

OPERATIONAL GUIDANCE NOTE

IRAN

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Iran and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Iran Country of Origin Information 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.

Source documents

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

2. Country assessment

- 2.1** The present Constitution was adopted after the 1979 Revolution. It stipulates that Iran is an Islamic Republic and the teachings of (Shi'a) Islam are to be the basis of all political, social and economic relations.¹
- 2.2** Overall authority is vested in the Supreme Leader, currently Ayatollah Ali Khamenei, who is chosen by the Assembly of Experts, an elected body of 86 religious scholars chosen from all over Iran. The Supreme Leader is the Commander-in-Chief of the armed forces. The executive branch is headed by the President, elected by universal adult suffrage for a term of four years and is restricted by the Constitution to no more than two consecutive terms in office.²
- 2.3** Legislative powers are held by the Majles consisting of 290 elected members who represent regional areas or religious communities for a four-year term. Iranian Christians, Zoroastrians and Jews have dedicated Majles representatives. All legislation passed by the Majles is sent to the Council of Guardians for approval. The Majles also approve the members of the Council of Ministers, the Iranian equivalent of the UK's Cabinet, who are appointed by the President. The Council of Guardians reviews legislation passed by the Majles for constitutionality and adherence to Islamic law. It is composed of six theologians appointed by the Supreme Leader and six jurists nominated by the judiciary and approved by the Majles. The Council of Guardians also has the power to vet candidates for the Majles, local councils, the Presidency and the Assembly of Experts.³
- 2.4** The Council for the Discernment of Expediency was created in 1988 to resolve disputes over legislation between the Majles and the Council of Guardians. In August 1989, it became an advisory body on national policy and constitutional issues for the Supreme Leader. It is currently led by former President Ali Akbar Hashemi Rafsanjani and includes the heads of all three branches of government and the clerical members of the Council of Guardians. The Supreme Leader appoints other members for a three-year term.⁴
- 2.5** Political parties were legalised in 1998 after a 13-year ban and are still at an early stage of development.⁵
- 2.6** Presidential elections took place in June 2005. Mahmoud Ahmadinejad a hard-line conservative, and former mayor of Tehran, beat Akbar Hashemi Rafsanjani, a former President (1989 - 1997), and pragmatic conservative. President Ahmadinejad secured just over one third of the votes. Although there was a relatively high turnout of approximately 59 per cent, the Council of Guardians reportedly prevented the vast majority of candidates, including all female ones, from standing. During the polling, many candidates and the interior ministry complained of irregularities, including interference by basij forces. There were no international election observers.⁶
- 2.7** Conservative candidates retained control of the Majles following the parliamentary elections of March 2008, reportedly winning an estimated four times as many seats as the reformists. However, many of the winners, including the former nuclear negotiator Ali Larijani, are pragmatic conservatives who are critics of the hard-line President.

¹ Home Office COI Service (COIS) Iran Country of Origin Information Report August 2008 (Background Information: Constitution) & Foreign and Commonwealth Office (FCO) Country Profile 2008

² FCO Country Profile 2008

³ FCO Country Profile 2008

⁴ FCO Country Profile 2008

⁵ FCO Country Profile 2008

⁶ COIS Iran Country Report August 2008 (Background Information: History) & FCO Country Profile 2008

Reformist candidates made up the bulk of about 1,700 candidates disqualified from standing in the elections by the Council of Guardians, but the reformists still saw a small increase in their representation in the Majles.⁷

- 2.8** The human rights situation in Iran remains poor. According to reports, violations of freedom of expression and freedom of religion are worsening, whilst journalists, academics, human rights defenders, and religious and ethnic minorities face harassment, intimidation, arbitrary detention, and threats of prosecution. The use of the death penalty is reportedly rising with more than 300 executions in 2007. Iranian judges continue to hand down death sentences to those who were under the age of eighteen at the time of their offence, despite Iran's international commitments to the Convention on the Rights of the Child and the international Covenant on Civil and Political Rights. Reports suggest that at least four juvenile executions took place in 2007 whilst the executions of seven child offenders were documented in 2008. Punishments such as flogging, stoning, and amputations remain on the statute books and have reappeared in practice.⁸
- 2.9** Three religious minorities are recognised by the Constitution (Christian, Jewish and Zoroastrian), but they remain vulnerable in a society governed by the laws and values of Islam. The Baha'i religion is not officially recognised, so members of the Baha'i community enjoy no constitutional freedoms. In recent years, Baha'is have reportedly faced discrimination, harassment, and arbitrary arrest and detention because of their religious beliefs. Some Baha'is have had property confiscated or destroyed, whilst many face limited access to employment and higher education.⁹

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 guidance below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).

⁷ COIS Iran Country Report August 2008 (Background Information: History), FCO Country Profile 2008, British Broadcasting Corporation (BBC) News 'Iran faces power play after vote' dated 16 March 2008, BBC News 'Conservatives win Iran election' dated 16 March 2008, BBC News 'Iranians vote in general election' dated 14 March 2008 & BBC News 'Iran blocks reformist candidates' dated 23 January 2008

⁸ COIS Iran Country Report August 2008 (Human Rights: Introduction), FCO Human Rights Annual Report 2007 (pages 151-154), FCO Country Profile 2008, U.S. Department of State report on Human Rights Practices 2007: Iran (Introduction), BBC News 'Iran executes juvenile offender' dated 12 June 2008, BBC News 'Iran hangs second teenage killer' dated 27 August 2008, BBC News 'Mass execution for Iran murderers' dated 22 January 2009, Amnesty International: Executions of Child Offenders since 1990, Human Rights Watch (HRW) World Report 2009: Iran & HRW 'Iran hangs seventh juvenile offender this year' dated 4 November 2008

⁹ COIS Iran Country Report August 2008 (Human Rights: Freedom of Religion), FCO Human Rights Annual Report 2007 (pages 151-154) & FCO Country Profile 2008

- 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 the individual circumstances.
- 3.4** 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 the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:
<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Christian converts**
- 3.6.1** 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.
- 3.6.2 *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. An innate-apostate (one whose parents were Muslims and who embraced Islam but later left Islam), if a man, may be executed. If a woman, she may be imprisoned for life, but will be released if she recants. A national apostate (a person converting from another faith to Islam, and then reconverting back to the other faith) will be encouraged to recant and, upon refusal to recant, may be executed. The most prominent cases of apostasy appear to occur from Islam to Christianity.¹⁰
- 3.6.3** According to the U.S. Department of State, there were no reported instances of the death penalty being applied for apostasy during 2007. In a letter dated 17 September 2007, the Foreign and Commonwealth Office (FCO) reported that in practice apostasy cases are rarely heard in Iranian courts. The FCO also reported that it is not aware of any individual in Iran who has been executed after having been convicted of apostasy in the past fifteen years. Whilst noting the case of Ghorban Touri whose death may have been related to his Christian activities including evangelising to Muslims, the FCO informed that it is not clear whether his murder was state sanctioned or perpetrated by members of his local community.¹¹
- 3.6.4** In the same letter, the FCO judged that whilst verbal intimidation and monitoring of Christian converts has increased since 2004, there is no evidence to suggest that arrests, or violence against, converted Christians has increased. The FCO also advised that the harassment Christian converts face is more likely to be extra-judicial and without connection to the Government.¹²
- 3.6.5** Conversion may impact on work and education opportunities as Christians are not permitted to hold senior official positions in the government, judiciary, school system or military. Muslim converts to Christianity may face obstacles (such as not being admitted to university or not being issued a passport), but in reality they appear able to practise their new faith up to a point. On the other hand, those who actively display their faith in

¹⁰ COIS Iran Country Report August 2008 (Human Rights: Freedom of Religion)

¹¹ COIS Iran Country Report August 2008 (Human Rights: Freedom of Religion) & Letter from the FCO dated 17 September 2007

¹² Letter from the FCO dated 17 September 2007

public, in particular by proselytising, can expect to face repression even if their conversion goes back decades.¹³

3.6.6 In a further letter dated 31 July 2008, the FCO noted an increase in reports of arrests of Christians during the previous three months and reaffirmed that Christians are more likely to face persecution from the authorities if they are actively trying to convert Muslims to Christianity or if they are converts themselves. The FCO has also highlighted the existence of a draft penal code currently being considered by the Iranian Parliament, which contains provisions setting out a mandatory death sentence for the crime of apostasy.¹⁴

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

3.6.8 *Internal relocation.* Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

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

3.6.9 *Case law.*

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

- 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)
- 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 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)
- On the issue of whether it would be persecutory to expect an individual returning to modify his behaviour, the AIT stated that cases must be considered in

¹³ COIS Iran Country Report August 2008 (Human Rights: Freedom of Religion) & Letter from the FCO dated 17 September 2007

¹⁴ Letter from the FCO dated 31 July 2008 & Telegraph.co.uk 'Hanged for being a Christian in Iran' dated 11 October 2008

accordance with the two stage approach in **HJ** (see paragraph 3.9.9 below). The first stage is to consider how a returnee will behave on return. That question must be decided from the evidence and facts of each case including the way in which the person has behaved up until the present. It should not be based on how it is thought the individual should behave. The second stage is an objective test to decide whether that would entail that person having to live a life that he could not reasonably be expected to tolerate because doing so would entail the suppression of many aspects of his identity. (paragraph 140) For some converts to sacrament-based churches the conditions may be such that they could not reasonably be expected to return.

- 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.

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).

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:

- (1) The genuineness of both the appellant’s conversion and the church he attends.
- (2) 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.
- (3) 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).

3.6.10 Conclusion. Whilst conversion from Islam to another religion is in theory punishable by the death penalty, there is no evidence that this has been applied by the Iranian authorities in recent years and apostasy cases are rarely heard in Iranian courts. In reality, Christian converts are able to practise their faith up to a point without attracting the attention of the authorities and such applicants will not generally warrant a grant of asylum. However, those who actively display their faith in public, in particular by proselytising, can expect to face repression and there may be some individuals who by virtue of their high profile are able to demonstrate that they face a serious risk of persecution or ill-treatment from the Government. According to the case law, the fundamental question to be determined in each case is whether there is a real risk that the applicant has already or will come to the attention of the authorities. Where individuals are able to demonstrate such a risk a grant of asylum may be appropriate. Moreover, there may be some Christian converts who can demonstrate that they have come to the attention of the authorities previously for different reasons and this in combination with their conversion will put them at real risk of persecution. The conversion plus additional risk factors may compel the authorities to show an adverse interest in the individual where knowledge of the conversion in itself would not be of interest. Where applicants are able to demonstrate such a risk, a grant of asylum may be appropriate.

3.7 Christian evangelisers and/or proselytisers

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 their actively seeking to convert others (proselytising).

3.7.2 *Treatment.* According to figures from the United Nations (UN), 300,000 Christians live in Iran, the majority of who are ethnic Armenians. There are Protestant denominations, including evangelical religious groups. Christian groups outside Iran estimate the size of the Protestant Christian community to be less than 10,000, although many Protestant Christians reportedly practise in secret.¹⁵

3.7.3 Christians who actively display their faith in public, particularly those who proselytise, can expect to face repression. In letters dated 28 June 2007, 17 September 2007, and 31 July 2008, 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.¹⁶

3.7.4 According to reports, the Iranian authorities have become particularly vigilant in recent years in curbing what is perceived as increasing proselytising activities by evangelical Christians. In 2006 and 2007, Christians, particularly evangelicals, continued to be subject to harassment and close surveillance. The Government vigilantly enforced its prohibition on proselytising by evangelical Christians by closely monitoring their activities, discouraging Muslims from entering church premises, closing their churches, and arresting Christian converts. Members of evangelical congregations are required to carry membership cards, photocopies of which must be provided to the authorities. In 2006 and 2007, worshippers were reportedly subject to identity checks by authorities posted outside congregation centres. The Government also 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.¹⁷

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

3.7.6 *Internal relocation.* Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of

¹⁵ U.S. Department of State International Religious Freedom Report 2008: Iran (Section I)

¹⁶ COIS Iran Country Report August 2008 (Human Rights: Freedom of Religion), 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

¹⁷ COIS Iran Country Report August 2008 (Human Rights: Freedom of Religion)

ill-treatment/persecution in their home area would be able to relocate to a part of Iran where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

3.7.7 *Caselaw.*

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

- 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)
- 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 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)
- On the issue of whether it would be persecutory to expect an individual returning to modify his behaviour, the AIT stated that cases must be considered in accordance with the two stage approach in **HJ** (see paragraph 3.9.9 below). The first stage is to consider how a returnee will behave on return. That question must be decided from the evidence and facts of each case including the way in which the person has behaved up until the present. It should not be based on how it is thought the individual should behave. The second stage is an objective test to decide whether that would entail that person having to live a life that he could not reasonably be expected to tolerate because doing so would entail the suppression of many aspects of his identity. (paragraph 140) For some converts to sacrament-based churches the conditions may be such that they could not reasonably be expected to return.
- 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.

FS & Others CG [2004] UKIAT 000303. The Tribunal noted that "we would draw a distinction between those converts who would simply attend Church, associate with Christians and study the bible, and those who would become leaders, lay or ordained, or Pastors, or who would actively and openly proselytise or who would wear in public outward manifestations of their faith such as a visible crucifix." (paragraph 175) They added that "leadership and active proselytising have led to greater targeting in the past." (paragraph 173) and concluded that "We would regard the more active convert, Pastor, church leader, proselytiser or evangelist as being at real risk." (paragraph 189)

3.7.8 Conclusion. The fundamental question to be determined in each case is whether there is a real risk that the applicant has already or will come to the attention of the authorities. Converts who practise their religion cautiously and with reasonable discretion are unlikely to face a real risk of persecution. However, converts who can demonstrate that they have and will continue to practise evangelical or proselytising activities because of their character or their affiliation to evangelical churches, will attract the adverse notice of the authorities on return to Iran and should be considered at risk of persecution. In such cases a grant of asylum will be appropriate.

3.8 Adulterers

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 and non-state agents due to their adultery.

3.8.2 *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. 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.¹⁸

3.8.3 According to the Iranian legal code, when there is not enough evidence to convict a defendant of sexual crimes, the judge may use his knowledge (in a deductive process based on the evidence that already exists) to determine whether the crime took place or not.¹⁹

3.8.4 In 2002, it was announced that there would be a moratorium on stoning as a punishment for adultery, however in 2007, the authorities reportedly carried out the sentence against one man, Jafar Kiani. In a report dated 1 October 2008, the UN Secretary General noted that stoning verdicts had reportedly been suspended for at least 14 people: eleven women and three men. According to the Secretary General, it was reported in July 2008, that nine people had been sentenced to stoning for adultery, although those figures are disputed by the Iranian authorities. Two men convicted of adultery were reportedly stoned to death in December 2008.²⁰

3.8.5 According to an article in the Daily Mail dated 8 February 2008, the punishment for an unmarried adulterer is not death, but 100 lashes. In an earlier report dated 8 May 1998, the Canadian Immigration and Refugee Board noted that the penalties for attempting to entice a married person into committing adultery could range from lashing to death depending on the judge's discretion. The married person who is the unwilling object of such attention is not immune from legal consequences (normally lashing) and from social ostracism.²¹

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

3.8.7 *Internal relocation.* Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

¹⁸ COIS Iran Country Report August 2008 (Human Rights: Humanitarian Issues)

¹⁹ COIS Iran Country Report August 2008 (Human Rights: Judiciary)

²⁰ COIS Iran Country Report August 2008 (Human Rights: Humanitarian Issues), United Nations General Assembly: Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran dated 1 October 2008 & BBC News 'Iran executes two men by stoning' dated 13 January 2009

²¹ COIS Iran Country Report August 2008 (Human Rights: Humanitarian Issues)

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

3.8.8 *Case law.*

A [2003] UKIAT 00095. The IAT allowed this appeal by the Secretary of State against this Iranian appellant who was sentenced to 100 lashes and then death by stoning after four witnesses gave evidence against him for adultery as is the normal procedure in Iran. The appellant successfully appealed and was released on bail. The Adjudicator found the appellant to be credible and that he has a well-founded fear of persecution due to his political and religious opinions. He then went on to find that there would be a breach of Articles 2 and 3 of ECHR. The S of S only appealed against the asylum decision. The IAT found: Following Januzi [2003] EWCA Civ 1187 and AE and FE* [2003] EWCA Civ 1032, the interpretation that 'because Iran is a theocratic state, anyone who violates its laws, and faces punishment as a result, can be said to be at risk of persecution by reason of religion,' substantially distorts the purpose of the Refugee Convention (paragraph 34). The fact that a law has its ultimate origin in a religious code does not make it fall within one of the Refugee Convention heads (paragraph 34). Applying Gomez, "All laws necessarily have to some extent a 'political dimension' but that does not mean that a person who transgresses a law is on that account being persecuted for a political reason." (Paragraph 35) Disparity in treatment between different countries cannot in itself cause one of the "Convention grounds" (race, religion etc.) to come into play, if it would not otherwise do so (paragraph 43).

ME [2003] UKIAT 00166. The adjudicator 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". She also allowed the appeal on human rights grounds.

The IAT allowed the appeal, by the SSHD, against the adjudicator's decision to allow the asylum appeal, however, human rights went unchallenged and thus still stand. The IAT found: The Tribunal distinguished the facts of the present case with those in Ameen; the reason that the appellant had been attacked and the authorities had subsequently prosecuted him for adultery was simply because he had contravened Iranian law (paragraph 9).

In applying the principles in Montoya [2002] INLR 399 (paragraph 10) to the facts of the case 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.' (Paragraph 11)

3.8.9 *Conclusion.* Adultery, given traditional and societal attitudes, can attract treatment amounting to torture, degrading treatment, and/or the death penalty. In a paper dated 1 January 2005, the United Nations High Commissioner for Refugees (UNHCR) noted that the critical questions for determining whether the claimant has protection needs are whether he did indeed commit adulterous acts under the Iranian Penal Code; whether this was known or likely to be made known to the public and the Iranian authorities; and whether persecution and serious harm would be among the likely consequences of this public knowledge.²²

3.8.10 However, the standard of proof required for a charge of adultery is stringent and if an applicant has been unjustly accused of adultery it is unlikely that s/he will be convicted wrongly of adultery. Few applicants will be able to demonstrate a well founded fear of

²² United Nations High Commissioner for Refugees (UNHCR): Adultery in Iran/Particular Social Group dated 1 January 2005 (page 3)

persecution from the authorities as a direct result of adultery, and those that can, will not be able to engage the UK's obligations under the 1951 Convention as they will not qualify as a particular social group. If there is credible evidence that the individual is an adulterer and is likely to be prosecuted a grant of Humanitarian Protection will be appropriate.

3.9 Gay men and lesbians

[This section is currently under review. Case owners should consult a Senior Caseworker as necessary.]

3.10 Women

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 and non-state agents due to their gender.

3.10.2 *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 can own property and businesses in their name, can obtain credit at a bank and are able to access maternity, child care, and pension benefits. Over half of Iran's university students are women and the number of women's non-governmental organisations has reportedly increased from approximately 130 to 450 in the past decade. Nonetheless, gender inequality and discrimination are widespread, and are perpetuated by Iran's constitutional structures. For example, a woman's legal testimony is worth half that of a man's; compensation (blood money) payable to the family of a female crime victim is half what is payable for a male victim; and under civil inheritance laws boys receive double the amount girls receive. Securing divorce and custody of children is also notoriously harder for Iranian women.²³

3.10.3 In 2007, the Government continued to enforce gender segregation in most public spaces 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 airports, universities and some public buildings through separate entrances. In addition, married women reportedly need their husband's permission to get a passport and travel overseas. In 2003, the Council of Guardians rejected a bill that would require the country to adopt a UN convention ending discrimination against women.²⁴

3.10.4 Iranian women's rights groups who have been campaigning for the Government to address the issues of discrimination have faced increasing pressure in recent years. For example, in 2007 the Government continued to arrest and detain members of the 'One Million Signatures Campaign Demanding Changes to Discriminatory Laws' which activists launched in 2006 to promote women's rights. In March 2007, days before International Women's Day, 33 women's rights activists were arrested outside a Tehran court building. They had gathered to support five women who were on trial for organising a women's rights demonstration in June 2006, a demonstration that was violently broken up by the security forces. The women received prison sentences (some suspended) for 'propaganda against the regime' and public order offences.²⁵

3.10.5 According to reports, spousal abuse and violence against women occurs in Iran, but reliable statistics are not available. Abuse in the family is reportedly considered a private matter and is seldom discussed publicly, although there have been some efforts in

²³ COIS Iran Country Report August 2008 (Human Rights: Women) & USSD 2007 (Section 5)

²⁴ COIS Iran Country Report August 2008 (Human Rights: Women)

²⁵ COIS Iran Country Report August 2008 (Human Rights: Women)

recent years to change this attitude. Rape is illegal and subject to strict penalties, but it reportedly remained a problem during 2007. According to a 2004 report from the Independent Researchers on Women's Issues, there were no reliable statistics on honour killings, but there was evidence of 'rampant' honour killings in the western and southwestern provinces, in particular Khuzestan and Elam. The punishment for perpetrators was reported to be a short prison sentence.²⁶

- 3.10.6** Women in Iran are required by Iranian penal law to maintain Islamic dress in public and therefore must cover their hair and neck completely and wear clothing that does not reveal the shape of the body. If a woman appears in public without the appropriate Islamic covering, she can be sentenced to imprisonment, lashings, and/or fined. However, in the absence of a clear legal definition of appropriate hijab or the punishment, women are reportedly at the mercy of the disciplinary forces or the judge.²⁷
- 3.10.7** 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. Temporary marriages may last for any length of time, but such wives are reportedly not granted rights associated with traditional marriage.²⁸
- 3.10.8** 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. The law provides women preference in custody for children up to seven years of age; thereafter, the father is entitled to custody. After the age of seven, in disputed cases custody of the child is determined by the court.²⁹
- 3.10.9** *Sufficiency of protection.* If the applicant's fear is of ill-treatment amounting to persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.10.10** According to reports, it is difficult for many women who suffer discrimination, particularly those living outside large cities, to obtain legal redress.³⁰ Iran is a highly developed country particularly in the major cities such as Tehran, Mashad or Esfahan with constitutional and legal 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.

²⁶ COIS Iran Country Report August 2008 (Human Rights: Women) & USSD 2007 (Section 5)

²⁷ COIS Iran Country Report August 2008 (Human Rights: Women)

²⁸ COIS Iran Country Report August 2008 (Human Rights: Women)

²⁹ COIS Iran Country Report August 2008 (Human Rights: Women)

³⁰ COIS Iran Country Report August 2008 (Human Rights: Women)

3.10.11 Internal relocation. 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. During the year, 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.³¹ 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.

3.10.12 Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in *Januzi* ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

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

3.10.13 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*

³¹ COIS Iran Country Report August 2008 (Human Rights: Freedom of Movement)

use, as the background material on custody and alimony shows. Relevant grounds apply to this Claimant and she is not dependant wholly on her own evidence. The Iranian state, whatever its other discriminatory acts, is not unable or unwilling to provide protection in this instance. The evidence also does not support the conclusion that this couple cannot live apart, before divorce; they have at times done so. It does not support the conclusion that after divorce there would be persecution." (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)

3.10.14 Conclusion. Iran remains an extremely patriarchal society and despite some advances in the general position of women they remain discriminated against both in terms of the law and tradition. Given the almost universal country attitudes, which can be more firmly rooted outside major towns and cities, the question of internal relocation will require consideration in light of the facts pertaining to each individual case. Sufficiency of protection will be dependent on the nature of fear, and where the persecution emanates from. Women who fear persecution as a result of their gender should be treated as being members of a particular social group as they are discriminated against in matters of fundamental human rights and may not be protected by the state. Women applicants who can demonstrate that they have a well founded fear of persecution as a result of their gender and that have no recourse to state protection or internal relocation should be granted asylum.

3.11 Kurds and supporters of the KDPI, Komala, or PJAK

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 due to their ethnicity or political affiliation.

3.11.2 Treatment. The Constitution grants equal rights to all ethnic minorities and according to reports ethnic Kurds can be found in all walks of life in Iran both in the private and public economic sectors as well as in Iran's military and civilian establishments. Kurds make up some 7 per cent of Iran's population of 68 million, and have campaigned for greater attention from the Government, citing provincial underdevelopment, inadequate political representation, and inattention to their cultural needs.³²

3.11.3 It was reported by the Kurdish press in March 2004 that demonstrations were triggered by events within the Kurdish area of Iraq when as a result of the signing of the Iraqi Constitution it transpired that Iraqi Kurdistan had gained considerable status within the Iraqi federal plan. The demonstrations followed as a result of Iranian Kurds showing

³² COIS Iran Country Report August 2008 (Human Rights: Ethnic Groups), USSD 2007 (Section 5) & Radio Free Europe 'Iran Faces Agitated Kurdish Population' dated 22 July 2005

solidarity and support with the Iraqi Kurds. The security forces reportedly reacted vigorously to the demonstrators. Iranian troops are permanently stationed in Kurdish areas.³³

- 3.11.4** In 2005 and 2006 there were a series of incidents focused on local Kurds' ethnic identity. In March 2006, Kurds clashed with police, reportedly resulting in three deaths and over 250 arrests. There were also clashes in June 2005, and there were strikes and demonstrations in July and August 2005 following the killing of a Kurdish activist by security forces. According to HRW and other sources, security forces killed at least 17 persons and wounded and arrested large numbers of others during this period.³⁴
- 3.11.5** 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), the largest and best organised of the Kurdish opposition groups, was founded after the Second World War and sought autonomy for Kurds in Iran. The KDPI reportedly ended its 'armed struggle' in the 1990s and the KDPI Congress in July 2004 changed the party's demands, replacing their previous aim of "democracy for Iran and autonomy for Kurdistan" with the aim of "federalism for Iran and national rights for Kurds". In 2005, the UNHCR reported that the punishments given to members of the KDPI have mainly remained concentrated on imprisonment terms. However, the UNHCR also noted that there have been a number of executions mainly reported by sources of the opposition.³⁵
- 3.11.6** The Revolutionary Organisation of the Toilers of Kurdistan, Komala, is the other major Kurdish party. While it has often violently disagreed with the KDPI, the Komala has supported the KDPI's stance for democracy and autonomy. According to the U.S. Department of State, two political activists associated with Komala, Sassan al-Kanaan and Mohammad Golabi, were executed in February and March 2003.³⁶ The regime has also been reported to use allegations that an individual is a member of a banned organisation, such as Komala, in order to silence them.³⁷
- 3.11.7** KDPI and Komala have more recently abandoned armed struggle in favour of a federal solution. However, Iran continues to face armed opposition mainly from the Kurdistan Independent Life Party (PJAK), thought to be affiliated to the Turkish PKK, which reportedly began operations in 2004. In September 2005, the Provincial Head of the Judiciary in West Azerbaijan stated that since March 2005 over 120 members of the security forces had been killed and 64 injured in clashes with PJAK. It was reported in April 2006 that Iranian police arrested seven activists from PJAK and charged them with inciting ethnic rioting in 2005. The Iranian authorities stated that the activists were involved in clashes in the West Azerbaijan province in which at least 17 people were killed. PJAK reportedly continued to conduct guerrilla attacks in 2007.³⁸
- 3.11.8 *Sufficiency of protection.*** As this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.11.9 *Internal relocation.*** Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners

³³ COIS Iran Country Report August 2008 (Human Rights: Ethnic Groups)

³⁴ COIS Iran Country Report August 2008 (Human Rights: Ethnic Groups), USSD 2007 (Section 5) & Radio Free Europe 'Iran Faces Agitated Kurdish Population' dated 22 July 2005

³⁵ COIS Iran Country Report August 2008 (Human Rights: Opposition Groups and Political Activists & Annex B) & FT.com 'Kurdish party sets out terms for talks with Tehran' dated 2 May 2003

³⁶ COIS Iran Country Report August 2008 (Human Rights: Opposition Groups and Political Activists)

³⁷ Letter from the FCO dated 26 June 2006

³⁸ COIS Iran Country Report August 2008 (Human Rights: Opposition Groups and Political Activists)

should automatically presume that internal relocation is not an option. As Lord Bingham observed in *Januzi* ([2006] UKHL 5):

“The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”

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

3.11.10 Conclusion. Unless the individual has come to the direct attention of the Iranian authorities, it is unlikely that the authorities will demonstrate an interest in an individual of Kurdish ethnicity or a low level supporter of the KDPI or Komala. However, there is objective evidence which indicates that leaders and militant supporters of the KDPI and Komala would be at a real risk of persecution because of their activities. For applicants that are able to demonstrate that they fall within this category, a grant of asylum would be appropriate. There have been reports that the regime may use allegations that an individual is a member of a banned organisation to silence them. In credible cases of this type a grant of asylum will only be appropriate where the individual is able to demonstrate that he/she has come to the attention of the authorities and as a result faces a serious risk of persecution.

3.11.11 Active members of PJAK who are able to establish that they are known to the Iranian authorities as activists may be at risk of ill-treatment amounting to persecution. Case owners should note 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 one of the Exclusion clauses is applicable. Case owners should refer all such cases to a Senior Caseworker in the first instance.

3.12 Student activists

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 being a student active against the state.

3.12.2 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.³⁹

3.12.3 In June 2003, thousands of Iranians took to the streets to protest against draft proposals to privatise universities in Iran. About 4,000 people were reportedly arrested all over the country as a result of the protests and subsequent clashes with militant supporters of

³⁹ COIS Iran Country Report August 2008 (Background Information: History)

religious leaders and the Special Forces. According to reports, up to 2,000 of those arrested were still held a month later, but most have since been released. Few students were reported among those arrested during the clashes which indicated that the dissent was by no means confined to student issues or the campuses where the trouble began.⁴⁰

3.12.4 According to some reports, students in Iran have lost interest in politics because the political situation is not changing, and the centre of gravity of their activities has shifted towards cultural and social initiatives. However, student activity and shows of dissent continued to erupt sporadically during 2007 and there have also been allegations regarding the arrest and ill-treatment of student activists such as Ahmad Batebi. In May 2006, a representative of the Student Movement Coordination Committee for Democracy in Iran reported that the repression of student activists has become “harsher” in recent years and the current regime has become more “intelligent” in how it deals with them.⁴¹

3.12.5 Sufficiency of Protection. As this category of applicants’ fear is of ill-treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.12.6 Internal Relocation. Where this category of applicants’ fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in *Januzi* ([2006] UKHL 5):

“The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”

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

3.12.7 Conclusion Those who are seen to be actively opposed to the current Government are likely to face ill-treatment in Iran. High-profile student activists who have come to the attention of the authorities are likely to face ill-treatment amounting to persecution. Where an individual applicant can demonstrate that they will face persecution a grant of asylum will be appropriate. However, students who have been involved in demonstrations but have no known political profile and are not known to the authorities are unlikely to come to the attention of the Iranian authorities on return. Therefore, the majority of applicants from this category of claim will not face ill-treatment or persecution and so would not qualify for asylum or Humanitarian Protection.

3.13 Smugglers

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

3.13.2 Treatment. 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. The total value of

⁴⁰ COIS Iran Country Report August 2008 (Background Information: History)

⁴¹ COIS Iran Country Report August 2008 (Background Information: History) & USSD 2007 (Section 1)

smuggled goods was believed to be \$5.5 billion-\$6 billion annually with up to 80 per cent of these goods entering the country through unregistered ports and jetties in the Persian Gulf.⁴²

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 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.⁴³

3.13.4 Sufficiency of protection. As this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.13.5 Internal relocation. Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

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

3.13.6 Conclusion. Persons fleeing from prosecution or punishment for an offence are not normally refugees. Prosecution, however, can be considered persecution if it involves victimisation in its application by the authorities. Punishment which is cruel, inhuman or degrading (including punishment which is out of all proportion to the offence committed) may also constitute persecution. Few applicants will be able to demonstrate that they would be subject to a disproportionate punishment as a result of their criminal activities. However, for individuals who are able to demonstrate that they face the death penalty or a real risk of suffering severe punishment which is meted out to some smugglers in Iran a grant of Humanitarian Protection may be appropriate. It should be noted 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 Prison conditions

3.14.1 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.

⁴² Radio Free Europe 'Goods Smuggling Highlights Economic Problems In Iran' dated 10 January 2005

⁴³ COIS Iran Country Report August 2008 (Human Rights: Medical Issues)

- 3.14.2** 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.
- 3.14.3 *Consideration.*** According to the U.S. Department of State, prison conditions in Iran are poor. In 2007, many prisoners were reportedly held in solitary confinement or denied adequate food or medical care in order to force confessions. After its February 2003 visit, the UN Working Group on Arbitrary Detentions described section 209 of Tehran's Evin Prison as a "prison within a prison" designed for the "systematic, large-scale use of absolute solitary confinement, frequently for long periods."⁴⁴
- 3.14.4** According to reports, overcrowding remains a significant problem. In March 2007, the UK-based International Centre for Prison Studies reported that 150,321 prisoners occupied facilities constructed to hold a maximum of 65,000 persons. Of the prisoners held in state detention centres during 2007, reportedly nearly one quarter were pre-trial detainees. In October 2007, Prison Organization head Ali Akbar Yasaghi put the number of prisoners at 158,351. There were 130 prisons in the country in 2007, with 41 more under construction during the year. There were reports during 2007 that Judiciary Chief Shahrudi encouraged judges to implement alternative sentencing for lesser crimes, reportedly due in part to prison overcrowding. However, at year's end, there were no reports on the extent to which this was implemented.⁴⁵
- 3.14.5** The first UN human rights monitors to visit Iran for seven years said on 26 February 2003 that Iranians suffer large-scale arbitrary detentions and some prisons operate outside the control of the judicial system. Although the head of the five-member team examining arbitrary detentions said the authorities had co-operated fully with its requests, he raised concerns about unaccountable prisons, detainees being held without access to legal defence, violations of freedom of expression and other abuses.⁴⁶
- 3.14.6** The number of illegal detention centres not under the direct control of the National Prisons Office is unknown. They are not officially registered as prisons, do not record the names of their prisoners, and information about their budgets, administration, and management is not known even by relevant government authorities. There are reportedly many in and around Tehran.⁴⁷
- 3.14.7** Some prison facilities, including Tehran's Evin Prison, are notorious for cruel and prolonged torture of political opponents of the Government. In 2007, human rights activists and domestic press reported cases of political prisoners confined in the same wing as violent felons. There were allegations that the authorities deliberately incarcerated non-violent offenders with violent offenders, anticipating they would be killed. There were also reports of juvenile offenders being detained with adult offenders.⁴⁸
- 3.14.8** In 2007, the Government generally granted prison access only to the International Committee of the Red Cross (ICRC), but the ICRC continued to not have access to detainees. In September 2007, the Government granted foreign journalists a tour of Evin Prison for the second time in two years. According to Agence France Presse, during the visit, the director of Tehran prisons, Sohrab Soleimani, denied that there were political

⁴⁴ COIS Iran Country Report August 2008 (Human Rights: Prison Conditions)

⁴⁵ COIS Iran Country Report August 2008 (Human Rights: Prison Conditions)

⁴⁶ COIS Iran Country Report August 2008 (Human Rights: Prison Conditions)

⁴⁷ COIS Iran Country Report August 2008 (Human Rights: Prison Conditions)

⁴⁸ COIS Iran Country Report August 2008 (Human Rights: Prison Conditions) & USSD 2007 (Section 1)

prisoners in Evin Prison but told the journalists that there were 15 prisoners in Evin on 'security' charges. Some prisoners who spoke to reporters during the journalists' 2006 visit to Evin prison complained that their cases had not come to trial or that they had been awaiting a verdict for months. According to reports from journalists following the two visits, the number of prisoners in Evin Prison is estimated to be between approximately 2,500 and 3,000.⁴⁹

3.14.9 *Caselaw.*

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 supervision." (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, as one recognises, quite impossible for any country to return to a non-signatory an individual who faces prosecution, rather than any sort of persecution."

3.14.10 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 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.

3.14.11 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

⁴⁹ COIS Iran Country Report August 2008 (Human Rights: Prison Conditions)

threshold and a grant of asylum will be appropriate where exclusion is not justified.

3.14.12 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 AI 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 they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Iran.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period 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.⁵⁰

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.⁵¹

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

⁵⁰ COIS Iran Country Report August 2008 (Human Rights: Medical Issues)

⁵¹ COIS Iran Country Report August 2008 (Human Rights: Medical Issues)

experienced and internationally trained. There is an extensive range of specialist care found in Tehran, both in the private and governmental sector.⁵²

- 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.⁵³
- 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.⁵⁴
- 4.4.7** According to health ministry statistics announced in October 2006, there were over 13,000 registered HIV-positive persons in the country, mostly men, but unofficial estimates were much higher. In 2007, there was a free anonymous testing clinic in Tehran, and government-sponsored low-cost or free methadone treatment, including in prisons. The Government also supported programmes for AIDS awareness and did not interfere with private HIV-related non-governmental organisations. Contraceptives were available at health centres as well in pharmacies. Nevertheless, persons infected with HIV were discriminated against in schools and workplaces during the year.⁵⁵
- 4.4.8** 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. As noted above, the Iranian healthcare system is relatively well-developed with treatment being available for a range of medical conditions. Therefore, the Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should, however, be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Iranian nationals may return voluntarily to any region of Iran at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) 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 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

⁵² COIS Iran Country Report August 2008 (Human Rights: Medical Issues)

⁵³ COIS Iran Country Report August 2008 (Human Rights: Medical Issues)

⁵⁴ World Health Organization Mental Health Atlas 2005 (pages 239-241)

⁵⁵ COIS Iran Country Report August 2008 (Human Rights: Medical Issues)

seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

5.3 **Case law.**

D CG [2003] UKIAT 00107. The Tribunal considered the position of returnees to Iran. An individual may be questioned on return, but there is no real or serious risk of prosecution for leaving illegally (paragraph 13). Any sentence that the appellant may be required to serve would not be a breach of article 3 (paragraph 13).

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