women, were arrested in Tehran. Official Iranian news sources reported that 86 of those arrested in Tehran were released from custody after expressing regrets.¹⁰
- 3.7.10** During the post election conflict relations between Iran and the UK became strained. On 24 June 2009 Iran's intelligence Minister Gholamhossein Mohseni-Ejei told the Fars news agency that British Passport holders 'had a role' in the violent clashes sparked by the election. Iran's foreign minister then announced that Tehran might downgrade its diplomatic ties with the UK. These announcements came a day after Iran banished two British diplomats from the country, accusing the pair of spying. British Prime Minister Gordon Brown, who dismissed the allegations as "absolutely without foundation," promptly banished two Iranian diplomats from London. Relations worsened as official Iranian rhetoric became increasingly anti-British, culminating in the arrest on 28 June of nine local British embassy staff in Tehran. This caused widespread outrage and condemnation both in Britain, the wider EU and the United States. Long a hot spot for anti-regime Iranian opposition and a font of support for human rights and reform in Iran, Britain has enjoyed little favour from Tehran in recent years. The launch in January of a BBC Persian-language TV service, thanks largely to funds from the British Foreign and Commonwealth Office, has further riled authorities in Iran.¹¹
- 3.7.11 *Actors of protection.*** Caseowners 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. Caseowners 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. 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

⁹ Immigration and Refugee board of Canada, Iran: Student protests in Iran; treatment by Iranian authorities of student protestors (December 2007 - December 2009), 5 January 2010

¹⁰ Immigration and Refugee board of Canada, Iran: Student protests in Iran; treatment by Iranian authorities of student protestors (December 2007 - December 2009), 5 January 2010

¹¹ Time, Has Britain replaced the US as Iran's 'Little Satan'?, 26 June 2009; Réalité EU, British-Iranian relations since the Iranian elections of June 2009, 14 September 2009

punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

- 3.7.12** However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.7.13 Internal relocation.** 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.
- 3.7.14** Iranian citizens are generally able to travel freely within the country and change their place of residence without obtaining official permission.¹² However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.
- 3.7.15 Conclusion.** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).
- 3.7.16** There is a real risk that high profile student activists and anti regime protestors 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.
- 3.7.17** Students and anti-regime protestors who have been involved in demonstrations but have no known political profile are in general unlikely to come to the attention of the Iranian authorities and, in the absence of any other risk factor, would not on return face real risk of serious mistreatment. However each case must be considered on its individual merits and caseowners must consider 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.
- 3.8 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 Iranian Government does not ensure the right of citizens to change or renounce their religious faith. Apostasy, specifically conversion from Islam to another religion, can be punishable by death. There are two type of apostate- an innate apostate is a person born to Moslem parents and therefore a Moslem. A parental apostate is a person born to non-Moslem parents, who converts to Islam after maturity and later denies Islam. The punishment is death in both cases, though the latter shall be given three days to repent, in which case he shall escape death. The related provisions enforce 'positive' discrimination for female apostates, who shall be given life imprisonment in both cases. The most prominent cases of apostasy appear to occur from Islam to Christianity.¹³

¹² US State Department Human Rights Report 2007 & 2009: Iran

¹³ COI Service Iran Country Report January 2010; International Federation for Human Rights report- Iran/death penalty, a state terror policy, April 2009

- 3.8.3** This provision has for the first time introduced the crime of apostasy in the penal code. The applicable laws do not contain any provisions on apostasy. Nevertheless, this exclusion did not prevent the execution of a large number of members of opposition groups on charges of apostasy or atheism in both 1981 and 1988. There have been few reports on apostasy cases in recent years and there are no reported instances of courts imposing the death penalty for apostasy during the year.¹⁴
- 3.8.4** In practice, it is very rare for anyone to be convicted of apostasy. However the government's attitude to apostasy may be changing. 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. Proselytizing of Muslims by non-Muslims was illegal. The authorities have been increasingly vigilant in recent years in curbing proselytizing activities by evangelical Christians.¹⁵
- 3.8.5** Muslim converts to Christianity are still the most vulnerable among the Christian community in Iran. There are vibrant house and public churches that are mostly formed by converts. Even though converts are able to continue their faith and meet with others, converts who are in leadership positions and lead Christian ministries face serious risk of detention, intimidation, imprisonment and extra-judicial physical harm. In practice, Iranian Muslims who convert to Christianity largely live in the same way as those who are born to Christian parents. However, it is a precondition for avoiding problems that converts behave discreetly, allow religious practice to take place within the confines of the religious community and otherwise treat their faith as a private matter, which most of them do.¹⁶
- 3.8.6** All Christians (whether born Christians or converts) who evangelise in relation to Muslims and, for example, hand out Christian literature risk problems in the workplace and in the local community. If the matter is reported, the person in question risks being tried on serious charges. According to church leaders, it is only rarely that ordinary members have experienced problems obtaining a job, gaining admission to university or obtaining a passport. Experience shows that it is primarily the leadership of the evangelical churches that are in the authorities' spotlight and that the tolerance of the authorities ends with instances of open evangelising and – in some case – the ordination of priests. There are examples of converts who have enjoyed untroubled lives for many years only to experience problems with the authorities once they have been ordained as priests. The FCO reported that Christians in Iran are more likely to face persecution from the authorities if they are actively evangelising and trying to convert Muslims. The 2005 Danish Fact Finding Mission to Iran quoted two sources stating that it was easier to convict someone for proselytising than merely converting, as the burden of proof only required evidence being given by witnesses and not a confession.¹⁷
- 3.8.7** Christians, particularly evangelicals, continued to be subject to harassment and close surveillance. During the reporting period, the Government vigilantly enforced its prohibition on proselytizing by closely monitoring the activities of evangelical Christians, discouraging Muslims from entering church premises, closing churches, and arresting Christian converts. Members of evangelical congregations were required to carry membership cards, photocopies of which must be provided to the authorities. Worshippers were subject to identity checks by authorities posted outside congregation centres. The Government restricted meetings for evangelical services to Sundays, and church officials were ordered to inform the Ministry of Information and Islamic Guidance before admitting new members.¹⁸

¹⁴ International Federation for Human Rights report- Iran/death penalty, a state terror policy, April 2009

¹⁵ International Federation for Human Rights report- Iran/death penalty, a state terror policy, April 2009

¹⁶ COI Service Iran Country Report January 2010

¹⁷ COI Service Iran Country Report January 2010; Danish Immigration Service: Report from the fact-finding mission to Teheran and Ankara 'On certain crimes and punishments in Iran' 22 January to 29 January 2005 (pages 13-14) & Letters from the FCO dated 28 June 2007, 17 September 2007, & 31 July 2008

¹⁸ U.S. Department of State International Religious Freedom Report 2009: Iran

3.8.8 *Actors of protection.* Caseowners 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. Caseowners 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. 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.

3.8.9 However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.

3.8.10 *Internal relocation.* 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.

3.8.11 Iranian citizens are generally able to travel freely within the country and change their place of residence without obtaining official permission.¹⁹ However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.8.12 *Caselaw.*

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 women who faces discrimination, short of persecution, on grounds of gender due to a lack of economic and social protection (paragraph 190); and an individual whose radical theatre activities led to a past adverse political profile (paragraph 191).

SZ and JM (Christians – FS confirmed) Iran CG [2008] UKAIT 00082. The AIT 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 AIT found it remains the case that it is the 'active evangeliser' in whom the authorities are primarily interested (paragraph 145) 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. (paragraph 146)
- (ii) With regard to the distinction drawn in **FS and Others** between 'ordinary convert and those who 'proselytise' the AIT 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 AIT concluded that the

¹⁹ US State Department Human Rights Report 2007 & 2009: Iran

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. (paragraph 139)

- (iii) It remains to be seen whether the proposed inclusion of apostasy in the amended criminal code will make a material difference. The amendments to the code are part of a wholesale change in the criminal law and not solely aimed at converts. The proposals are still before Parliament.

J [2003] UKIAT 00158. The Tribunal set down a number of features that should be taken into consideration in assessing the extent of the appellant's conversion (See paragraph 22). They are:

- (i) The genuineness of both the appellant's conversion and the church he attends.
- (ii) The evidence produced by the appellant in relation to his attendance at a church. This evidence should be more than a written letter: ideally it should be oral evidence from the Pastor or Church leader.
- (iii) The extent to which the appellant has adhered to the principles of the Church he attends. This adherence should be evident throughout his stay in the UK.

The Tribunal also said that the test as to the bona fides of the appellant's conversion is more than that of a reasonable likelihood (paragraph 22). The Tribunal did not believe it possible that someone could be a member of a faith and remain a member in total isolation, attending no services and communicating with no other persons of that faith (paragraph 15).

3.8.13 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).

3.8.14 The evidence shows, as confirmed by caselaw, that those who undertake active evangelism and those who lead Christian ministries are at real risk of persecution on return to Iran. Whereas an "ordinary" convert to Christianity, in the absence of any other risk factor, would not on return face a real risk of serious mistreatment.

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 agents due to their adultery.

3.9.2 Treatment. Under the Islamic Penal Code adopted by the Majles in November 1995, those found guilty of adultery (a crime that must be proven by the testimony of four just men or that of three just men and two just women) are subject to execution by stoning. In the case of sexual intercourse between married men with single or married women or married women with single or married men, the punishment stipulated by the IPC is stoning of the married person. The single party in such a relationship would usually be sentenced to 100 lashes for fornication. If a husband discovers his wife in an adulterous act he may kill her without legal consequence, if he was certain she was a consenting partner. A wife who discovers her husband with another woman does not have the same right.²⁰

3.9.3 Most stoning sentences are issued not on the basis of testimony or confession but on the judges 'knowledge' or 'intuition'. Article 105 of the Islamic Penal Code (IPC) of Iran allows a judge to rule according to his gut feeling instead of hard evidence; the Islamic Penal Code (IPC) has stipulated 'knowledge of the judge' specifically as one of the means to prove theft or murder, but not in the case of fornication/adultery. However, Ayatollah Khomeini has granted judges the power to use their knowledge in fornication- and adultery-related cases and as a result, most of [sic] not all adultery cases are unfairly tried.²¹

3.9.4 Despite a 2002 judicial directive imposing a moratorium on executions by stoning, and an announcement in August 2008 by a spokesperson for the judiciary that this form of execution had been suspended, at least five men and one woman have been stoned to death since 2002. In January 2009 a spokesperson for the judiciary confirmed that

²⁰ Learning Partnership: Islamic Republic of Iran: Penal Code Excerpts Relating to Women 1994; COIS Iran Country Report January 2010; US State Department Human Rights Report 2009: Iran

²¹ COI Service Iran Country Report January 2010

executions by stoning had taken place in December 2008 and said that the directive on the moratorium had no legal weight and that judges could ignore it.²²

- 3.9.5 *Actors of protection.*** Caseowners 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. Caseowners 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. 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.
- 3.9.6** However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.9.7 *Internal relocation.*** 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.
- 3.9.8** Iranian citizens are generally able to travel freely within the country and change their place of residence without obtaining official permission.²³ However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.
- 3.9.9 *Caselaw.***
- ME [2003] UKIAT 00166.** In the 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, by the SSHD, 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. The Adjudicator had also allowed the appellant's appeal on human rights grounds and this was not challenged in the SSHD's appeal to the Tribunal.
- 3.9.10 *Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).
- 3.9.11** 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

²² Amnesty International Report: Death Sentences and Executions 2009

²³ US State Department Human Rights Report 2007 & 2009: Iran

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.

3.9.12 However, the standard of proof required for a charge of adultery is stringent and few applicants are likely to be able to demonstrate a well founded fear of ill-treatment from the authorities as a direct result of adultery. Those that can will qualify for Humanitarian Protection rather than asylum because an adulterer who had transgressed Iranian law cannot be regarded as a particular social group within the terms of the Refugee Convention.

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.* Under the Iranian Penal Code same-sex physical acts are a serious crime and, if there is the necessary evidence or confessions, can incur severe penalties. Articles 108 – 134 the Penal Code set out how same-sex physical acts are defined and proven, and the corresponding penalties.²⁴ These include punishment of up to death for penetrative same-sex physical acts between men on the first conviction; and punishment of up to 100 lashes for non-penetrative activity. . Same-sex physical acts between women are punishable with death on the fourth conviction. This, however, must be proven by either confession from the accused or by the testimony of “four righteous men” who witnessed the act. A Shari’a judge can also make a decision in accordance with his own knowledge based on general knowledge and judgment.²⁵

3.10.3 There have been few reported cases of individuals being officially charged for having gay sex in recent years. Human Rights Watch (HRW) reported in November 2009 that there were three men awaiting execution under charges of male homosexual conduct allegedly committed when they were children. At the end of December 2009 there were 12 men facing execution on Sodomy charges and another 2 were being re-tried on the same capital charge. The report goes on to state that It is extremely difficult to obtain information about death penalty cases involving homosexuality under today’s regime in Iran, where the press is heavily censored and journalists, regime critics, and human rights advocates are routinely persecuted and arrested and where the subject of same-sex relations is officially considered a political and religious taboo. Defendants in sodomy cases are denied open trials. Prior to these latest reports of executions the last documented death sentences for consensual gay sex in Iran were handed down in March 2005, but it is not known if the sentences were carried out.²⁶

3.10.4 HRW has documented patterns of harassment, arbitrary arrest and torture based on sexual orientation, including instances in which individuals have been arrested at private gatherings or by undercover police agents who they arranged to meet through internet chat rooms. However, in a letter of 15 April 2008 the FCO stated that in their opinion, although gay men and lesbians may experience discrimination in Iran, they are not systematically persecuted. The UNHCR/ACCORD workshop report noted that as long as gay acts happen behind closed doors and as long as gay men and lesbians do not proselytise their sexuality, they will most likely remain unharmed.²⁷

²⁴ COI Service Iran Country Report January 2010; Freedom House Report 2009: Iran

²⁵ COI Service Iran Country Report January 2010

²⁶ COI Service Iran Country Report January 2010; Human Rights Watch, Iran: Revoke death sentence for Juvenile offenders 11 April 2009; Chelsea Now, Twelve men face execution for sodomy in Iran, 10 December 2009

²⁷ COI Service Iran Country Report January 2010; Human Rights Watch: Iran, Private homes raided for immorality 27 March 2008; FCO letter 15 April 2008; Safra Project - Country Information Reports: Iran 2004; The Times, Gay’s should be hanged says Iranian minister 13 November 2007

- 3.10.5** As regards societal attitude, sexual issues are considered taboo in Iran, and there is widespread misinformation about homosexuality. Many Iranians consider it a disease or sickness. For some, homosexuality among men is synonymous with paedophilia. As a result, gays and lesbians in Iran cannot be open about their sexual orientation.²⁸
- 3.10.6** The government in Iran provided grants of as much as 45 million rials (£2, 900) and loans of as much as 55 million rials (£3,500) for transgender persons willing to undergo gender reassignment surgery. Human rights activists and NGOs reported that some members of the gay, lesbian and bisexual community have been pressured to undergo gender reassignment surgery to avoid legal and social persecutions in the country. In September 2009 international newspapers reported that a family court allowed the first transgender marriage between a woman and her male partner, previously also a woman²⁹
- 3.10.7 *Actors of protection.*** Caseowners 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. Caseowners 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. 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.
- 3.10.8** However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.10.9 *Internal relocation.*** 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.
- 3.10.10** Iranian citizens are generally able to travel freely within the country and change their place of residence without obtaining official permission.³⁰ However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.
- 3.10.11 *Caselaw.***
- Supreme Court. HJ & HT v SSHD [2010] UKSC 31 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:

²⁸ COI Service Iran Country Report January 2010

²⁹ COI Service Iran Country Report January 2010

³⁰ US State Department Human Rights Report 2007 & 2009: Iran

- (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.

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.

3.10.12 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above) and also refer to the Asylum Instruction on sexual orientation and gender identity in the asylum claim.

3.10.13 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.

3.10.14 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.

3.10.15 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 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 agents due to their gender.

3.11.2 Treatment. The Constitution says all citizens, both men and women, equally enjoy protection of the law and all human, political, economic, social and cultural rights, in conformity with Islamic rights. Women in Iran are widely educated; 94 percent of secondary-school-aged girls attend school, compared to only 80 percent of boys, and a

majority of university students are female. Although Iranian women currently hold seats in parliament, they are barred from serving as judges and are routinely excluded from running for office. A woman cannot obtain a passport without the permission of her husband or a male relative, and women do not enjoy equal rights under Shari'a statutes governing divorce, inheritance, and child custody; some of these inequalities are accompanied by greater familial and fiscal responsibilities for men. A woman's testimony in court is given only half the weight of a man's, and the monetary damages (blood money) awarded to a female victim's family upon her death is half that owed to the family of a male victim..³¹

- 3.11.3** The government enforced gender segregation in most public spaces, including 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.³²
- 3.11.4** The government intensified its campaign against members of the 'One Million Signatures' campaign, which activists launched in 2006 to promote women's rights and demand changes to discriminatory laws. In a report released October 20 2008, UN secretary-general Ban Ki-Moon noted 'an increasing crackdown in the past year on the women's rights movement. In the past three years, from the beginning of Campaign's activity on August 27, 2006 until the beginning of 2010, fifty activists of the One Million Signatures Campaign had been arrested. Four had been summoned to appear in court without an official arrest warrant; more than fifteen people had been summoned to appear at the offices of security forces, and had been repeatedly interrogated. The pretext for most of the arrests is collecting signatures, and at the start of 2010 a total of sixteen people had been arrested in Tehran and been sent to prison. Four and half years in prison is the sum of the mandatory imprisonment periods that Campaign activists currently have to serve. Some of the legal cases against them are still waiting for the court's final ruling. Unofficial summons and searches of homes belonging to One Million Signatures Campaign members are another type of pressure that Campaign activists have suffered. In addition to the arrests and the sentences issued, seven of the Campaign's activists had been prevented from leaving the country by security forces.³³
- 3.11.5** The law does not specifically prohibit domestic violence in Iran. 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. Abuse in the family was considered a private matter and seldom discussed publicly, although there were some efforts to change this attitude, particularly by the "One Million Signatures for the Repeal of Discriminatory Laws," or "Change for Equality," Campaign (OMSC). Some nongovernmental shelters and hotlines assisted victims during the year. Spousal rape is not illegal in Iran, cases of rape were difficult to document due to social stigma against the victims. Most rape victims did not report the crime to authorities because they feared societal reprisal such as ostracism or punishment for having been raped. According to a police official quoted in a domestic newspaper in 2008, 50 honour killings were reported during a seven-month period, although official statistics were not available. The punishment for perpetrators was often a short prison sentence.³⁴
- 3.11.6** The penal code provides that if a woman appears in public without an appropriate hijab, she can be sentenced to lashings and fined. However, there is an absence of a clear legal definition of "appropriate hijab" or the punishment; women were subject to the opinions of disciplinary forces or judges. During the year the government continued its crackdown on un-Islamic dress or "bad hijab" (when a head covering is brightly coloured or does not completely cover the wearer's hair). According to press reports, morality police have stopped or detained more than two million individuals since 2007 for inappropriate

³¹ COI Service Iran Country Report January 2010; Freedom House Report 2009: Iran

³² US State Department Human Rights Report 2009: Iran

³³ COIS Iran Country Report January 2010; Sign 4 Change, Violence against Women's Rights Activists: A Report on Arrests and Summons of Campaign Activists, 11 January 2010

³⁴ US State Department Human Rights Report 2009: Iran

hairstyles or bad hijab. In September the BBC reported that the morality police stopped male shopkeepers from selling women's undergarments, and the *Los Angeles Times* reported stores were forced to ensure that mannequins had appropriate dress.³⁵

- 3.11.7** According to some reports, it is not unusual in rural areas for parents to have their children marry before they become teenagers, often for economic reasons. The law requires court approval for the marriage of girls below the age of thirteen and boys younger than fifteen. The 1991 civil law states that a virgin female needs the consent of her father or grandfather to wed, or the court's permission, even if she is older than eighteen. The country's Islamic law permits a man to have up to four wives and an unlimited number of temporary partnerships (sigheh), based on a Shi'a custom in which a woman may become the wife of a Muslim male after a simple religious ceremony and a civil contract outlining the union's conditions. The custom of sigheh, which allows couples to establish unions lasting from a few minutes to 99 years, is permitted under Shi'a Islam but has been likened in Iran to prostitution. Sigheh children are however, classed as legitimate.³⁶
- 3.11.8** Divorce applies to permanent marriage only. A husband wishing to divorce is required to obtain court permission to register the divorce if his wife does not agree to the divorce, but registration can only be delayed by the court, not prevented. A husband is not required to cite a reason for divorcing his wife. Women have the right to divorce if the husband signed a contract granting that right or if he cannot provide for his family, is a drug addict, insane, or impotent. In the event of divorce, the father traditionally has legal custody of his children, unless a woman can show her spouse to be an unfit father and applies under legislation passed in November 1998 to obtain custody. Child custody laws favour men over women. In principle, both the physical custody (hezanat) and the legal guardianship (velayat) of the child belong to the father. While, under certain circumstances, women are granted physical custody, legal guardianship, which includes the authority over decisions regarding the child's well-being, is almost exclusively given to the father. Following a divorce, physical custody was until recently granted to the mother until age 7 for girls and age 2 for boys. In 2003, the law was changed to allow both children to remain with the mother till age 7, custody is then automatically transferred to the father, or if he is absent or incapable, to another male in his family.³⁷
- 3.11.9 *Actors of protection.*** Caseowners 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. Caseowners 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. 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.
- 3.11.10** If the applicant's fear is of ill-treatment amounting to persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.11.11** Despite President Ahmadinejad's claim that Iranian women are the 'freest in the world', they continue to face widespread discrimination in law and practice,. Gender inequality is widespread and sustained by Iranian law.³⁸ Iran is a highly developed country particularly in the major cities such as Tehran, Mashad or Esfahan with constitutional and legal

³⁵ US State Department Human Rights Report 2009: Iran

³⁶ COIS Iran Country Report January 2010

³⁷ COI Service Iran Country Report January 2010

³⁸ COI Service Iran Country Report January 2010

safeguards aimed at protecting women's rights. However, Iran is also a conservative traditional society and those provisions may not always be enforced, for example, in some rural areas sufficiency of protection may not be available. Case owners should take into account inconsistency in application of the legal system that is part of the every day life in Iran. In the light of this, case owners will need to decide whether the authorities are willing and able to provide protection on the facts of each individual claim.

3.11.12 Internal relocation. 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.

3.11.13 In 2007, the Government reportedly placed some restrictions on freedom of movement rights. Citizens could travel within the country and change their place of residence without obtaining official permission; however, the Government required exit permits for foreign travel for all citizens. Some citizens, particularly those whose skills were in short supply and who were educated at government expense, had to post bonds to obtain exit permits. The Government restricted the foreign travel of certain individual members of religious minorities and several religious leaders, as well as some scientists in sensitive fields. The Government also confiscated passports and placed travel bans on several journalists, academics, and activists.³⁹ Internal relocation may be a viable option for women who fear domestic violence. Iranian society in general does not encompass freedom of movement for females but it is not impossible. Factors such as the social and professional background of an individual applicant and family support will be a major consideration when determining relocation as an option.

3.11.14 Caselaw.

ZH CG [2003] UKIAT 00207. The facts of ZH were that the appellant suffered domestic violence from a husband who was a drug addict (paragraph 7). 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 (paragraph 83). Although the IAT found that women per se do not form a particular social group (paragraph 74), 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.

³⁹ US State Department Human Rights Report 2007 & 2009: Iran

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." (paragraphs 91-92)

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." (paragraph 61)

3.11.15 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).

3.11.16 The evidence is that high-profile women's rights activists who have come to the attention of the authorities are at real risk of persecution on return to Iran for reason of their imputed political opinions, However women's rights activists who have been involved in low level activities (for example simply attending a demonstration) and have no known political profile are unlikely to attract the adverse attention of the Iranian authorities on return and are therefore unlikely in the absence of any other risk factor to be at real risk of ill-treatment for this reason alone.

3.11.17 Iran is a strongly patriarchal society and despite some advances in the general position of women they can face discrimination both in law and tradition. The range of possible gender based asylum claims is too wide to cover individually. Therefore each case must be considered on its merits, taking full account of the possibility of internal relocation and any protection that may be available. The courts have found that women per se do not form a particular social group within the meaning of the Refugee Convention so unless the treatment feared is for another Refugee Convention reason, a woman who faces a real risk of ill-treatment on return would qualify for Humanitarian Protection rather than 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 Constitution grants equal rights to all ethnic minorities. The Kurdish population is one of the largest ethnic minority groups in Iran. Estimates of the number of Kurds in the country vary 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 nationalist movement has been strong in the Kurdish provinces of Iran for many years. Some Kurdish groups have been fighting the central government in Iran since 1979 and the demand for regional autonomy is strong; they have thus suffered the highest number of casualties in comparison with other ethnic groups.⁴⁰

⁴⁰ COI Service Iran Country Report January 2010, US State Department Human Rights Report 2009:Iran

- 3.12.3** There are two major Kurdish parties in Iran as well as many smaller ones, including Kurdish branches of other Iranian political parties. The Kurdistan Democratic Party of Iran (KDPI) is the largest and best organised of the Kurdish opposition groups. Since 1984 the party has been based in Iraq. In 1991, the KDPI called off its armed activities in Iran, although its 'self-defence units' have clashed with Iranian troops during Iranian military incursions into Iraqi Kurdistan. In 2005, the UNHCR reported that the punishments given to members of the KDPI have mainly remained concentrated on imprisonment terms. However, the UNHCR noted opposition claims that there have been a number of executions.⁴¹
- 3.12.4** The second main Kurdish party is Komala which amongst other things aims to achieve autonomy for Iranian Kurds. Komala took up arms against the central government after the 1979 revolution but unilaterally laid down its arms in the 1990s.⁴²
- 3.12.5** The Chatham House Middle East Programme Briefing Paper, *The Kurdish Policy Imperative*, dated December 2007, stated that "Iranian Kurdish parties have also consistently fractured and there have been major splits in both the KDPI and Komala since early 2007. In October 2007 a number of Komala's leading figures broke away to form '*Komala – the faction of reform and development*'. In both cases there were physical clashes among the followers of the various factions"⁴³
- 3.12.6** Currently the Party for Free Life in Kurdistan (PJAK), the Iranian branch of the Kurdistan Workers Party (PKK) - the group fighting for the independence of Kurds in Turkey - is the only group engaged in armed struggle against the Iranian government. Based mostly in Iraqi Kurdistan, PJAK has claimed responsibility for a number of armed operations against Iranian security forces. In response, Iran launched armed incursions into northern Iraq, most recently in August 2007 and June 2008. The KDPI and other Kurdish parties claim that they have no relationship with PJAK. PJAK conducted a number of guerrilla attacks in 2007, and four members of PJAK were reportedly killed by the Basij near the Iraq-Iran border in October 2008. In July 2008, an appeals court upheld the death sentence against Farzad Kamangar for his alleged membership in the PJAK, although the prosecution offered no evidence of this during his five-minute trial.⁴⁴ Reports on 10 May 2010 indicated that Farzad Kamangar had been executed along with 4 other 'Kurdish rebels' thought to be members of PJAK. The report also states that Iranian forces clashed with Kurdish fighters in Iran's north western border region in January 2010 and arrested a suspect in the killing of a prosecutor.⁴⁵
- 3.12.7** According to the US State Department Human Rights report for 2009 Kurdish human rights organizations reported that 16 Kurdish political prisoners faced execution at year's end.⁴⁶
- 3.12.8** According the Danish Immigration Service Report 2009 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. The report goes on to state that persecution for opposition political activities is a problem all over Iran. The authorities are, however, watching Kurdish areas and Tehran more carefully than others. Human Rights Watch reports that Kurdish opposition groups suspected of separatist aspirations, such as the Democratic Party of Iranian Kurdistan (KDPI) are brutally suppressed.⁴⁷
- 3.12.9 *Actors of protection.*** Caseowners 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

⁴¹ Human Rights Watch Report, Iran: Freedom of Expression and Association in the Kurdish Regions, January 2009; UNHCR Comments on the Iran Country Report of April 2005, August 2005

⁴² COI Service Iran Country report January 2010. Section 15.41 – 15.45

⁴³ COI Service Iran Country report January 2010. Section 15.41 – 15.45

⁴⁴ US State Department Human Rights Report 2009: Iran; Human Rights Watch Report, Iran: Freedom of expression and association in the Kurdish regions, January 2009; COIS Iran Country Report January 2010

⁴⁵ BBC News, Iran hangs five 'Kurdish rebels', 10 May 2010

⁴⁶ US State Department Human Rights Report 2009

⁴⁷ COI Service Iran Country Report January 2010

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. Caseowners 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. 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.

3.12.10 However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.

3.12.11 *Internal relocation.* 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.

3.12.12 Iranian citizens are generally able to travel freely within the country and change their place of residence without obtaining official permission.⁴⁸ However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.12.13 *Conclusion.* Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).

3.12.14 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 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.

3.12.15 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.

⁴⁸ US State Department Human Rights Report 2007 & 2009: Iran

- 3.13.2 Treatment.** In January 2005, the Chief of Iran's National Police Force was reported to have announced that the problem of smuggling in Iran was increasing. Nobody knows the exact amount and value of goods smuggled into Iran every year. The lowest figure announced is 6 billion US\$ a year. However, according to another informed source, based on the latest studies carried out by concerned authorities, the total volume of smuggled goods amounted to 19.2 billion US\$ in 2008. Based on the same report, out of the aforesaid figure, 16 billion US\$ pertained to imports and 3.2 billion US\$ was attributed to exports. The report showed that 2.5 billion US\$ worth of smuggled goods enters the country through official border crossings and 13.5 billion US\$ enters through unofficial crossings.⁴⁹
- 3.13.3** By law the death penalty can be carried out for drug smuggling, however the execution of drug offenders is usually limited to drug lords, organised drug criminals, and armed drug traffickers. The possession and smuggling of opium and cannabis of up to 50 grams can result in a fine of 4 million rials [approx £300] and up to 50 lashes. The penalties become harsher according to the amount that is found on the person. The death penalty may be commuted to life imprisonment and 74 lashes if the quantity does not exceed 20 kg and the perpetrator did not succeed in smuggling/distributing/selling. Anyone who deals in, puts on sale, or carries heroin or morphine is sentenced to various punishments.⁵⁰
- 3.13.4 Actors of protection.** Caseowners 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. Caseowners 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. 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.
- 3.13.5** However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.13.6 Internal relocation.** 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.
- 3.13.7** Iranian citizens are generally able to travel freely within the country and change their place of residence without obtaining official permission.⁵¹ However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

⁴⁹ Radio Free Europe 'Goods Smuggling Highlights Economic Problems In Iran' dated 10 January 2005; Iran International Magazine, High tariffs are no remedy, March 2010

⁵⁰ COI Service Iran Country Report January 2010

⁵¹ US State Department Human Rights Report 2007 & 2009: Iran

- 3.13.8 Conclusion.** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).
- 3.13.9** 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.
- 3.13.10** 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 Members/former members of IRGC (Pasdaran) or Basij

- 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 membership/ previous membership of state security organisations (such as the IRGC, Pasdaran, Basij, or SEPAH) and having spoken out against abuses committed by those organisations.
- 3.14.2 Treatment.** Iran maintains an extensive network of internal security and intelligence services. The main parts of the domestic security apparatus are made up of the Ministry of Intelligence and Security, the Basij Resistance Force, the intelligence unit of the [Iranian Revolutionary Guards Corps] IRGC, and the law enforcement forces within the Ministry of Interior that largely are responsible for providing police and border control. The leadership of each of these organizations appears to be fragmented and dispersed among several, often competing, political factions. Public information on all Iranian security and intelligence forces is extremely limited and subject to political manipulation.⁵²
- 3.14.3** The Revolutionary Guards, also known as the Islamic Revolutionary Guards Corps (IRGC), was formed after the 1979 revolution as a parallel armed force to ensure domestic security. The Revolutionary Guards control the volunteer Basij militia. There are now around 125,000 Revolutionary Guards, with air, naval and ground forces. All commanders are appointed by Iran's Supreme Leader and answerable only to him. The Guards also have substantial economic interests in Iran, owning many companies and some public services like hospitals.⁵³
- 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. 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.⁵⁴
- 3.14.5** There are 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

⁵² COI Service Iran Country Report January 2010

⁵³ Amnesty International Report Iran Election contested repression compounded, December 2009

⁵⁴ COI Service Iran Country Report January 2010

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.⁵⁵

- 3.14.6** The Basij derives its legitimization from Article 151 of the Iranian Constitution, which calls upon the government to fulfil its duty according to the Quran to provide all citizens with the means to defend themselves. Numbering over 1,000,000 members, the Basij is a paramilitary force, mostly manned by elderly men, youth, and volunteers who have completed their military service.⁵⁶
- 3.14.7** The Basij, plays an increasingly prominent role in the suppression of domestic unrest. Throughout the 1990s, the regular army and IRGC alike protested at being ordered to suppress citizens demonstrating against Iran's worsening economic conditions. For instance, in August 1994, they refused orders to open fire on protesters in Qazvin. The Basij, however, had no such qualms. They were similarly deployed by conservative clerics to quell the student riots of 1999 and 2003.⁵⁷
- 3.14.8** During the post election violence the Supreme Leader also appeared to give the go-ahead to security forces to use whatever force they felt was necessary to end the demonstrations. Despite several reported deaths of protesters, he did not call on them to use force only if strictly necessary and in accordance with the law, but instead warned people that if they continued to take to the streets, the consequences would lie with them. His speech ushered in a violent crackdown on protests. In Tehran and many other cities, Revolutionary Guards, special riot police and the Basij were deployed in vast numbers to stop or disperse demonstrations, using live ammunition, tear gas and rubber bullets. Anti-riot police, non-uniformed intelligence officials and Basij on motorbikes charged into crowds of demonstrators, causing terror and many injuries.⁵⁸
- 3.14.9** In October 2009, it was announced that the Basij and Revolutionary Guards would shortly be merged to create the Revolutionary Guards Ground Resistance Force. When announcing the merger, the Chief of the Joint Command of the Armed Services, Major-General Sayed Hassan Firouzabadi, stated that “structures in the Guards should change and Basij Organization should deal with other issues such as intellectual matters [*kar-e narm afzari*] and the deepening of Basiji culture in society”. Around the same time, Hossein Ta'eb, the Commander of the Basij, who had supported President Mahmoud Ahmadinejad's re-election and had previously held posts in the Ministry of Intelligence and the Office of the Supreme Leader, was reported to have become the Deputy Head of Intelligence of the Revolutionary Guards.⁵⁹
- 3.14.10 Actors of protection.** Caseowners 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. Caseowners 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. 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

⁵⁵ COI Service Iran Country Report January 2010

⁵⁶ COI Service Iran Country Report January 2010

⁵⁷ COI Service Iran Country Report January 2010

⁵⁸ Amnesty International Report Iran Election contested repression compounded, December 2009

⁵⁹ Amnesty International Report Iran Election contested repression compounded, December 2009

punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

3.14.11 However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.

3.14.12 *Internal relocation* 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.

3.14.13 Iranian citizens are generally able to travel freely within the country and change their place of residence without obtaining official permission.⁶⁰ However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.14.14 *Conclusion.* Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).

3.14.15 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...

3.14.16 Those members of the internal security and intelligence services who are able to demonstrate that they have not taken part in such abuses and who having spoken out against abuses committed by those organisations (including for example reporting such instances to their superiors are likely to face a serious risk of mistreatment on return to Iran and a grant of asylum will be appropriate.

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 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.

3.15.3 *Consideration.* Prison conditions are poor. 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 and death in custody remains a very serious

⁶⁰ US State Department Human Rights Report 2007 & 2009: Iran

concern in Iran. Numerous prisoners complained that authorities intentionally exposed them to extreme cold for prolonged periods and said they lacked access to medical care in prison. At the end of July 2009, Supreme Leader Khamenei ordered Kahrizak Prison closed after detainees alleged abuse and inhumane conditions. The prisoners were transferred to Evin Prison.⁶¹

- 3.15.4** In September 2008 the UK-based International Center for Prison Studies reported that more than 150,000 prisoners in the country occupied facilities constructed to hold no more than 65,000 persons. Human rights activists and international media reported cases of political prisoners confined with violent felons. Pretrial detainees occasionally were held with convicted prisoners. Typically, people accused of drugs offences or other serious crimes are held for long periods in pre-trial detention, routinely ill-treated, and allowed access to a lawyer only at the point where they go on trial, if at all.⁶²
- 3.15.5** The government did not permit independent monitoring of prison conditions by any outside groups, including UN groups or special rapporteurs. On July 28, a parliamentary committee visited Evin Prison to investigate conditions. At the end of 2009 its report had not been published. In 2007 the government granted foreign journalists a tour of Evin Prison for the second time in two years. According to Agence France-Presse (AFP), during the visit Tehran prison director Sohrab Soleimani denied there were political prisoners in Evin Prison but told journalists there were 15 prisoners in Evin on "security" charges.⁶³
- 3.15.6** There is much evidence to suggest that torture and other ill-treatment of detainees was widespread during the 2009 election unrest. Women and men reported being raped in custody, sometimes with an implement. Evidence of this particular form of rape – which had rarely if ever been reported before by men – accumulated as the months passed by and suggested that sexual abuse of dissidents may have been authorized at some level in the post-election period. Methods of torture and other ill-treatment reported, in addition to rape, included severe beatings; confinement in tiny spaces; hanging upside down by the feet for long periods; deprivation of light, food and water and denial of medical treatment. The authorities have acknowledged that at least three people died in custody in the election period apparently as a result of torture or ill-treatment, although the true total may be much higher.⁶⁴
- 3.15.7** Some prison facilities, including Tehran's Evin Prison, are notorious for cruel and prolonged torture of political opponents of the Government. Kahrizak detention centre, in the southern outskirts of Tehran, appears to have been set up as a detention centre for "thugs and hooligans", under the control of the police, about five years ago. However, in 2007 it was reportedly identified as substandard and illegal by the Judiciary which had recommended its closure, which never happened. Abuses at Kahrizak detention centre in southern Tehran began to emerge almost immediately after up to 145 people arrested during the 10 July 2009 protests were transferred there because of overcrowding at Evin Prison. The authorities have acknowledged that at least three people held there died. Detainees have described how they were held in containers in appalling conditions and subjected to torture and other ill-treatment. Some said that in order to inflict greater pain, prison officers wet the prisoners before beating them with electricity cables and batons.⁶⁵
- 3.15.8** The age for criminal responsibility under Iranian law is set at 14 years and 7 months for boys and 8 years and 9 months for girls, which is low by international standards. Accordingly, children who commit serious crimes can be processed as adults under the Penal Code. Furthermore, there is a possibility of death sentence under *qisas* (retribution in kind) for juvenile offenders, unless *diyah* is agreed or the offender is forgiven by the

⁶¹ COI Service Iran Country Report January 2010; US State Department Human Rights Report 2009: Iran

⁶² COI Service Iran Country Report January 2010

⁶³ US State Department Human Rights Report 2009: Iran

⁶⁴ Amnesty International Report, Iran, Election contested repression compounded December 2009.

⁶⁵ COI Service Iran Country Report January 2010; Amnesty International Report, Iran, Election contested repression compounded December 2009

victim's family. The sharia jurisprudence considers *qisas* a private right of the family of the victim that cannot be overruled by the decision of a judge or any other authority. In this connection, Iranian officials exclude the State's responsibility for *qisas* cases. There were also reports of juvenile offenders being detained with adult offenders.⁶⁶

3.15.9 The use of the death penalty is reportedly rising, and Iran is one of the few countries in the world that still executes juvenile offenders. According to reports there were over 388 executions in 2009, compared to 350 in 2008 and 300 in 2007. This includes the execution of at least five juvenile offenders, under the age of 18 at the time of their offence. Punishments such as flogging, stoning, and amputations remain on the statute books and have reappeared in practice.⁶⁷

3.15.10 Caselaw.

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)

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).

SF (Iran) CG* [2002] UKIAT 00973. The IAT held that the following conditions in Iran did not breach Article 3:

- some prison facilities are notorious for the cruel and prolonged acts of torture inflicted upon political opponents of the government – there was no real risk that the claimant in this case would be treated as if he were a political opponent
- prison conditions are harsh. Some prisoners are held in solitary confinement or denied adequate food or medical care in order to force confessions – the claimant in this case was not at all likely to face ill treatment in order to force a confession

The Tribunal did "not doubt that prison conditions in Iran are far from ideal ... [and] may not measure up to what is expected in this country ... Recognition has to be had to the situation in individual countries and to the standards that are accepted, and expected, in those countries. Of course in relation to Article 3, there is a line below which the treatment cannot sink ... [but] the threshold has to be a high one because, otherwise, it would be ... quite impossible for any country to return to a non-signatory an individual who faces prosecution, rather than any sort of persecution."

3.15.11 Conclusion. Whilst prison conditions in ordinary prisons in Iran are reportedly poor with overcrowding and solitary confinement being particular problems, conditions 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

⁶⁶ US State Department Human Rights Report 2009: Iran; COIS Iran Country Report January 2010

⁶⁷ FCO Country Profile 2010; BBC News 'Iran executes juvenile offender' 12/06/08; BBC News 'Iran hangs second teenage killer' 27/08/08; BBC News 'Mass execution for Iran murderers' 22/01/09; Amnesty International: Executions of Child Offenders since 1990; Human Rights Watch (HRW) World Report 2010: Iran; HRW 'Iran hangs seventh juvenile offender this year' dated 4/11/08

appropriate. However, the individual factors of each case should be 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 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.

3.15.12 Prison conditions for political prisoners 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 in Iran are likely to reach the persecution threshold and a grant of asylum will be appropriate where exclusion is not justified.

3.15.13 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.

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 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. 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 Health outcomes in Iran have improved greatly over the past twenty years and now generally exceed regional averages. Key to this success has been the Government's strong commitment to and effective delivery of primary health care.⁶⁸

4.4.3 There are two types of hospitals in Iran, private and governmental. To receive treatment in the governmental hospitals, one must belong to the social security scheme whereby the employer pays the subscriptions for the employee, which would then entitle them to subsidised medical treatment and medication.⁶⁹

⁶⁸ COI Service Iran Country Report January 2010

⁶⁹ COI Service Iran Country Report January 2010

- 4.4.4** In Tehran and 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.⁷⁰
- 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 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.⁷¹
- 4.4.6** According to the most recent epidemiologic survey (2004), 21 per cent of the population (25.9 per cent of the women and 14.9 per cent of the men) was detected as likely to be suffering from mental illness. A mandate by the Minister of Health was issued in 1997 to allocate 10 per cent of all general hospitals to psychiatry beds. Mental health services at the primary care level are available to more than one-fifth of urban and more than four-fifths of the rural population.⁷²
- 4.4.7** The UN AIDS/WHO/UNICEF Epidemiological Fact Sheet on HIV and AIDS in Iran, updated in October 2008, noted that approximately 86,000 adults were living with HIV, of whom approximately 24,000 were women. The major factor which is fuelling the epidemic in Iran is the use of contaminated injecting equipment among injecting drug users, as well as sexual transmission of the disease. Therefore, the work of the Joint UN Team on AIDS is primarily focused on the issue of injecting drug use. This work has been successful and the Iranian government has one of the most progressive harm reduction policies on record in a developing country. There are more than 20,000 drug users on the government methadone maintenance programme, which began three years ago. Important legal reforms have facilitated the success of this programme: although drug use is a crime, people who are having treatment for drug use are not considered criminals. Based on the most recent available studies, more than 90 percent of drug users have used clean needles for their last injection in Tehran. The government supported programs for HIV/AIDS awareness and generally did not interfere with private HIV/AIDS-related NGOs. Government hospitals diagnosed and treated AIDS patients free of charge. Nevertheless persons with HIV/AIDS reportedly faced discrimination in schools and workplaces.⁷³
- 4.4.8** 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

⁷⁰ COI Service Iran Country Report January 2010

⁷¹ COI Service Iran Country Report January 2010

⁷² World Health Organization Mental Health Atlas 2005 (pages 239-241)

⁷³ COI Service Iran Country Report January 2010; US State Department Human Rights Report 2009: Iran

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. The AVR scheme is implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM 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 the IOM offices in London 0800 783 2332 or www.iomlondon.org.

6. List of source documents

A full list of source documents cited in footnotes in this guidance is set out below:

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October 2010