



OPERATIONAL GUIDANCE NOTE

PAKISTAN

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1. Introduction

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

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

http://www.homeoffice.gov.uk/rds/country_reports.html

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

2. **Country assessment**

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

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

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

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

3. **Main categories of claims**

- 3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Pakistan. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions 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 or on their individual circumstances.
- 3.4 All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

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

3.5 **Credibility**

- 3.5.1 This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see para 11 of the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights claims'. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Ahmadis fearing the Pakistani authorities

- 3.6.1** Many applicants will apply for asylum or make a human rights claim based on fear of persecution by the Pakistani authorities due to their Ahmadi religious faith.
- 3.6.2 *Treatment.*** The constitution states that subject to law, public order and morality, every citizen shall have the right to profess, practice, and propagate his religion. The number of Ahmadis living in Pakistan, according to Jamaat-e-Ahmadiyya, is nearly 600,000, although it is difficult to establish an accurate estimate because Ahmadis, who are legally prohibited from identifying themselves as Muslims, generally choose to not identify themselves as non-Muslims. The Ahmadi population is centred in and around Rabwah.¹
- 3.6.3** Ahmadis are prevented by law from engaging in the full practice of their faith. Pakistan's constitution declares members of the Ahmadi religious community to be 'non-Muslims,' despite their insistence to the contrary. Barred by law from 'posing' as Muslims, Ahmadis may not call their places of worship 'mosques', worship in non-Ahmadi mosques or public prayer rooms which are otherwise open to all Muslims, perform the Muslim call to prayer, use the traditional Islamic greeting in public, publicly quote from the Koran, or display the basic affirmation of the Muslim faith. It is also illegal for Ahmadis to preach in public; to seek converts; or to produce, publish, or disseminate their religious materials. The punishment for violation of the law is imprisonment for up to three years and a fine.²
- 3.6.4** Ahmadiyya leaders claimed the Government used regular sections of the Penal Code against their members for religious reasons. Authorities often accused converts to the Ahmadiyya community of blasphemy, violations of anti-Ahmadi laws, or other crimes. The Government used anti-Ahmadi laws to target and harass Ahmadis. The vague wording of the provision that forbids Ahmadis from directly or indirectly identifying themselves as Muslims enabled officials to bring charges against Ahmadis for using the standard Muslim greeting and for naming their children Muhammad.³
- 3.6.5** Since 1983 Ahmadis have been prohibited from holding public conferences or gatherings and from holding their annual conference. Ahmadis are banned from preaching and were prohibited from travelling to Saudi Arabia for the Hajj or other religious pilgrimages because of the passport requirements to list religious affiliation and denounce the Ahmadi prophet. Ahmadis are therefore restricted and are unable to declare themselves as Muslims. Ahmadiyya publications were banned from public sale, but they published religious literature in large quantities for a limited circulation.⁴
- 3.6.6** The Ahmadi community claimed that as of April 2009, 88 Ahmadis faced criminal charges on religious laws or because of their faith, compared to 45 between July 2007 and June 2008. Of those facing charges up to April 2009, 18 were under the blasphemy laws, 68 under Ahmadi-specific laws, and two under other laws but motivated by their Ahmadi faith. The Ahmadiyya community claimed the arrests were groundless and based on the detainees' religious beliefs. Several criminal cases, ranging from killings to destruction of property, were filed against prominent members of the Ahmadiyya community during 2009. The US State Department International Religious Freedom Report 2009 also noted that police charged the entire Ahmadi populations in Rabwah and Kotli with blasphemy in June 2008 for celebrating 100 years of Caliph-ship and constructing a mosque for the community.⁵
- 3.6.7** Authorities routinely used blasphemy laws to harass religious minorities and vulnerable Muslims and to settle personal scores or business rivalries. Authorities detained and convicted individuals on spurious charges. Judges and magistrates, seeking to avoid

¹ COI Service Pakistan Country Report January 2010

² COI Service Pakistan Country Report January 2010

³ COI Service Pakistan Country Report January 2010

⁴ COI Service Pakistan Country Report January 2010

⁵ COI Service Pakistan Country Report January 2010

confrontation with or violence from extremists, often continued trials indefinitely.⁶ In several instances, the police have been complicit in harassment and the framing of false charges against Ahmadis, or stood by in the face of anti-Ahmadi violence.⁷

3.6.8 *Actors of Protection.* Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection..

3.6.9 *Internal relocation.* Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.6.10 *Caselaw.*

[2005] UKIAT 00033 KK. The IAT found that for the ‘unexceptional Ahmadi’, there is no real risk of persecutory or Article 3 infringing treatment on return to Pakistan (whether Rabwah or elsewhere) merely by the reason of being Ahmadi. The ‘unexceptional Ahmadi’ was defined as a man of the Ahmadi faith but who:

- i) has no record of active preaching and is not a person in respect of whom any finding has been made that there is a real risk that he will preach on return;
- ii) has no particular profile in the Ahmadi faith;
- iii) has no history of persecution or other ill-treatment in Pakistan related to his Ahmadi faith; and
- iv) has no other particular feature to give any potential added to the risk to him (e.g. by being a convert to the Ahmadi faith).

3.6.11 *Conclusion.* Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). There may be some individual prominent Ahmadis who are able to demonstrate that the effect of discriminatory religious legislation and the penalties imposed on them as a result of this would amount to persecution. Where individuals are able to demonstrate such a risk a grant of asylum may be appropriate. However, for ordinary members of the Ahmadi community the effect of discriminatory legislation is unlikely to amount to persecution or torture or inhuman or degrading treatment and a grant of asylum or Humanitarian Protection will not be appropriate.

3.7 Ahmadis who fear extremist militant groups and/or individuals

⁶ US State Department International Religious Freedom Report 2009: Pakistan

⁷ Human Rights Watch, Massacre of minority Ahmadis, 1 June 2010

- 3.7.1** Ahmadis may apply for asylum or make a human rights claim based on fear of persecution from extremist militant groups and/or from individuals due to their Ahmadi religious faith. They claim that the authorities are not able or willing to offer sufficiency of protection.
- 3.7.2 *Treatment.*** Ahmadis continue to suffer from societal discrimination. Promotions for all minority groups appeared limited within the civil service. These problems were particularly acute for Ahmadis, who contended that a "glass ceiling" prevented their promotion to senior positions and that certain government departments refused to hire or retain qualified Ahmadis. In 2007, the Human Rights Commission of Pakistan (HRCP) also reported the vernacular press as having become virulently anti-Ahmadi. The HRCP noted that state television contained broadcasts of anti-Ahmadi rhetoric, including phrases such as 'Ahmadis deserve to die.' The HRCP further noted that even in the traditionally liberal English language press, religious freedom was becoming harder to defend as journalists' increasingly feared attack if they defended Ahmadis.⁸
- 3.7.3** The public school curriculum included derogatory remarks in textbooks against minority religious groups, particularly Ahmadis, Hindus, and Jews, and the teaching of religious intolerance was widespread. The Government continued to revise the curriculum to eliminate such teachings and remove Islamic overtones from secular subjects. Officials used bureaucratic demands and bribes to delay religious groups trying to build houses of worship or obtain land. Although Ahmadis were prevented from building houses of worship, Sunni Muslim groups built mosques and shrines without government permission, at times in violation of zoning ordinances and on government-owned lands.⁹
- 3.7.4** Although discrimination continued to exist during 2009, there were no reports of discrimination against Ahmadis and Christians when they applied for entry to universities and medical schools. During this period, Shi'a leaders said they were not subjected to discrimination in hiring for the civil service or admission to government institutions of higher learning.¹⁰
- 3.7.5** On 28 May 2010 extremist Islamist militants attacked two Ahmadiyya mosques in the central Pakistani city of Lahore with guns, grenades, and suicide bombs, killing 94 people and injuring well over a hundred. On the night of May 31, unidentified gunmen attacked the Intensive Care Unit of Lahore's Jinnah Hospital, where victims and one of the alleged attackers were under treatment, sparking a shootout in which at least a further 12 people, mostly police officers and hospital staff, were killed. The assailants succeeded in escaping.¹¹
- 3.7.6** The anti-Ahmadiyya campaign has intensified in the past year, exemplified by the government allowing groups to place banners seeking the death of "Qadianis" (a derogatory term for Ahmadis) on the main thoroughfares of Lahore. The government seldom brings charges against perpetrators of anti-Ahmadi violence and discrimination. Research by Human Rights Watch indicates that the police have failed to apprehend anyone implicated in such activity in the last several years.¹²
- 3.7.7 *Actors of Protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the

⁸ US State Department International Religious Freedom Report 2009: Pakistan, COI Service Pakistan Country Report January 2010

⁹ US State Department International Religious Freedom Report 2009: Pakistan

¹⁰ COI Service Pakistan Country Report January 2010

¹¹ Human Rights Watch, Massacre of minority Ahmadis, 1 June 2010

¹² Human Rights Watch, Massacre of minority Ahmadis, 1 June 2010

organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

- 3.7.8** Pakistan is an Islamic republic, Islam is the state religion, and the Constitution requires that laws be consistent with Islam. The Constitution states that "subject to law, public order, and morality, every citizen shall have the right to profess, practice, and propagate his religion;" in practice however, the Government imposes limits on freedom of religion. The Government did take some steps to improve its treatment of religious minorities during 2009. Despite these steps, serious problems remained. Law enforcement personnel abused religious minorities in custody. Security forces and other government agencies did not adequately prevent or address societal abuse against minorities and there are specific laws that discriminate against religious minorities including anti-Ahmadi and blasphemy laws that provide the death penalty for defiling Islam or its prophets.¹³
- 3.7.9** Public pressure routinely prevented courts from protecting minority rights and forced judges to take strong action against any perceived offence to Sunni orthodoxy. Discrimination charges against religious minorities were rarely brought before the judiciary. According to several NGOs, cases against Christians and Ahmadis continued to increase during 2009; however, the judiciary, even at the lower levels, acted more judiciously in dealing with these cases as compared with previous reporting periods. Police reportedly tortured and mistreated those in custody and at times engaged in extrajudicial killings. It was usually impossible to ascertain whether adherence to particular religious beliefs was a factor in cases in which religious minorities were victims; however, both Christian and Ahmadiyya communities claimed their members were more likely to be abused.¹⁴
- 3.7.10** It is clear that despite constitutional guarantees, sufficiency of protection may not always be available to individual Ahmadis. Some Ahmadis may be reluctant to call upon the services of the police as a result of perceptions of their lack of power in the face of dominant political groups and collusion between them and those who are anti-Ahmadi. Some individuals who do approach the police for assistance may face police inaction to prevent attacks against them and some Ahmadis have reportedly been attacked while in police custody.¹⁵
- 3.7.11 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.7.12** The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation; the government however limited these rights in practice.¹⁶ The Ahmadi population is centred around Rabwah. Internal relocation may be viable in some circumstances particularly for low-level members of the community however relocation may only be a temporary solution given the ease with which Ahmadi affiliation can be detected.

¹³ US State Department International Religious Freedom Report 2009: Pakistan

¹⁴ US State Department International Religious Freedom Report 2009: Pakistan

¹⁵ US State Department International Religious Freedom Report 2009: Pakistan

¹⁶ US State Department Human Rights Report 2009: Pakistan

This is because Ahmadis are prevented by law from engaging in the full practice of their faith. They are barred by law from 'posing' as Muslims, may not call their places of worship 'mosques', worship in non-Ahmadi mosques or public prayer rooms which are otherwise open to all Muslims, perform the Muslim call to prayer, use the traditional Islamic greeting in public, publicly quote from the Koran, or display the basic affirmation of the Muslim faith.¹⁷ Ahmadis therefore remain somewhat visible within Muslim communities, especially within small communities.

3.7.13 Case owners should assess on an individual case by case basis whether internal relocation is a reasonable option for applicants in this category. In particular, case owners will need to consider whether the individual concerned has lived away from the area where they face a threat, whether the individual has extended family/friends in other parts of Pakistan, whether the threat that they face is likely to follow them, and whether they would be easily identifiable in their new location. Whilst Ahmadis may not be visibly different from other Muslims their attendance at Ahmadi Mosques and the fact that they cannot register as Muslims make them identifiable to those seeking to do so. Consequently, case owners will also need to consider whether applicants in this category would be easier to track down were they to relocate outside of their Ahmadi community. Such considerations may rule out the option of internal relocation in some cases.

3.7.14 Caselaw.

MJ and ZM (Ahmadis – risk) Pakistan CG [2008] UKAIT 00033. The AIT concluded that:

1. The finding in **IA and Others** that the existence of a majority Ahmadi community in Rabwah does not justify dismissing an appeal which would otherwise be allowed remains valid. Rabwah is no safer than elsewhere in Pakistan for Ahmadis, but the question whether it is an appropriate internal relocation option for an Ahmadi will always depend on the particular circumstances and facts of that individual's situation.
2. In Pakistan as a whole, whilst it is clear that from time to time local pressure is exerted to restrict the building of new Ahmadi mosques, schools and cemeteries, and that a very small number of Ahmadis are arrested and charged with blasphemy or behaviour offensive to Muslims, the number of problems recorded is small and has declined since the Musharraf Government took power. Set against the number of Ahmadis in Pakistan as a whole, they are very low indeed. The courts do grant bail and all appeals against blasphemy convictions in recent years have succeeded.
3. There is very sparse evidence indeed of harm to Ahmadis from non-state agents (though rather more anecdotal evidence of difficulties for Christians). The general risk today on return to Pakistan for Ahmadis who propagate the Ahmadi faith falls well below the level necessary to show a real risk of persecution, serious harm or ill-treatment and thus to engage any form of international protection.
4. Where, exceptionally, the facts of a particular appellant's case indicate that such an appellant cannot be returned safely to their home area, the existence of an internal relocation option, either to Rabwah or elsewhere in Pakistan, is a question of fact in each such appeal.

IA (Pakistan) [2008] EWCA Civ 580

The Court of Appeal consider the appeal of the Secretary of State in the case of **IA Pakistan UKAIT 00088 [2007]**. They agree that the headnote in that case should be read that 'Rabwah does not necessarily constitute a safe haven for every Ahmadi' rather than the phrase used which read as; 'a safe haven for any Ahmadi'. The Court of Appeal set out the following steps to consider;

- It is not necessarily the case that an Ahmadi who reasonably fears persecution elsewhere in Pakistan can safely relocate to Rabwah.
- An Ahmadi who does move to Rabwah may not be able to remain there for long; and for those who are able to remain in Rabwah, safety is not assured because local power is not in Ahmadi hands and the KN is at least as active in Rabwah as elsewhere.
- But this does not mean that no Ahmadi can be reasonably safe in Rabwah. As in the rest of Pakistan, the incidence of harm to Ahmadis there is not high.
- What matters therefore is the particular risk faced by the individual Ahmadi and the reasons for it.
- It follows that, for those who can establish a well-founded fear of persecution elsewhere in Pakistan, Rabwah is not to be assumed to be either generically safe or generically unsafe. The issue must be determined case by case.

¹⁷ COI Service Pakistan Country Report January 2010

Court of Appeal (Case Number: C5/2007/2868) Between the Secretary of State for the Home Department and IA (Pakistan). The Court of Appeal clarified the AIT's reasoning in **IA and Others** and dismissed the Home Secretary's appeal. The Court of Appeal also cleared up an error in the AIT's determination head note. The Court of Appeal agreed the head note should state that Rabwah does not necessarily constitute a safe haven for every Ahmadi rather than retain the AIT's phrase that it was not 'a safe haven for any Ahmadi'.

[2005] UKIAT 00033 KK. The IAT found that for the 'unexceptional' Ahmadi, there is no real risk of persecutory or Article 3 infringing treatment on return to Pakistan (whether Rabwah or elsewhere) merely by the reason of being Ahmadi. The unexceptional Ahmadi was defined as a man of the Ahmadi faith but who:

- has no record of active preaching and is not a person in respect of whom any finding has been made that there is a real risk that he will preach on return;
- has no particular profile in the Ahmadi faith;
- has no history of persecution or other ill-treatment in Pakistan related to his Ahmadi faith; and
- has no other particular feature to give any potential added to the risk to him (e.g. by being a convert to the Ahmadi faith).

[2004] UKIAT 00302 KM. The IAT found that there are no statistics to indicate whether the incidence of persecution or difficulty in Rabwah is greater or lesser in proportion than in other parts of Pakistan and that the incidence of violence against Ahmadis in Rabwah does not demonstrate a consistent pattern of gross, flagrant or mass violations of the Human Rights of the Ahmadis living there. In addition, there is no evidence that the appellant placed himself in the forefront of attention by preaching or attending any particularly overt meeting.

[2004] UKIAT 00139 MC. The Tribunal agreed with the adjudicator that the incidents of violence in Rabwah against Ahmadis are not large scale or endemic and fall short of demonstrating that the authorities there are generally unable or unwilling to afford local Ahmadis effective protection. The Tribunal concluded that, 'In these circumstances the Tribunal find that it will be a rare case in which an Ahmadi can establish that the authorities in Rabwah are unable or unwilling to offer him a sufficiency of protection.'

[2003] UKIAT 00198 A (Pakistan) The Tribunal reject the notion that simply because an Ahmadi preaches or proselytises he is at real risk of serious harm.

[2002] UKIAT 02642 AZ (Pakistan) CG. The appellant grew up as a Muslim and had converted to the Ahmadi faith at the age of nearly 40. He had claimed asylum on the grounds that, as an Ahmadi, he would face ill-treatment from his brothers and fellow villagers. The Tribunal concluded that there is no sustainable evidence that Ahmadis whether it be as a social group or for their religion are discriminated against by the state so as to be excluded from protection which the law affords all citizens of Pakistan. Being an Ahmadi is not in itself a basis to entitle a person to be treated as a refugee. Simply being an apostate to his faith does not inexorably mean he faces death nor that it is reasonably likely nor a real risk.

[2002] UKIAT 05714 MM (PAKISTAN) (Ahmadi – Internal Relocation) CG. The Appellant is an Ahmadi who feared the Khatme Nabuwat in his home area of Lahore. The IAT agreed with the adjudicator that there was no sufficiency of protection from the authorities in Lahore, however internal relocation to Rabwah was viable where the appellant would be relatively free to manifest his religion openly and in safety.

3.7.15 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). Societal attitudes towards Ahmadis may result in the harassment or ill-treatment of individuals which in individual cases may reach the level of persecution, torture or inhuman and degrading treatment. Where individuals face a serious risk of persecution, torture or inhuman or degrading treatment, case owners will need to consider whether there is sufficiency of protection for that individual and whether they could relocate internally. Sufficient protection may not be available and for some individuals internal relocation may be unduly harsh. The majority of Ahmadi applicants will not be at real risk of ill-treatment but for the small numbers who are, and who are unable to access sufficient protection or relocate internally, a grant of asylum will be appropriate.

3.8 Women victims of domestic violence

- 3.8.1** Some female applicants will apply for asylum or make a human rights claim based on the grounds that they are the victims of domestic violence and are unable to seek protection from the authorities.
- 3.8.2 *Treatment.*** Domestic violence is reportedly a widespread and serious problem. Husbands reportedly beat, and occasionally killed their wives. Other forms of domestic violence included torture and shaving. In-laws abused and harassed married women. Dowry and family-related disputes often resulted in death or disfigurement by burning or acid. According to a 2008 Human Rights Commission of Pakistan (HRC) report, 80 percent of wives in rural Punjab feared violence from their husbands, and nearly 50 percent of wives in developed urban areas admitted that their husbands beat them. The HRCP reported 52 cases of women doused with kerosene and set afire. The Aurat Foundation reported that during 2009 there were 53 cases of acid attacks, up from 29 in 2008.¹⁸
- 3.8.3** Women who tried to report abuse faced serious challenges. Police and judges were reluctant to take action in domestic violence cases, viewing them as family problems. Police, instead of filing charges, usually responded by encouraging the parties to reconcile. Abused women usually were returned to their abusive family members. Women were reluctant to pursue charges because of the stigma attached to divorce and their economic and psychological dependence on relatives. Relatives were hesitant to report abuse for fear of dishonouring the family.¹⁹
- 3.8.4** The government operated the Crisis Centre for Women in Distress, which referred abused women to NGOs for assistance. There were approximately 70 district-run shelter homes and approximately 250 facilities operating as emergency shelters for women in distress, including female police stations and homes run by provincial social welfare departments and NGOs. The district-run centres provided shelter, access to medical treatment, limited legal representation, and some vocational training. However, there were reports that some women were abused at the government-run shelters.²⁰
- 3.8.5** The Protection of Women (Criminal Laws Amendment) Act 2006²¹ was approved by the National Assembly on 15 November 2006 and enacted on 1 December 2006. This Act affects the application of the Hudood Ordinances, especially in matters relating to sexual crimes i.e. rape, adultery and fornication. Most sexual offences now have to be dealt with under the Pakistan Penal Code (PPC) rather than under the more punitive Offence of Zina (Enforcement of Hudood) Ordinance 1979. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery; since 1 December 2006 any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation. Offences of adultery (both zina liable to hadd and zina liable to tazir) have been made bailable. In addition, sentences of capital punishment and corporal punishment (flogging) for consensual extra-marital sex have been abolished; however, this offence remains punishable by up sentences of up to five years imprisonment and/or a fine.²²
- 3.8.6** On 4 August 2009 the Pakistan National Assembly unanimously passed the the Domestic Violence (Prevention and Protection) Bill, but the bill lapsed after the Senate failed to pass it within the three months required under the country's constitution and it remains outstanding.²³

¹⁸ US State Department Human Rights Report 2009: Pakistan

¹⁹ US State Department Human Rights Report 2009: Pakistan

²⁰ US State Department Human Rights Report 2009: Pakistan

²¹ <http://www.pakistani.org/pakistan/legislation/2006/wpba.html>
(Protection of Women (Criminal Laws Amendment) Act 2006)

²² <http://www.unhcr.org/refworld/country,,IRBC,,PAK,,4784def9c,0.html>

The Protection of Women (Criminal Laws Amendment) Act, 2006

²³ Human Rights Watch, Pakistan: Expedite domestic violence legislation, 11 January 2010

- 3.8.7 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection..
- 3.8.8** Domestic violence is not specifically prohibited by law in Pakistan, but abusers may be charged with assault. Human Rights Watch reported that the Domestic Violence (Prevention and Protection) Bill was passed by the National Assembly on 4 August 2009; however the bill lapsed after the Senate failed to pass it within the three months required under the Constitution of Pakistan.²⁴ To date, no further legislation has been enacted. The earlier 'Protection of Women (Criminal Laws Amendment) Act' 2006 deals primarily with women accused of sexual crimes, and offers no legislative protection for women suffering domestic abuse. The Government, along with local NGOs, also runs crisis centres and shelters across the country for women in distress. Sufficiency of protection must be considered on the facts of each individual case, but there are likely to be women who are not able to access assistance and protection. In each case, case owners should identify whether attempts were made to seek protection and what the response of the authorities was. If the applicant did not seek the protection of the authorities, case owners should assess why it was not sought. In such cases, there are likely to be applicants who are able to establish a well-founded fear of seeking protection from the authorities.
- 3.8.9 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.8.10** The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation; the government however limited these rights in practice.²⁵ Taking into account the general position of women in Pakistani society where they are subordinate to men, may not be educated or even literate and may have to depend on relatives for economic support, internal relocation may be unduly harsh for women who are genuinely fleeing a risk of serious domestic violence. Factors such as the social and professional background of the individual applicant should be considered when determining relocation as an option. Educated and professional women may however find it possible to support themselves in alternative locations.
- 3.8.11 *Case/law.***
- Shah and Islam HL [1999] ImmAR283 25 March 1999.** The House of Lords held that women in Pakistan constituted a particular social group because they share the common immutable characteristic

²⁴ <http://www.hrw.org/en/news/2010/01/11/pakistan-expedite-domestic-violence-legislation>
[Pakistan: Expedite Domestic Violence Legislation | Human Rights Watch](#)

²⁵ US State Department Human Rights Report 2009: Pakistan

of gender, they were discriminated against as a group in matters of fundamental human rights and the State gave them no adequate protection because they were perceived as not being entitled to the same human rights as men.

KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 IAC. The court made the following findings:

- i. In general persons who on return face prosecution in the Pakistan courts will not be at real risk of a flagrant denial of their right to a fair trial, although it will always be necessary to consider the particular circumstances of the individual case.
- ii. Although conditions in prisons in Pakistan remain extremely poor, the evidence does not demonstrate that in general such conditions are persecutory or amount to serious harm or ill-treatment contrary to Article 3 ECHR.
- iii. The Protection of Women (Criminal Laws Amendment) Act 2006 (“PWA”), one of a number of legislative measures undertaken to improve the situation of women in Pakistan in the past decade, has had a significant effect on the operation of the Pakistan criminal law as it affects women accused of adultery. It led to the release of 2,500 imprisoned women. Most sexual offences now have to be dealt with under the Pakistan Penal Code (PPC) rather than under the more punitive Offence of Zina (Enforcement of Hudood) Ordinance 1979. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery; since 1 December 2006 any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation. Offences of adultery (both zina liable to hadd and zina liable to tazir) have been made bailable. However, Pakistan remains a heavily patriarchal society and levels of domestic violence continue to be high.
- iv. Whether a woman on return faces a real risk of an honour killing will depend on the particular circumstances; however, in general such a risk is likely to be confined to tribal areas such as the North West Frontier Province (NWFP) and is unlikely to impact on married women.
- v. Pakistan law still favours the father in disputes over custody but there are signs that the courts are taking a more pragmatic approach based on the best interests of the child.
- vi. The guidance given in SN and HM (Divorced women – risk on return) Pakistan CG [2004] UKIAT 00283 and FS (Domestic violence – SN and HM – OGN) Pakistan CG [2006] 000283 remains valid. The network of women’s shelters (comprising government-run shelters (Darul Amans) and private and Islamic women’s crisis centres) in general affords effective protection for women victims of domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres. Women with boys over 5 face separation from their sons.
- vii. In assessing whether women victims of domestic violence have a viable internal relocation alternative, regard must be had not only to the availability of such shelters/centres but also to the situation women will face after they leave such centres.

[2006] UKAIT 00023 FS (domestic violence –SN and HM – OGN) Pakistan CG Heard on 30 November 2005 Promulgated on 13 March 2006 The IAT concluded the background evidence on the position of women at risk of domestic violence in Pakistan and the availability to them of State protection remains as set out in SN & HM (Divorced women– risk on return) Pakistan CG [2004] UKIAT 00283. (See below) It appears that the current intention of the authorities is to improve State protection for such women, although progress is slow. Every case will still turn on its particular facts and should be analysed according to the step by step approach set out at paragraph 48 of SN & HM, with particular regard to the support on which the appellant can call if she is returned.

[2004] UKIAT 00283 SN & HM (Divorced women– risk on return) Pakistan CG The IAT held that the question of internal flight will require careful consideration in each case. The general questions which Adjudicators should ask themselves in these cases of this kind are:

- (a) has the claimant shown a real risk or reasonable likelihood of continuing hostility from her husband (or former husband) or his family members, such as to raise a real risk of serious harm in her former home
- (b) If yes, has she shown that she would have no effective protection in her home area against such a risk, including protection available from the Pakistani state, from her own family members, or from a current partner or his family?

(c) If, yes would such a risk and lack of protection extend to any other part of Pakistan to which she could reasonably be expected to go (*Robinson [1977] EWCA Civ 2089 AE and FE [2002] UKIAT 036361*), having regard to the available state support, shelters, crisis centres, and family members or friends in other parts of Pakistan?

In order to engage obligations under the Refugee Convention or Article 3 ECHR there should be a positive answer to each of these questions.

3.8.12 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). As noted above, caselaw has confirmed that Pakistani women are members of a particular social group within the terms of 1951 Refugee Convention. It should be noted that new legislative measures have been put in place in Pakistan, including the Protection of Women (Criminal Laws Amendment) Act 2006, which have improved the situation of women to some extent, mainly with regard to sexual crimes. However, it remains the case that levels of domestic violence in Pakistan are high. Asylum claims from Pakistani women who have demonstrated that they face a serious risk of domestic violence which will amount to persecution or torture or inhuman or degrading treatment must be considered in the context of the individual circumstances of each claim. In individual cases, sufficiency of protection by the state authorities may not be available, and although internal relocation may be possible in some circumstances, where it is not, a grant of asylum will be appropriate.

3.9 Women who have reported being raped

3.9.1 Some female applicants will claim asylum based on fear of ill-treatment by the state authorities or societal discrimination as a result of having reported or attempted to report a rape in Pakistan.

3.9.2 Treatment. Rape, other than by one's spouse, is a criminal offence. An individual cannot be prosecuted for marital rape or for rape in a case in which a marriage between the perpetrator and victim was contracted but not solemnized. Although rape was frequent, prosecutions were rare. There were no reliable national statistics on rape, due to the serious underreporting of the problem. Local observers noted that rape was among the most taboo human rights violations in the country. The punishment for rape ranges from 10 to 25 years in prison and a fine at a minimum, or the death penalty at a maximum. The penalty for gang rape is either death or life imprisonment, but sentences were often much lower. However, the Aurat Foundation recorded 439 cases of rape and 307 cases of gang-rape, between January and December 2008, in its 2008 annual report.²⁶

3.9.3 The Protection of Women (Criminal Laws Amendment) Act 2006 brought the crime of rape under the jurisdiction of criminal rather than Islamic courts. Previously, under the rape provision of the Hudood Ordinance, a woman was compelled to produce four male witnesses to corroborate her charge. Under the new law, police are not allowed to arrest or hold a woman overnight at a police station without the consent of a civil court judge. In an attempt to bypass difficulties faced by victims at police stations, a provision in the act called for a sessions judge to hear all rape cases. Women's rights NGOs complained, however, that the law introduced barriers to rape victims who did not have money or access to the courts. Courts began bringing rape cases under the WPA rather than the Hudood Ordinances. According to women's rights groups, however, the law was poorly enforced.²⁷ For further information on this Act, please refer to paragraph 3.8.5 of this guidance.

3.9.4 Police were at times implicated in rape cases. Police often abused or threatened victims and demanded they drop charges, especially when the accused had bribed police. Police demanded bribes from some victims prior to registering rape charges, and investigations were often superficial. NGOs reported that some police stations stopped recording rape

²⁶ US State Department Human Rights Report 2009: Pakistan, COI Service Pakistan Country Report January 2010

²⁷ US State Department Human Rights Report 2009: Pakistan

complaints. Medical personnel did not have sufficient forensics training, which further complicated prosecutions.²⁸

- 3.9.5 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.9.6** As stated above, the Protection of Women (Criminal Laws Amendment) Act 2006 has introduced significant changes to the consideration of rape cases in the courts. Still, the police have reportedly been implicated in rape cases in some instances, especially with regard to the treatment of the victim. Sufficiency of protection must be considered on the facts of each individual case, but there are likely to be women who are not able to access protection. In each case, case owners should identify whether attempts were made to seek protection and what the response of the authorities was. If the applicant did not seek the protection of the authorities, case owners should assess why it was not sought. In such cases, there are likely to be applicants who are able to establish a well-founded fear of seeking protection from the authorities.
- 3.9.7 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.9.8** The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation; the government however limited these rights in practice.²⁹ Taking into account the general position of women in Pakistani society, i.e. where they are subordinate to men, may not be educated or literate, and may have to depend on relatives for economic support, internal relocation may be unduly harsh. Factors such as the social and professional background of the individual applicant should be considered when determining relocation as an option. Educated and professional women will find it easier to support themselves in alternative locations.
- 3.9.9 *Caselaw.***
- See paragraph **3.8.11** for caselaw on women.
- 3.9.10 *Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). As noted above, caselaw has confirmed that Pakistani women are members of a social group within the terms of 1951 Refugee Convention. Asylum claims from Pakistani women

²⁸ COI Service Pakistan Country Report January 2010

²⁹ US State Department Human Rights Report 2009: Pakistan

who have been raped and who are able to demonstrate that the treatment they will face on return amounts to persecution or torture or inhuman or degrading treatment must be considered in the context of the individual circumstances of each claim. The Protection of Women (Criminal Laws Amendment) Act 2006 indicates that there is a greater willingness on the part of the authorities to protect women. However, in individual cases, sufficiency of protection by the state authorities may not be available, and although internal relocation may be possible in some circumstances, where it is not a grant of asylum may be appropriate.

3.10 Women who fear becoming the victim of an honour crime

- 3.10.1** Some applicants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of non-state agents because they have breached or are perceived to have breached family honour. Applicants in this category may be in fear of their husbands, their husband's family and in some cases their own family.
- 3.10.2 *Treatment.*** Honour killings and mutilations occurred throughout the country during the year. The Aurat Foundation reported that during the year there were 604 honour killings. A 2005 law established penalties for honour killings. Human rights groups criticized the legislation because it allows the victim or the victim's heirs to negotiate physical or monetary restitution with the perpetrator of the crime in exchange for dropping charges, a law known as "qisas" and "diyat." Because honour crimes generally occurred within families, perpetrators were able to negotiate nominal payments and avoid more serious punishment.³⁰
- 3.10.3** Government-backed legislation enacted in 2005 introduced stiffer sentences and the possibility of the death penalty for honour killings, but activists have questioned the authorities' willingness to aggressively enforce it. Commenting on its revised laws for honour killings, the Government of Pakistan stated in its report to the UN Committee on the Rights of the Child, dated 4 January 2008, that the low level implementation of laws was a problem, which was "Mostly... due to lack of adequate training to appropriately deal with the situation and apply the relevant provisions of the law".³¹
- 3.10.4 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.10.5** For further information on the Protection of Women (Criminal Laws Amendment) Act 2006, please see paragraph **3.8.5**
- 3.10.6** There continue to be reports of honour related deaths in Pakistan, but in strengthening the law to deal with honour related crimes there is evidence to show that the Government has taken steps against this practice. Sufficiency of protection must, therefore, be considered on the facts of each individual case. For example, case owners should identify whether attempts were made to seek protection and what the response of the authorities was. If the applicant did not seek the protection of the authorities, case owners should assess why it was not sought. In

³⁰ US State Department Human Rights Report 2009: Pakistan

³¹ COI Service Pakistan Country Report January 2010

such cases, there may be applicants who are able to establish a well-founded fear of seeking protection from the authorities.

3.10.7 *Internal relocation.* Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.10.8 The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation; the government however limited these rights in practice.³² Taking into account the general position of women in Pakistani society where they are subordinate to men, may not be educated or even literate and may have to depend on relatives for economic support, internal relocation may be unduly harsh for women who are genuinely fleeing ill treatment due a breach or perceived breach of family honour. Factors such as the social and professional background of the individual applicant should be considered when determining relocation as an option. Educated and professional women may find it easier to support themselves in alternative locations.

3.10.9 *Caselaw.*

See paragraph **3.8.11** for relevant caselaw on women.

3.10.10 *Conclusion.* Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). As noted above, caselaw has confirmed that Pakistani women are members of a social group within the terms of 1951 Refugee Convention. It should be noted that new legislative measures have been put in place in Pakistan, including the Protection of Women (Criminal Laws Amendment) Act 2006, which have improved the situation of women to some extent. However, it remains the case that violence against women is endemic in Pakistan, and many ‘honour’ killings do take place. Asylum claims from Pakistani women who demonstrate that they face a serious risk of becoming subject to an ‘honour’ crime which will amount to persecution or torture or inhuman or degrading treatment must be considered in the context of the individual circumstances of each claim. Each case should be considered individually on its own merits to assess whether the applicant sought and was provided with protection and/or whether internal relocation is an option for that particular individual. In most cases, married women may be less at risk, and women in tribal areas such as the North West Frontier Province are at greater risk than women in urban areas. In certain cases, applicants may be able to establish a valid claim for asylum.

3.11 *Women accused of committing adultery or having an illegitimate child*

3.11.1 Some women will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution from the authorities because they have committed or are accused of committing adultery and/or having an illegitimate child and fear imprisonment under the Hudood Ordinance.

³² US State Department Human Rights Report 2009: Pakistan

- 3.11.2** Some applicants accused of adultery or having an illegitimate child may fear punishment by family members rather than imprisonment. If this is the case, case owners should refer to section 3.10 on honour killings.
- 3.11.3 *Treatment.*** The Protection of Women (Criminal Laws Amendment) Act 2006 amended the Hudood Ordinance moved cases of rape and adultery to secular rather than Shari'a courts. Previously, the Hudood Ordinance often relied on harsh and discriminatory interpretations of Qur'anic standards of evidence and punishment that applied equally to Muslims and non-Muslims. If Qur'anic standards are used, Muslim and non-Muslim and male and female testimony carry different weight. Approximately 2,500 women have been released from prison since former President Musharraf ordered the release of all women imprisoned under the Hudood Ordinance. Many were unable to return to their homes because of social ostracism. A few others remained in custody, and most were housed in government shelters. The women who were arrested under the Hudood Ordinance on charges of fornication, adultery, and possession of liquor now have their cases heard under the above Protection of Women Act. According to the Society for Human Rights and Prisoners Aid, the number of adultery-related cases against women dropped considerably during 2008-09.³³
- 3.11.4** The Protection of Women Act prohibits charging women with fornication offences in the cases where women allege they were victims of rape but cannot prove their 'absence of consent'. Heterosexual consensual sex outside of marriage continues to be criminalized; however, the Act provides that such complaints will be investigated by a court before formal charges are laid.³⁴
- 3.11.5** For further information on the Protection of Women (Criminal Laws Amendment) Act 2006, please refer to paragraph **3.8.5**.
- 3.11.6 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.11.7 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.11.8 *Caselaw.*

See paragraph **3.8.11** for caselaw on women.

³³ US State Department International Religious Freedom Report 2009: Pakistan

³⁴ COI Service Pakistan Country Report January 2010

3.11.9 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). While sex outside a marriage remains a crime, in 2007 no woman was charged with adultery or fornication if she appeared before a court after the passage of the Women's Protection Act. In addition, nearly all women previously charged under the Hudood Ordinances have been released since the introduction of the Act. As noted above, caselaw has confirmed that Pakistani women are members of a social group within the terms of 1951 Refugee Convention. Therefore, asylum claims from Pakistani women who demonstrate that they face a serious risk of facing inhuman or degrading treatment due to a spurious accusation of adultery which will amount to persecution must still be considered in the context of individual circumstances of each claim and may qualify for asylum. In the majority of cases, however, a grant of asylum or Humanitarian Protection will not be appropriate.

3.12 Fear of the Taliban/Extremist Muslim Groups

3.12.1 Some applicants will apply for asylum or make a human rights claim based on the grounds that they fear the Taliban/Extremist Muslim groups in Pakistan and are unable to seek protection from the authorities.

3.12.2 Treatment. Pakistan faces major terrorist and insurgent threats, particularly from Sunni-Deobandi extremist groups. Pro-Taliban militancy since 2001, originally confined to Pakistan's tribal areas [the FATA], has spread into the North West Frontier Province (NWFP). In addition, Punjab-based Sunni extremist groups are emerging as a major threat to security and there appears to be a growing symbiotic relationship between these groups and tribal-based organisations. There are numerous militant factions in Pakistan's northwest with differing objectives, some intent on forcing foreign troops out of Afghanistan, others fighting Pakistan.³⁵

3.12.3 Although the Pakistani Taliban are mostly active in the tribal belt along Pakistan's western border, other militant Sunni groups are based in the country's political heartland in Punjab province. The largest of these, the Lashkar-e-Taiba, has been accused of organising an attack on Mumbai in November 2008. These groups are believed to provide logistics and other help to al Qaeda and the Taliban. Two of these groups, the sectarian Lashkar-e-Jhangvi and Kashmir-oriented Jaish-e-Mohammed have been blamed for bomb attacks inside the country. By contrast, the externally-oriented Lashkar-e-Taiba has not been known to attack Pakistani targets.³⁶

3.12.4 The government and the military have encouraged the creation of lashkars (village militias) to help to counter the threat posed by TTP [Tehrik-e-Taliban] and TTP-linked groups in FATA and neighbouring parts of the NWFP. These have met with only limited success to date.³⁷ The government and the military provide intelligence and 'logistical support' (which may or may not include arms) to the militias; villagers provide arms of their own, ranging from guns to axes and sticks.³⁸

3.12.5 Actors of protection. Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the

³⁵ COI Service Pakistan Country Report January 2010

³⁶ COI Service Pakistan Country Report January 2010

³⁷ http://www.wilsoncenter.org/index.cfm?topic_id=1462&fuseaction=topics.item&news_id=542689
[Formation of lashkars](#)

³⁸ COI Service Pakistan Country Report January 2010

organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection..

- 3.12.6** In October 2009 the government amended the country's anti-terrorism laws through presidential ordinance to further curtail the legal rights of terrorism suspects. Under the ordinance, suspects can be placed in "preventive detention" for a period of 90 days without benefit of judicial review or the right to bail. Confessions made before the police or military are now deemed admissible as evidence despite the fact that torture by Pakistan's police and the military's intelligence services continues to be routine. Under the Anti-Terrorism Act, any action, including speech, intended to incite religious hatred is punishable by up to seven years' imprisonment. The Government banned activities of and membership in several religious extremist and terrorist groups. The Anti-Terrorism Act allows the Government to use special streamlined courts to try violent crimes, terrorist activities, acts or speech designed to foment religious hatred, and crimes against the state; however, many of the groups that the Government banned remained active.³⁹
- 3.12.7** Whilst many banned groups remained active in Pakistan the government has put in place legislation to combat any action intended to incite religious hatred. However, implementation of the legislation is often weak, particularly in religious hatred cases.⁴⁰ This is due to various factors, e.g. resources, availability of personnel, access issues, and corruption and politicisation of the police and judiciary. Applicants who claim a fear of the Taliban or Extremist Muslim groups should be able to seek protection from the authorities in most instances.
- 3.12.8 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.12.9** The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation; the government however limited these rights in practice.⁴¹ Case owners should assess on an individual case by case basis whether internal relocation is a reasonable option for applicants in this category. In particular, case owners will need to consider whether the individual concerned has lived away from the area where they face a threat, whether the individual has extended family/friends in other parts of Pakistan and whether the threat that they face is likely to follow them.
- 3.12.10 *Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). Applicants whose claim for asylum is based on a fear of the Taliban and/or Extremist Muslim groups should be able to seek protection from the authorities in line with the above findings on Pakistan's anti-terrorism laws. Those claimants who can show that they are unable to seek protection from the authorities for whatever reason should be able to relocate to another area of Pakistan where they would not be at risk. Applicants who can

³⁹ HRW World Report 2010 Pakistan chapter; COI Service Pakistan Country Report January 2010

⁴⁰ US State Department Human Rights Report 2009: Pakistan

⁴¹ US State Department Human Rights Report 2009: Pakistan

demonstrate that they are unable to seek protection and that internal relocation would be unduly harsh may be eligible for a grant of asylum but the credibility of the applicant and their evidence would need to be thoroughly assessed.

3.13 Prison conditions

- 3.13.1** Applicants may claim that they cannot return to Pakistan due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the Pakistan are so poor as to amount to torture or inhuman treatment or punishment.
- 3.13.2** 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.
- 3.13.3 *Consideration.*** Prison conditions were extremely poor and failed to meet international standards. Overcrowding was widespread, except for cells of wealthy or influential prisoners. According to Society for Human Rights and Prisoners' Aid (SHARP), more than 95,000 prisoners occupied 72 jails originally built to hold approximately 36,000 persons.⁴²
- 3.13.4** Inadequate food and medical care in prisons led to chronic health problems and malnutrition for those unable to supplement their diet with help from family or friends. According to a November Global Foundation report on prisoners, 197 prisoners suffered from HIV/AIDS in prisons across Punjab, including 30 in the Central Adiala Jail. It stated that there were 55 HIV/AIDS patients in prisons across Sindh, including 21 in the Larkana jail and 34 in the Karachi Central Jail. Foreign prisoners often remained in prison long after completion of their sentences because they were unable to pay for deportation to their home countries. Although the law contains provisions for inmate release on probation, scarcity of resources made this option impossible in most cases.⁴³
- 3.13.5** Police reportedly tortured and mistreated those in custody and at times engaged in extrajudicial killings. Christian and Ahmadi communities claimed their members were more likely to be abused. Non-Muslim prisoners generally were afforded poorer facilities than Muslim inmates and often suffered violence at the hands of fellow inmates.⁴⁴
- 3.13.6** Prison officials kept juvenile offenders in the same facilities as adults but in separate barracks. Police often did not segregate detainees from convicted criminals. Prisoners with mental illness usually lacked adequate care and were not segregated from the general prison population.⁴⁵
- 3.13.7** In 2005 authorities expanded the number of special women's police stations with all-female staff in response to complaints of custodial abuse of women, including rape. The Aurat Foundation reported these stations did not function properly due to lack of resources and lack of appropriate training for policewomen. Court orders and regulations prohibit male police from interacting with female suspects, but male police often detained and interrogated women at regular stations.⁴⁶
- 3.13.8** Following a complaint of torture by Mirza Sarfaraaz, a death row inmate in Adiala Prison, the judiciary launched an inquiry into prison conditions and the prisons department in June 2008. The inquiry revealed that prisoners who did not pay bribes were brutalized. In October the *Daily Times* reported that after the imposition of national judicial policy,

⁴² US State Department Human Rights Report 2009: Pakistan

⁴³ US State Department Human Rights Report 2009: Pakistan

⁴⁴ US State Department Human Rights Report 2009: Pakistan

⁴⁵ US State Department Human Rights Report 2009: Pakistan

⁴⁶ US State Department Human Rights Report 2009: Pakistan

authorities released 1,000 prisoners. The Punjab Home Department conducted medical tests of 32,464 prisoners in 29 prisons across the province on the directives of Chief Justice Chaudhry when he visited prisons across the country. There were various reports of prison riots during 2009. *The News* quoted jail officials who stated that more than 20 riots had occurred during the year in Sindh. Grievances that provoked the riots included overcrowding, deprivation of legal rights, slow disposition of cases, behaviour of the jail administration, and lack of facilities.⁴⁷

3.13.9 At the end of 2009 the Sindh attorney general had not followed up on his commitment to initiate an investigation into the October 2008 police abuse of prisoners in Hyderabad Central Jail following a prisoner riot over lack of basic facilities and alleged corruption. More than 1,000 prisoners broke out of their cells and protested both the solitary confinement of 40 prisoners and basic conditions of confinement. Police injured four inmates in the clashes.⁴⁸

3.13.10 The International Committee of the Red Cross (ICRC) had an agreement with authorities to allow independent visits to prisons throughout the country, but this understanding was only partially honoured. The ICRC had access to the Peshawar Central Prison, where it initiated a water-sanitation improvement project. ICRC visits were not permitted to some detention sites in the NWFP and Balochistan. The ICRC suspended prison visits in Punjab in 2008, as its inspectors were not provided access to prisoners detained on certain security-related charges. Authorities at the local, provincial, or national level permitted some human rights groups and journalists to monitor prison conditions for juveniles and female inmates, but visits of prison conditions for male inmates, whose conditions were poorest, took place rarely and on an ad hoc basis.⁴⁹

3.13.11 *Caselaw*

KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 IAC. The court made the following findings:

- i. In general persons who on return face prosecution in the Pakistan courts will not be at real risk of a flagrant denial of their right to a fair trial, although it will always be necessary to consider the particular circumstances of the individual case.
- ii. Although conditions in prisons in Pakistan remain extremely poor, the evidence does not demonstrate that in general such conditions are persecutory or amount to serious harm or ill-treatment contrary to Article 3 ECHR.
- iii. The Protection of Women (Criminal Laws Amendment) Act 2006 (“PWA”), one of a number of legislative measures undertaken to improve the situation of women in Pakistan in the past decade, has had a significant effect on the operation of the Pakistan criminal law as it affects women accused of adultery. It led to the release of 2,500 imprisoned women. Most sexual offences now have to be dealt with under the Pakistan Penal Code (PPC) rather than under the more punitive Offence of Zina (Enforcement of Hudood) Ordinance 1979. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery; since 1 December 2006 any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation. Offences of adultery (both zina liable to hadd and zina liable to tazir) have been made bailable. However, Pakistan remains a heavily patriarchal society and levels of domestic violence continue to be high.
- iv. Whether a woman on return faces a real risk of an honour killing will depend on the particular circumstances; however, in general such a risk is likely to be confined to tribal areas such as the North West Frontier Province (NWFP) and is unlikely to impact on married women.
- v. Pakistan law still favours the father in disputes over custody but there are signs that the courts are taking a more pragmatic approach based on the best interests of the child.

⁴⁷ US State Department Human Rights Report 2009: Pakistan

⁴⁸ US State Department Human Rights Report 2009: Pakistan

⁴⁹ US State Department Human Rights Report 2009: Pakistan

- vi. The guidance given in SN and HM (Divorced women – risk on return) Pakistan CG [2004] UKIAT 00283 and FS (Domestic violence – SN and HM – OGN) Pakistan CG [2006] 000283 remains valid. The network of women’s shelters (comprising government-run shelters (Darul Amans) and private and Islamic women’s crisis centres) in general affords effective protection for women victims of domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres. Women with boys over 5 face separation from their sons.
- vii. In assessing whether women victims of domestic violence have a viable internal relocation alternative, regard must be had not only to the availability of such shelters/centres but also to the situation women will face after they leave such centres.

3.13.12 Conclusion. Whilst prison conditions in Pakistan are poor with overcrowding and inadequate food being a particular problem, conditions are unlikely to reach the Article 3 threshold. Therefore, even where applicants can demonstrate a real risk of imprisonment on return to Pakistan 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.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Pakistan the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Pakistan 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 Adequate basic non-emergency medical care is available in major Pakistani cities, but is limited in rural areas. Facilities in the cities vary in level and range of services, resources, and cleanliness. A visible increase has been witnessed in the establishment of health care services across the country. Basic Health Units (BHU), Rural Health Centres (RHC), and civil dispensaries exist in the remote rural areas to meet the health needs of the local

communities. In the cities there exist both government and private hospitals with modern technologies available to meet a variety of health challenges.⁵⁰

- 4.4.3** Free services are available to residents of Pakistan who either possess the Zakat form attested from the area counsellor or to government employees. Vaccination and family planning measures are available to all free of cost. Basic Health units and central health units provide free of cost treatment for minor ailment[s], and free obstetric care is provided to Pakistan nationals and to Afghan nationals in North West Frontier Province of Pakistan.⁵¹
- 4.4.4** The Human Rights Commission of Pakistan (HRCP) recorded one doctor was available for every 1,225 persons, one dentist for every 19,121 persons, one nurse for every 2,501 persons and one lady health visitor (LHV) for every 16,845 persons in Pakistan. There are a total of 945 hospitals, 4,755 dispensaries, 5,349 BHUs, 903 Maternity & Child Health Centres and 290 TB Centres in Pakistan. There were reports that facilities at state-owned hospitals were poor. Service at private hospitals was preferred because of the higher monetary incentives available there. There were also many reports of the non-availability of basic medicines, such as anti-rabies medication at public hospitals.⁵²
- 4.4.5** The International Organization for Migration (IOM) recorded there are various professional bodies established in Pakistan to look after medical resources and needs namely; Pakistan Medical and Dental Council (PMDC), Pakistan Dental Association (PDA), College of Physicians & Surgeons (CPSP). In addition, the National Institute of Cardiovascular Diseases (NICVD) was established to meet the national need to cope with the increasing demand for the diagnosis, management and prevention of cardiovascular diseases and also to keep pace with the rapid technological advances in the practice of cardiology through research and development.⁵³
- 4.4.6** The National Aids Control Program reported there were approximately 90,000 HIV-positive individuals in the country, and approximately 50 percent of those lived in Sindh Province. The report stated that 'entrenched age-old social attitudes, practices, and stereotyping, which often lead to violence against women, coupled with unequal access to economic resources, are hampering progress toward dealing with the spread of HIV/AIDS'. Nearly 4,000 people with HIV/Aids have reported at treatment centres around Pakistan, government and World Health Organisation (WHO) officials say. The WHO funded a three-year, \$4.5m anti-retroviral programme in Pakistan which started late 2005. There are 9 treatment centres countrywide, which offer both treatment and counselling sessions.⁵⁴
- 4.4.7** Mental health is a part of the primary health care system. Actual treatment of severe mental disorders is available at the primary level. The country has disability benefits for persons with mental disorders. Disability benefit is paid to individuals who are not able to work due to mental illness. There are many residential and day-care facilities, especially for people with learning disabilities providing social, vocational and educational activities. Regular training of primary care professionals is carried out in the field of mental health.⁵⁵
- 4.4.8** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

⁵⁰ COI Service Pakistan Country Report January 2010

⁵¹ COI Service Pakistan Country Report January 2010

⁵² COI Service Pakistan Country Report January 2010

⁵³ COI Service Pakistan Country Report January 2010

⁵⁴ COI Service Pakistan County Report January 2010

⁵⁵ COI Service Pakistan Country Report January 2010

5. **Returns**

- 5.1** There is no policy which precludes the enforced return to Pakistan of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** Pakistan nationals may return voluntarily to any region of Pakistan 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 any travel documents and booking flights, as well as organising reintegration assistance in Pakistan. 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. Pakistan nationals wishing to avail themselves of this opportunity for assisted return to Pakistan should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

6. **List of source documents**

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