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OPERATIONAL GUIDANCE NOTE

GEORGIA

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1. Introduction

1.1 This document evaluates the general, political and human rights situation in Georgia and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Policy Instructions for further details of the policy on these areas.

1.2 This guidance must also be read in conjunction with any COI Service Georgia Country of Origin Information at:

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

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

Source documents

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

2. Country assessment

2.1 Georgia is a republic with a Constitution that provides for a strong executive branch that reports to the president. The president appoints ministers with the consent of Parliament.

Parliamentary elections took place in November 2003. The electoral process was widely seen as flawed and was severely criticised by international organisations such as the Organisation for Security and Co-operation in Europe (OSCE). Mass, but peaceful street demonstrations resulted in the resignation of then President Shevardnadze on 23 November 2003. New presidential elections were held on 4 January 2004, and opposition leader Mikheil Saakashvili won with over 90% of the vote. New parliamentary elections were held in March 2004, and Saakashvili's National Movement won the majority of seats.¹

- 2.2** In May 2004, following public protests in the breakaway Georgian province of Ajara the autocratic President of Ajara Aslan Abashidze fled to Moscow. Ajara was restored to central Government control and there was a decline in human rights abuses, particularly concerning the press and freedom of association. Georgia's Parliament introduced a new Ajaran Constitution and fresh Ajaran legislative elections were held on 20 June 2004. Ajara's elections were won by a local offshoot of President Saakashvili's National Movement party.²
- 2.3** Russia wants to keep Georgia within its sphere of influence and tensions between Russia and Georgia have included cutting off gas supplies and blocking trade/remittances as well as political rhetoric.³ The dispute with the separatist regimes of Abkhazia and South Ossetia continues and provides the most serious challenge to Georgia's hopes for political and economic stability.⁴ The de facto authorities in the separatist regions remained outside the control of the central government and although ceasefires were in effect, incidents of violence, including deaths, occurred in both areas during 2005.⁵
- 2.4** The law provides for an independent judiciary, but the executive branch and powerful outside interests continued to pressure judicial authorities. Many NGOs complained that judicial authorities increasingly acted as a rubber stamp for prosecutors' decisions and that the executive branch exerted undue influence. NGOs expressed concerns that recent judicial appointees lacked experience and training to act independently. Moreover, the presence of presidential and executive branch appointees, as well as the prosecutor general, on the High Council of Justice (HCOJ), which among other things has the power to initiate disciplinary actions against a judge, had a crippling effect on judicial independence. Constitutional amendments in 2004 empowered the president to appoint or dismiss judges without parliamentary or other confirmation, severely limiting the independence of an already weak judiciary.⁶
- 2.5** The government's human rights record improved in some areas during 2005, however, serious problems remained including law enforcement officers who tortured, beat, and otherwise abused detainees, corruption and impunity in law enforcement, arbitrary arrest and detention and lack of judicial independence.⁷
- 2.6** However, since 2004, the Georgian authorities have introduced or implemented a number of measures to tackle the issue of torture and ill-treatment and at least 10 perpetrators of such crimes are serving prison terms. The measures have included legal amendments and extensive monitoring activities of detention facilities under the jurisdiction of the Ministry of Internal Affairs conducted in particular by the office of the Public Defender of Georgia (Ombudsman).⁸ Due to these measures serious abuses and police misconduct, such as the fabrication or planting of evidence, reportedly decreased.⁹ However, Amnesty

¹ FCO Country Profile October 2005 & USSD 2005 (Introduction)

² FCO Country Profile October 2005 & USSD 2004

³ BBC Country Profile November 2006

⁴ FCO Country Profile October 2005

⁵ USSD 2005 (Introduction)

⁶ USSD 2005 (Section 1)

⁷ USSD 2005 (Introduction)

⁸ AI summary on torture and ill-treatment 2006

⁹ USSD 2005 (Section 1)

International has continued to receive reports about torture and ill-treatment¹⁰ and Human Rights Watch reported that torture, impunity, and denial of due process remain serious problems in Georgia.¹¹

2.7 The general prosecutor was in charge of investigations into allegations of torture and ill treatment. Prosecutors were required to investigate police use of force when a detainee with injuries sustained during arrest was registered. If they concluded that charges were not warranted, the decision could be appealed to a higher level of the general prosecutor's office. NGOs reported that investigations usually substantiated the reasonable use of force by police. Any person subjected to abuse was able to pursue a civil action against the abuser.¹² Eleven perpetrators of crimes amounting to torture or ill-treatment were serving prison terms handed down since the "Rose Revolution" in November 2003. In June 2005 Georgia recognized the competence of the UN Committee against Torture to consider individual complaints and in August 2005 it acceded to the Optional Protocol to the Convention against Torture.¹³

2.8 According to Georgian non-governmental organisations (NGOs) and those involved in the monitoring programme, by mid-2005 there had been a reduction in the number of complaints of torture in the capital, Tbilisi. However, the NGO's reported that there had been a corresponding increase in police violence at the time of arrest and during transportation to the police stations. They also said that the widespread problem of torture in other parts of the country remained largely unaffected by government measures, in part because resources were lacking to effectively monitor police stations in the regions.¹⁴

Abkhazia

2.9 The latest phase in the long-standing tension between Abkhazia and Georgia began in July 1992 when the Abkhaz parliament, reinstated the Abkhaz constitution of 1925 which gave Abkhazia equal status with Georgia. In consequence Georgian troops invaded. After prolonged fighting, the Georgian government lost control of the entire territory of the Autonomous Republic of Abkhazia in September 1993, and a de facto 'border' between Georgia and Abkhazia was established along the Inguri River.¹⁵

2.10 The situation on the ground continued to deteriorate until the parties agreed to a cease-fire in May 1994. A separation of forces agreement was brokered by the Russian Federation and peacekeeping forces were sent to the area. There has been little progress on agreeing the outlines of a comprehensive political settlement based on a possible division of constitutional competences between Georgia and Abkhazia. Progress on the return of refugees and improving the security environment has also been slow.¹⁶

South Ossetia

2.11 In September 1990 the South Ossetians proclaimed their independence from Georgia in response to moves being made by Georgian nationalists to loosen Moscow's control. In late November 1990 tension between Georgians and South Ossetians led to clashes and intervention by Soviet Interior troops. In December 1991 the South Ossetian parliament declared independence and appealed to former republics of the USSR for support and recognition.¹⁷

2.12 At a meeting in Dagomys on 24 June 1992 an outline agreement on settling the conflict was signed. The agreement included a cease-fire, the withdrawal of armed formations, a demilitarised zone, military observers, Joint Peacekeeping Forces, and a quadripartite Joint Control Commission, conditions for the return of refugees, and the resumption of gas

¹⁰ AI summary on torture and ill-treatment 2006

¹¹ HRW 2006

¹² USSD 2005 (Section 1)

¹³ AI Report 2006

¹⁴ HRW 2006

¹⁵ FCO Country Profile 2005

¹⁶ FCO Country Profile 2005

¹⁷ FCO Country Profile 2005, BBC Country Profile October 2005

supplies to Georgia. Despite numerous agreements on the demilitarisation of the zone of conflict, tensions remain high.¹⁸

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 Georgia. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** All APIs can be accessed via the IND website at:
<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6** **Minority ethnic groups: Abkhazians, South Ossetians and Yezidi Kurds**
- 3.6.1** Most claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the authorities or ordinary Georgian civilians due to their Abkhaz, South Ossetian or Yezidi Kurdish ethnicity. Some Abkhaz and South Ossetian claimants will claim that they fear persecution because they are accused of being spies and/or supporters of the respective separatist governments.
- 3.6.2** **Treatment.** The government generally respected the rights of ethnic minorities in non conflict areas during 2005 but limited self-government. The law stipulates that Georgian is the state language. Ethnic Armenians, Azeris, Greeks, Abkhaz, Ossetians, and Russians usually communicated in their native languages or in Russian. However, new requirements for serving on the Central Election Commission (CEC) mandated that a candidate must speak Georgian, thereby effectively excluding many citizens who do not speak the language. Some government materials distributed to the public were only available in the Georgian language.¹⁹

¹⁸ FCO Country Profile 2005

¹⁹ USSD 2005 (Section 5)

- 3.6.3** The question of minorities in Georgia is often understood through the prism of the Abkhaz and Ossetian conflicts reinforcing the widely held view that the minorities are a potential threat. This has led to a mixed policy, marked, on the one hand, by the mistrust which further marginalises the minorities, and, on the other hand, a conciliatory attitude towards them, particularly in the densely populated regions where the central authorities fear, rightly or wrongly, vague separatist impulses.²⁰
- 3.6.4** It was recorded that there were approximately 245,000 persons displaced at end of 2005 due to conflicts in the separatist regions of Abkhazia and South Ossetia, as well as hostilities in Chechnya.²¹ These conflicts and the problems associated with the IDPs posed a continued threat to national stability.²²
- 3.6.5** IDPs occupied collective centres in hotels, hospitals, and other civil buildings in Tbilisi, or lived in private homes with relatives or friends throughout the country, particularly concentrated in Tbilisi, Zugdidi, and Gori. The UN High Commissioner for Refugees (UNHCR) reported that collective centres were not well adapted to serve as homes. In October 2005 the government provided housing vouchers based on the average market value of homes in the area to 126 IDPs housed in a Kutaisi hospital's tuberculosis ward in close proximity with patients.²³
- 3.6.6** Despite ceasefires, killings were committed by elements on both sides of the separatist conflict in South Ossetia. In May 2005 four Ossetians and one Georgian police officer were killed in a shoot out near the village of Tamareshini. In December 2005 the remains of four Georgian men kidnapped from their village on 6 June 2005 were returned to Georgia from South Ossetia.²⁴
- 3.6.7** Partisan violence continued in Abkhazia. Early in 2005 an armed group attacked the village of Ganmukhir near the Abkhaz-Georgian administrative zone and also killed a Georgian policeman at a checkpoint in the zone.²⁵
- 3.6.8** The general attitude of the Georgian population towards Yezidi Kurds is one of suspicion based on negative stereotypes of Kurds as performing jobs at the lower end of the socio-economic spectrum. The authorities and police are also guilty of treating Yezidi Kurds in line with this stereotyping. Nevertheless, the Georgian speaking press does sometimes open its columns to Yezidi Kurds for their right to reply. The Yezidi Kurds are sometimes targets for acts of violence by the forces of order, although these acts of violence did not appear to be any different from those reported by other groups including ethnic Georgians.²⁶
- 3.6.9** ***Sufficiency of protection.*** If this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection. Public confidence in the police continued to increase during 2005 due to a reduction in corruption and a number of police officers were arrested or administratively disciplined in high-profile cases of physical abuse or deaths in custody. (However, in general officers were only held accountable for abuses in extreme cases). According to the General Prosecutor's Office's Human Rights Protection Unit as of November 2005, 188 criminal cases concerned with alleged ill treatment, abuse, or torture by law enforcement officers had been opened and charges were brought against 25 law enforcement officers. Since the Rose Revolution in November 2003, 10 officers have been convicted of torture and abuse and are serving prison terms.²⁷ If this category of claimants' fear is of ill treatment/persecution by non-state

²⁰ FIDH 2005 p.6

²¹ USSD 2005 (Section 2)

²² USSD 2005 (Section 2)

²³ USSD 2005 (Section 1)

²⁴ USSD 2005 (Section 1)

²⁵ USSD 2005 (Section 1)

²⁶ FIDH 2005 p.10

²⁷ USSD 2005 (Section 1)

agents then there is no evidence that they would not be able to seek and receive adequate protection from the authorities.

3.6.10 *Internal relocation.* If this category of claimants fear is of ill treatment/persecution by the state authorities' relocation to a different area of the country to escape this threat is not feasible. The law provides for freedom of movement, and the government generally respected this in practice in areas under its control. However, freedom of movement was restricted by the de facto authorities in the separatist regions of Abkhazia and South Ossetia and police checkpoints often obstructed citizens' internal movement in these regions.²⁸ If this category of claimants' fear is of ill treatment/persecution by non-state agents then relocation to a different area of the country to escape this threat is feasible.

3.6.11 *Conclusion.* Due to the ongoing tense relationship between the Georgian government and the separatist regions there may be some antipathy directed towards Abkhazians and South Ossetians within Georgia and Yezidi Kurds are often viewed as being at the lower end of the social scale. However, the Georgian government generally respects the rights of ethnic minority groups and there is no evidence that either state or non-state agents persecute such individuals on account of their regional origins, minority ethnic group or imputed association with the separatist authorities in those regions. Therefore it is unlikely that claimants from this category of claim will qualify for a grant of asylum of Humanitarian Protection.

3.6.12 Caseworkers should note that members of separatist's organisations have been responsible for serious human rights abuses. If it is accepted that a claimant was an active operational member or combatant for the either the South Ossetian or Abkhaz separatist forces and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

3.7 Members of minority religious groups

3.7.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the authorities or ordinary Georgians due to their affiliation to minority religious groups.

3.7.2 *Treatment.* The constitution provides for freedom of religion, and the Government generally respected this right in practice. During 2006, the status of religious freedom continued to improve. Beginning in July 2005 the Government approved the registration applications of previously unregistered religious groups, pursuant to a new law enabling religious groups to operate more freely. A total of fourteen organisations subsequently registered under the law. Police were generally more responsive to the needs of minority religious groups but failed at times to adequately protect them.²⁹

3.7.3 Citizens generally did not interfere with religious groups considered to be "traditional"; however, there was widespread suspicion of "non-traditional" ones. Attacks on religious minorities, including violence, verbal harassment, and disruption of services and meetings, continued to decrease. While the Prosecutor General's Office increasingly initiated investigations of religious-based violence, past complaints remained unresolved.³⁰

3.7.4 Most ethnic Georgians (more than 80 percent of the population, according to the 2002 census) nominally associate themselves with the Georgian Orthodox Church (GOC). Several religions, including the Armenian Apostolic Church, Roman Catholicism, Judaism, and Islam, traditionally have coexisted with Georgian Orthodoxy. Approximately 9.9 percent of the population is nominally Muslim and approximately 3.9 percent of the population belongs to the Armenian Apostolic Church which forms the third largest religious group in

²⁸ USSD 2005 (Section 2)

²⁹ USIRF 2006 (Introduction)

³⁰ USIRF 2006 (Introduction)

Georgia. All other religious groups constitute less than one percent of the population each. Jews, (approximately 4,000) and a small number of Kurdish Yezidis (approximately 18,000) have lived in the country for centuries.³¹

- 3.7.5** Since the collapse of the Soviet Union, Protestant denominations have become more active and prominent. They include Baptists (composed of Russian, Georgian, Armenian, Ossetian, and Kurdish groups totalling approximately 8,000 adherents); Seventh-day Adventists (approximately 350 members); Pentecostals (both Georgian and Russian, estimated at approximately 9,000 adherents); Jehovah's Witnesses (approximately 16,000 adherents); and the New Apostolic Church. The number of Mormons in the country is small. There also are a few Baha'is, Hare Krishnas, and Buddhists. The membership of all these groups combined is officially estimated at 34,000 persons.³²
- 3.7.6** While most citizens practice their religion without restriction, the worship of some, particularly members of non-traditional faiths, has been restricted by threats and intimidation from some local Orthodox priests and congregations. On some occasions during 2005, local police were slow to prevent the harassment of non-Orthodox religious groups, including members of Jehovah's Witnesses, Baptists, and Pentecostals. Some politicians used the supremacy of the GOC in their platforms and criticized some Protestant groups, particularly evangelical groups, as subversive. Jehovah's Witnesses in particular were the targets of some politician's derogatory comments.³³
- 3.7.7** Amnesty International reported that there were several instances where members of religious minorities were beaten and harassed by supporters of the Georgian Orthodox Church during 2005. In some cases, it was alleged that the attacks were incited by Georgian Orthodox priests. However, several perpetrators of violent attacks on religious minorities in recent years were imprisoned during 2005.³⁴
- 3.7.8** In the past, customs and police officials sometimes seized literature of non-traditional religions, particularly that of the Jehovah's Witnesses. However, since January 2004 there have been no reported cases of seized literature or importation difficulties.³⁵
- 3.7.9** Human Rights Watch reported that overall the environment for religious freedom has significantly improved since the change in government (January 2004) when violent attacks against minority religions began to subside, which suggests that the attackers were somehow linked to the former government. In a positive move the authorities arrested Vasili Mkalavishvili, the leader of many of the attacks, and in January 2005, he was convicted and sentenced to six years in prison. In another positive step, the parliament passed amendments to the civil code in April 2005 making it easier for religious organisations to be registered. Discrimination against unregistered religious groups had previously been a major obstacle to religious freedom in Georgia.³⁶
- 3.7.10 Sufficiency of protection.** If this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection. Public confidence in the police continued to increase during 2005 due to a reduction in corruption and a number of Police officers were arrested or administratively disciplined in high-profile cases of physical abuse or deaths in custody.³⁷ Although at times the police failed to adequately protect minority religious groups, in general the police and the authorities were generally more responsive to the needs of these groups in 2005 than compared to previous years and those who attack religious minority groups face prosecution within the law. In January 2005 the main instigator of these attacks against non-traditional religious groups

³¹ USIRF 2006 (Section I)

³² USIRF 2006 (Section I)

³³ USIRF 2006 (Section II)

³⁴ AI Report 2006

³⁵ USIRF 2005 (Section II)

³⁶ HRW 2006

³⁷ USSD 2005 (Section 1)

Vasili Mkalavishvili was imprisoned for six years. If this category of claimants' fear is of ill treatment/persecution by non-state agents then although individual police officers may at times not be able or willing to provide adequate protection there is no evidence that this is sanctioned by the authorities and in general the authorities are willing to provide sufficiency of protection.

3.7.11 Internal relocation. If this category of claimants fear is of ill treatment/persecution by the state authorities' relocation to a different area of the country to escape this threat is not feasible. The law provides for freedom of movement, and the government generally respected this in practice in areas under its control. However, freedom of movement was restricted by the de facto authorities in the separatist regions of Abkhazia and South Ossetia and police checkpoints often obstructed citizens' internal movement in these regions.³⁸ If this category of claimants' fear is of ill treatment/persecution by non-state agents then relocation to a different area of the country to escape this threat is feasible.

3.7.12 Conclusion. There is some general societal discrimination against religious minority groups in Georgia and in particular against non-traditional Protestant evangelical groups and some local authorities have imposed restrictions on members of these groups. However, since the new Government has come to power the situation has improved with attacks on religious minorities decreasing significantly. Minority groups are able to freely practice their religions and are now able to register with the authorities. The state authorities do not persecute members of minority religious groups and are willing and able to protect religious minorities from attacks. Therefore claimants from this category of claim are unlikely to qualify for a grant of asylum or Humanitarian Protection.

3.8 Involvement with the former Shevardnadze government

3.8.1 Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of the Georgian authorities due to their involvement with the previous government of Edward Shevardnadze

3.8.2 Treatment. While the new Government prioritised rooting out corruption in 2004, its efforts sometimes infringed on the rule of law. For example, between January and March 2004, the Government arrested a number of high profile, wealthy figures close to former President Shevardnadze, charged them with abuse of office or tax arrears, sentenced them to pre-trial detention, and fined them a pre-determined sum, which was reportedly deposited in the State treasury. Detainees were released without charge if they paid. If the individual refused to pay, he or she remained in isolated pre-trial detention and experienced intimidation. The Government, in effect, used pre-trial detention as a bargaining tactic to induce payment.³⁹

3.8.3 During 2004, President Saakashvili and other government officials often made public statements concerning the guilt of detained suspects in high-profile corruption cases before a trial had commenced, thus exerting undue influence on impending court cases, as judges felt pressured to uphold the President's "opinions."⁴⁰

3.8.4 In February 2004, law enforcement agents arrested Gia Jokhtaberidze, majority shareholder in a large telecommunications company and son-in-law of former President Shevardnadze. Jokhtaberidze was forcibly removed from a departing airplane in an arrest widely broadcast throughout the country, and immediately placed in pre-trial detention. Commenting on the arrest, President Saakashvili made public statements that violated due process. In March 2004, in contradiction to the law, Jokhtaberidze was transferred to Isolator Number Five. Jokhtaberidze's lawyers claimed he was repeatedly threatened. The General Prosecutor offered to drop all charges if Jokhtaberidze paid \$15 million (30 million GEL). On 26 April 2004, after payment, Jokhtaberidze was released from detention with all

³⁸ USSD 2005 (Section 2)

³⁹ USSD 2004

⁴⁰ USSD 2004

charges dropped. Government officials, including the President, and media claimed that the money was a fine; Jokhtaberidze and his company denied the payment was an admission of wrongdoing.⁴¹

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

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

3.8.7 Conclusion. There is no evidence that individuals who had low or medium level involvement with the previous regime are targeted or discriminated against by the current authorities simply because they were associated with that government. Some high profile members of the Shevardnadze administration have been the subject of arrests and criminal charges but this has been on account of illegal activity and/or corruption. Low or medium level member or activists affiliated to the previous government are not likely to encounter persecution by the state authorities, while higher profile individuals are likely to fear prosecution rather than persecution. Therefore a claimant from this category of claim is unlikely to qualify for a grant of asylum or Humanitarian Protection.

3.9 Organised crime and corruption

3.9.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of organised criminal gangs and that the authorities are unable or unwilling to offer sufficiency of protection.

3.9.2 Treatment. Throughout 2005 Government corruption continued to decrease in the executive branch, but remained widespread in the judicial branch and in some law enforcement agencies. During 2005 most government officials continued to receive salaries in a timely manner, reducing corruption significantly.⁴²

3.9.3 In February 2004, Parliament passed an anti-corruption bill that introduced major changes to the criminal procedure codes. The new legislation allowed the Prosecutor's Office greater flexibility in charging officials with criminal bribery, cancelled immunity for law enforcement agency officials, authorised in absentia proceedings against officials who fail to appear in court, and introduced the use of plea-bargaining, as well of undercover recordings made by journalists in trials.⁴³

3.9.4 In October 2004, the Parliament adopted a new Code of Conduct, which established ethical norms to govern Parliamentarians in an effort to strengthen public accountability and provided a set of benchmarks for the public to measure their elected representatives' performance.⁴⁴

3.9.5 On 28 June 2005, the head of the Tbilisi city tax department and seven other officials were arrested on corruption charges. In a 6-month period during 2005, over 60 police officers were charged with corruption, in addition to 3 mayors and 6 prosecutors. The government fired 15 judges who were caught on videotape accepting bribes. In August 2005 the State Minister for Reforms Co-ordination unveiled an anti-corruption action plan, requiring elected officials to disclose their financial holdings.⁴⁵

3.9.6 In July 2004, the Ministry of Internal Affairs (MIA) took steps to reduce police corruption by firing 13,000 officers, disbanding the corrupt traffic police force, and replacing them with a

⁴¹ USSD 2004

⁴² USSD 2005 (Section 3)

⁴³ USSD 2004 & AI 2005

⁴⁴ USSD 2004 & AI 2005

⁴⁵ USSD 2005 (Section 3)

new patrol police unit consisting of newly hired officers with higher salaries. Only individuals under age 37 were allowed to apply for this new Patrol. Since then, the widespread solicitation of bribes from motorists decreased substantially.⁴⁶ In April 2005 the patrol police, expanded its training.⁴⁷

- 3.9.7** Public confidence in the police increased during 2005 due to a reduction in corruption. A significant rise in the salary of police officers as well as regular payment of these salaries provided an incentive to police officers to refrain from ill treatment or abuse of detainees so as to not jeopardise their jobs.⁴⁸
- 3.9.8 *Sufficiency of protection.*** The implementation of specific legislation and a Code of Conduct in 2004 to counter corruption and organised crime, the streamlining of the police and security forces and the active investigation of corruption and organised crime allegations under the previous administration has considerably enhanced the authorities' capacity to counteract organised crime and corruption. There is therefore no evidence that such claimants are not able to seek and receive adequate protection from the state authorities.
- 3.9.9 *Internal relocation.*** The law provides for freedom of movement, and the government generally respected this in practice in areas under its control. However, freedom of movement was restricted by the de facto authorities in the separatist regions of Abkhazia and South Ossetia and police checkpoints often obstructed citizens' internal movement in these regions.⁴⁹ Internal relocation to a different area of the country to escape this threat is therefore feasible.
- 3.9.10 *Conclusion.*** Though organised crime and corruption are still conspicuous features of Georgian society, the government has set out to tackle these issues as its top priority and corruption among the police and law enforcement officials is falling. The availability of adequate protection from the state authorities and a viable internal relocation option means that claimants in this category of claim are unlikely to engage the UK's obligations under the terms of the 1951 Convention and are unlikely to qualify for a grant of asylum or Humanitarian Protection.
- 3.10 Prison conditions**
- 3.10.1** Claimants may claim that they cannot return to Georgia due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the Georgia are so poor as to amount to torture or inhuman treatment or punishment.
- 3.10.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.10.3 *Consideration.*** The Ombudsman and NGOs agreed that prison conditions remained poor and did not meet international standards during 2005. The United Nations (UN), the International committee of the Red Cross (ICRC), and many NGOs, including Human Rights Watch (HRW) continued to report inhumane and life-threatening prison conditions, including poor facilities, overcrowding, inadequate nutrition and health care, and the influence of criminal gangs. Most prison facilities lacked basic utilities and sanitary facilities.

⁴⁶ USSD 2004 (Section 1)

⁴⁷ USSD 2005 (Section 1)

⁴⁸ USSD 2005 (Section 1)

⁴⁹ USSD 2005 (Section 2)

Abuse and extortion of prisoners and detainees by prison staff continued to occur in 2005.⁵⁰

- 3.10.4** The December 2005 transfer of some of the prison population to a new 1,500 inmate prison in Kutaisi eased overcrowding in the region's prisons. However, conditions at pre-trial detention facilities remained poor. However, during 2005, the Ministry of Internal Affairs (MOIA) refurbished a facility in Tbilisi, installing new electric and heating systems. A June 2005 parliamentary committee visit to Batumi Prison No. 3 found it at double its capacity. In one instance, 37 prisoners shared a cell intended for 12. Prisoners suffering from tuberculosis or hepatitis-C shared cells with healthy inmates.⁵¹
- 3.10.5** Human Rights Watch reported that the majority of the country's 13,000 prisoners are being held in severely overcrowded, filthy and poorly-ventilated cells. In the last two years, the prison population has nearly doubled due to the routine use of pre-trial detention, even for non-violent offences. Nearly two-thirds of the country's prisoners are still awaiting trial. In many facilities, conditions of detention constitute degrading treatment in violation of Georgia's own laws and its international human rights obligations.⁵²
- 3.10.6** Juveniles were held in separate facilities; however, juveniles were rarely separated from other inmates in MOIA temporary detention facilities. Pre-trial detainees were often kept with convicted prisoners due to overcrowding.⁵³
- 3.10.7** The Thieves-in-Law, a powerful network of organised crime gangs, was prevalent in all prisons during 2005 and routinely extorted payments called *obshyak* from fellow prisoners that were in turn used to bribe prison officials and judges. In the Gugeti prison colonies, prison officials refused to patrol at night for fear of assault from the Thieves. NGOs reported that many prisoners sought placement in punishment isolation cells in spite of their deplorable conditions, to evade the Thieves' influence. According to the ombudsman's office, refusal to cooperate with gangs provoked physical and psychological intimidation.⁵⁴
- 3.10.8** Payment of guards and prison staff salaries became more regular during 2005, which reportedly decreased corruption. However, in June 2005 mounting NGO and Ombudsman pressure culminated in the criminal investigation of Shota Kopadze, director of the penitentiary department of the Ministry of Justice (MOJ), for alleged collaboration with the Thieves to extort and abuse prisoners; the ombudsman's office accused Kopadze of extorting over \$166,000 (300,000 GEL) *obshyak* from prisoners on a monthly basis. The ministry refused to dismiss Kopadze, although two prison administrators were subsequently arrested--one for extorting a bribe from a detainee's relative, and the other following an incident in which Ombudsman and general prosecutor officials were harassed during a monitoring visit to the detention facility under his supervision. On 22 December 2005, President Saakashvili fired and replaced Kopadze with Deputy Public Defender Bacho Akhalaia.⁵⁵
- 3.10.9** The prison mortality rate reportedly improved in 2005, although human rights NGOs reported authorities kept official rates artificially low by releasing terminally ill prisoners or hospitalising dying prisoners. Observers claimed deaths of prisoners without families usually went unreported. During 2005 there were 44 registered deaths in prison. However, the MOIA reported that no deaths occurred in pre-trial detention facilities during 2005.⁵⁶
- 3.10.10** The UN expressed concern over the conditions of pre-trial detainees and convicted prisoners in Abkhazia, including female prisoners, and especially the conditions on death

⁵⁰ USSD 2005 (Section 1)

⁵¹ USSD 2005 (Section 1)

⁵² HRW Georgia: Prison Abuses Rife Despite Promises of Reform September 2006

⁵³ USSD 2005 (Section 1)

⁵⁴ USSD 2005 (Section 1)

⁵⁵ USSD 2005 (Section 1)

⁵⁶ USSD 2005 (Section 1)

row. In South Ossetia, the UN expressed concerns about detention conditions after visits to Tskhinvali Prison and the detention facility of the de facto Ministry of Interior.⁵⁷

3.10.11 The ICRC had full access to detention facilities, including those in Abkhazia and South Ossetia, and the OSCE reported no serious problems in obtaining access to prisoners or detainees. The prosecutor office's human rights unit enjoyed free access to prisons to monitor conditions. Local human rights groups and members of the prison monitoring council reported sporadic difficulty in visiting detainees, particularly in cases with political overtones.⁵⁸

3.10.12 Conclusion. Whilst prison conditions in Georgia are poor with severe overcrowding, unsanitary conditions and abuse and extortion of prisoners being particular problems conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Georgia 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 API on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the API on Article 8 ECHR.

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

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 Claimants may claim they cannot return to Georgia 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.

⁵⁷ USSD 2005 (Section 1)

⁵⁸ USSD 2005 (Section 1)

- 4.4.2** In 2000 the Georgian government adopted a State programme for a national health policy. The same year saw the adoption of a Strategic plan for health care development in Georgia. According to the latest World Health Organisation (WHO) health indicators for Georgia of May 2005, 100% of the population have access to primary healthcare. Between 90 and 100% of children have received all major inoculations. Per 10,000 people in 2003 there were a total of 48.4 doctors and 41.9 hospital beds. Measles and tuberculosis are the main causes of death by disease.⁵⁹

HIV/AIDS

- 4.4.3** The law expressly prohibits discrimination on the basis of HIV/AIDS status; however, there is no penalty for violating this prohibition. NGOs reported societal stigmas that resulted in individuals avoiding testing or obtaining health care for fear of discrimination. Some health care providers, especially dentists, often refused to provide services to HIV-positive persons. Individuals often concealed their HIV-positive status from employers for fear of losing their jobs. The MOIA conducted mandatory testing on all job applicants.⁶⁰
- 4.4.4** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Georgian nationals may return voluntarily to any region of Georgia at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Georgia. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Georgian nationals wishing to avail themselves of this opportunity for assisted return to Georgia should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

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