

# OPERATIONAL GUIDANCE NOTE

## SYRIA

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### 1. Introduction

1.1 This document evaluates the general, political and human rights situation in Syria 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 Syria Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site at:

[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

1.3 Claims should be considered on an individual basis, but taking full account of the guidance 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** Syria borders Lebanon and the Mediterranean Sea to the west, Israel to the southwest, Jordan to the south, Iraq to the east, and Turkey to the north.<sup>1</sup> Its most contentious boundary is with Israel, where the latter has occupied Syrian territory, the Golan Heights, since 1967.<sup>2</sup> Syria is home to diverse ethnic and religious groups, including Kurds, Armenians, Assyrians, Alawite, Shias and Druze, as well as the Arab Sunnis who make up the majority of the Muslim population.<sup>3</sup> Syria gained independence from the French in 1946. During the 1950s and 1960s, Syria experienced a period of political upheaval, which included a series of military governments and a three-year unsuccessful attempted union with Egypt. In 1963 the Ba'ath, a revolutionary party based on the ideas of Arab nationalism and socialism, seized power. In 1966 a radical wing of the Party took control, expelling the original founders of the Party who eventually established themselves in Iraq, instituting a rivalry between Iraq and Syria which has persisted ever since. In November 1970, power was seized from the radicals by the party's more moderate wing led by Lieutenant-General Hafiz al-Assad, who ruled the country until his death in June 2000.<sup>4</sup>
- 2.2** His son, Dr Bashar al-Assad, was formally inaugurated as President on 17 July 2000 and re-elected for a second 7-year term in 2007. Since his succession, Bashar al-Assad has reiterated his desire for Syrian modernisation. He has stated his commitment to fulfilling his father's legacy by achieving peace with Israel. However, Syria's support for Palestinian groups is seen by many to directly contradict this aim. Indirect peace negotiations between Syria and Israel resumed in May 2008, with Turkey acting as intermediary. Turkey has sought to encourage Syria back into the international fold. Syria has good relations with Iran, including on defence ties, and signed an agreement with Iraq in 2006 to restore diplomatic relations almost 25 years after they were cut.<sup>5</sup>
- 2.3** Syria intervention in Lebanon during the 1980s brought an end to the civil war in that country and by September 2004 Syria still had a military force of 15,000 men in Lebanon and commanded a high degree of influence there. Syria is widely suspected of involvement in the murder of the former Lebanese Prime Minister, Rafiq Hariri in February 2005. Following the attack a million demonstrators demanded the departure of Syrian forces. By May 2005, Syria withdrew its troops. Political discord in Lebanon erupted in November 2006, when the Hezbollah led opposition resigned from government because they were not given enough seats to ensure veto power over policy decisions. Iran and Syria backed Hezbollah in the battle against the governing coalition and its American and Saudi allies.<sup>6</sup> Agreement reached in May 2008 ended the 18 month political deadlock and led to a significant shift of power in favour of Hezbollah and its allies in the opposition. Syria's role in the Lebanon crisis as well as their facilitation of foreign fighters into Iraq led the UK, USA and France and some EU countries to limit their contacts with the Syrian government.<sup>7</sup> Syria hosted a four-way 'summit for stability' in September 2008 in Damascus. President Sarkozy was the first Western leader to visit the Syrian capital since February 2005.<sup>8</sup> The UK Foreign Secretary, David Miliband, entered talks with Bashar al-Assad in November 2008 and said Syria could play a constructive role fostering stability in the Middle East.<sup>9</sup>
- 2.4** Syria is not an electoral democracy. Under the 1973 constitution, the president is nominated by the ruling Ba'ath Party and approved by popular referendum for seven-year terms. In practice, these referendums are orchestrated by the regime, as are elections for the 250-member, unicameral People's Council, which serves for four-year terms and holds little independent legislative power. Almost all power rests in the executive branch. The only legal political parties are the Ba'ath Party and its several small coalition partners in the

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<sup>1</sup> CIA World Fact book

<sup>2</sup> FCO Country Profile 23.09.08

<sup>3</sup> BBC Country Profile

<sup>4</sup> COI report 10.10.07

<sup>5</sup> FCO Country Profile 23.09.08

<sup>6</sup> The New York Times 'Deal for Lebanese factions leaves Hezbollah stronger' 22.05.08

<http://www.nytimes.com/2008/05/22/world/middleeast/22lebanon.html?emc=rss&partner=rssnyt>

<sup>7</sup> FCO Country Profile 23.09.08

<sup>8</sup> BBC News 'Syria sets basis for Israel talks' 4.09.08

<sup>9</sup> BBC News 'Syria and UK share intelligence' 19.11.08

ruling National Progressive Front (NPF). Independent candidates, who are heavily vetted and closely aligned to the regime, are permitted to contest about a third of the People's Council seats, meaning two-thirds are reserved for the NPF. The ruling party pledged to legalise political parties not based on religious or ethnic identity (a condition that would exclude the Muslim Brotherhood and Kurdish opposition groups) at its June 2005 conference, but no legislation implementing this pledge has been forthcoming. In January 2007, the president decreed a series of largely cosmetic electoral reforms ahead of the April parliamentary elections, May presidential referendum, and August municipal elections. Bashar al-Assad obtained approval for another term as president with 97.6% of the vote. In results that were pre-ordained by the electoral framework and not, therefore, regarded as free and fair, the ruling Ba'ath-dominated coalition won the majority of seats in the parliamentary and municipal polls. Opposition groups boycotted the elections.<sup>10</sup>

- 2.5** The role of the security services is reported to extend far beyond necessary security matters due to a state of emergency, which has been in place since 1963. The government justifies the ongoing Emergency Law on the basis of its conflict with Israel and threats from terrorist groups. The four major branches of security forces include the Syrian Military Intelligence (SMI), Political Security Directorate (PSD), General Intelligence Directorate and Syrian Air Force Intelligence, all of which devote some of their overlapping resources to monitoring internal dissent and individual citizens. The four branches operate independently and generally outside of the control of the legal system. The Ministry of Interior (MOI) controls the police forces, which consist of four separate divisions; emergency police, traffic police, neighbourhood police and riot police. Corruption continued to be a serious problem in the police and security forces.<sup>11</sup>
- 2.6** The 1963 Emergency Law authorises the government to conduct preventive arrests and overrides constitutional and penal code provisions against arbitrary arrest and detention, including the need to obtain warrants. In cases involving political or national security offences, arrests were often carried out in secret with cases assigned in a seemingly arbitrary manner to military, security or criminal courts. Suspects were detained incommunicado for prolonged periods without charge or trial and denied the right to a judicial determination regarding pre-trial detention. Unlike defendants in regular criminal and civil cases, security detainees did not have access to lawyers prior to or during questioning, as well as throughout their defence. The authorities maintained effective control of the security forces, and members of the security forces committed numerous, serious human rights abuses.<sup>12</sup> Hundreds of people were arrested and hundreds of others remained imprisoned for political reasons, including prisoners of conscience and others sentenced after unfair trials.<sup>13</sup> Security services were reported to detain people arbitrarily and torture remained a serious problem.<sup>14</sup>
- 2.7** The Syrian constitution of 1973 requires that the president be Muslim but does not make Islam the state religion. Islamic jurisprudence, however, is required to be a main source of legislation. The Ba'ath Party emphasises socialism and secular Arabism, and, although its doctrine seeks to build pan-Arab rather than ethnic identity, ethnic, religious, and regional allegiances remain important in Syria. The judicial system in Syria is an amalgam of Ottoman, French, and Islamic laws.<sup>15</sup> The constitution provides for an independent judiciary but courts are subject to political influence.<sup>16</sup>
- 2.8** The judicial system is composed of civil and criminal courts, military courts, the Supreme State Security Court (SSSC), and religious courts, which adjudicate matters of personal status such as divorce and inheritance. The Court of Cassation is the highest court of

<sup>10</sup> Freedom House: Freedom in the World Report 2008

<sup>11</sup> USSD 2008

<sup>12</sup> USSD 2008

<sup>13</sup> Amnesty International World Report 2008

<sup>14</sup> Human Rights Watch World Report 2008

<sup>15</sup> US State Background Note May 2007 <http://www.state.gov/r/pa/ei/bgn/3580.htm>

<sup>16</sup> USSD 2008

appeal. The Supreme Constitutional Court rules only on laws and decrees. Military courts have authority over crimes committed by soldiers or members of other military or police branches. The defendant has the right to appeal in certain circumstances. Military courts also have authority to try civilians in cases based on military law. Civilians have the right to appeal all sentences imposed by military courts. Civil and criminal courts are organised under the Ministry of Justice. Defendants before these courts are entitled to legal representation, are presumed innocent, are allowed to present evidence and to confront accusers. Trials are public and there is a right of appeal. These rights are extended to all criminal cases but sections of family and criminal law are based on Shari'a law and do not treat men and women equally.<sup>17</sup>

- 2.9** The SSSC tries political and national security cases and operates under the provisions of the 1963 Emergency Law. It does not observe constitutional provisions safeguarding defendants' rights and its verdicts are not subject to judicial appeal. The minister of interior may ratify, nullify or alter SSSC rulings. The president must approve the verdict or may cancel it and ask for a re-trial. Although the government states that the SSSC tries only persons who have sought to use violence against the state, the majority of defendants were prosecuted for exercising their political rights. Human rights organisations estimate that hundreds of cases are tried by the SSSC annually. The majority of cases involved charges relating to membership in various banned political groups, including religious parties such as the MB, the Islamic Liberation Party and Syrian Kurdish parties. During 2007 the SSSC sentenced more than 150 citizens to sentences ranging from 3 years in prison to execution which can be commuted to 12 years.<sup>18</sup>
- 2.10** Although there was an initial improvement in human rights performance under President al-Assad, the human rights situation has deteriorated significantly over the past year. Few human rights groups are tolerated and there has been a marked downturn with harsh sentencing for some Human Rights Defenders in mid-2007. The Security Services coordinate with the Ministry of Labour and Social Affairs to issue licences for formation of NGOs. There are now several hundred but more politicised ones have so far failed to obtain a licence. Those operating illegally are subject to arrest and trial in security courts. Religious freedom is provided for by the constitution. Formally recognised religious minorities are generally well respected and have full freedom to practise their faith.<sup>19</sup>
- 2.11** Freedom of expression is heavily restricted. Articles of the penal code, Emergency Law and a 2001 Publications Law criminalise the publication of material that harms national unity, tarnishes the image of the state, or threatens the "goals of the revolution." Many journalists, writers and intellectuals have been arrested under these statutes. Apart from a handful of non-news radio stations, all broadcast media are state-owned. However, satellite dishes are common, giving many Syrians access to foreign broadcasts. The government does not interfere with broadcasts from abroad. While there are more than a dozen privately owned newspapers and magazines, only one is allowed to publish serious criticism of the government. Syrians are permitted access to the internet only through state-run servers which block access to Kurdish, opposition, foreign-based and other websites. Email correspondence is reportedly monitored by the intelligence agencies.<sup>20</sup> The government strictly controlled the dissemination of information and prohibited criticism of the government and discussion of sectarian issues including religious and ethnic minority rights. There were detentions and beating for individual expressions of opinion that violated these restrictions, leading journalists and writers to practise self-censorship.<sup>21</sup>
- 2.12** The government limited freedom of movement and, during 2007, increased the use of travel bans to prevent critics of the regime from leaving the country. Travel bans prevented more than 100 human rights activists, political reformers and civil society leaders from leaving the

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<sup>17</sup> USSD 2008

<sup>18</sup> USSD 2008

<sup>19</sup> FCO Country Profile 23.09.08

<sup>20</sup> Freedom House: Freedom in the World Report 2008

<sup>21</sup> USSD 2008

country. Travel to Israel is illegal and the government restricts travel near the Golan Heights. The law provides for the prosecution of any person who attempts to seek refuge in another country to escape a penalty in Syria. Persons who have unsuccessfully sought asylum in other countries and who have past connections with the Muslim Brotherhood, have been prosecuted on return to Syria. The government routinely arrested dissidents who tried to return to the country after years in exile. The government maintained security checkpoints, primarily in military and other restricted areas. There were few police checkpoints on main roads or in populated areas. The government restricted travel to and from the country of persons of Kurdish descent without citizenship or identity documents.<sup>22</sup>

- 2.13** There are 1-1.5 million Kurds in Syria, making them the largest ethnic minority group in the country. Approximately 250,000 of them are not entitled to Syrian nationality and have no civil and political rights. The Tenth Ba'ath party Congress recommended that this issue be tackled but this has not progressed so far. Those who lost their nationality in the 1962 census, including their children, remain severely disadvantaged in participating in civil life and in receiving government services including health, education and employment.<sup>23</sup> Security services subjected Kurdish citizens to mass arrests in 2007. Prosecutions often involved accusations of seeking to annex part of Syria to another country. Although the government contended that there was no discrimination against the Kurdish population, it placed limits on the use and teaching of the Kurdish language. It also restricted the publication of books and other materials written in Kurdish, Kurdish cultural expression, and at times, the celebration of Kurdish festivals.<sup>24</sup>

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

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Syria. 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 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).
- 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 below 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

<sup>22</sup> USSD 2008

<sup>23</sup> FCO Country Profile 23.09.08

<sup>24</sup> USSD 2008

Credibility in Asylum and Human Rights Claims'. [Case owners should also refer to the Asylum Instruction on Nationality.]

- 3.5** All Asylum Instructions can be accessed on 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 Kurds**
- 3.6.1** Many claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of the State due to their ethnicity.
- 3.6.2 *Treatment.*** It is estimated that Kurds make up approximately 8 -15% of the 18 million inhabitants of Syria. In January 2006 it was estimated that Syrian Kurds numbered approximately 1.75 million. Roughly half the Kurdish population were located in the northeast – Hassakeh (Hasaka) and Jazeera (Jazira) – and in Afrin, Aleppo, Kubani and Kurd Dagh in the north to northwest. The other half were mostly to be found in the urban centres of Aleppo and Damascus.<sup>25</sup>
- 3.6.3** Citizenship is derived from the father, not place of birth or birth mother. Following the 1962 census, approximately 120,000 Syrian Kurds lost their citizenship (20% of the Kurdish population at the time), which the government has never restored.<sup>26</sup> Persons that participated in the census but were unable to prove their entitlement to Syrian citizenship (or refused/were unable to pay large bribes to retain it) are known as Ajanib (foreigners) and were issued 'Red Cards', which state that they are not Syrian nationals. Others who did not take part in the census, or who were unable to be registered at birth due to the lack of status of their parent(s), are known as Maktoumeen ('those who are muted') and have no identity document.<sup>27</sup> Others are Syrian citizens. Maktoumeen, around 75,000 – 100,000 are not registered at the civil registrar office and thus cannot register marriage, property etc. and cannot obtain a travel document. Ajanabi, around 200,000 are registered at the civil registrar office (as foreigners). They can register marriage, property etc. They can obtain an id-paper (orange colour, photo of the holder attached) and, under certain circumstances a Syrian travel document.<sup>28</sup> Ajanib and Maktoumeen are unable to access government health care and must pay for all health services. Ajanibi and Maktoumeen cannot work in the civil service or in the Army. The children of Ajanib can access primary education but find it more difficult to access secondary and higher education, although they can study at universities whereas Maktoumeen children's education is very restricted with attendance at higher education practically impossible.<sup>29</sup>
- 3.6.4** Both Maktoumeen and Ajanabi are stateless. The estimated number of stateless Kurds in 2007 was 200,000 – 300,000. Because Maktoumeen have no identity document they cannot travel abroad legally. If they leave Syria illegally they will in general not be readmitted by the Syrian authorities but if it can be proved that he/she has a former residence and family in Syria, re-entry may take place. Ajanabi can apply for a travel document which will be issued on approval of the security agency and can re-enter Syria after visits abroad. Persons who exit Syria illegally are likely to be detained and questioned on return. A number of sources contributing to the 2007 Danish FFM considered that illegal exit from Syria was not usually punished and that applying for asylum abroad was not generally regarded by the Syrian authorities as an expression of anti-government activities. The penalty for illegal exit ranges from a fine to a prison sentence, the maximum potential penalty was estimated to be 2-3 years imprisonment, but most were subject to a fine or were released after a short period of detention. One source claimed that mistreatment

<sup>25</sup> COI Report October 2007 Section 18

<sup>26</sup> USSD 2008

<sup>27</sup> COI Report October 2007 Section 18

<sup>28</sup> Danish Refugee Council, Syria: Kurds, Honour Killings and Illegal Departure FFM January 2007

<sup>29</sup> COI Report October 2007 Section 18

could happen during detention. Re-entry could lead to problems for human rights activists and political activists, including politically active Kurds if the person concerned was already known to the Syrian authorities.<sup>30</sup>

- 3.6.5** Kurds continued to suffer from identity-based discrimination, including restrictions placed on the use of the Kurdish language and culture.<sup>31</sup> However there have been, and still are, many Kurds in positions of power or influence in Syria and these are often cited by Syrian Arabs as evidence of Kurdish equality and immersion in the state. These Kurds tend to be urban and affluent, to speak Arabic rather than Kurmanji and to be reconciled to the 'Arabness' of their identity.<sup>32</sup>
- 3.6.6** In terms of abuse or harassment by the Syrian authorities, the Kurds in Syria – both nationals and stateless, but particularly those involved in the struggle for their people's political and civil rights – have been under increasing pressure since the Qamishli riot of March 2004. The trouble began at a football match in Qamishli in the Jazira on 12 March 2004 when hostilities between Kurdish and Arab supporters ended with the security forces shooting dead at least seven Kurds. This was followed by further shootings at their funerals. Thousands demonstrated in Qamishli and in Kurdish areas across Syria – the Jazira, Afrin, Aleppo and Damascus. Some protests turned into riots, government and private property was ransacked and burned and a police station was attacked in Amude. The Syrian authorities reacted with brutality, beating, arresting and imprisoning large numbers of Kurds. The army moved into Kurdish regions in force, tanks and helicopters appeared in Qamishli and a week later calm was restored.<sup>33</sup> Most were released shortly after arrest and UNHCR stated in 2007 that all participants in the unrest, who were arrested, had been released.<sup>34</sup>
- 3.6.7** The Syrian Government appeared to be making guarded attempts at conciliation with its large Kurdish minority, with President Bashar al-Assad admitting the existence of the Kurds in Syria when making an unprecedented visit to Jazeera, and the March 2005 Presidential pardon that led to the aforementioned prisoner releases. On the central issue of citizenship for the Ajanib and Maktoumeen, in recent years members of the Government have spoken of finding a solution, particularly since the Qamishli riots.<sup>35</sup> In July 2007 the President re-stated that the government would try to resolve the issue of stateless Kurds, although no progress is reported to date.<sup>36</sup>
- 3.6.8** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.6.9** **Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

#### **3.6.10 Caselaw**

##### **AR [2006] UKAIT 00048 CG**

The Tribunal conclude that the deprivations experienced by Syrian Kurds are not such as to amount to persecution or breach of their human rights if returned to Syria. (Para 88)

The Tribunal found that a Syrian Kurd with no political history does not face a risk of persecution or breach of his human rights on return to Syria. (Para 92)

##### **SA & IA Syria CG [2009] UKAIT 00006 (2 February 2009)**

<sup>30</sup> Danish Refugee Council, Syria: Kurds, Honour Killings and Illegal Departure FFM January 2007 (3.1)

<sup>31</sup> Amnesty International Report 2008

<sup>32</sup> COI Report October 2007 Section 18

<sup>33</sup> COI Report October 2007 Section 18

<sup>34</sup> Danish Refugee Council, Syria: Kurds, Honour Killings and Illegal Departure FFM January 2007

<sup>35</sup> COI Report October 2007 Section 18

<sup>36</sup> USSD 2008

The AIT concluded as follows:

Para 57: The validity of the conclusion in **AR** was confirmed - in general, the discrimination and deprivations experienced by Syrian Kurds are not such as to amount to persecution or breach of their human rights if returned to Syria.

Para 58: Persons with actual or perceived anti-regime profile are at real risk of persecution. The greatest risk is to Islamists but the risk extends to other groups such as Kurdish or human rights or democracy activists.

Para 59: No internal relocation alternative exists for such persons

Para 60: Anti-regime activities undertaken by Syrians abroad, of which the Syrian authorities are aware, will contribute to their risk on return and will be taken as seriously as prior anti-regime activity.

Paras 68 & 69: A rare attendance at a crowded demonstration outside the Syrian Embassy by a person with no other political involvement or activity from which he might be identified (for example, by a person who is simply seeking to bolster an otherwise weak asylum claim) will not constitute a real risk of coming to the adverse attention of the Syrian authorities. However, regular attendances at such demonstrations over a lengthy period of time will increase the risk profile, as would membership of and active involvement in other overt political activities and/or organisations which might be penetrated by informers. The greater and more varied the activity, the greater the risk. The possibility of there being an existing security file on an individual would increase the risk of his being identified by the Syrian authorities at a demonstration. However, whether in any particular case information about an individual's activities would come to the attention of the Syrian authorities is a judgment that needs to be made after balancing the established facts in each case

Para 73: There is no real risk that leaving Syria illegally would, in the absence of additional aggravating factors, result in ill-treatment on return amounting to persecution or a breach of human rights.

Para 89: A failed asylum seeker will not be perceived as being an opponent of the regime simply by reason of having claimed asylum abroad and will not as such be at real risk of persecutory ill-treatment on return.

Para 91: A stateless, undocumented Syrian Kurd who left Syria illegally, and is a failed asylum seeker but is not perceived by the Syrian authorities as having an anti-regime profile, will not be at real risk of persecutory ill-treatment or a material breach of his human rights on return

**3.6.11 Conclusion.** Generally Syrians of Kurdish ethnic origin may face some unequal treatment or discrimination but this will rarely amount to persecution. It will only do so when the individual has made public his opposition to the authorities for example through protests or participation in political parties that oppose the regime. A grant of asylum or Humanitarian Protection will only be applicable in cases where it can be demonstrated the level of discrimination reaches persecution. It is unlikely that non-political Kurds in this category would qualify for asylum or Humanitarian Protection and such claims are likely to be unfounded. For those who have demonstrated some opposition to the authorities please refer to 3.7 below.

For cases in which statelessness is claimed, case owners should refer to the relevant Asylum Instruction.

### **3.7 Political opposition to the Syrian Government**

**3.7.1** Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of the State due to their political activity or affiliation.

**3.7.2 Treatment. See 2.4.** The Syrian constitution vests the Arab Ba'ath Socialist Party with leadership functions in the state and society and provides broad powers to the president. The president is also Secretary General of the Ba'ath Party and leader of the National Progressive Front, which is a coalition of 10 political parties authorised by the regime. The



National Progressive Front acts as a forum in which economic policies are debated and the country's political orientation is determined. However, because of Ba'ath Party dominance, the National Progressive Front has traditionally exercised little independent power.<sup>37</sup>

- 3.7.3** Members of President Assad's own minority sect, the Alawis, hold most of the important military and security positions, while Sunnis (in 2006) controlled ten of 14 positions on the powerful Ba'ath Party Regional Command. In recent years there has been a gradual decline in the party's pre-eminence. The party is also heavily influenced by the security services and the military, the latter of which consumes a large share of Syria's economic resources.<sup>38</sup>
- 3.7.4** Officially, Syria is a republic. In reality, however, it is an authoritarian regime that exhibits only the forms of a democratic system. Although citizens ostensibly vote for the President and members of Parliament, they do not have the right to change their government. The President and his senior aides, particularly those in the military and security services, ultimately make most basic decisions in political and economic life, with a very limited degree of public accountability. Political opposition to the President is not tolerated. Syria has been under a state of emergency since 1963. Syrian governments have justified martial law by the state of war, which continues to exist with Israel and by continuing threats posed by terrorist groups.<sup>39</sup>
- 3.7.5** The Assad regime has held power longer than any other Syrian government since independence; its survival is due partly to a strong desire for stability and the regime's success in giving groups such as religious minorities and peasant farmers a stake in society. The expansion of the government bureaucracy has also created a large class loyal to the regime. The President's continuing strength is due also to the army's continued loyalty and the effectiveness of Syria's large internal security apparatus.<sup>40</sup>
- 3.7.6** All three branches of government are guided by the views of the Ba'ath Party, whose primacy in state institutions is assured by the constitution. The Ba'ath platform is proclaimed succinctly in the party's slogan: "Unity, freedom, and socialism." The party has traditionally been considered both socialist, advocating state ownership of the means of industrial production and the redistribution of agricultural land, and revolutionary, dedicated to carrying a socialist revolution to every part of the Arab world. Founded by Michel 'Aflaq, a Syrian Christian and Salah al-Din Al-Bitar, a Syrian Sunni, the Party embraces secularism and has attracted supporters of all faiths in many Arab countries, especially Iraq, Jordan, and Lebanon. Since August 1990, however, the party has tended to de-emphasise socialism and to stress both pan-Arab unity and the need for gradual reform of the Syrian economy.<sup>41</sup>
- 3.7.7** Nine smaller political parties are permitted to exist and, along with the Ba'ath Party, make up the National Progressive Front (NPF), a grouping of parties that represents the sole framework of legal political party participation for citizens. While created ostensibly to give the appearance of a multi-party system, the NPF is dominated by the Ba'ath Party and does not change the essentially one-party character of the political system. Non-parties included in the NPF represent small political groupings of a few hundred members each and conform strictly to Ba'ath Party and government policies. There were reports in 2005, in the wake of the June Ba'ath Party Congress, that the government was considering legislation to permit the formation of new political parties and the legalisation of parties previously banned. These changes have not taken place. In addition, some 15 small independent parties outside the NPF operate without government sanction.<sup>42</sup> They operate within Syria or in exile and are forced to operate on a clandestine basis.<sup>43</sup> (see Country of

<sup>37</sup> US State Background Note May 2007 <http://www.state.gov/r/pa/ei/bgn/3580.htm>

<sup>38</sup> US State Background Note May 2007 <http://www.state.gov/r/pa/ei/bgn/3580.htm>

<sup>39</sup> US State Background Note May 2007 <http://www.state.gov/r/pa/ei/bgn/3580.htm>

<sup>40</sup> US State Background Note May 2007 <http://www.state.gov/r/pa/ei/bgn/3580.htm>

<sup>41</sup> US State Background Note May 2007 <http://www.state.gov/r/pa/ei/bgn/3580.htm>

<sup>42</sup> US State Background Note May 2007 <http://www.state.gov/r/pa/ei/bgn/3580.htm>

<sup>43</sup> Europa World

Origin report 10.10.07: Section 14 'Opposition Groups and Political Activists' and Annex B for list of political organisations)

- 3.7.8** The Ba'ath Party dominates the parliament, which is known as the People's Council. With members elected every 4 years, the Council has no independent authority. The executive branch retains ultimate control over the legislative process, although parliamentarians may criticise policies and modify draft laws; according to the constitution and its bylaws, a group of 10 parliamentarians can propose legislation. During 2001, two independent members of parliament, Ma'mun al-Humsy and Riad Seif, who had advocated political reforms, were stripped of their parliamentary immunity and tried and convicted of charges of "attempting to illegally change the constitution." Seif was released from prison in early 2006, but remains under strict surveillance by the security services. The government has allowed independent non-NPF candidates to run for a limited allotment, about a third, of seats in the 250-member People's Council.<sup>44</sup> However, independent candidates are heavily vetted and closely aligned to the regime.<sup>45</sup> Following the April 22-23, 2007 parliamentary elections, the NPF strengthened its hold on parliament, with the number of non-NPF deputies shrinking from 83 to 80, ensuring a permanent absolute majority for the Ba'ath Party-dominated NPF.<sup>46</sup>
- 3.7.9** There was a surge of interest in political reform after Bashar al-Assad assumed power in 2000. Human rights activists and other civil society advocates, as well as some parliamentarians, became more outspoken during a period referred to as "Damascus Spring" (July 2000-February 2001). Assad also made a series of appointments of reform-minded advisors to formal and less formal positions, and included a number of similarly oriented individuals in his cabinet. The 2001 arrest and long-term detention of the two reformist parliamentarians and the apparent marginalising of some of the reformist advisors in the past five years, indicate that the pace of any political reform in Syria is likely to be much slower than the short-lived Damascus Spring promised. A crackdown on civil society in 2005, in the wake of Syria's withdrawal from Lebanon, and again in the late winter and spring of 2006, reinforced the perception that any steps toward political form were likely to be halting and piecemeal at best.<sup>47</sup>
- 3.7.10** Although the number of political prisoners remained difficult to determine due to a continuing lack of official government information, various local human rights groups estimated that a total of between 1,500 and 3,000 political prisoners, including accused Islamists, remained in detention in 2007. Since 2006 the government has tried some new political detainees in criminal court, and once convicted on political or security related charges, they are treated like common prisoners. The government did not permit regular access to political prisoners or detainees by local or international humanitarian organisations. Human rights groups reported that many political prisoners serving long-term sentences remained in prison after the expiration of their sentences. There were also Jordanian, Lebanese, Iraqi, Palestinian and Western political prisoners and detainees. Estimates of foreign detainees were difficult to confirm because different branches of the security services, which maintained their own incarceration facilities, held significant numbers and there was no centralised tracking system. Detainees were frequently held for extended periods of times without trial and without information provided to their families. Towards the end of 2007, an estimated 250 Jordanian prisoners were released.<sup>48</sup> (see 2.5 – 2.8 and 2.11)
- 3.7.11** Torture remains a serious problem in Syria, especially during interrogation. As in previous years, the government in 2007 failed to acknowledge security force involvement in the "disappearances" of an estimated 17,000 persons since the 1970s, the vast majority of whom remain unaccounted for and many of whom are believed to have been killed. The "disappeared" are mostly Muslim Brotherhood members and other Syrian activists detained by the government in the late 1970s and 1980s, as well as hundreds of Lebanese and

<sup>44</sup> US State Background Note May 2007 <http://www.state.gov/r/pa/ei/bgn/3580.htm>

<sup>45</sup> Freedom House: Freedom in the World report 2008

<sup>46</sup> US State Background Note May 2007 <http://www.state.gov/r/pa/ei/bgn/3580.htm>

<sup>47</sup> US State Background Note May 2007 <http://www.state.gov/r/pa/ei/bgn/3580.htm>

<sup>48</sup> USSD 2008

Palestinians detained in Syria or abducted from Lebanon by Syrian forces or Lebanese and Palestinian militias.<sup>49</sup> Most of the 170 people sentenced in 2007 after reportedly unfair trials were alleged to be Islamists. The death penalty remained in force for a wide range of offences. At least seven people were said to have been executed in public.<sup>50</sup> In a climate of impunity, there were instances of arbitrary or unlawful deprivation of life. Facilities for political or national security prisoners, especially accused Islamists, were generally much worse than those for common criminals. Each branch of the four security services operated its own detention centres. The majority of reported torture or mistreatment cases occurred in these facilities, according to local human rights organisations.<sup>51</sup>

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

**3.7.13 Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible. The government routinely arrested dissidents who tried to return to the country after years in exile.<sup>52</sup>

**3.7.14 Conclusion.** The Syrian Government is repressive of dissent and anti-regime behaviour is generally not allowed within the country. If it is accepted that the claimant has been involved in political activity opposing the Government which has come to the attention of the authorities, a grant of asylum is likely to be appropriate. However, this is likely to depend on the nature of the dissent, how it was expressed, and whether it is accepted that the authorities are aware of the dissent.

**3.7.15** Case owners should note that members of some opposition groups have been responsible for organised attacks and terrorist campaigns against the Syrian authorities in the past which may amount to serious human rights abuses or war crimes and crimes against humanity. If it is accepted that the claimant was an active operational member or combatant for such a group and the evidence suggests that he/she has been involved in such actions, then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.

### 3.8 Affiliation to the Muslim Brotherhood

**3.8.1** Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of the State due to their affiliation to the Muslim Brotherhood.

**3.8.2 Treatment.** The Alawis (Alawite) minority in Syria practise a form of Islam that started in the 9th century by splintering off from the Shiite branch and integrates doctrines from other religions; pagan, gnostic and particularly Christian.<sup>53</sup> Alawi literally means "those who adhere to the teachings of Ali," the son-in-law of the Prophet Muhammad. Syria's three-quarters majority Sunni population considers the Alawi to be heretical because of their belief that Ali is Muhammed's successor and their rejection of traditional Islamic restrictions. Yet, the Alawi domination of the government, the Ba'ath party, key military positions, resources, and national wealth, have preserved their power since 1970 with Hafez al-Assad's successful coup.<sup>54</sup>

<sup>49</sup> Human Rights Watch Report 2008

<sup>50</sup> Amnesty International Report 2008

<sup>51</sup> USSD 2008

<sup>52</sup> USSD 2008. Section 2

<sup>53</sup> Global Security: Syria overview

<sup>54</sup> MAR <http://www.cidcm.umd.edu/mar/assessment.asp?groupId=65201>  
<http://www.globalsecurity.org/military/intro/islam-alawi.htm>

- 3.8.3** The Muslim Brotherhood, a Sunni fundamentalist, anti-government movement whose popularity grew markedly in the late 1970s protested Alawi domination and alongside other like-minded groups undertook a series of violent attacks against the Ba'ath government. In June 1980, the Brotherhood attempted to assassinate the then President following which the government passed a law making membership of the Brotherhood a capital offence; the law is still in force today. The attacks increased in frequency, and the government responded in kind. In late 1981, Assad finally isolated Muslim Brotherhood adherents in their strongholds of Aleppo and Hamah. In February 1982, with no regard for civilian safety, the full force of the Syrian army was brought to bear on the rebels in Hamah. Entire sections of the city were reduced to rubble by tank and artillery fire, as upward of 25,000 citizens were killed, including between 5,000 and 10,000 of Brotherhood members.<sup>55</sup>
- 3.8.4** In the wake of the massacre, many of the surviving members left Syria and are exiled in Western European countries.<sup>56</sup> Since then, the brotherhood has abandoned its strategy of direct confrontation.<sup>57</sup> General supervisor of the brotherhood, Ali Sadr al-Din al-Bayanouni (who has lived in London since being ejected from Amman in 2000), has steadily moderated the Brotherhood's declared objectives and principles.<sup>58</sup> When Bashar al-Assad took power in 2000, the brotherhood accepted the legitimacy of the regime for the first time. In 2004, Syrian government officials, including Assad, met with Muslim leaders who had ties to the Brotherhood.<sup>59</sup> Some progress was made and several hundred Muslim Brotherhood members were released from jail. However, the government was unwilling to meet Bayanouni's three core demands; a general amnesty that would free thousands of brotherhood members still in detention, permission for all exiles to return home, and a lifting of the government's ban on the brotherhood. In October 2005, the brotherhood joined other opposition groups in signing the Damascus Declaration, which called for the establishment of a liberal democracy in Syria. Because of fears about Sunni domination, Assad is said to have tried to obstruct the brotherhood's rapprochement with secular opposition forces.<sup>60</sup>
- 3.8.5** Despite doubts concerning the amount of active support within the country, according to a number of human rights organisations, Syria continued not only to hold thousands of Muslim Brothers in prison but also continued to convict large numbers in the SSSC in recent years.<sup>61</sup> See **3.7.11 – 3.7.12**.
- 3.8.6** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.8.7** **Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible. Persons who have unsuccessfully sought asylum in other countries and who have past connections with the Muslim Brotherhood have been prosecuted upon their return to Syria. The government routinely arrested dissidents who tried to return to the country after years in exile.<sup>62</sup>
- 3.8.8** **Conclusion.** Claimants who can demonstrate that they are/were active Members of the Muslim Brotherhood in Syria, and are known as such to the Syrian authorities, are likely to be able to establish a well-founded fear of persecution. A grant of asylum would, therefore, be appropriate in most cases.
- 3.8.9** Case owners should note that members of the Muslim Brotherhood have been responsible for organised attacks and terrorist campaigns against the Syrian authorities in the past which may amount to serious human rights abuses or war crimes and crimes against

<sup>55</sup> Global Security: Syria overview

<sup>56</sup> Global Security: Syria overview

<sup>57</sup> The Washington Institute <http://www.washingtoninstitute.org/templateC05.php?CID=2276>

<sup>58</sup> Global Politician <http://www.globalpolitician.com/21790-syria-islamism>

<sup>59</sup> The Washington Institute <http://www.washingtoninstitute.org/templateC05.php?CID=2276>

<sup>60</sup> Global Politician <http://www.globalpolitician.com/21790-syria-islamism>

<sup>61</sup> COI report 10.10.07 (14.06)

<sup>62</sup> USSD 2008. Section 2

humanity. If it is accepted that the claimant was an active operational member or combatant for the Muslim Brotherhood and the evidence suggests that he/she has been involved in such actions, then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.

### 3.9 Returning failed asylum seekers

- 3.9.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the state authorities due to them returning to Syria having claimed asylum in another country.
- 3.9.2 *Treatment.*** The law provides for the prosecution of any person attempting to seek refuge in another country to escape a penalty in Syria. Persons who have unsuccessfully sought asylum in other countries and who have past connections with the Muslim Brotherhood have been prosecuted upon their return to Syria. The government routinely arrested dissidents who tried to return to the country after years in exile.<sup>63</sup> However the authorities are unlikely to try a failed Syrian asylum seeker on the basis of applying for asylum alone, although it would not help their case if they were to be tried for some other crime. In addition the Syrian authorities would not automatically know an individual had applied for asylum in the UK.<sup>64</sup> A number of sources contributing to the 2007 Danish FFM considered that illegal exit from Syria was not usually punished and that applying for asylum abroad was not generally regarded by the Syrian authorities as an expression of anti-government activities.<sup>65</sup>
- 3.9.3 *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.
- 3.9.4 *Internal relocation.*** As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.9.5 *Caselaw.***

AR Syria CG [2006] UKAIT 00048

The Tribunal find that there is no evidence to indicate that the authorities would be aware that he has applied for asylum in the United Kingdom. Dr George's views on this were essentially speculative as to the ability of the security services in Syria monitoring the activities of Syrians in the United Kingdom. The evidence shows that the appellant would face no more than a risk of imprisonment potentially up to a period of three months. They do not consider that the evidence shows a real risk of ill-treatment giving rise to a breach of his protected rights on return in that regard. Accordingly the Tribunal do not consider that the risk factor with regard to this aspect of his claim is such as to place him at a real risk of persecution or breach of his human rights. The Tribunal see no reason to disagree with the earlier conclusions of the IAT in SY Syria CG [2005] UKIAT 00039. Para 92

SY CG [2005] UKIAT 00039

The Tribunal concluded that a person without political profile returning to Syria having left without authorisation is not a person who faces a real risk of persecution or breach of their human rights.

#### **SA & IA Syria CG [2009] UKAIT 00006 (2 February 2009)**

The AIT concluded as follows:

Para 57: The validity of the conclusion in **AR** was confirmed - in general, the discrimination and deprivations experienced by Syrian Kurds are not such as to amount to persecution or breach of their human rights if returned to Syria.

<sup>63</sup> USSD 2008. Section 2

<sup>64</sup> FCO letter dated 2 November 2004

<sup>65</sup> Danish Refugee Council, Syria: Kurds, Honour Killings and Illegal Departure FFM January 2007

Para 58: Persons with actual or perceived anti-regime profile are at real risk of persecution. The greatest risk is to Islamists but the risk extends to other groups such as Kurdish or human rights or democracy activists.

Para 59: No internal relocation alternative exists for such persons

Para 60: Anti-regime activities undertaken by Syrians abroad, of which the Syrian authorities are aware, will contribute to their risk on return and will be taken as seriously as prior anti-regime activity.

Paras 68 & 69: A rare attendance at a crowded demonstration outside the Syrian Embassy by a person with no other political involvement or activity from which he might be identified (for example, by a person who is simply seeking to bolster an otherwise weak asylum claim) will not constitute a real risk of coming to the adverse attention of the Syrian authorities. However, regular attendances at such demonstrations over a lengthy period of time will increase the risk profile, as would membership of and active involvement in other overt political activities and/or organisations which might be penetrated by informers. The greater and more varied the activity, the greater the risk. The possibility of there being an existing security file on an individual would increase the risk of his being identified by the Syrian authorities at a demonstration. However, whether in any particular case information about an individual's activities would come to the attention of the Syrian authorities is a judgment that needs to be made after balancing the established facts in each case

Para 73: There is no real risk that leaving Syria illegally would, in the absence of additional aggravating factors, result in ill-treatment on return amounting to persecution or a breach of human rights.

Para 89: A failed asylum seeker will not be perceived as being an opponent of the regime simply by reason of having claimed asylum abroad and will not as such be at real risk of persecutory ill-treatment on return.

Para 91: A stateless, undocumented Syrian Kurd who left Syria illegally, and is a failed asylum seeker but is not perceived by the Syrian authorities as having an anti-regime profile, will not be at real risk of persecutory ill-treatment or a material breach of his human rights on return

**3.9.6 Conclusion.** There is no evidence to suggest that individuals who have been absent from Syria for any period of time or who are returning failed asylum seekers are liable for adverse treatment by the authorities solely for these reasons. A grant of asylum or Humanitarian Protection in such cases is therefore not likely to be appropriate.

### 3.10 Women

**3.10.1** Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of non-state agents due to their gender.

**3.10.2 Treatment.** The Syrian Penal Code covers violence against women, including the offence of rape. Rape is a felony; however, there are no laws against spousal rape. According to the law, 'the punishment for a man who rapes a woman (other than his wife) is at least 15 years in prison.' However, if the individual who commits the crime agrees to marry the victim, he faces no punishment. The victim's family sometimes agrees to this arrangement to avoid the social scandal and stigma attached to rape. If the victim is too young for marriage, the rapist receives a longer prison sentence. No statistics were kept on spousal rape because it is not a crime under the law.<sup>66</sup>

**3.10.3** The law does not specifically prohibit domestic violence, and violence against women occurred during 2007. An April 2006 study funded by the UN Development Fund for Women (UNIFEM) and conducted by the state-run General Union of Women, reported that as many as one in four women surveyed in the country had been victims of violence. Local observers, however, pointed out discrepancies in the numbers and the wording of the report. Victims of domestic violence have the legal right to seek redress in court but few did so because of the social stigma attached to such action. The law provides for reduced

<sup>66</sup> USSD 2008

sentences in “honour” crimes. Although no official statistics were kept on honour crimes, NGOs estimated there were 300 honour killings in any given year.<sup>67</sup>

- 3.10.4** The constitution provides for equality between men and women and equal pay for equal work. Moreover, the government sought to overcome traditional discriminatory attitudes toward women and encouraged women’s education by ensuring equal access to educational institutions. However, the government has not changed personal status, retirement, or social security laws that discriminate against women. In addition, some secular laws discriminate against women. For example, under criminal law, if a man and woman separately commit the same criminal act of adultery, the woman’s punishment is double that of the man’s. Women participated actively in public life and were represented in most professions, including the armed forces. Women were not impeded from owning or managing land or other property. During 2007, women constituted approximately 13% of judges, 17% of lawyers, 62% of teachers below university level and 26% of university professors. In addition, women accounted for 30 MPs, two cabinet ministers and one vice president.<sup>68</sup>
- 3.10.5 *Sufficiency of protection.*** Although victims of domestic violence can seek legal redress in assistance outside the family. In some cases, observers reported that the abused women tried to file a police report, but the police did not respond aggressively, if at all, to their claims. Women reported incidents at police stations of sexual harassment, hair pulling, and slapping by police officers when attempting to file police reports, particularly at the Criminal Security Branch at Bab Musallah in Damascus.<sup>69</sup>
- 3.10.6** The Syrian Women's Federation offered counselling services to battered wives to remedy individual family problems. The Syrian Family Planning Association also provided counselling. Some private groups, including the Family Planning Association, organised seminars on violence against women. There was believed to be at least one private shelter specifically designated for battered women who fled from their husbands. The Syrian Agency for Family Affairs reports directly to the prime minister and reviews the legal and social status of women and coordinates with NGOs that provide services to women and children.<sup>70</sup>
- 3.10.7 *Internal relocation.*** Women over the age of 18 have the legal right to travel without the permission of male relatives; however, a husband or a father could file a request with the Minister of the Interior to prohibit his wife or minor dependents’ departure from the country. Internal relocation may be a viable option for women in individual cases. Factors to be considered include the social and professional background of an individual claimant and the level of family support.
- 3.10.8 *Conclusion.*** The government has promoted gender equality by appointing women to senior positions and providing equal access to education, but many discriminatory laws remain in force. State protection is available to women in Syria, but societal and family pressures are likely to prevent most women from approaching the state for protection. Where State protection is available, women are unlikely to qualify for asylum. If it is accepted in individual cases that the authorities were unwilling or unable to provide protection, and internal relocation is also not viable in the individual circumstances, a grant of Humanitarian Protection may be appropriate.

### **3.11 Prison conditions**

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

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<sup>67</sup> USSD 2008

<sup>68</sup> USSD 2008

<sup>69</sup> USSD 2008

<sup>70</sup> USSD 2008

- 3.11.2** 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.
- 3.11.3 *Consideration.*** Prison conditions in 2007 generally were poor and did not meet international standards for health and sanitation. At some prisons security officials demanded bribes from family members. Overcrowding and the denial of food remained problems at several prisons. According to local and international human rights organisations prisoners and detainees were held without adequate medical care, and some prisoners with significant health problems reportedly were denied adequate medical treatment.<sup>71</sup>
- 3.11.4** There were separate detention facilities for men, women and children. However several reports cited minors being held in adult facilities. Pre-trial detainees, particularly those held for political or security reasons were usually held separately from convicted prisoners. Facilities for political or national security prisoners generally were worse than those for common criminals. Released political detainees confirmed reports of poor prison conditions, including overcrowded cells and a shortage of beds. Each branch of the four security services operated its own detention centres. The majority of reported torture or mistreatment cases occurred in these facilities, according to local human rights organisations. (see 3.7.12)<sup>72</sup>
- 3.11.5** The government did not permit any independent monitoring of prison or detention centre conditions; however, diplomatic and consular officials were granted access in some cases.<sup>73</sup>
- 3.11.6 *Conclusion.*** Whilst prison conditions in Syria are poor with overcrowding and the absence of medical facilities being particular problems, conditions for ordinary, non-political prisoners are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Syria a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.
- 3.11.7** Prison conditions in Syria for political prisoners are severe and taking into account torture and an absence of adequate medical care, conditions for such individuals in prisons and detention facilities in Syria are likely to reach the Article 3 threshold. Therefore a grant of asylum will be appropriate where individual claimants are able to demonstrate a real risk of imprisonment as a political prisoner on return to Syria. Please refer to section 3.9 when dealing with an applicant with a political profile. Depending on the level and type of political activities the claimant has participated in, case owners may need to consider whether one of the Exclusion clauses applies. Case owners should refer such cases to a Senior Caseworker in the first instance.

#### **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.

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<sup>71</sup> USSD 2008

<sup>72</sup> USSD 2008

<sup>73</sup> COI Report February 2007 Section 12



(See Asylum Instruction 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 Instruction on Article 8 ECHR.

**4.2** With particular reference to Syria 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 Instruction on Discretionary Leave and the Asylum Instruction 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 or support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place.

**4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care or 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** Claimants may claim they cannot return to Syria 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** Syria is a middle income country among developing countries. However, compared to developing countries with the same GDP, it presents fairly good living conditions because of its socialist system. The 1973 Syrian Constitution binds the State to provide extensive welfare services free of charge, or at token charges to citizens, and the government has constantly placed emphasis on people's well being. As a result, notable progress has been made in the provision of basic amenities (including health, education and social services), due to large investment in basic infrastructure, social facilities and rural development.<sup>74</sup>

**4.4.3** Syria provides virtually free medical care to its citizens and imposes a ceiling on charges by private hospitals. Services at government clinics and health centres are free to all citizens. Government employees and their dependents are also fully or partially reimbursed for private health care and medication costs. Since government salaries for doctors are quite low, they are allowed to set up private practices while also working in a government health centre.<sup>75</sup>

**4.4.4** Syria's public health programme is administered by the Ministry of Health and is augmented by programs arranged by the Ministry of Social Affairs and Ministry of Education. The Ministry of Education administers a preventive medicine and dentistry program for school children. The health system is based on primary health care and is delivered at three levels: village, district and provincial. At the provincial level there are urban health centres staffed with specialised physicians and dentists in addition to various technicians. Among the services provided in health centres are immunisations, maternal and child health, family planning, control and prevention of communicable diseases, environmental health control, preventive care for chronic non-communicable diseases, and health education. At the provincial level there are also large general hospitals and specialised hospitals. At the district level, health centres are staffed with at least 1 physician, 1 nurse, 1 public health

<sup>74</sup> Health Profile of Syria 2006, Indiana University School of Medicine

<sup>75</sup> Health Profile of Syria 2006, Indiana University School of Medicine

technician. Some large centres are additionally staffed with dentists, pediatricians, obstetrician, pharmacy technicians, laboratory technicians, midwives, health visitors, specialized physicians and training facilities. On average there are 9.8 health workers to a district health centre. A small district hospital also exists in each district. At the village level there are rural health centres and health units. Although approximately 95% of the population is within half an hour of a primary health care centre, doctors, dentists and pharmacists (who have finished medical school and who do not intend to specialise) are required to practice in rural areas for at least two years. Infrastructures and medical treatment provided in the rural areas remain inadequate.<sup>76</sup>

- 4.4.5** There were 458 hospitals in Syria (23,789 beds) in 2005. Of them, 373 are private hospitals with 7,396 beds and 85 public hospitals with 16,402 beds. The rate is 12.8 beds per 10,000 of the population, which is low compared to other countries. The majority of private hospitals are small with an average 19.83 beds per hospital. This is due to lack of big corporations and the hospitals being owned by one or a few doctors. On the other hand, the public hospitals have an average of 192.96 beds per hospital.<sup>77</sup>
- 4.4.6** Since there is no health insurance in Syria, those who can afford private health care usually opt for the private health care. They can choose the doctor and the hospital or health facility they want to be treated in. For those who cannot afford it, they usually use the public health system and although they cannot pick their doctor or get the exact treatment that they wish to have, they will still get treatment free of charge which applies to all levels of care from emergency medicine to hospital admissions, surgeries, clinic follow-up, dialysis, and high tech expensive surgeries like a coronary artery bypass graft. About 50% of the health expenditure in Syria comes from private care, and about 50% is generated by governmental health facilities. There is a belief that the private sector provides better services than the government sector. However, this has been changing since there are some government facilities that provide excellent service and are outperforming the private sector.<sup>78</sup>
- 4.4.7** The drug industry is one of the success stories in Syria. In 1970 only 6% of drugs were manufactured locally and 94% were imported. In 2005, however, 90% of drugs were manufactured locally and 10% were imported. This success has been achieved by encouraging the private sector to invest in this domain and increased support from the government and the Ministry of Health. There were 11 drug companies in 1970 in Syria. This has increased to 54 companies producing 5,165 different kinds of medicine covering all specialties in 2005. The success also translated into exporting medicine to 44 different countries. However, in 2005 two main groups of medications were still not manufactured locally: the insulin group and the chemotherapy group. Studies and planning are under way to accommodate this need. (Ministry of Health, 2005). There is a continuous effort to improve the quality of medications produced locally.<sup>79</sup>
- 4.4.8** A mental health policy and a national mental health programme were both formulated in 2001; also present was mental health legislation concerning the admission and discharge of patients in Government psychiatric hospitals. The treatment of mental health problems was available at primary health care level in 2005.<sup>80</sup> For mental health patients there were 800 beds at Ibn Sina Hospital in Damascus distributed over 18 wards allotted for the treatment of 600 male patients and 200 female patients, out of whom 100 were under legal confinement. Treatment of such patients was mainly conducted through the use of psychoactive drugs, rehabilitation by work and other social and artistic activities. Ibn Khaldoun Hospital, in Aleppo, included 400 beds, 250 of which were for male patients and

<sup>76</sup> Health Profile of Syria 2006, Indiana University School of Medicine

<sup>77</sup> Health Profile of Syria 2006, Indiana University School of Medicine

<sup>78</sup> Health Profile of Syria 2006, Indiana University School of Medicine

<sup>79</sup> Health Profile of Syria 2006, Indiana University School of Medicine

<sup>80</sup> COIS Report February 2007 Section 24

150 for female patients, receiving more or less the same type of medical treatment used at Ibn Sina Hospital in Damascus.<sup>81</sup>

- 4.4.9** Damascus included a psychiatric department providing therapeutic psychiatric services at the Ministry of Health Hospital of Ibn Al-Nafees; a teaching psychiatric department which provided similar services at Al-Moassat Hospital of Damascus University; as well as two more mental health departments providing such services at two military hospitals affiliated to military medical services. In addition to these hospitals, there were special foundations attached to the Ministry of Work and Social Affairs, which provided treatment and rehabilitation to the mentally handicapped and delinquents, under the supervision of licensed psychiatrists.<sup>82</sup>
- 4.4.10** Around 250,000 HIV tests are performed annually in Syria, a large part of these mandatory. In 1999, 196,341 blood transfusion units were tested as well as 44,231 Syrians travellers seeking job opportunities abroad (mainly in the Arab Gulf countries.) Blood donation is mandatory and collected at least once in a lifetime from adults applying for driving licenses or entering public service, universities and the military. All foreigners applying for marriage licenses, residency or work are tested for HIV. Results of HIV testing of the various high and low risk groups are consistently below 0.5%. In results reported in 2001, only 12 (0.07%) of 16,401 high-risk individuals, including IDUs [intravenous drug users], MSM [men who have sex with men] and bar girls, were positive; of 323,087 blood donors, three (<0.01%) were positive. In a 2001 study on STI [sexually transmitted infections] prevalence among 800 pregnant women and 200 women attending gynaecology services in urban and rural areas of Damascus, there was no HIV infection.<sup>83</sup>
- 4.4.11** Where a case owner considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Syrian nationals may return voluntarily to any region of Syria 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 Organisation 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. 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. 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](http://www.iomlondon.org).

<sup>81</sup> WHO Country profiles, 7 April 2001, p3

<sup>82</sup> WHO Country profiles, 7 April 2001, p3

<sup>83</sup> COIS Report February 2007 Section 24

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