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OPERATIONAL GUIDANCE NOTE

IRAN

CONTENTS

1. Introduction	1.1 – 1.
2. Country assessment	2.1 – 2.
3. Main categories of claims	3.1 – 3.5
Illegal exit from Iran	3.6
Political opponents and opposition supporters	3.7
Christians/Christian converts	3.8
Adulterers	3.9
Gay men and lesbians	3.10
Women	3.11
Kurds and supporters of KDPI, Komala or PJAK	3.12
Smugglers	3.13
Former members of state security organisations	3.14
Prison conditions	3.15
4. Discretionary Leave	4.1 – 4.2
Minors claiming in their own right	4.3
Medical treatment	4.4
5. Returns	5.1 – 5.5
6. List of source documents	

1. Introduction

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

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

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

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

2. Country assessment

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

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

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

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

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Iran. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

3.5 Credibility

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

3.6 Illegal exit from Iran

- 3.6.1** Some applicants may base their claim for asylum, in full or in part on the consequences of their illegal departure from Iran. Although this is unlikely, of itself, to be a successful basis of claim, it may be an aggravating factor in other categories of claim and as such a risk factor to be taken into account.
- 3.6.2 *Treatment.*** All Iranians require exit permits from the police department for foreign travel. Some Iranians, particularly those whose skills are in demand and who are educated at government expense, have to post a bond to obtain an exit permit. The government restricts foreign travel of some religious leaders and individual members of religious minorities and scientists in sensitive fields, and it increasingly targets journalists, academics, and political activists - including women's rights activists for travel bans and passport confiscation. A woman must have the permission of her husband, father, or other male relative to obtain a passport and subsequently an exit permit.¹
- 3.6.3** Checks are carried out, at the time of passport issue, in relation to for example outstanding warrants, which could prevent either a male or a female from being issued the passport. This takes place at the time of the general passport application rather than when issuing an exit permit. This is done using a specialised database, which is also the same system used at the airport when conducting the final verification of eligibility to travel at the security checkpoint.²
- 3.6.4** Exit permits can be revoked by the Immigration Police at the airport if checks conducted on departure indicate that the person concerned has outstanding issues with the government or other reasons that may lead to the authorities revoking the permission.³
- 3.6.5** Under Article 34 of the Penal Code, any Iranian who leaves the country illegally, without a valid passport or similar travel documents, will be sentenced to between one and three years imprisonment, or will receive a fine between 100,000 and 500,000 Rials (between £6 and £30). Cases relating to illegal departure are heard at a special court at Tehran Airport (its branch number is given as 1610). If an Iranian arrives in the country, without a passport or any valid travel documents, they will be arrested and taken to this court. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organisations or groups and any other circumstances. The judge will decide the severity of the punishment within the parameters of Article 34. This procedure also applies to people who are deported back to Iran, not in the possession of a passport containing an exit visa.⁴
- 3.6.6** Other than being fined, those who have left Iran illegally do not face any further problems with the authorities on return. However, if the individual concerned is subject to a travel ban, or has other outstanding issues with the authorities (for example an outstanding warrant for other offences) he or she will face prosecution for those offences. The punishment for those offences would be in accordance with the relevant provision in the Penal Code law but may also result in stricter punishment as a result of the individual having left Iran illegally.⁵
- 3.6.7 *Actors of protection.*** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or

¹ COI Service Iran Country Report August 2010 (para 27.01 - 27.02 & 31.02)

² COI Service Iran Country Report August 2010 (para 31.06)

³ COI Service Iran Country Report August 2010 (para 31.19)

⁴ COI Service Iran Country Report August 2010 (para 31.17)

⁵ COI Service Iran Country Report August 2010 (para 31.12)

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.

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

3.6.9 *Internal relocation.* Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied

3.6.10 However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.6.11 *Caselaw*

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

- (i) Events in Iran following the 12 June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Persons who are likely to be perceived by the authorities in Iran as being actively associated with protests against the June 2009 election results may face a real risk of persecution or ill treatment, although much will depend on the particular circumstances.
- (ii) Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment. That remains the case even if they exited Iran illegally. Having exited Iran illegally is not a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, such a history could be a factor adding to the level of difficulties he or she is likely to face.
- (iii) Being a person who has left Iran when facing court proceedings (other than ordinary civil proceedings) is a risk factor, although much will depend on the particular facts relating to the nature of the offence(s) involved and other circumstances. The more the offences for which a person faces trial are likely to be viewed as political, the greater the level of risk likely to arise as a result. The degree of risk will vary according to the nature of the court proceedings; being involved in ongoing court proceedings is not in itself something that will automatically result in ill-treatment; rather it is properly to be considered as a risk factor to be taken into account along with others.
- (iv) Being a person involved in court proceedings in Iran who has engaged in conduct likely to be seen as insulting either to the judiciary or the justice system or the government or to Islam constitutes another risk factor.
- (v) Being accused of anti-Islamic conduct likewise also constitutes a significant risk factor.

SA (Iranian Arabs-no general risk) Iran CG [2011] UKUT 41(IAC). In this country guidance case the Tribunal concluded that the Iranian state is suspicious of those Iranian citizens who are also Arabs and regards London as a centre of separatist activity. Being an Iranian Arab returned from the United Kingdom enhances other risk factors but an Iranian Arab does not risk persecution or other ill treatment solely by reason of ethnicity.

3.6.12 *Conclusion.* Illegal exit is not in itself a significant risk factor which would of itself give rise to a need for international protection. It may however add to the difficulties an applicant would face if they had attracted the adverse attention of the authorities for another reason.

3.7 Political opponents and opposition supporters

- 3.7.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state due to being a political opponent or supporter of political opposition to the current Iranian regime.
- 3.7.2 Treatment.** The Iranian constitution permits the establishment of political parties, professional syndicates, and other civic organizations, provided that they do not violate the principles of 'freedom, sovereignty, and national unity' or question the Islamic basis of the republic.⁶
- 3.7.3** After Ahmadinejad was elected president in 2005, the situation for everyone who can be suspected of being in opposition to the regime has deteriorated.⁷ Despite crackdowns on human and women's rights activists and restrictions on internet freedom in the months prior to the June 2009 presidential election, supporters of all candidates seemed to enjoy a relatively relaxed and politically vibrant atmosphere.⁸
- 3.7.4** Despite polls indicating that the June 2009 presidential election was a close race, Ahmadinejad was declared the winner soon after the election and credited with over 63 percent of the vote. Protests broke out on a massive scale as voters rejected the official results.⁹ The post-election demonstrations were overwhelmingly peaceful. However, police and security forces confronted protestors, including those who played no part in the occasional acts of vandalism that occurred, with batons, clubs, and in some cases live ammunition. State violence extended beyond demonstrations, with plainclothes and paramilitary forces attacking student dormitories and staging night time raids in residential areas. Security forces arrested thousands of protestors in the course of these governmental crackdowns during the first week following the election.¹⁰
- 3.7.5** Well over 5,000 people were detained after the June 2009 election, including opposition politicians, journalists, academics, students, lawyers, human rights activists and army officers. Those with dual nationality or links to the USA or UK were also targeted. Some were arrested at demonstrations; others at their home or workplace; and some, who were injured, from hospital. Most, if not all, were denied access to legal representation. Many were denied access to their families and to medical care. Hundreds of those arrested were freed within days or weeks, but scores were charged with vaguely worded offences, such as fomenting a 'velvet revolution' or committing 'acts against national security, and prosecuted in 'show trials'¹¹ The UN High Commissioner for Human Rights expressed serious concern over the arbitrary detention of demonstrators, stating that "many have been given harsh sentences, including capital punishment, for their role in post-election protests after questionable trials."¹²
- 3.7.6** The constitution provides for freedom of expression and of the press, except when the words are deemed 'detrimental to the fundamental principles of Islam or the rights of the public.' In practice the government severely restricted freedom of speech and of the press.¹³ The number of journalists now detained in the Islamic Republic of Iran is reported to be 37¹⁴ and the government directly controls all television and radio broadcasting. Satellite dishes are illegal, and while they are generally tolerated, there have been increasing reports of dish confiscation and steep fines. The authorities have had some success in jamming broadcasts by dissident satellite stations based overseas, and cooperation with Persian-language satellite channels is banned. Even the purchase of satellite images from abroad is illegal. The Ministry of Culture must approve publication of

⁶ COI Service Iran Country Report August 2010 (para 15.02)

⁷ COI Service Iran Country Report August 2010 (para 19.10)

⁸ COI Service Iran Country Report August 2010 (para 15.06)

⁹ COI Service Iran Country Report August 2010 (para 15.06)

¹⁰ COI Service Iran Country Report August 2010 (para 9.31)

¹¹ COI Service Iran Country Report August 2010 (para 9.29)

¹² UN News Centre, UN human rights chief voices concern about abuses in Iran, Sri Lanka, 04/03/2010.

¹³ COI Service Iran Country Report August 2010 (para 16.03)

¹⁴ RSF, *World's biggest prison for journalists*, 20 December 2010

all books and inspects foreign books prior to domestic distribution.¹⁵ Iranian internet users suffer from routine surveillance, harassment, and the threat of imprisonment for their online activities, particularly those who are more critical of the authorities.¹⁶ In June 2010 the Fars news agency quoted the head of the country's security forces as saying that Iran was creating a new "internet police" force which will "identify threats and remove them."¹⁷

- 3.7.7** Since the disputed June 2009 election, the authorities also disrupted mobile phone and internet communications, including social networking sites, to prevent information circulating. They prevented foreign journalists from covering demonstrations, expelling some, and security officials controlled the content of newspapers. Security forces raided university campuses, injuring students.¹⁸
- 3.7.8** Although the Iranian constitution prohibits arbitrary arrest and detention, these are increasingly routine, and family members of detainees are often not notified for days or weeks. Suspected dissidents are frequently held in unofficial, illegal detention centres, and there were numerous credible reports that security forces and prison personnel tortured detainees and prisoners, especially after the June election.¹⁹
- 3.7.9** People in Iran continue to be arbitrarily arrested, often without warrant, by state officials who fail to identify themselves. Many are held for weeks or even months – often in solitary confinement – in detention centres outside of the control of the Judiciary in prolonged incommunicado detention without access to families or lawyers, in conditions amounting to enforced disappearances.²⁰
- 3.7.10** Amnesty International, reporting one year after the disputed elections, reported that “hundreds of students who have participated in demonstrations in the streets or on university campuses have been arrested and some have been sentenced to prison terms”.²¹ The same report notes that “the vast majority of the well-over 5,000 arrested since June 2009 have been ordinary citizens – women and men, workers and the unemployed, students and professionals”²²
- 3.7.11** In October 2010, Radio Free Europe/Radio Liberty reported that “today, the country's institutes of higher learning are working under heightened scrutiny, with a heavy police presence keeping a close eye on students and professors alike.”²³ Reportedly, whilst it used to be universities' disciplinary committees that would deal with students critical of the regime, this is now the domain of the Intelligence Ministry and other security organs, demonstrating that students in general are of ongoing interest to the authorities.²⁴ Since 2005, President Ahmadinejad's administration has pursued a campaign to neutralise dissent at universities and "Islamicise" higher education. This campaign includes imprisoning student activists; barring other politically active students and members of Iran's Baha'i community from higher education; using university disciplinary committees to monitor, suspend, or expel students; increasing the presence of pro-government student groups affiliated with the basij (a hard-line Islamist paramilitary group); and restricting the activities of student groups.²⁵
- 3.7.12** On 14 February 2011, demonstrations took place throughout Iran after authorities conducted a wave of arrests against opposition activists, placed the opposition leaders Mir Hossein Mousavi and Mehdi Karroubi under house arrest, and clamped down telephone and satellite communications and the internet. Initial reports from Tehran and other cities

¹⁵ COI Service Iran Country Report August 2010 (para 16.08)

¹⁶ COI Service Iran Country Report August 2010 (para 16.19)

¹⁷ CNN, Iran to create internet police, security chief says, 16 June 2010

¹⁸ COI Service Iran Country Report August 2010 (para 15.07)

¹⁹ COI Service Iran Country Report August 2010 (para 9.37)

²⁰ COI Service Iran Country Report August 2010 (para 9.33)

²¹ Amnesty International, Iran: Election contested, repression compounded, 10 December 2009.

²² Amnesty International, Iran: Election contested, repression compounded, 10 December 2009.

²³ Radio Free Europe/Radio Liberty, In Iran, Renewed Efforts To Keep University Students In Check, 18/10/2010.

²⁴ Radio Free Europe/Radio Liberty, In Iran, Renewed Efforts To Keep University Students In Check, 18/10/2010

²⁵ HRW, Iran: Escalating Repression of University Students, 7 December 2010.

indicate that police, anti-riot police, and plainclothes officers attacked demonstrators and that there were numerous arrests.²⁶

3.7.13 Satellite TV broadcasts to Iran have been jammed. This was first targeted on news about the revolution in Egypt and then was extended on 12 February 2011 to all *BBC* and *Voice of America* broadcasts, which were either cut off or became hard to pick up. The *BBC* officially protested on 10 February 2011.²⁷

3.7.14 *Actors of protection.* Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective 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.

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

3.7.16 *Internal relocation.* Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.7.17 However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.7.18 *Caselaw*

SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053 In this country guidance case, the tribunal concluded that events in Iran following the June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Persons who are likely to be perceived by the authorities in Iran as being actively associated with protests against the June 2009 election results may face a real risk of persecution or ill treatment, although much will depend on the particular circumstances.

BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC). In this country guidance case the Tribunal found that:

1. Given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain.

²⁶ Human Rights Watch, Iran: Stop Attacks on Peaceful Demonstrators, 14 February 2011

²⁷ RSF, Regime steps up censorship and online disruption to block protests, 15 February 2011

2. (a) Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally.
 (b) There is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country guidance case of **SB** (risk on return -illegal exit) Iran CG [2009] UKAIT 00053 are followed and endorsed.
 (c) There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognize up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home.
3. It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.
4. The following are relevant factors to be considered when assessing risk on return having regard to sur place activities:
 - (i) Nature of sur place activity
 - Theme of demonstrations – what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime?
 - Role in demonstrations and political profile – can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime?
 - Extent of participation – has the person attended one or two demonstrations or is he a regular participant?
 - Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?
 - (ii) Identification risk
 - Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc?
 - Regime's capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?
 - (iii) Factors triggering inquiry/action on return
 - Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable?
 - Immigration history – how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?
 - (iv) Consequences of identification
 - Is there differentiation between demonstrators depending on the level of their political profile/adversity towards the regime?
 - (v) Identification risk on return
 - Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?

3.7.19 Conclusion. There is a real risk that high profile activists and political opponents who have come to the attention of the authorities would on return to Iran face a real risk of persecution and should be granted asylum for reason of his or her political opinion.

3.7.20 Depending on the particular circumstances, some persons who do not have a political profile - which would include for example student demonstrators or other anti-government protestors - are likely to be perceived by the authorities in Iran to oppose the regime and may similarly face a real risk of persecution or ill-treatment on return. Caseowners must

consider carefully whether the personal circumstances of the individual concerned are such that he or she would face a real risk of persecution on return to Iran.

- 3.7.21** Those who have engaged in opposition political activity in the UK might depending on their level of involvement similarly face a real risk of persecution on return to Iran on account of that activity and in such cases a grant of asylum will also be appropriate. The test to be applied in such cases is set out in detail in *BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC)* – see above.

3.8 Christians/Christian converts

- 3.8.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state due to their conversion to Christianity or actively seeking to convert others (proselytising).
- 3.8.2** **Treatment.** The Iranian Constitution explicitly declares Islam to be the state religion but contains two important provisions concerning religious minorities. Article 13 states that Zoroastrian, Jewish and Christian Iranians are the only recognised religious minorities who are free to perform their religious rites and ceremonies, within the limits of the law, and to act according to their own principles in matters of personal affairs and religious education. Article 14 also provides protection for non-Muslims, provided they refrain from conspiracy or activity against Islam and the Islamic Republic of Iran.²⁸
- 3.8.3** However in practice all religious minorities experience varying degrees of officially sanctioned discrimination, particularly in employment, education, and housing.²⁹ Since the 1979 Iranian revolution, members of minority religious communities have fled Iran in significant numbers for fear of persecution³⁰
- 3.8.4** Iranian religious tradition differentiates between offences committed in the public domain and that which takes place within the confines of privacy. Offences that are in violation of Islam and that are committed in the public domain must be punished, while what takes place in the private sphere, and is thereby concealed, is tolerated to a greater extent. This can include, for example, drinking of alcohol, prohibited sexual relations, use of illegal films, books, music and religious practice. Irrespective of their ethnic and religious background, very many Iranians in practice live two lives, one in the public domain and another in private. As long as the private sphere remains private and Islamic rules and values are not visibly challenged or violated, the Iranian authorities will not normally intervene in citizens' private sphere. All non-Muslim minorities generally maintain a low profile in public as regards religious affiliation. As long as they follow the rules, minorities can practise their religion without being in the authorities' spotlight because this constitutes lawful and socially acceptable behaviour.³¹
- 3.8.5** After Ahmadinejad was elected president in 2005, the situation for everyone who can be suspected of being in opposition to the regime has deteriorated. Religious minorities have also experienced a general worsening of the political climate³² and government actions continue to support elements of society who create a threatening atmosphere for some religious minorities³³.
- 3.8.6** Since the disputed June 2009 elections, human rights and religious freedom conditions in Iran have regressed to a point not seen since the early days of the Islamic revolution. Killings, arrests, and physical abuse of detainees have increased, including for religious minorities and Muslims who dissent or express views perceived as threatening the legitimacy of the government. The Iranian government has repressed its citizens on the basis of religious identity for years. However, more recently it has increasingly manipulated

²⁸ COI Service Iran Country Report August 2010 (para 19.16)

²⁹ COI Service Iran Country Report August 2010 (para 19.08)

³⁰ COI Service Iran Country Report August 2010 (para 19.05)

³¹ COI Service Iran Country Report August 2010 (para 19.11)

³² COI Service Iran Country Report August 2010 (para 19.10)

³³ COI Service Iran Country Report August 2010 (para 19.08)

the reach of its religious laws.³⁴ Government rhetoric and actions create a threatening atmosphere for nearly all non-Shi'a religious groups, most notably for Baha'is, as well as Sufi Muslims, evangelical Christians, and members of the Jewish community and there are reports of government imprisonment, harassment, intimidation, and discrimination based on religious beliefs.³⁵

- 3.8.7** The Iranian government does not respect the right of Muslim citizens to change or renounce their religion.³⁶ Proselytising of Muslims by non-Muslims is illegal. The government charged members of religious minorities and others with crimes such as 'confronting the regime' and apostasy and followed the same trial procedures as in cases of threats to national security. According to Article 513 of the Iranian Penal Code, anyone who insults the Holy Islam or the Prophet or any Imam, as well as the Prophet Mohammed's daughter, will be punished by death if the insult is so radical so as to amount to rejection of the Prophet, Saabonabi (equivalent to apostasy). Otherwise, the offender would be sentenced to between one and five years imprisonment.³⁷
- 3.8.8** A letter from the Foreign and Commonwealth Office (FCO) dated 30 April 2010 stated that: "Under Iran's strict interpretation of Islam, anyone converting to another religion could face the death penalty or at least life imprisonment" and that "the number of Christians and Christian converts arrested or detained in Iran has increased significantly over the last two years."³⁸ Associated Press recently reported that Iran had arrested about 70 Christians since Christmas in a crackdown that has targeted grass-roots Christian groups Iran describes as "hard-liners" who pose a threat to the Islamic state.³⁹
- 3.8.9 *Actors of protection.*** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective 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.
- 3.8.10** However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.8.11 *Internal relocation.*** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

³⁴ COI Service Iran Country Report August 2010 (para 19.12)

³⁵ COI Service Iran Country Report August 2010 (para 19.04)

³⁶ COI Service Iran Country Report August 2010 (para 19.09)

³⁷ COI Service Iran Country Report August 2010 (para 19.22)

³⁸ COI Service Iran Country Report August 2010 (para 19.23)

³⁹ Associated Press Iran rounds up Christians in crackdown, 11 January 2011

3.8.12 However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.8.13 Caselaw.

FS & Others CG [2004] UKIAT 000303. The Tribunal made three main findings; an "ordinary" convert will not, without more, face persecution; an active convert, Pastor, church leader or proselytiser might face persecution; an "ordinary" convert with "additional risk factors" might face persecution. In the third category the "additional risk factors" in 2 of the cases were; a single woman who faces discrimination, short of persecution, on grounds of gender due to a lack of economic and social protection; and an individual whose radical theatre activities led to a past adverse political profile.

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

- (i) The conditions for Christians in Iran have not deteriorated sufficiently to necessitate a change in the guidance in FS and Others (see below). The Tribunal found it remains the case that it is the 'active evangeliser' in whom the authorities are primarily interested and concluded that the number and frequency of attacks on ordinary converts are not such to show that there is a real risk of serious mistreatment to those who are not seen as the more active convert, pastor, church leader, proselytiser, or evangelist.
- (ii) With regard to the distinction drawn in FS and Others between 'ordinary convert and those who 'proselytise' the Tribunal concluded that the more accurate description is that between the ordinary convert and those who undertake 'active evangelism'. Whilst acknowledging it is perhaps arguable that proselytising is a more robust form of evangelising, the Tribunal concluded that the terms should not be used as terms of art and no conclusion can be drawn by the use of one word in preference to the other.

3.8.14 Conclusion. According to the case law, one of the fundamental questions to be determined in each case is whether there is a real risk that a Christian convert has already or will come to the attention of the authorities.

3.8.15 Converts who can demonstrate that in Iran or in the UK they have and will continue to practise evangelical or proselytising activities because of their character or their affiliation to evangelical churches or who would wear in public outward manifestations of their faith such as a visible crucifix, will attract the adverse notice of the authorities on return to Iran and should be considered at risk of persecution. In such cases a grant of asylum will be appropriate.

3.8.16 Moreover, there may be some Christian converts who can demonstrate that they have come to the attention of the authorities previously for different reasons and this in combination with their conversion will put them at real risk of persecution. The conversion plus additional risk factors may compel the authorities to show an adverse interest in the individual where knowledge of the conversion in itself would not be of interest. Where applicants are able to demonstrate such a risk, a grant of asylum is likely to be appropriate.

3.9 Adulterers

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

3.9.2 Treatment. Under the Islamic Penal Code of Iran adultery is punishable by flogging or death by stoning.⁴⁰ The majority of those sentenced to death by stoning are women, who suffer disproportionately from such punishment. One reason is that they are not treated equally before the law and courts, in clear violation of international fair trial standards. The age of criminal responsibility for women is lower than that for men and a woman's testimony is worth only half that of a man. They are particularly vulnerable to unfair trials because in Iran they are more likely than men to be illiterate and more likely to sign confessions to crimes they did not commit. Discrimination against women in other aspects of their lives

⁴⁰ COI Service Iran Country Report August 2010 (para 23.40)

also leaves them more susceptible to conviction for adultery.⁴¹ Furthermore, the law provides that a victim of stoning is allowed to go free if he or she escapes. It is much harder for women to escape, as they are buried to their necks, whereas men are buried only to their waists.⁴²

- 3.9.3** Most stoning sentences are issued not on the basis of testimony or confession but on the judges 'knowledge' or 'intuition'. Article 105 of the Penal Code allows a judge to rule according to his gut feeling instead of hard evidence. As a result, most adultery cases are unfairly tried.⁴³
- 3.9.4** A man may escape punishment for killing a wife caught in the act of adultery if he is certain she was a consenting partner. According to a police official quoted in a domestic newspaper in 2008, 50 honour killings were reported during a seven-month period, although official statistics were not available. The punishment for perpetrators was often a short prison sentence.⁴⁴
- 3.9.5 *Actors of protection.*** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.9.6** However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.9.7 *Internal relocation.*** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.9.8** However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.
- 3.9.9 *Caselaw.***

ME [2003] UKIAT 00166. In this case an Adjudicator had found that the appellant on return to Iran would face persecution on account of his membership of a particular social group - *the group being men in Iran who have committed adultery which has been witnessed by at least three others*". The Tribunal allowed the appeal against the adjudicator's decision. The Tribunal found that neither the appellant's 'nationality nor his sex was a basis for any discriminatory treatment that he received.

⁴¹ COI Service Iran Country Report August 2010 (para 23.44)

⁴² COI Service Iran Country Report August 2010 (para 23.43)

⁴³ COI Service Iran Country Report August 2010 (para 11.36)

⁴⁴ COI Service Iran Country Report August 2010 (para 23.41)

Thus, the principal factors relied upon to identify him as a “particular social group” amounted to no more than those which defined his persecution. He was persecuted because he was an adulterer who had transgressed Iranian law. However, the Tribunal concluded that a woman in the same position would be able to make an argument that she was a member of a particular social group. The Adjudicator had also allowed the appellant’s appeal on human rights grounds and this was not challenged in the appeal to the Tribunal.

3.9.10 Conclusion. Adultery, given traditional and societal attitudes, can attract treatment amounting to torture, degrading treatment, and/or the death penalty. The key considerations in cases where applicants claim to fear persecution due to adultery are whether they did indeed commit adulterous acts under the Iranian Penal Code; whether this was known or likely to be made known to the public and the Iranian authorities; and whether persecution and serious harm would be among the likely consequences of this public knowledge.

3.9.12 Where an individual is at risk of being prosecuted for adultery a grant of Humanitarian Protection or asylum will be appropriate. A male adulterer who has transgressed Iranian law cannot be regarded as facing persecution on account of his membership of a particular social group. However women are not treated equally before the law and may therefore face persecution on account of their membership of a particular social group and the grant of asylum in these circumstances may be appropriate.

3.10 Gay men, lesbians, bisexual and transgender persons.

3.10.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state as gay men or lesbians in Iran.

3.10.2 Treatment. Sexual issues are considered taboo in Iran, and there is widespread misinformation about homosexuality. Gay men and lesbians face harassment, ostracism and abuse from their families, friends and acquaintances.⁴⁵ The homophobic culture that rules Iranian society puts enormous pressure on homosexuals.⁴⁶ Societal as well as official scrutiny of ‘deviant’ behaviour is widespread in Iran, with neighbours and even family members enlisted to support the state’s moral policing.⁴⁷ Many Iranians consider homosexuality a disease or sickness. For some, homosexuality among men is synonymous with paedophilia. As a result, gay men and lesbians in Iran cannot be open about their sexual orientation. Many suppress their feelings. There are also reports of sex-change operations or hormone therapy to escape persecution. Some also face arranged or forced marriages insisted on by their families.⁴⁸

3.10.3 Under Iranian law, sodomy includes sexual intercourse between members of the same sex, and is illegal. The punishment for same-sex intercourse between two men (Lavaat) is death and between two women (Mosaheghe) is 100 lashes for the first three offences and the death penalty for the fourth.⁴⁹ This must be proven by either confession from the accused or by the testimony of “four righteous men” who witnessed the act. A Shari’a judge can also make a decision in accordance with his own knowledge based on general knowledge and judgment.⁵⁰ Sexual minorities targeted by security forces in both public and private spaces often face charges related to offenses against public morals or chastity instead of sexual crimes (e.g. violating of “religious sanctities” in public and encouraging others to engage in “corrupt” and “obscene” acts).⁵¹

3.10.4 Allegations of executions related to homosexual conduct were reported in 2006, 2007, 2008 and 2009.⁵² Human Rights Watch also reported an individual being sentenced to death for

⁴⁵ COI Service Iran Country Report August 2010 (para 21.33)

⁴⁶ COI Service Iran Country Report August 2010 (para 21.33)

⁴⁷ COI Service Iran Country Report August 2010 (para 21.34)

⁴⁸ COI Service Iran Country Report August 2010 (para 21.33)

⁴⁹ COI Service Iran Country Report August 2010 (para 21.08)

⁵⁰ COI Service Iran Country Report August 2010 (para 21.07)

⁵¹ Human Rights Watch, “We Are a Buried Generation,” Discrimination and Violence against Sexual Minorities in Iran, 15/12/2010.

⁵² COI Service Iran Country Report August 2010 (para 21.14)

sodomy in 2010.⁵³ It is however extremely difficult to obtain information about death penalty cases involving homosexuality under the current Iranian regime, where the press is heavily censored and journalists, regime critics, and human rights advocates are routinely persecuted and arrested and where the subject of same-sex relations is officially considered a political and religious taboo. Defendants in sodomy cases are denied open trials and can be convicted on the basis of a "Judge's knowledge" in the absence of conclusive evidence.⁵⁴

- 3.10.5** Iran regularly arrests and tortures men, women, and transgender people under suspicion of same sex conduct. A recent report by Human Rights Watch details the discrimination and violence in Iran against those "whose sexual practices and gender expression do not conform to socio-religious norms". It notes that attempts to openly gather, organize, or disseminate information contrary to the government's mainstream views regarding gender identity and sexual orientation may be viewed as political propaganda and a threat to national security. Individuals who undertake these activities risk being targeted by security forces and prosecuted under national security-related crimes.⁵⁵ Organisations like Freedom House report increased monitoring of internet sites used by gay men and lesbians.
- 3.10.6** The government in Iran provided grants of as much as 45 million Rials (£2,700) and loans of as much as 55 million Rials (£3,000) for transgender persons willing to undergo gender reassignment surgery. Human rights activists and NGOs reported that some members of the gay, lesbian and bisexual community have been pressured to undergo gender reassignment surgery to avoid legal and social persecutions in the country. In September 2009 international newspapers reported that a family court allowed the first transgender marriage between a woman and her male partner, previously also a woman.⁵⁶
- 3.10.7 *Actors of protection.*** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.10.8** However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.10.9 *Internal relocation.*** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there

⁵³ Human Rights Watch, "We Are a Buried Generation": Discrimination and Violence against Sexual Minorities in Iran, 15/12/2010, section XI.

⁵⁴ COI Service Iran Country Report August 2010 (para 21.11)

⁵⁵ Human Rights Watch, "We Are a Buried Generation": Discrimination and Violence against Sexual Minorities in Iran, 15/12/2010, section XI.

⁵⁶ COI Service Iran Country Report August 2010 (para 21.40)

may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.10.10 However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.10.11 Caselaw.

Supreme Court. HJ & HT v SSHD [2010] UKSC 31 7 July 2010 In this case, the Supreme Court established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.
- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

RM and BB CG [2005] UKIAT 00117. The tribunal concluded that it is most unlikely, given the statistics and the problems of proof, that the death penalty for sodomy is anything other than an extremely rare occurrence. It did however find that those found guilty under the Penal Code face harsh punishments which can include long prison sentences up to six years and up to one hundred lashes. The tribunal also found that the interest of the Iranian authorities in homosexual offenders is essentially focused upon any outrage to public decency; and that the authorities would not simply ignore reports made to them of persons carrying out homosexual acts albeit in private. The tribunal was satisfied that if a complaint is brought to the authorities then they would act upon that to the extent that they would arrest the claimed offenders and question them and thereafter there is a real risk that either on the basis of confessions or knowledge of the judge which might arise from such matters as previous history or medical evidence or the evidence of the person who claimed to have observed the homosexual acts, that they would be subjected to significant prison sentences and/or lashing.

3.10.12 Conclusion. Case owners must refer to the Asylum Instruction on sexual orientation and gender identity in the asylum claim.

3.10.13 The country evidence is that gay rights activists, who come to the attention of the authorities, are in danger of persecution at the hands of the state and should be granted asylum.

3.10.14 If there is a real risk that a gay man, lesbian or bisexual sexual relationship will come to the attention of the authorities, the applicant would on return to Iran face a real risk of persecution and, as gay men, lesbians and bisexuals in Iran may be considered to be members of a particular social group, should be granted asylum.

3.10.15 If an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation. In this regard caseowners should consider carefully the country evidence about the homophobic culture that rules Iranian society and that gay men and lesbians face ostracism and abuse from their families, friends and acquaintances.

3.10.16 If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the

right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

3.11 Women

- 3.11.1** Some women applicants may make a claim for asylum because they fear gender-based persecution (where the type of harm is related to their gender) or because the reason for persecution is their gender.
- 3.11.2 *Treatment.*** The constitution nominally provides women with equal protection under the law and all human, political, economic, social, and cultural rights in conformity with Islam⁵⁷. However provisions in the Islamic civil and penal codes, particularly sections dealing with family, property and personal status, legalise the subordination of women, treating them as second-class citizens with unequal rights.⁵⁸ Many articles of the Civil Code discriminate in the areas of marriage, divorce, nationality and custody of children. Under the Penal Code, a woman's testimony is worth half that of a man's, women receive half as much compensation for injury or death, and girls face prosecution as adults at a much younger age than boys.⁵⁹
- 3.11.3** Women in Iran have the right to vote and run for public office but are excluded from holding leadership roles in the main organs of power, such as the office of the supreme leader, the Assembly of Experts, the Guardian Council, the Expediency Council, the judicial branch, and the presidency. These positions have been reserved exclusively for men, most of whom are also clerics.⁶⁰
- 3.11.4** Social and legal constraints limited women's professional opportunities. Women are represented in many fields, including the legislature, municipal councils, police, and fire-fighters, but a woman must seek her husband's consent before working outside the home. According to a World Economic Forum report in 2009, the unemployment rate for women, who constituted 33% of the workforce, was 15.8%, compared with 9.3% for men. Women cannot serve in many high-level political positions or as judges, except as consultant or research judges without the power to impose sentences.⁶¹
- 3.11.5** The government enforces gender segregation in most public spaces, including medical care, and prohibited women from mixing openly with unmarried men or men not related to them. Women must ride in a reserved section on public buses and enter public buildings, universities, and airports through separate entrances.⁶²
- 3.11.6** Women must conform to strict dress codes. Head and body coverings for women are mandatory under Article 638 of the penal code, which stipulates that those who fail to comply with *hijab shar'è* (Shari'a-based veiling) face 10 days to two months in prison or fines between 50,000 and 500,000 rials (£3 - £30). The law lacks specificity on what constitutes a violation, but in practice, women have been punished for all of the following: showing part of one's hair, using cosmetics, wearing sunglasses, wearing a tight or short *manteau* (coat or gown), showing skin above the wrist or ankle, showing neckline, and wearing boots over (rather than under) trousers. No private plaintiff is necessary for prosecution, as it is the state's prerogative to monitor and control women's apparel. Harsher enforcement has increased the number of arbitrary arrests and detentions in recent years. Morality police have stopped, verbally scolded, physically attacked, arrested, or temporarily detained thousands of women and some young men (usually related to the length of men's hair or beards) for wearing insufficiently modest clothing, inappropriate hairstyles or 'bad hijab'.⁶³

⁵⁷ COI Service Iran Country Report August 2010 (para 21.10)

⁵⁸ COI Service Iran Country Report August 2010 (para 23.09)

⁵⁹ COI Service Iran Country Report August 2010 (para 23.11)

⁶⁰ COI Service Iran Country Report August 2010 (para 23.20)

⁶¹ COI Service Iran Country Report August 2010 (para 23.64)

⁶² COI Service Iran Country Report August 2010 (para 23.56)

⁶³ COI Service Iran Country Report August 2010 (para 23.58 -23.59)

- 3.11.7** Even with sex segregation, discriminatory laws, and state policies stressing women's domestic duties, women in Iran play a considerable and very visible role in the public sphere. Using any available spaces and legal rights, they have demonstrated their activism in both formal and informal political and civil society organizations. A growing women's rights movement, especially in the past 10 years, has been challenging discriminatory laws and policies in various areas of life, including those that prevent women from taking part in high-level decision-making and political power. Women's activities have been constrained by some cultural traditions and state repression, especially under the presidency of Ahmadinejad.⁶⁴
- 3.11.8** Women's groups have become increasingly active in campaigning for change. Various campaigns have been launched by local activists, such as the One Million Signatures Campaign (aka Campaign for Equality), and the Maydaan Movement, which campaigns for gender equality and an end to stoning. However, as the popularity of both campaigns has increased, so too has repression and harassment of their members.⁶⁵ Even though the Campaign for Equality conducts its activities in full compliance with the law, the authorities have impeded its work and repressed its activists. They have regularly blocked access to the campaign's main website, frequently denied the group permission to hold public meetings, prevented activists from travelling abroad or summoned them for interrogation, and apparently been behind threatening phone calls. Over 60 activists have been arrested for peaceful activities and three activists are currently in custody. Women activists had been among those particularly targeted in the run-up to the June 2009 Presidential election and during the crack down by the authorities following the disputed election results.⁶⁶ The crackdown on women's rights activists and female journalists has continued over the past year. Many have faced intimidation, harassment and, in some cases, detention or travel bans. The authorities often invoke external security threats to suppress women's rights activists⁶⁷.
- 3.11.9** The law does not specifically prohibit domestic violence in Iran. Spousal abuse and violence against women is widespread. According to a study published in 2008 using 2005 data, 52.7 percent of women reported being physically abused during their married lives. Abuse in the family was considered a private matter and seldom discussed publicly.⁶⁸ Iran has no public or private shelters for abused women. Due to legal shortcomings, societal attitudes, and the very nature of such abuse, domestic violence remains a private hardship. Victims who turn to the police are treated no differently from those who are attacked by a stranger. They can be compensated through the diyeh [diyat] system of the penal code, provided they supply witnesses and medical reports. Victims of bodily injury may also seek out retribution under Article 273 of the penal code. Sexual harassment in public places is outlawed under Article 619 of the penal code, which generally prohibits verbal or physical harassment of women or children in public places. If convicted under this statute, offenders face two to six months in prison and up to 74 lashes.⁶⁹ Wrongful suspicion that a woman has brought dishonour on the family can result in her being murdered by her husband, his relatives, or even her own side of the family, particularly in more traditional parts of Iran, where communal justice systems are in place. These types of 'honour killings' are perpetrated throughout Iran.⁷⁰
- 3.11.10** The legal age of consent is 13 for girls and 15 for boys, but a permit may be obtained for the marriage of even younger girls or boys upon the request of a father or paternal grandfather to the court. Very young or widowed women, particularly those living in provincial and rural areas, may be forced into marriage either out of poverty or based on

⁶⁴ COI Service Iran Country Report August 2010 (para 23.23)

⁶⁵ COI Service Iran Country Report August 2010 (para 23.91)

⁶⁶ COI Service Iran Country Report August 2010 (para 23.92)

⁶⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, 15/09/2010, para. 24.

⁶⁸ COI Service Iran Country Report August 2010 (para 23.75)

⁶⁹ COI Service Iran Country Report August 2010 (para 23.76)

⁷⁰ Landinfo Country of Origin Information Centre (Norway), Honour killings in Iran, 22/05/2009, section 1.3., Institute for War and Peace Reporting (UK), Iran: High Price of Flouting Marriage Rules, 16/08/2010,

traditional and tribal customs. Although men may also be forced into marriage by their families, rural girls are far more susceptible to such practices. The validity of a woman's first marriage is contingent upon the approval of her father or paternal grandfather, regardless of her age. If she has no father or grandfather, or can argue that they refused her choice without justification, the daughter may appeal to the court and register her marriage with the court's approval. Such restrictions do not apply to men. It is uncommon and largely undesirable for a young woman to marry without parental (especially the father's) approval, as it may ostracize her from her relatives and community.

- 3.11.11** Only men are permitted to marry multiple spouses. They can take up to four wives and engage in an unlimited number of temporary marriages (*sigheh* or *mutá*). In reality, polygamy is not a common practice, and most people disapprove of *sigheh*. However, because sexual relationships outside of marriage are criminalized under Article 63 of the penal code, *sigheh* is occasionally used by members of the secular and nonconformist youth to avoid punishment for otherwise illicit sexual activity.⁷¹ A married man is legally allowed to engage in affairs under the guise of *sigheh* (temporary marriage) as many times as he wishes, whereas a married woman can be stoned to death or murdered in an "honour killing" for participating in a similar relationship.⁷² The government does not recognize marriages between Muslim women and non-Muslim men, or Baha'i marriages.⁷³
- 3.11.12A** A woman has the right to divorce only if her husband signs a contract granting that right, cannot provide for his family, or is a drug addict, insane, or impotent. A husband is not required to cite a reason for divorcing his wife. Traditional interpretations of Islamic law recognise a divorced woman's right to part of shared property and to alimony but these laws are not enforced. According to a study by the National Organization for Civil Registration quoted in a book by a women's rights activist, more than 89 percent of women did not receive their due alimony, and 9 percent did not receive their share of the wedding gift (wedding contracts traditionally stipulate that in case of divorce the groom give his bride the wedding gift for financial support). The law provides divorced women preference in custody for children up to age seven; divorced women who remarry are forced to give the child's father custody. After the child reaches age seven, the father is entitled to custody (unless the father has been proven unfit to care for the child). The court determines custody in disputed cases⁷⁴.
- 3.11.13 Actors of protection.** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective 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.
- 3.11.14** If the applicant's fear is of ill-treatment amounting to persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.11.15** Gender inequality in Iran is widespread and sustained by Iranian law. Iran is a highly developed country particularly in the major cities such as Tehran, Mashad or Esfahan with constitutional and legal safeguards aimed at protecting women's rights. However, Iran is also a conservative traditional society and those provisions are not always enforced, for example, in some rural areas sufficiency of protection may not be available. Case owners

⁷¹ COI Service Iran Country Report August 2010 (para 23.30)

⁷² Freedom House, Women's Rights in the Middle East and North Africa 2010 – Iran, 3 March 2010.

⁷³ COI Service Iran Country Report August 2010 (para 23.31)

⁷⁴ COI Service Iran Country Report August 2010 (para 23.47)

should take into account inconsistency in application of the legal system that is part of the every day life in Iran as well as the fact that women are discriminated against in law and practice. In the light of this, case owners will need to decide whether the authorities are willing and able to provide protection on the facts of each individual claim.

3.11.16 Internal relocation. Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.11.17 The law restricts freedom of movement for women. Women must often obtain the permission of their husband to travel alone, work outside the home or stay in a hotel and sex segregation in public places further erodes women's freedom of movement. There is an absence of shelters available for women fleeing domestic violence. Whether a woman can live on her own depends of a variety of factors, including her ability to find work and her need to rely on her family support network. Stigma attached to single women should also be considered to assess whether relocation is safe. On relocation, single women may be at risk of harassment or sexual abuse and therefore (new) forms of ill-treatment.

3.11.18 Caselaw.

ZH CG [2003] UKIAT 00207. The facts of ZH were that the appellant suffered domestic violence from a husband who was a drug addict. In ZH there was no evidence that the appellant faced a real risk of adultery charges from her husband or anyone else. Her concern was that her husband wanted her back with their child, and that his threat to kill her might then be realised. Although the Tribunal found that women per se do not form a particular social group, it went on to conclude:

"We accept that the police are reluctant and unlikely generally to intervene in domestic violence cases against a husband but the evidence does not show such a reluctance in respect of drug or alcohol abuse, nor that the reluctance is marked where there is other supporting evidence, e.g. from parents. In this country, the attitude of the police towards domestic violence has been one of reluctant involvement, though we accept not to the same degree as in Iran, but it would still have been regarded as part of a system of protection.

The inability of the state to provide protection cannot always be tested solely by reference to the police, if as here, relief can be obtained through divorce. Lord Hoffmann looked at both criminal and civil or family court protection in the United Kingdom in Shah and Islam. In domestic violence, the availability and consequences of divorce constitute a relevant part of the system of state protection. It may be difficult to obtain, but the legislative provision exist, they are not simply ignored by the courts or made impractical for all to use, as the background material on custody and alimony shows. Relevant grounds apply to this claimant and she is not dependant wholly on her own evidence. The Iranian state, whatever its other discriminatory acts, is not unable or unwilling to provide protection in this instance. The evidence also does not support the conclusion that this couple cannot live apart, before divorce; they have at times done so. It does not support the conclusion that after divorce there would be persecution."

TB [2005] UKIAT 00065. This case is not a country guidance case but received a determination specific to the facts of the case. The Tribunal found the Appellant would be persecuted on return because she belonged to a particular social group viz., "Young Iranian women who refuse to enter into arranged marriages". The Tribunal reasoned (at paragraph 69 iv):

"the real risk of this appellant suffering serious harm on return to Iran is primarily for non-Convention reasons (the vindictiveness and retribution of the appellant's father and the Mullah). However, as we consider there would also be a failure of state protection against that serious harm, we find that there is a causal nexus between the persecution (accepting that: Persecution = failure of state protection + serious harm) and her membership of a particular social group."

Whilst the Tribunal considered that women in Iran may constitute a particular social group, it did not come to a finding on it and there is no conclusive statement on this point.

FF Iran [2004] UKIAT 00191. The Tribunal found that they “do not consider that the appellant as the sister of three women who have obtained asylum elsewhere, who has been out of Iran herself for over 3½ years, who left Iran in breach of regulations and is reluctant to wear the Hijab, is a person who faces a real risk of ill-treatment giving rise to a breach of her human rights on return to Iran.”

3.11.19 Conclusion. The evidence is that those actively involved in women’s rights groups are at risk on return of arbitrary arrest and detention as well as smear campaigns in the state-run media, verbal and physical harassment, travel bans, and other forms of suppression. As such they are likely to qualify for asylum for reason of their imputed political opinions..

3.11.20 Iran is a strongly patriarchal society and despite some advances in the general position of women they remain discriminated against both in law and tradition. Women who have a well founded fear of persecution as a result of their gender should be treated as being members of a particular social group as they are discriminated against in matters of fundamental human rights and may not be protected by the state. Women applicants who can demonstrate that they have a well founded fear of persecution as a result of their gender and that they have no recourse to state protection or internal relocation should be granted asylum

3.12 Kurds and supporters of Kurdish political parties (KDPI, Komala, or PJAK)

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

3.12.2 Treatment. The Kurdish population is one of the largest ethnic minority groups in Iran. The number of Kurds in the country varies considerably according to the available sources. The estimate ranges from five to twelve million people out of a total Iranian population of an estimated 70.5 million. The vast majority of the Kurds in Iran live in the mountainous region of Western Iran from the Turkish and Iraqi borders in the west to Lake Urmieh in the north east. The area covers approximately 95,000 square kilometres. The only province that is governmentally recognised as Kurdish is the province of Kurdistan. However, the area that is often called Iranian Kurdistan extends from Kurdistan province in the central area to Western Azerbaijan province in the north and Kermanshah province in the southern area.⁷⁵

3.12.3 Kurds are vulnerable as a minority population in Iran for two main reasons: some Kurds have a long history of struggle for national autonomy in Iran and they are mostly Sunni Muslims (a minority in Shi’a Iran). The border areas they inhabit are relatively underdeveloped and they have suffered from violent repression before and since the 1979 revolution. Iran is a strong centralised state that is intolerant of ethnic dissidents.⁷⁶ Although there are no specific anti-Kurdish laws in the constitution, the authorities find pretexts for persecuting Kurds who openly and non-violently profess their group identity. Once arrested many have experienced violations of due process that contravene Iranian law and fall far below international standards.⁷⁷ In the north western provinces of Azerbaijan and Kurdistan, the government restricts cultural and political activities, including the organizations that focus on social issues. The government also restricts these minorities from promoting their cultures and languages.⁷⁸ Kurds also face discrimination with respect to housing, public education and employment.⁷⁹

3.12.4 Although strong feelings of nationalism exist among some of the Kurds in Iran, most Kurds express their identity non-violently. However, journalists and historians who publish their thoughts or opinions on Kurdish nationalism have been tried, imprisoned and often

⁷⁵ COI Service Iran Country Report August 2010 (para 20.06)

⁷⁶ COI Service Iran Country Report August 2010 (para 20.09)

⁷⁷ COI Service Iran Country Report August 2010 (para 20.09)

⁷⁸ COI Service Iran Country Report August 2010 (para 20.12)

⁷⁹ COI Service Iran Country Report August 2010 (para 20.09)

sentenced to death. They are usually convicted of '*enmity with God*', a vague charge that is often used by the regime to silence its critics.⁸⁰

- 3.12.5** The KDPI [Kurdish Democratic Party of Iran] supported the overthrow of the Shah and many Kurds participated in the 1979 revolution, but they were quickly marginalized by the new regime. When a popular referendum was held to vote on the creation of an Islamic Republic, most Kurds boycotted the vote. They objected to the draft constitution, which did not mention the Kurds or make provision for regional autonomy. Shortly thereafter, the KDPI helped to organise a rebellion in the region. The uprising was met with brutal violence. Human Rights Watch reported that 'more than 271 Iranian Kurdish villages were destroyed and depopulated between 1980 and 1992. An estimated 10,000 Kurds were killed in the two years after the revolution.'⁸¹
- 3.12.6** The second main Kurdish party is Komala which amongst other things aims to achieve autonomy for Iranian Kurds. Komala took up arms against the central government after the 1979 revolution but unilaterally laid down its arms in the 1990s.⁸²
- 3.12.7** Iranian Kurdish parties have also consistently fractured and there have been major splits in both the KDPI and Komala since early 2007. In December 2006 a significant number of members in the KDPI broke away, renaming themselves KDP (removing 'Iran' from the name of the Party and returning to the original name as established in 1945). The change of name not only distinguishes the new party from the old but also relates to its more broadly nationalist approach.⁸³
- 3.12.8** The Free Life Party of Kurdistan (PJAK), a separatist militant group linked to the Kurdistan Workers' Party (PKK) of Turkey, has conducted a number of guerrilla attacks in recent years and was declared a terrorist organization by the United States in 2009. In May 2009, after alleged PJAK attacks on police stations in border cities left multiple officers and rebels dead, Iranian aircraft attacked PJAK outposts in Iraq.⁸⁴ PJAK is the only group currently engaged in armed struggle against the Iranian government. The KDPI and other Kurdish parties claim that they have no relationship with PJAK.⁸⁵
- 3.12.9** Kurdish opposition groups suspected of separatist aspirations are brutally suppressed⁸⁶ and those suspected of being members of these groups are arrested and imprisoned and some sentenced to death.⁸⁷
- 3.12.10** Politically active groups and individuals are considered a threat to national security by the Iranian government. If the Iranian authorities consider a person to be working against national security, (the person may for example be accused of being a spy or of cooperating with an oppositional religious, ethnic or political group), they may face severe punishment ranging from ten years imprisonment to execution. For instance, being in possession of a CD, a pamphlet or something similar made by the Kurdish Democratic Party of Iran (KDPI), Komala or other Kurdish organisations, may be considered as an act against national security. This form of persecution for political activities is a problem all over Iran. However, the authorities are watching Kurdish areas and Tehran more carefully than other areas.⁸⁸
- 3.12.11** Charges made against Kurdish activists often include allegations of unspecified breaches of national security or violating morality, which create a legal exemption from honouring human rights protections outlined in the constitution. For example, freedom of expression is allowed, 'except when it is detrimental to the fundamental principles of Islam or the rights of the public.' Activities that count as being 'against' Islam or the Islamic Republic can be very

⁸⁰ COI Service Iran Country Report August 2010 (para 20.10)

⁸¹ COI Service Iran Country Report August 2010 (para 20.10)

⁸² COI Service Iran Country Report August 2010 (para 15.71)

⁸³ COI Service Iran Country Report August 2010 (para 15.70)

⁸⁴ COI Service Iran Country Report August 2010 (para 15.79)

⁸⁵ COI Service Iran Country Report August 2010 (para 15.77)

⁸⁶ COI Service Iran Country Report August 2010 (para 15.69)

⁸⁷ COI Service Iran Country Report August 2010 (para 20.14)

⁸⁸ COI Service Iran Country Report August 2010 (para 15.68)

broadly defined to suit the purposes of the local or national government. Such charges are used as a pretext for cracking down on criticism, activism or dissent of any kind.⁸⁹

3.12.12 *Actors of protection.* Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective 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.

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

3.12.14 *Internal relocation.* Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.12.15 However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.12.16 *Caselaw*

SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053 In this country guidance case, the tribunal concluded that events in Iran following the 12 June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Persons who are likely to be perceived by the authorities in Iran as being actively associated with protests against the June 2009 election results may face a real risk of persecution or ill treatment, although much will depend on the particular circumstances.

3.12.17 *Conclusion.* There is no evidence to suggest that an applicant of Kurdish ethnic origin, in the absence of any other risk factor, would on return face a real risk of serious mistreatment simply on account of his or her ethnic origin alone. Applicants who are able to demonstrate that they are members or supporters of the KDPI, Komala, or active members of PJAK, and who are known to the authorities as such, will be at real risk of persecution and a grant of asylum will be appropriate unless there are case-specific reasons why it would not be.

3.12.18 Caseowners should also have regard to the fact that members of PJAK have been responsible for serious human rights abuses. If it is accepted that an applicant was an active operational member or combatant for PJAK and the evidence suggests that he/she has been involved in such actions, case owners should consider whether they fall to be excluded from the 1951 Refugee Convention under Article 1F. Case owners should refer all such cases to a Senior Caseworker in the first instance.

⁸⁹ COI Service Iran Country Report August 2010 (para 20.15)

3.13 Smugglers

- 3.13.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state due to their criminal activities.
- 3.13.2 *Treatment.*** The size of Iran's smuggling industry has been estimated at \$12 billion a year and there is speculation the IRGC control much of it.⁹⁰ Iran's proximity to Afghanistan, which supplies more than 90% of the world's opiates, means that Iran is particularly vulnerable to drug abuse and is also a main trafficking route for heroin destined for European markets.⁹¹
- 3.13.3** The death penalty is provided for crimes covered in the Anti-Narcotics Law. These crimes include smuggling or distribution of more than 5kg of hashish or opium, or more than 30g of heroin, codeine, methadone or morphine. People who commit a fourth offence of cultivation of narcotic plants, recidivist (repeated) possession of opium and hashish, and the manufacture or supply of various chemicals that can be used in the manufacture of drugs can also receive the death penalty.⁹² Some sources estimate that Iran has executed 10,000 drug traffickers since the revolution of 1979, although a number of these are alleged to have been political dissidents who were charged with drug crimes.⁹³
- 3.13.4** Section 28 Article 703 of the Islamic Penal Code states: "Anyone making, selling or putting alcoholic liquors up for sale or import such liquors from abroad or putting liquors at the disposal of another shall be sentenced to a term of three months to one year in prison and lashing of up to seventy four (74) strokes and also be fined from one million and five hundred thousand to six million rials in cash, or one or two of the punishments." Chapter 6 Section 2 Article 175 of Iran's Criminal Code states: "Any person ... transporting intoxicants will be sentenced to between six months and two years imprisonment."⁹⁴
- 3.13.5** Traditional courts adjudicate civil and criminal offences, and Islamic revolutionary courts try offences viewed as potentially threatening to the Islamic Republic, including threats to internal or external security, narcotics and economic crimes, and official corruption. A special clerical court examines alleged transgressions within the clerical establishment, and a military court investigates crimes connected with military or security forces. A media court hears complaints against publishers, editors, and writers, including Internet cases. The Supreme Court has review authority over some cases, including appeals of the death penalty.⁹⁵
- 3.13.6 *Actors of protection.*** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.13.7** However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot generally apply to these authorities for protection.
- 3.13.8 *Internal relocation.*** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in

⁹⁰ Newsweek. Smugglers for the state. 10 July 2010

⁹¹ COI Service Iran Country Report August 2010 (para 8.01)

⁹² COI Service Iran Country Report August 2010 (para 8.05)

⁹³ COI Service Iran Country Report August 2010 (para 8.06)

⁹⁴ Danish Immigration Service. Fact-finding mission report 24 March 2006

⁹⁵ COI Service Iran Country Report August 2010 (para 11.08)

paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.13.9 However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

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

3.13.11 Caseowners should also have regard to the fact that a person's criminal activities may mean that they fall to be excluded from the 1951 Refugee Convention under Article 1F and that a grant of Humanitarian Protection or Discretionary Leave would not be appropriate. Such cases should be referred to a Senior Caseworker.

3.14 Former members of state security organisations

3.14.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state due to their previous membership of state security organisations (such as the IRGC, Pasdaran or Basij) and having spoken out against abuses committed by those organisations.

3.14.2 Treatment. Iran maintains an extensive network of internal security and intelligence services. The main parts of the domestic security apparatus are made up of the Ministry of Intelligence and Security, the Basij Resistance Force, the intelligence unit of the [Iranian Revolutionary Guards Corps] IRGC, and the law enforcement forces within the Ministry of Interior that largely are responsible for providing police and border control. The leadership of each of these organizations appears to be fragmented and dispersed among several, often competing, political factions. Public information on all Iranian security and intelligence forces is extremely limited and subject to political manipulation.⁹⁶

3.14.3 The Revolutionary Guards, also known as the Islamic Revolutionary Guards Corps (IRGC), was formed after the 1979 revolution as a parallel armed force to ensure domestic security. It has since become a major military, political and economic force in Iran, with close ties to the Supreme Leader, Ayatollah Ali Khamenei, and President Ahmadinejad, a former member. The force is estimated to have 125,000 active troops, boasts its own ground forces, navy and air force, and oversees Iran's strategic weapons. It also controls the paramilitary Basij Resistance Force and the powerful bonyads, or charitable foundations, which run a considerable part of the Iranian economy.⁹⁷

3.14.4 The Islamic Revolutionary Guards Corps (IRGC), commonly known as the Pasdaran (Guardians), is composed of five main branches - Ground Forces, Air Force, Navy, Basij militia and the Qods [or Quds] Force special operations branch. There is also an

⁹⁶ COI Service Iran Country Report August 2010 (para 9.01)

⁹⁷ COI Service Iran Country Report August 2010 (para 9.07)

Intelligence Directorate. The IRGC has a cultural and military mission. Its cultural role is in safeguarding the achievements of the Islamic Revolution, while its military role lies in supporting the regular forces when required. Because of its dual political and military role, the IRGC also has an internal security role, which includes local intelligence gathering. While co-operation between the IRGC and the national police is institutionalised, it is best to treat the IRGC predominantly as a military land force that parallels the regular army.⁹⁸

- 3.14.5** There are reports that the Revolutionary Guards have increased their already substantial stake in Iran's economy, with the purchase of a majority stake in the main telecommunications company. The Guards are thought to control around a third of Iran's economy through a series of subsidiaries and trusts. The Guards' engineering wing, Khatam-ol-Anbia (also known by an acronym, GHORB), has been awarded several multi-billion-dollar construction and engineering contracts, including the operation of Tehran's new Imam Khomeini international airport.⁹⁹
- 3.14.6** The IRGC oversaw the creation of a people's militia, a volunteer group it named the Basij Resistance Force (which means Mobilization of the Oppressed), in 1980. The Basij derives its legitimization from Article 151 of the Iranian Constitution, which calls upon the government to fulfil its duty according to the Quran to provide all citizens with the means to defend themselves. Numbering over 1,000,000 members, the Basij is a paramilitary force, mostly manned by elderly men, youth, and volunteers who have completed their military service.¹⁰⁰ The Basij is controlled by the IRGC and its primary role is internal security, monitoring the activities of Iranian citizens, acting as replacements for the military services and serving as a static militia force tied to local defence missions.¹⁰¹
- 3.14.7** Since the disputed June 2009 elections, human rights conditions in Iran have regressed to a point not seen since the early days of the Islamic revolution. Killings, arrests, and physical abuse of detainees have increased.¹⁰² Although the Iranian constitution prohibits arbitrary arrest and detention, these are increasingly routine, and family members of detainees are often not notified for days or weeks. Suspected dissidents are frequently held in unofficial, illegal detention centres, and allegations of torture are common.¹⁰³
- 3.14.8** People in Iran continue to be arbitrarily arrested, often without warrant, by state officials who fail to identify themselves. Many are held for weeks or even months – often in solitary confinement – in detention centres outside of the control of the Judiciary in prolonged incommunicado detention without access to families or lawyers, in conditions amounting to enforced disappearances.¹⁰⁴
- 3.14.9 *Actors of protection.*** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective 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.

⁹⁸ COI Service Iran Country Report August 2010 (para 9.09)

⁹⁹ COI Service Iran Country Report August 2010 (para 9.11)

¹⁰⁰ COI Service Iran Country Report August 2010 (para 9.16)

¹⁰¹ COI Service Iran Country Report August 2010 (para 9.17)

¹⁰² COI Service Iran Country Report August 2010 (para 19.12)

¹⁰³ COI Service Iran Country Report August 2010 (para 9.37)

¹⁰⁴ COI Service Iran Country Report August 2010 (para 9.33)

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

3.14.11 *Internal relocation* Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.14.12 However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.14.13 *Caselaw*

SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053 In this country guidance case, the tribunal concluded that events in Iran following the 12 June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Persons who are likely to be perceived by the authorities in Iran as being actively associated with protests against the June 2009 election results may face a real risk of persecution or ill treatment, although much will depend on the particular circumstances.

3.14.14 *Conclusion.* There is a real risk that those members of the internal security and intelligence services who have spoken out against abuses committed by those organisations and have come to the attention of the authorities would on return to Iran face a real risk of persecution and should be granted asylum for reason of his or her political opinion.

3.14.15 Depending on the particular circumstances, former members of the internal security and intelligence services who are perceived to have spoken out against abuses committed by those organisations may similarly face a real risk of persecution or ill-treatment on return. Caseowners must consider carefully whether the personal circumstances of the individual concerned are such that he or she would face a real risk of persecution on return to Iran.

3.14.16 Those applicants who have been members of the IRGC or Basij may have been witness to abuses and/or taken part in abuses whilst they were members. If it is accepted that the applicant was an active operational member of the IRGC or Basij and has been involved in such actions, case owners should consider whether the claimant falls to be excluded from the 1951 Refugee Convention under Article 1F. Case owners should refer all such cases to a Senior Caseworker in the first instance.

3.15 *Prison conditions*

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

3.15.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

- 3.15.3 Consideration.** Prison conditions are notoriously severe. Many prisoners are held in solitary confinement or are denied adequate food or medical care as a way to force confessions. Overcrowding is a significant problem. Numerous prisoners complain that authorities intentionally expose them to extreme cold for prolonged periods and say they lack access to medical care in prison.¹⁰⁵
- 3.15.4** In September 2008 the UK-based International Centre for Prison Studies reported that more than 150,000 prisoners were held in facilities constructed to hold no more than 65,000 persons. Human rights activists and international media reported cases of political prisoners confined with violent criminals; juvenile offenders detained with adult offenders; and pre-trial detainees occasionally held with convicted prisoners¹⁰⁶. Amnesty International reported on 7 August 2009 that “Typically, people accused of drugs offences or other serious crimes are held for long periods in pre-trial detention, routinely ill-treated, and allowed access to a lawyer only at the point where they go on trial, if at all.”¹⁰⁷
- 3.15.5** Authorities routinely hold political prisoners in solitary confinement for extended periods and deny them due process and access to legal representation. Political prisoners are also at greater risk of torture and abuse in detention. The government does not permit access to political prisoners by international humanitarian organizations or UN Special Rapporteur.¹⁰⁸
- 3.15.6** Suspected dissidents are frequently held in unofficial, illegal detention centres, and allegations of torture are common there and in Tehran’s infamous Evin prison. A 2004 law banned torture in interrogations, but reports of the practice persisted in 2009, particularly for political prisoners arrested after the June presidential election. Prison conditions in general are notoriously poor, and there are regular allegations of abuse and death in custody. Male and female detainees allege rape by security forces and these claims were reinforced when a former member of the Basij confessed that security personnel were permitted to rape detainees as a ‘reward’ for their work.¹⁰⁹
- 3.15.7** Deaths in custody remain a very serious cause for concern in Iran.¹¹⁰ The International Campaign for Human Rights in Iran and Human Rights Watch have said that the government is covering up deaths in detention by forcing families to claim their loved ones died of natural causes. Both organizations have collected accounts from victims’ families that government agents have exerted tremendous pressure on them not to publicize the deaths of their children.¹¹¹
- 3.15.8** In October 2010, Human Rights Watch issued a joint statement with other human rights groups seeking action by the UN General Assembly in light of the fact of the “human rights crisis that continues to unfold in Iran”.¹¹² The statement detailed that protestors detained following the disputed elections were unfairly tried, often in ‘show trials’ which “typically take place after defendants have been held for long periods of detention - often in solitary confinement or incommunicado detention - in centres where torture and other ill-treatment are common. Poor prison conditions, including denial of adequate medical care, have also been used to bring further pressure to bear on those held and their families”.¹¹³ Similarly reporting on the ‘show trials’, the World Organisation Against Torture reported that “detainees were reported to be subjected to torture and harsh interrogations. Allegations of rape and sexual assaults of male and female detainees were also reported”.¹¹⁴

¹⁰⁵ COI Service Iran Country Report August 2010 (para 13.02)

¹⁰⁶ COI Service Iran Country Report August 2010 (para 13.02)

¹⁰⁷ COI Service Iran Country Report August 2010 (para 13.07)

¹⁰⁸ COI Service Iran Country Report August 2010 (para 13.03)

¹⁰⁹ COI Service Iran Country Report August 2010 (para 13.05)

¹¹⁰ COI Service Iran Country Report August 2010 (para 13.06)

¹¹¹ COI Service Iran Country Report August 2010 (para 13.10)

¹¹² Human Rights Watch, Iran: Human Rights Crisis Requires International Scrutiny, 28/10/2010.

¹¹³ Human Rights Watch, Iran: Human Rights Crisis Requires International Scrutiny, 28/10/2010.

¹¹⁴ World Organisation Against Torture (OMCT) / International Federation for Human Rights (FIDH), Steadfast in Protest – Annual Report 2010: Iran, 13/09/2010.

3.15.9 The use of the death penalty in Iran has increased year on year since 2004. Iran executes more people per capita than any other country. An estimated 318 people were put to death in 2009, over 100 of whom were executed in the weeks immediately following the elections. Many basic minimum standards surrounding the application of capital punishment are absent, with prisoners often executed in groups, in public or by inhumane methods, such as stoning.¹¹⁵

3.15.10 The Iranian government's already high rate of executions increased yet further particularly in 2010 and early 2011 highlighting the deepening of the human rights situation that has gripped the country following the disputed June 2009 presidential election. According to Iranian media reports, authorities have executed at least 73 prisoners - an average of almost three prisoners per day - since 1 January 2011.¹¹⁶

3.15.11 Caselaw.

Boroumand, R (on the application of) v Secretary of State for the Home Department [2010] EWHC 225 (Admin). Even if it is accepted that there is a real risk that the applicant will face execution on return to Iran it is not disproportionate to grant them a period of DL (6 months) and exclude them from HP. "In principle, if the Secretary of State is entitled not to give a person humanitarian protection because that person has committed a serious crime it is neither irrational nor disproportionate to limit the normal period of leave. Mr Southley accepted for the purpose of this case that there is nothing incompatible with Article 8 in granting leave for periods of six months provided, however, that applications are determined promptly" (paragraph 85)

HD [2004] UKIAT 00209. In paragraph 23, the IAT noted, "In reality the background material shows that there is a clear distinction between political and non-political offences in the way in which the offenders are treated and ordinary offender conditions do not involve a real risk of torture or breach of Article 3." In addition, in the second part of paragraph 19 the Tribunal concluded, "It is to be noted that there is nothing about the UN finding evidence of torture, let alone torture in ordinary prisons or treatment which breaches Article 3 ECHR."

BE Iran [2004] UKIAT00183. The IAT stated that, "Whilst prison conditions in Iran are poor, the Tribunal has not considered that they cross the threshold of serious harm: see Fazilat [2002] UKIAT 00973." (paragraph 12).

"... Certainly Evin prison has a record where torture and ill-treatment of inmates happens to a significant extent; but as the appellant's experiences demonstrate, such treatment is not necessarily routine in respect of all prisoners, and his offence was one of desertion, not of being active in political organisations bent on subversion." (paragraph 13).

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

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

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

3.15.12 Conclusion. The caselaw cited above is seven years old and the country evidence indicates that the situation has changed. Prison conditions in Iran are severe and are in general likely to reach the Article 3 threshold. Therefore, even where applicants can demonstrate a real risk of imprisonment on return to Iran a grant of Humanitarian Protection will generally be appropriate. However, the individual factors of each case should be carefully considered to determine whether detention will cause a particular individual in his or her particular circumstances to suffer treatment contrary to Article 3, relevant factors being the reasons for detention, the likely length of detention, the likely type of detention

¹¹⁵ COI Service Iran Country Report August 2010 (para 14.10)

¹¹⁶ Human Rights Watch. Iran: Deepening crisis on rights 26 January 2011

facility, and the individual's gender, age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

3.15.13 Prison conditions for political prisoners and perceived members of the political opposition in Iran are more severe and taking into account that political prisoners may be held in unofficial detention centres or prisons outside judicial control without access to legal defence and suffer violations of freedom of expression and other abuses, conditions for political prisoners and perceived members of the political opposition in Iran are likely to reach the Article 3 threshold. However as the imprisonment is related to one of the five Refugee Convention grounds – political, or perceived political opinion - a grant of asylum will be appropriate.

3.15.14 Where case owners believe that an individual is likely to face imprisonment on return to Iran they should also consider whether the applicant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where case owners consider that this may be the case they should contact a senior caseworker for further guidance.

4. Discretionary Leave

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

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

4.3 Minors claiming in their own right

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

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Iran due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 Health outcomes in Iran have improved greatly over the past twenty years and now generally exceed regional averages. Key to this success has been the Government's strong commitment to and effective delivery of primary health care.¹¹⁷

4.4.3 There are two types of hospitals in Iran, private and governmental. To receive treatment in the governmental hospitals, one must belong to the social security scheme whereby the employer pays the subscriptions for the employee, which would then entitle them to subsidised medical treatment and medication.¹¹⁸

4.4.4 In Tehran and other larger cities such as Shiraz and Isfahan there are many well-reputed hospitals. These are staffed by physicians and specialists, most of whom are very

¹¹⁷ COI Service Iran Country Report August 2010 (para 26.02)

¹¹⁸ COI Service Iran Country Report August 2010 (para 26.04)

experienced and internationally trained. There is an extensive range of specialist care found in Tehran, both in the private and governmental sector.¹¹⁹

- 4.4.5** For complex medical conditions where treatment is not available locally, the patients can apply to the Supreme Medical Council for financial assistance towards payment of medical expenses overseas. The Supreme Medical Council consists of a group of specialist doctors who assess and examine each case to determine whether such assistance in funding should be allocated.¹²⁰
- 4.4.6** Iran has a well developed pharmaceutical production capability but the country still relies on importation of raw materials and many specialised drugs. The Ministry of Health has the mission to provide access to sufficient quantities of safe, effective and high quality medicines at an affordable price for the entire population. Since the 1979 revolution, Iran has adopted a full generic-based National Drug Policy, with the local production of essential drugs and vaccines. Therefore, apart from very rare and special medicines, all medications are available in Iran. There are many private pharmacies all over the country. There are also four major governmental pharmacies that would provide any kind of prescribed medicine, but in small quantities to avoid the creation of [a] black market. There are thousands of pharmaceutical facilities in Tehran and hundreds more around the country.¹²¹
- 4.4.7** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** There is no policy which precludes the enforced return to Iran of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** Iranian nationals may return voluntarily to any region of Iran at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.4** Until 31 March 2011 the AVR scheme is implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Iran. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Iranian nationals wishing to avail themselves of this opportunity for assisted return to Iran should be put in contact with the IOM offices in London 0800 783 2332 or www.iomlondon.org.

¹¹⁹ COI Service Iran Country Report August 2010 (para 26.04)

¹²⁰ COI Service Iran Country Report August 2010 (para 26.04)

¹²¹ COI Service Iran Country Report August 2010 (para 26.08)

- 5.5 From 1 April 2011, Refugee Action replace IOM as the service provider for the delivery of AVR programmes. The AVR Programmes remain the same. Details can be found on Refugee Action's web site at www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

6. **List of source documents**

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

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