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OPERATIONAL GUIDANCE NOTE

BANGLADESH

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Bangladesh and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Bangladesh Country of Origin Information at: http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

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

2. Country assessment

- 2.1** Bangladesh is a parliamentary democracy with a non-executive president elected by parliament. Parliament and president are both elected for five years. In the elections held in October 2001, the 'Four-Party' Alliance led by Khaleda Zia's Bangladesh Nationalist Party (BNP) won an overall majority, with 219 seats out of 300. The main opposition party, the Awami League (AL) won 58 seats. International observers reported that the election was generally free and fair, but there were reports of election-related violence, ballot rigging and other election malpractice. The AL publicly refused to accept the result, however, and from 2001 to 2006 AL attendance in parliament was sporadic.¹
- 2.2** The Government's five-year term of office came to an end in October 2006 and an interim caretaker government took office for the period leading up to the general election scheduled for 22 January 2007. Against the background of serious differences between the BNP and the AL regarding the general election, political demonstrations and civil unrest, on 11 January 2007, President Iajuddin Ahmed declared a state of emergency and announced the postponement of the general election for an unspecified period to ensure that it would be 'free, fair and credible'.²
- 2.3** On 2 November 2008, the Election Commission declared that the general election would take place on 18 December 2008, though this was later put back to 29 December. The Caretaker Government lifted the state of emergency in December 2008 ahead of the election. In an election declared by international observers as broadly free and fair, Sheikh Hasina and her AL-led alliance won an overwhelming victory over Khaleda Zia's BNP, winning more than 250 out of 300 seats in parliament. Sheikh Hasina was sworn in as prime minister on 6 January 2009.³
- 2.4** Bangladesh does not have a good human rights record, though the Caretaker Government made a commitment to address human rights abuses and in 2008 established the National Human Rights Commission. While there was a significant drop in the number of extrajudicial killings by security forces in 2007, they were accused of serious abuses, including custodial deaths, arbitrary arrest and detention, and harassment of journalists. Some members of the security forces reportedly acted with impunity and committed acts of physical and psychological torture during the year. Violence against women also remained a problem in 2007. The Caretaker Government separated the lower judiciary from executive control and placed it under the control of the Supreme Court, but corruption in the lower courts, judicial inefficiency, lack of resources, and a large case backlog reportedly remain problems.⁴

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 Bangladesh. 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

¹ Home Office COI Service Bangladesh Country of Origin Information Report September 2008 (Background Information: History) & Foreign and Commonwealth Office (FCO) Country Profile 2008

² COIS Bangladesh Country Report September 2008 (Background Information: Recent Developments)

³ COIS Bangladesh Country Report September 2008 (Preface: Latest News), COIS Bangladesh Country of Origin Information Bulletin January 2009 (Summary and Background, State of Emergency Lifted & General Election of 29 December 2008), British Broadcasting Corporation (BBC) News 'Hasina wins Bangladesh landslide' dated 30 December 2008 & BBC News 'Democracy returns in Bangladesh' dated 6 January 2009

⁴ COIS Bangladesh Country Report September 2008 (Background Information: Recent Developments & Human Rights: Introduction & Judiciary), FCO Country Profile 2008 & The Daily Star 'Nat'l HR Commission begins journey to ensure justice' dated 2 December 2008

comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on the individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:
<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

3.6 Members of political parties

- 3.6.1** Applicants may seek asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the Bangladesh authorities due to their involvement with political organisations. Applicants may fall into one of two categories:
- those who have participated in low level political activity at local level, and who express fear of ill-treatment at the hands of local police who are politically aligned in opposition to them.
 - high profile political activists, i.e. those who are known beyond their local area perhaps because of police interest or media coverage, may claim a fear of persecution or ill-treatment on return to Bangladesh as a consequence of their political activity.
- 3.6.2** **Treatment.** The constitution prohibits arbitrary arrest and detention. The Emergency Power Ordinance introduced by the Caretaker Government on 12 January 2007 gave the authorities the power to restrict any activities deemed to be 'subversive to the state'; 'hampering the relations of Bangladesh with foreign countries'; or 'disrupting peace in any part of the country or creating enmity, hatred, or confrontations among different sections of society'. As a result, political parties were banned from holding meetings, though some of these restrictions were lifted in September 2007. The Emergency Power Ordinance remained in force for the period of the state of emergency, which was lifted by the Caretaker Government in December 2008.⁵
- 3.6.3** Arbitrary arrests have reportedly been common under past governments, but it is difficult to estimate the total number of those detained for political reasons. Many high-level officials detained during the state of emergency were widely suspected of corruption and had

⁵ COIS Bangladesh Country Report September 2008 (Background Information: Recent Developments, Human Rights: Introduction, Security Forces, Arrest and Detention - Legal Rights & Political Affiliation), COIS Bangladesh Country Bulletin January 2009 (Summary and Background & State of Emergency Lifted) & U.S. Department of State report on Human Rights Practices 2007: Bangladesh (Section 1)

credible charges of corruption pending against them. Several high profile figures, including some members of the leadership of the BNP and the AL, however, were held for months without any charges filed against them. International and domestic human rights organisations accused the Caretaker Government of selective prosecution. In addition, individuals were reportedly not able to criticise the Government publicly without fear of reprisal.⁶

3.6.4 Sufficiency of protection. If the fear is of ill-treatment amounting to persecution by the state authorities individuals cannot apply to those authorities for protection. Applicants in this category do not generally claim to be in fear of the state authorities themselves, but fear the local police who are politically motivated and with views in opposition to theirs. In this circumstance, however, they cannot approach the local police for protection.

3.6.5 Internal relocation. The law provides for freedom of movement, and the Government generally respects this right in practice.⁷ Where the ill-treatment feared is at the hands of local police, individuals can relocate to areas where their political opinions do not bring them to the attention of the local police or areas where they are in the political majority. It is highly unlikely that such individuals will be pursued outside of the local area. It would not be unduly harsh to expect individuals to relocate in these circumstances.

3.6.6 Conclusion. It is unlikely that anyone claiming involvement in low-level political activities would be able to demonstrate that the treatment they might suffer at the hands of local police would amount to a well-founded fear of persecution within the terms of the 1951 Convention. Although there may not be sufficient protection provided at local level in their home areas, such applicants can relocate safely to escape the attention of local officials and therefore such claims will generally fall to be refused and be clearly unfounded. The exact nature of the political activity and level of involvement with any political party should be thoroughly investigated, however, and case owners should assess on an individual case by case basis whether there may be a real risk that high profile activists will encounter persecution or ill-treatment as a consequence of their political opinion. The grant of asylum may therefore be appropriate in some cases.

3.7 Political activists in fear of members of opposing parties

3.7.1 Some applicants may make an asylum or human rights claim based on a fear of ill-treatment by members of opposing political parties or a fear of opposing factions within their own party.

3.7.2 Treatment. Tensions between the two main political parties, the BNP and the AL, has continued in recent years and political violence during demonstrations and general strikes has reportedly killed hundreds of people in major cities and injured thousands.⁸

3.7.3 Against the background of serious differences between the BNP and the AL regarding the general election, political demonstrations and civil unrest, on 11 January 2007, President Ahmed declared a state of emergency. Under the Emergency Power Ordinance 2007 introduced the following day, political parties were initially banned from holding meetings and political rallies, though some of these restrictions were lifted in September 2007. The Emergency Power Ordinance remained in force for the period of the state of emergency, which was lifted by the Caretaker Government in December 2008.⁹

⁶ COIS Bangladesh Country Report September 2008 (Preface: Latest News, Background Information: Recent Developments & Human Rights: Introduction, Security Forces, Arrest and Detention - Legal Rights & Political Affiliation)

⁷ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Movement)

⁸ COIS Bangladesh Country Report September 2008 (Background Information: History & Recent Developments & Human Rights: Political Affiliation)

⁹ COIS Bangladesh Country Report September 2008 (Background Information: Recent Developments) & COIS Bangladesh Country Bulletin January 2009 (Summary and Background & State of Emergency Lifted)

3.7.4 There is little corroborated information on whether clashes between members or supporters of opposing political parties such as the BNP and the AL have continued to any significant degree either during the state of emergency or since Sheikh Hasina's AL-led alliance was victorious in the general election of December 2008.

3.7.5 *Sufficiency of protection.* The internal security establishment in Bangladesh consists primarily of the police and four auxiliary forces: the Bangladesh Rifles, the Rapid Action Battalion (RAB), the Ansars and the Village Defence Party. The police are organised nationally, under the Ministry of Home Affairs, and have a mandate to maintain internal security and law and order. Under recent governments police were generally ineffective and reluctant to investigate persons affiliated with the ruling party. After the January 2007 declaration of a state of emergency, the Caretaker Government formed a joint task force, composed of personnel from the police, the RAB, the military, and other security agencies, and gave the special new teams responsibility for enforcing the state of emergency.¹⁰

3.7.6 A Police Reform Programme, designed to assist the police to improve performance and professionalism, to ensure equitable access to justice and to be more responsive to the needs of poor and vulnerable people, commenced in 2005 and then progressed more rapidly under the Caretaker Government. By April 2008, eleven model thanas (police stations), designed under the programme, had so far opened in different regions of the country, officers were receiving training on human rights, on gender awareness, and on accountability.¹¹ Whilst not always fully effective the authorities have not shown that they are unwilling or unable to offer sufficiency of protection from members of opposing political parties or opposing factions of an applicant's own party.

3.7.7 *Internal relocation.* The law provides for freedom of movement, and the Government generally respects this right in practice.¹² Political violence in Bangladesh is generally localised, so internal relocation will be a viable option in most cases.

3.7.8 *Caselaw.*

UKIAT 08102 Islam [2002]. There is sufficiency of protection for BNP members, i.e. members of the party in power. In this case it was found that there was no reason why a local BNP party worker would be at risk from the authorities. There was no reason why she should not be able to look to the authorities for protection in respect of her claim to be at risk from the Awami League.

EWHC 189 (Admin) Husan [2005]. In this case involving an individual who had left the student wing of the BNP and joined the student wing of the Awami League, the High Court held that there was no evidence that the individual concerned was a marked man nationally and that he could therefore relocate. The court upheld the Secretary of State's decision to certify this case as clearly unfounded.

3.7.9 *Conclusion.* Whilst protection from governmental sources may not be available in all cases, those in fear of ill-treatment by members of opposing political parties or in fear of opposing factions within their own party will generally be able to relocate internally away from the area where they are at risk. Claims made on this basis are therefore also likely to be clearly unfounded and will fall to be certified. However, the precise nature of political activity and level of involvement of both the applicant and the opposing party member(s) with any political party should be investigated in detail. A grant of asylum or HP would only be appropriate in exceptional cases, where an individual was able to show that he/she remained at risk because of specific factors relating to his/her particular history, and internal relocation was not an option.

¹⁰ COIS Bangladesh Country Report September 2008 (Human Rights: Security Forces)

¹¹ COIS Bangladesh Country Report September 2008 (Background Information: Recent Developments & Human Rights: Security Forces)

¹² COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Movement)

3.8 Victims of domestic violence

- 3.8.1** Some female applicants may seek asylum or make a human rights claim on the grounds that they are the victims of domestic violence and are unable to seek protection from the authorities. Occasionally the applicant will state that the abuser bribed the police (or otherwise exerted influence on the police) not to take action on the complaints made against them.
- 3.8.2** *Treatment.* Domestic violence is reportedly widespread in Bangladesh, but difficult to quantify. Some of the reported violence against women in 2007 was related to disputes over dowries. The law prohibits rape and physical spousal abuse but makes no specific provision for spousal rape as a crime.¹³
- 3.8.3** The patriarchal nature of society and of the household, especially in rural areas, reportedly permits socially acceptable violence against women in the form of physical chastisement by a husband. A misinterpretation of religious teaching reportedly reinforces this social sanction.¹⁴
- 3.8.4** In accordance with the Penal Code, all forms of physical violence, some forms of psychological violence, and threats of physical injury constitute criminal offences. In practice, however, when such an offence is committed by a husband against his wife, it is not considered as an offence punishable in the same way. The Women and Children Repression Prevention Act (2000), as amended in 2003, lays down severe penalties for violent offences against women. It also provides for the speedy trial of offenders in special tribunals situated throughout the country. The Act specifies deterrent punishment for dowry-related crimes and also covers rape, trafficking and abduction. However, it has been stated that there is no mention of punishment for husbands for abusing wives, except in dowry offences. The Dowry Prohibition Act, passed in 1980, also makes giving, taking or demanding dowry a punishable offence. There are no specific civil law remedies to which victims of wife abuse can resort, other than divorce and claims for dower, maintenance and custody. A wife can seek an injunction under the Civil Procedure Code, the Specific Relief Act or the Family Court Ordinance of 1985, but these are ancillary to other proceedings. The various special laws to protect women from abuse have reportedly not proved as effective as they were designed to be and their deterrent value has reportedly been diminished by low conviction rates.¹⁵
- 3.8.5** Acid attacks on women are also a problem. In 2007, assailants threw acid in the faces of women and a growing number of men, leaving victims disfigured and often blind. Two new laws were introduced in 2002 - the Acid Crime Prevention Act 2002 and the Acid Control Act 2002 - to restrict the import and sale of acid in open markets, allow for trials in acid throwing cases by a special tribunal (with a right of appeal to a higher court) to make the maximum punishment for acid throwing offences the death penalty and to provide for the treatment and rehabilitation of victims. Statistics provided by the Acid Survivors Foundation (ASF) show that the number of recorded attacks peaked in 2002, and have since been declining. 153 acid attack incidents were recorded in 2007, with a total of 187 victims. Of the 187 victims in 2007, there were 108 women, 44 men and 35 children under 18 years, of whom the majority were girls. During 2007, 48 persons were convicted following acid attacks. The motives for acid attacks are not always directly gender-related. For example, 50 per cent of recorded acid attacks in 2007 were, according to the ASF, in connection with land/property/money disputes; 23 per cent of attacks related to marital or family or dowry disputes and 7 per cent of attacks were categorised as refusal/rejection of love/marriage/sex.¹⁶

¹³ COIS Bangladesh Country Report September 2008 (Human Rights: Women) & Human Rights Watch World Report 2009: Bangladesh

¹⁴ COIS Bangladesh Country Report September 2008 (Human Rights: Women)

¹⁵ COIS Bangladesh Country Report September 2008 (Human Rights: Women)

¹⁶ COIS Bangladesh Country Report September 2008 (Human Rights: Women)

- 3.8.6** The Suppression of Violence against Women and Children Act 2000 carries the death penalty or life imprisonment for rape if death or injury results or is intended. Attempted rape is subject to a penalty of five to ten years' imprisonment. Prosecution of rapists was reportedly uneven in 2007.¹⁷
- 3.8.7 *Sufficiency of protection.*** Owing to the prevalent patriarchal attitude towards women, in most cases complaints are not recorded properly by the police, evidence is hard to produce or establish and there is a very slim chance of the perpetrator being punished. A study by the Family Court in Dhaka showed that husbands rarely appear and thus suits are dismissed in their absence and wives are denied justice. There is, in general, reluctance among abused women to seek relief against their husbands, often due to social stigma, economic insecurity, fear of retribution, or acceptance of violence as a social norm. Laws specifically prohibit certain forms of discrimination against women, provide for special procedures for persons accused of violence against women and children, call for harsher penalties, provide compensation to victims, and require action against investigating officers for negligence or wilful failure of duty. However, enforcement of these laws is weak. In 2003, an amendment to the current law was passed, weakening provisions for dowry crimes and addressing the issue of suicide committed by female victims of acts of 'dishonour'.¹⁸
- 3.8.8** The Women Affairs Department runs six shelters, one each in the six divisional headquarters, for abused women and children. In 2007, non-governmental organisations such as the Bangladesh National Women Lawyers' Association also ran facilities to provide shelter to destitute persons and distressed women and children.¹⁹ Whilst some women may be reluctant to report incidents of domestic violence it has not been shown that the authorities are unwilling or unable to offer some form of protection in the majority of cases.
- 3.8.9 *Internal relocation.*** The law provides for freedom of movement, and the Government generally respects this right in practice.²⁰ Internal relocation may be a viable option for women who fear domestic violence, however, factors such as the social and professional background of an individual applicant must be carefully considered when determining relocation as an option.
- 3.8.10 *Caselaw.***

UKIAT 00070 RA and others [2005]. The IAT found that: a) women in Bangladesh who are subject to domestic violence are not a particular social group (the evidence of discrimination isn't at the Shah and Islam level); b) the adjudicator did not err in law in finding that appropriate protection was available in Bangladesh; and c) the adjudicator did not err in law in finding that internal relocation was an option.

- 3.8.11 *Conclusion.*** Domestic violence is widespread in Bangladesh. There are constitutional and legal safeguards aimed at protecting women's rights, but application of these safeguards is uneven. Internal relocation to escape domestic violence may be an option where, in the particular circumstances of the applicant's case, it is not considered unduly harsh for the victim to do so. Claims based on fear of domestic violence are unlikely to engage the UK's obligations under the 1951 UN Refugee Convention and do not in general qualify for asylum as women in this category are not in a particular social group. However, case owners should consider each case on its individual facts to assess whether a grant of Humanitarian Protection may be appropriate.

3.9 Biharis

- 3.9.1** Applicants of Bihari ethnic origin may claim asylum or make a human rights claim on the grounds of being 'stateless' in Bangladesh. Many applicants are likely to have lived in

¹⁷ COIS Bangladesh Country Report September 2008 (Human Rights: Women)

¹⁸ COIS Bangladesh Country Report September 2008 (Human Rights: Women)

¹⁹ COIS Bangladesh Country Report September 2008 (Human Rights: Women)

²⁰ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Movement)

camps reserved for the Biharis, but there are individual applicants who have moved out of the camps and have lived and worked among the Bangladeshi majority. Some applicants may have applied for Bangladeshi citizenship whilst others may not have made an application. In addition to the issue of statelessness, some Bihari applicants may claim affiliation to one of the political parties and may have experienced political violence in clashes with political opponents. Biharis may also cite poverty and lack of educational or employment opportunities, particularly in the camps.

- 3.9.2 *Treatment.*** There are an estimated 300,000 Biharis living in Bangladesh. The Biharis are Muslims who originated in India, predominantly the region state of Bihar. In 1947, at the time of partition, they, along with millions of other Muslims, moved to East Pakistan (today's Bangladesh). Unlike the majority of those other Muslims, however, the Biharis were not Bengali-speakers, but Urdu-speakers with closer links to Muslims who moved to West Pakistan (today's Pakistan). The Bihari remained in Bangladesh after independence in 1971, but Pakistan accepted some 170,000 Biharis for resettlement in 1973. In 1992, an agreement was signed between the Bangladeshi and Pakistani Governments to take back a further 3,000 Bihari families from Bangladesh to Pakistan. The repatriation process began in early 1993, but after the repatriation of only 325 families, Pakistan suspended the process citing fund constraints.²¹
- 3.9.3** After Bangladeshi independence in 1971, the International Committee of the Red Cross established camps to accommodate Biharis pending their return to Pakistan. By 2004/05, around half of the Biharis in Bangladesh were still living in 116 camps situated throughout the country. Although Biharis are not mandated to live in the camps, a lack of resources means many cannot afford to live anywhere else. Some also remain in the camps because they reportedly feel more secure living among other Biharis.²²
- 3.9.4** On 18 May 2008, the High Court declared valid a claim that Biharis should be included in the Voter List as citizens of Bangladesh. The ruling applied to those who were minors when Bangladesh became independent in 1971, or were born thereafter - some 150,000 people. Following the High Court's decision, the Caretaker Government granted citizenship to the Biharis to enable them to vote in the elections of December 2008. However, not all Biharis residing in camps were in favour of accepting Bangladeshi citizenship.²³
- 3.9.5** The Bihari camps are severely overcrowded, lack clean water and have poor drainage and sanitation systems. Access to education is limited and several camps have no healthcare at all. The basic situation for the Biharis resembles that of the poorest citizens of the country.²⁴
- 3.9.6 *Sufficiency of protection.*** Those who fear ill-treatment amounting to persecution by the state authorities cannot apply to these authorities for protection. There is no evidence to suggest that a Bihari would be unable to access protection from the police in Bangladesh were they to face mistreatment or societal discrimination at the hands of the wider public on the grounds of their ethnicity. There is also no evidence that Biharis are any less likely than other citizens of the country to access protection from the state.
- 3.9.7 *Internal relocation.*** The law provides for freedom of movement, and the Government generally respects this right in practice.²⁵ Internal relocation will generally be a viable option for Bihari applicants.

3.9.8 *Caselaw.*

²¹ COIS Bangladesh Country Report September 2008 (Human Rights: Ethnic Groups)

²² COIS Bangladesh Country Report September 2008 (Human Rights: Ethnic Groups)

²³ COIS Bangladesh Country Report September 2008 (Human Rights: Ethnic Groups), COIS Bangladesh Country Bulletin January 2009 (Summary and Background) & The Daily Star 'Parties go innovative to grab Bihari votes' dated 26 December 2008

²⁴ COIS Bangladesh Country Report September 2008 (Human Rights: Ethnic Groups)

²⁵ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Movement)

AU [2004] UKIAT 00121. The IAT examined the position of a Bihari appellant by considering the CIPU report of October 2003. They stated 'There is nothing to indicate that a Bihari is less likely to receive a fair hearing than any other citizen of Bangladesh...Even if they (warrant/documents) are genuine and there is a risk of prosecution, there is no real risk of persecution for a Convention reason or treatment contrary to Article 3.'

Syed Mahmud Hossin [2002] UKIAT 02751. The IAT find that there is no breach of Article 3 to return a Bihari to a refugee camp.

Abu Quashem [2002] UKIAT 04999. The Tribunal determined that the objective country evidence does not support the Bihari appellant's argument that he would not get Bangladeshi citizenship if he were to apply. A stateless person, in accordance with Article 1 of the Convention, must demonstrate that he is outside the country of his former habitual residence and is unable or unwilling to return. The latter was not demonstrated in this particular case.

GA [2002] UKIAT 05810 CG. 'The background evidence does not establish that all Biharis are at risk of persecution or treatment contrary to their human rights.'

3.9.9 Conclusion. There is no evidence to suggest that Biharis suffer persecution either at the hands of the state authorities or non-state agents in Bangladesh on grounds of ethnicity. There is also no evidence that Biharis are any less likely than other citizens of the country to access protection from the state were they to face mistreatment or discrimination from the wider public. It is therefore unlikely that a Bihari applicant would be able to demonstrate a well founded fear of persecution on account of their ethnic origin alone. Whilst living conditions within camps in Bangladesh are harsh, around half of Biharis live outside the camp and are integrated into the wider society. Conditions in Bihari camps are not such as to amount to torture or inhuman or degrading treatment and engage the UK's obligations under Article 3 of the ECHR. Claims made under this category are therefore likely to be clearly unfounded and as such fall to be certified.

3.10 Hindus

3.10.1 Hindus may claim asylum or make a human rights claim on the basis that as members of a minority religion they face attacks or intimidation by members of other religious groups, particularly Islamic fundamentalists.

3.10.2 Treatment. Sunni Muslims constitute 88 per cent of the population. Approximately 10 per cent of the population is Hindu. The remainder of the population is mainly Buddhist or Christian (mostly Roman Catholic). There are also small populations of Shi'a Muslims, Sikhs, Baha'is, Animists, and Ahmadis. Estimates of their numbers vary from a few thousand to 100,000 adherents for each faith.²⁶

3.10.3 In the weeks following the October 2001 general elections, Bangladesh witnessed an outburst of systematic attacks on Hindus across the country. Houses were reportedly torched, ransacked and in many cases seized, women were raped, and temples were desecrated. Hindu families reportedly fled their homes and sought refuge in areas considered 'safe'. The Bangladesh Observer reported that at least 10,000 people in Barisal district ran away from their homes following attacks by activists of the fundamentalist Jamaat-e-Islami party and took shelter in neighbouring Gopalganj district. Many others reportedly fled to the Indian State of Tripura and West Bengal.²⁷

3.10.4 Attacks against members of the Hindu community by the wider society were reported in 2007 and 2008, though there is no evidence confirming that such attacks were religiously motivated.²⁸

²⁶ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Religion)

²⁷ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Religion)

²⁸ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Religion) & U.S. Department of State International Religious Freedom Report (USIRFR) 2008: Bangladesh (Section III)

3.10.5 Many Hindus have been unable to recover landholdings lost because of discrimination in the application of the law, especially under the Vested Property Act. The act was an East Pakistan-era law that allowed ‘enemy’ (in practice Hindu) lands to be expropriated by the Government. Approximately 2.5 million acres of land were seized from Hindus, affecting almost all of the ten million Hindus in the country. In April 2001, however, parliament passed the Vested Property Return Act. This law stipulated that land remaining under government control be returned to its original owners, provided that the original owners or their heirs remain resident citizens. In 2002, parliament passed an amendment to the Vested Property Return Act, allowing the Government unlimited time to return the vested properties.²⁹

3.10.6 Sufficiency of protection. The Constitution establishes Islam as the state religion but provides for the right to practice, subject to law, public order, and morality, the religion of one’s choice. It is also stated that every religious community or denomination has the right to establish, maintain, and manage its religious institutions.³⁰

3.10.7 Religion exerts a significant influence on politics, and past governments have been sensitive to the Islamic consciousness of most citizens. The U.S. Department of State reported in September 2008 that the Caretaker Government took steps to promote interfaith understanding. For example, government leaders issued statements on the eve of religious holidays calling for peace and warned that action would be taken against those attempting to disrupt the celebrations. Through additional security deployments and public statements, the Caretaker Government also promoted the peaceful celebration of religious festivals, including Durga Puja. Government officials, including the police, are nonetheless sometimes ineffective in upholding law and order and are sometimes slow to assist religious minority victims of harassment and violence. Civil society leaders have stated that violence against religious minorities normally has political or economic motivations and cannot be attributed only to religious belief or affiliation.³¹ It has not been shown that the authorities are unwilling or unable to offer protection to Hindus. Sufficiency of protection will, therefore, be available in the majority of cases.

3.10.8 Internal relocation. The law provides for freedom of movement, and the Government generally respects this right in practice.³² Religious violence in Bangladesh is not state-sponsored, so internal relocation is generally a viable option and applicants in this category could relocate from areas where they are in the religious minority to safer areas that are not dominated by such violence or where they are in the majority.

3.10.9 Conclusion. There is no evidence to suggest that the Caretaker Government condoned religious violence. Similarly, there is no evidence to suggest that sufficiency of protection would not generally be available under the new government led by Sheikh Hasina. The threshold for persecution, torture or inhuman and degrading treatment may, of course, be passed in individual cases. However, this is not inevitable and each case should still be considered individually on its own merits. In the majority of cases, internal relocation, to an area where the applicant’s specific religious group is in the majority, is not considered unduly harsh. Therefore a grant of asylum or Humanitarian Protection would not usually be appropriate. In certain cases, applicants may be able to establish a valid claim for asylum if it is shown that internal relocation would be unduly harsh, due to the specific facts of their case, and sufficiency of protection is not available.

3.11 Ahmadis (Ahmadiyyas)

3.11.1 Ahmadis may claim asylum or make a human rights claim on the basis that as members of a minority religion they face attacks or intimidation by members of other religious groups particularly Islamic fundamentalists.

²⁹ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Religion)

³⁰ USIRFR 2008: Bangladesh (Introduction)

³¹ USIRFR 2008: Bangladesh (Introduction & Section II)

³² COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Movement)

- 3.11.2 *Treatment.*** The Ahmadi community was founded in the 1880s by Mirza Ghulam Ahmad, who was born in the Punjab town of Qadiyan. It later split into two groups, of which Qadiani is the larger; the other is the Lahore branch. While they identify as a Muslim community, Ahmadis are considered heretics by mainstream Islam because Mirza Ghulam Ahmad proclaimed himself to be the expected Mahdi, or prophet, thereby rejecting a fundamental tenet of Islam.³³
- 3.11.3** Anti-Ahmadi agitations began during 2003. Since then they have been the targets of attacks and harassment prompted by clerics and the rhetoric of leaders of the Islami Okkiya Jote. The Khatme Nabuwat and a splinter group Khatme Nabuwat Andolon Bangladesh have also attacked Ahmadi mosques and campaigned for Ahmadis to be declared non-Muslim. The U.S. Department of State has reported that between July 2007 and June 2008 there were no reported demonstrations or attempt to lay siege to Ahmadi institutions, though there continued to be instances of harassment.³⁴
- 3.11.4** In January 2004, the BNP Government announced a ban on the sale, distribution, and possession of Ahmadiyya publications. However, Bangladesh's High Court suspended the ban in December 2004 and this remains stayed by the High Court, effectively allowing the publication of material.³⁵
- 3.11.5 *Sufficiency of protection.*** The constitution establishes Islam as the state religion but provides for the right to practice, subject to law, public order, and morality, the religion of one's choice. It is also stated that every religious community or denomination has the right to establish, maintain, and manage its religious institutions. Incidents of harassment against Ahmadis have continued sporadically in 2007 and 2008, but the Caretaker Government generally acted in an effective manner to protect Ahmadis and their property. The Caretaker Government also took steps to promote interfaith understanding.³⁶ Sufficiency of protection needs to be considered in light of the particular facts of each case. For example, case owners should examine whether attempts were made to seek protection and if not why not. If protection was sought, case owners should examine what the police response was. In most cases, sufficient protection will be available.
- 3.11.6 *Internal relocation.*** The law provides for freedom of movement, and the Government generally respects this right in practice.³⁷ Religious violence in Bangladesh is not state-sponsored, so internal relocation is generally a viable option.
- 3.11.7** There are approximately 100,000 Ahmadis living in Bangladesh.³⁸ Whilst violence against Ahmadis is localised case owners will need to consider whether, in the light of the size of the Ahmadi community in Bangladesh, it would be unduly harsh to expect the applicant to relocate to an area where Ahmadis may not be present.
- 3.11.8 *Conclusion.*** There is no evidence to suggest that the state authorities condone religious violence, but societal attitudes towards Ahmadis may in some instances result in the harassment of individuals and the threshold for persecution, torture or inhuman and degrading treatment may be passed in some individual cases. However, this is not inevitable, and each case should still be considered individually on its own merits to assess whether the applicant sought and was provided with protection and/or whether internal relocation is an option. In certain cases applicants may qualify for asylum.

³³ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Religion)

³⁴ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Religion) & USIRFR 2008: Bangladesh (Introduction & Section III)

³⁵ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Religion)

³⁶ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Religion) & USIRFR 2008: Bangladesh (Introduction & Section III)

³⁷ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Movement)

³⁸ COIS Bangladesh Country Report September 2008 (Human Rights: Freedom of Religion) & USIRFR 2008: Bangladesh (Section III)

3.12 Prison Conditions

- 3.12.1** Applicants may claim they cannot return to Bangladesh due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Bangladesh are so poor as to amount to torture or inhuman treatment or punishment.
- 3.12.2** 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.
- 3.12.3 *Consideration.*** The inspector general of prisons took several steps to improve prison conditions in 2007, including updating the jail code, reducing corruption and drug trafficking in prisons, limiting the use of full shackles on prisoners for reasons other than discipline, improving the quality of food service, creating more prisoner vocational training opportunities and literacy classes, and improving morale of prison staff. Still, the U.S. Department of State reported that the prison system remained abysmal in 2007 due to overcrowding and the lack of proper sanitation. Local human rights observers also considered the poor prison conditions to be a contributing factor to custodial deaths. The prison population reportedly stood at 87,011 in July 2008, while the country's 67 prisons had a nominal capacity of only 27,451.³⁹
- 3.12.4** In general, the Caretaker Government did not permit prison visits by independent human rights monitors in 2007. Government-appointed committees of prominent private citizens in each prison locality monitored prisons monthly but did not release their findings. District judges occasionally visited prisons during the year, but rarely disclosed their findings.⁴⁰

3.12.5 *Caselaw.*

SH (prison conditions) Bangladesh CG [2008] UKAIT 00076. The Tribunal concluded that prison conditions in Bangladesh, at least for ordinary prisoners, do not violate Article 3 of the ECHR. The Tribunal stated that this does not mean an individual who faces prison on return to Bangladesh can never succeed in showing a violation of Article 3 in the particular circumstances of his case. The individual facts of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3. In view of the significant changes in Bangladesh politics in recent years, the Tribunal removed **AA (Bihari-Camps) Bangladesh CG [2002] UKIAT 01995**, **H (Fair Trial) Bangladesh CG [2002] UKIAT 05410** and **GA (Risk-Bihari) Bangladesh CG [2002] UKIAT 05810** from the list of country guidance cases.

- 3.12.6 *Conclusion.*** Whilst prison conditions in Bangladesh are poor, they are unlikely to reach the minimum level of severity required to reach the Article 3 threshold. Therefore, even where applicants can demonstrate a real risk of imprisonment on return to Bangladesh, a grant of Humanitarian Protection will not generally be appropriate. As stated in SH, however, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his or her particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility, and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

³⁹ COIS Bangladesh Country Report September 2008 (Human Rights: Prison Conditions)

⁴⁰ COIS Bangladesh Country Report September 2008 (Human Rights: Prison Conditions)

- 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 Bangladesh 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 the Asylum Instructions on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Bangladesh.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favorable 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 Bangladesh 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** Significant changes in human resources for health have taken place in recent years leading to overall improvement in the coverage of health services. These include production and deployment of more health and health-related personnel, refresher training for health personnel in service, and greater use of health volunteers. Bangladesh has a national essential drugs policy and a list of essential drugs to be procured and used in health services is maintained.⁴¹
- 4.4.3** In the fiscal year 2005/06 there were 49,669 hospital beds, 42,101 registered doctors and 14,689 registered nurses in the public sector. (This translates to approximately 27 doctors and 10 registered nurses per 100,000 population). The private sector provides the major proportion of outpatient curative care, especially among the poor, while the public sector serves the larger proportion of inpatient care.⁴²
- 4.4.4** Mental health care is provided at the primary level by primary care physicians and health workers, at the secondary level by district hospitals, though only one hospital is equipped to provide the services, and at tertiary level by teaching hospitals. Of the 14 drugs for psychiatric treatment listed in the WHO Project Atlas survey for 2005, only three were not available in Bangladesh.⁴³
- 4.4.5** Bangladesh is a country with low HIV prevalence but high 'vulnerability'. The BNP Government's National Strategic Plan on HIV/AIDS for the period 2004 to 2010 was formally launched in May 2005 to coordinate and fund a national response to HIV. The

⁴¹ COIS Bangladesh Country Report September 2008 (Human Rights: Medical Issues)

⁴² COIS Bangladesh Country Report September 2008 (Human Rights: Medical Issues)

⁴³ COIS Bangladesh Country Report September 2008 (Human Rights: Medical Issues)

Government also works with the World Bank on a US \$40 million HIV/AIDS Prevention Project. UNAIDS estimated in 2006 that only 1 per cent of HIV-infected men and women were then receiving anti-retroviral therapy. However, according to the 2008 UNGASS Country Progress Report prepared by the Ministry of Health, 13.3 per cent of adults and children 'with advanced HIV infection' were receiving anti-retroviral therapy in 2007.⁴⁴

- 4.4.6** Where a case owner considers that the circumstances of the individual applicant and the situation in Bangladesh reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Bangladeshi nationals may return voluntarily to any region of Bangladesh at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Bangladesh. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

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