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OPERATIONAL GUIDANCE NOTE

PAKISTAN

CONTENTS

1. Introduction	1.1 – 1.3
2. Country assessment	2.1 – 2.2
Actors of protection	2.3
Internal relocation	2.4
Country guidance caselaw	2.5
3. Main categories of claims	3.1 – 3.4
Fear of the Taliban and other militant groups	3.6
Ahmadis	3.7
Christians	3.8
Gay men, lesbians, bisexual and transgender persons	3.9
Women victims of domestic violence	3.10
Women who have reported being raped	3.11
Women who fear becoming the victim of an honour crime	3.12
Women accused of committing adultery	3.13
Land disputes	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

1. Introduction

1.1 This document provides UK Border Agency case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Pakistan, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 Case owners 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 case owners 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.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Case owners must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy. 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. Where a person is being considered for deportation, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules.

2. Country Assessment

- 2.1** Case owners 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/>

- 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://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf>

2.3 Actors of Protection

- 2.3.1** Case owners must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Case owners must 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.

- 2.3.2** Police have primary internal security responsibilities for most of the country. By law, control of local police falls under the Ministry of Interior. The Rangers are a paramilitary organisation under the authority of the Ministry of Interior, with branches in Sindh and Punjab. The armed forces are responsible for external security. At times during the year they also were assigned domestic security responsibilities.¹
- 2.3.3** The Frontier Crimes Regulations (FCR) provides the framework for law and order in the Federally Administered Tribal Areas (FATA). The FCR has long been criticized for several harsh and inhuman provisions, some of which were mitigated when President Zardari modified the FCR on 12 August 2011. Major changes in the FCR related to banning the collective responsibility of a tribe, restricting the arbitrary nature of the powers of political agents or district co-ordination officers and granting citizens the right to challenge the decisions of political agents in the Courts. The FCR is implemented through a political agent who reports to the president through the Khyber Pakhtunkhwa Governor. In lieu of police, multiple law enforcement entities operated in FATA. These incorporated the paramilitary Frontier Scouts, which report to the Ministry of Interior in peacetime and the army in times of conflict; the Frontier Constabulary, which patrols the area between FATA and KP; levies, which operate in FATA and report to the political agent; khassadars (hereditary tribal police), which help the political agent maintain order; and lashkars (tribal militias), which are convened by tribal leaders to deal with temporary law and order disturbances.²
- 2.3.4** At present Pakistan has only about 354,000 police personnel for a population of 170 million and the mandated strength is rarely reached, especially in rural areas where most criminal activity occur. It is estimated that Punjab, Pakistan's most populous province, has an 180,000-strong police force of which only 40,000 are permanently stationed in police stations. Lahore, with 10 million inhabitants, has only 25,000 police and Karachi, the city with the highest incidence of crime and with a population of more than 16 million, has around 29,000 police. The number of terrorist attacks against police has dramatically risen in recent years, from 113 in 2005 to around 2,000 in 2009. The Khyber Pakhtunkhwa police force lost 353 policemen in 2009 in terrorism-related incidents. In August 2010, the head of the Frontier Constabulary was one of the most senior security officials ever to be killed by militants in the country. Since May 2011 the Pakistani Taliban have launched numerous deadly attacks on police targets to avenge the killing of Al-Qaeda leader Osama bin Laden. These include a suicide attack on a Frontier Corps training centre, killing at least 80 troops, and an execution-style killing of 16 policemen in Dir district.³
- 2.3.5** The Police Service of Pakistan (PSP) is the career federal civil service body from which senior police officers are drawn. Junior officers are appointed by provincial governments. PSP cadres are assigned to serve with provincial governments or to central government bodies. Recruits are selected annually by examination, and the body's decent pay rates and prestige ensure that competition is keen. Successful candidates receive two years of training at the Police Training College in Sihala, near Islamabad, and are then assigned to duty. Postings and promotions

¹ US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

² US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

³ COIS Pakistan Country Report June 2012 (Para 9.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi>
Jane's Information Group (Subscription Only) <http://www.janes.com/products/janes/index.aspx>
Sentinel Security Assessment: Pakistan, Updated between 10 October 2011 and 23 April 2012

are frequently subject to political interference.⁴

- 2.3.6** In addition to the regular uniformed forces, tribal elders have formed tribal militias or laskhars (literally, 'armies'). The institution of the tribal lashkar, originally a tribal irregular volunteer militia, has undergone a transformation during the past few years; it is not a permanent defence force but is an irregular force with a localised mission and hence not accustomed to being directed by a central authority for a sustained purpose. In many instances, tribes, frustrated at insurgent operations including unlawful killings, harassment, intimidation and displacement, set up lashkars for their protection. The army, relying on the superior local knowledge of tribesmen, has of late encouraged and in some cases armed such militias to fight insurgents, in the FATA region as well as in Khyber Pakhtunkhwa. Lashkars have fought militants in several of the FATA's seven agencies; insurgents, in return, have targeted lashkar members and unlawfully killed anti-Taliban tribal elders who have ties to the lashkars as well as relatives of lashkar members.⁵
- 2.3.7** Taliban and allied armed groups have systematically and widely engaged in human rights abuses in FATA and neighbouring areas of northwest Pakistan. But many civilians from these areas told Amnesty International that they had no less fear of military operations, as was demonstrated in Malakand when more than two million people fled their homes at the onset of military operations in April 2009 or again in South Waziristan in October 2009, where 200,000 people fled as the army moved in. Many residents blamed the Taliban for placing military forces within civilian areas, raising the likelihood of harm to civilians during operations. But government forces are also culpable of systematic and widespread human rights violations in FATA and Khyber Pakhtunkhwa (formerly the NWFP), both in the course of military operations and by subjecting suspected insurgents to arbitrary arrest, enforced disappearance and apparent extrajudicial execution.⁶
- 2.3.8** Police effectiveness varied greatly by district, ranging from reasonably good to ineffective. Although the law prohibits torture and other cruel, inhuman, or degrading treatment, there were reports that security forces, including intelligence services, tortured and abused individuals in custody. A Non Governmental Organisation (NGO), the Society for Human Rights and Prisoners Aid (SHARP), reported that, as of 15 December 2011, police tortured persons in more than 8,000 cases, compared with findings of 4,069 cases in 2010. Human rights organisations reported that methods of torture included beating with batons and whips, burning with cigarettes, whipping soles of the feet, prolonged isolation, electric shock, denial of food or sleep, hanging upside down, and forced spreading of the legs with bar fetters. Torture occasionally resulted in death or serious injury. Observers noted the underreporting of torture throughout the country.⁷
- 2.3.9** Frequent failure to punish abuses created a climate of impunity. Police and prison officials frequently used the threat of abuse to extort money from prisoners and their families. The inspectors general, district police officers, district nazims (a chief elected official of a local government or mayor equivalent), provincial interior or chief ministers, federal interior minister, prime minister, or courts can order

⁴ COIS Pakistan Country Report June 2012 (Para 9.08) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi>
Jane's Information Group (Subscription Only) <http://www.janes.com/products/janes/index.aspx>

Sentinel Security Assessment: Pakistan, Updated between 10 October 2011 and 23 April 2012

⁵ "As If Hell Fell On Me": The Human Rights Crisis in Northwest Pakistan, 10 June 2010

<http://www.amnesty.org/en/library/info/ASA33/004/2010/en>

⁶ "As If Hell Fell On Me": The Human Rights Crisis in Northwest Pakistan, 10 June 2010

<http://www.amnesty.org/en/library/info/ASA33/004/2010/en>

⁷ US State Department Human Rights Report 2011. Pakistan Section 1

<http://www.state.gov/documents/organization/186685.pdf>

internal investigations into abuses and order administrative sanctions. Executive branch and police officials can recommend, and the courts can order, criminal prosecution. These mechanisms were sometimes used.⁸

- 2.3.10** There have however been reports of improvements in police professionalism during 2011. Punjab provincial government continue to conduct regular training and retraining in technical skills and protection of human rights for police at all levels.⁹ In March 2010 the Islamabad Capital Police established a human rights cell to encourage persons to report cases of human rights violations either in person, through a telephone hotline, or via e-mail. Islamabad police also decided to appoint human rights officers (HROs) and members of the community at all police stations. HROs could visit police stations at different times and had authority to interview arrested individuals. If a police officer was reported to be involved in torturing or detaining persons at police stations without justification, HROs could recommend disciplinary action against the officer involved. Provincial and federal law enforcement officers also attended a training course that included human rights, victims' rights, and women's rights. Since 2008 the NGO SHARP has provided training to more than 2,000 police officers in human rights.¹⁰
- 2.3.11** The law provides for an independent judiciary; in practice the judiciary was often subject to external influences, such as fear of reprisal in terrorism cases. In non-political cases the media and the public generally considered the high courts and the Supreme Court credible. The civil, criminal, and family court systems provide for public trial, presumption of innocence, cross-examination by an attorney and appeal of sentences. There are no trials by jury. Although defendants have the right to be present and consult with an attorney, courts appointed attorneys for indigents only in capital cases. Defendants bear the cost of legal representation in lower courts, but a lawyer can be provided at public expense in appellate courts. Defendants can confront or question witnesses brought by the prosecution and present witnesses and evidence on their behalf. Defendants and attorneys have legal access to government-held evidence relevant to their cases. Due to the limited number of judges, a heavy backlog of cases, lengthy court procedures, frequent adjournment, and political pressure, cases routinely lasted for years and defendants had to make frequent court appearances.¹¹
- 2.3.12** There were extensive case backlogs in the lower and superior courts, as well as other problems that undermined the right to effective remedy and the right to a fair and public hearing. Delays in justice in civil and criminal cases arose due to antiquated procedural rules, weak case management systems, costly litigation to keep a case moving in the system, and weak legal education. According to Chief Justice Iftikhar Chaudhry, at the start of the new judicial year on 12 September 2011, 19,323 cases were pending before the Supreme Court. A total of 1.4 million cases were pending in the entire judicial system.¹²

⁸ US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

⁹ US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

¹⁰ US State Department Human Rights Report 2010 Pakistan Section 1
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154485.htm>

¹¹ US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

¹² US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

2.4 Internal Relocation

- 2.4.1** Case owners must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to 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 part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for 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. Case owners must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.4.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.4.3** The law provides for freedom of movement within the country, and for uninhibited foreign travel, emigration, and repatriation; the government limited these rights in practice. The law prohibits travel to Israel, and the country's passports include a statement that they are "valid for all countries except Israel." Government employees and students must obtain "no objection certificates" from the government before travelling abroad. This requirement rarely was enforced for students.¹³
- 2.4.4** The Pakistan government cooperates with the UNHCR and other humanitarian organisations in providing protection and assistance to IDPs, refugees, returning refugees, asylum seekers, and other persons of concern. However, the government's restrictions on access to certain areas of FATA, KP, and Balochistan, often due to security concerns, hindered the ability of humanitarian assistance providers to deliver aid to vulnerable populations.¹⁴
- 2.4.5** Persons on the Exit Control List (ECL) are prohibited from foreign travel. Although the ECL is intended to prevent those with pending criminal cases from travelling abroad, no judicial action is required for the Ministry of Interior to add a name to the ECL. The ECL is sometimes used to harass human rights activists or leaders of nationalist parties. Those on the list have the right to appeal to the courts for

¹³ US State Department Human Rights Report 2011 Pakistan Section 2
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

¹⁴ US State Department Human Rights Report 2011 Pakistan Section 2
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

removal of their names.¹⁵

- 2.4.6** Under Pakistani family law, which is based on Islamic law, the father controls virtually all aspects of his family's life. He decides where his wife and children will live, how the children are to be educated and whether or where they may travel. Courts rarely, if ever, give custody of children to a woman who is not a Muslim, who will not raise the children as Muslims, does not plan to raise them in Pakistan, or has remarried. In all probability, even if the mother wins custody, the children would still need the father's permission, to leave the country. Any matter of custody in Pakistan can only be resolved through the appropriate local judicial system. In Pakistan, most mothers do not earn an income. The courts keep this in mind in determining what is in the best interests of the child. A father is legally bound to take care of his children no matter what since he is the income earner. A mother is not so bound. That is why, in most cases, the father is granted custody. Laws protecting the rights of mothers are written into the Quran (Koran). Under Islamic law, a woman has the right to keep a boy child up to the age of seven years and a girl child up to the age of twelve.¹⁶

2.5 Country Guidance Caselaw

MN and others (Ahmadis – Country Conditions – Risk) Pakistan CG [2012] UKUT 00389(IAC)

1. This country guidance replaces previous guidance in [MJ & ZM \(Ahmadis – risk\) Pakistan CG \[2008\] UKAIT 00033](#), and [IA and Others \(Ahmadis: Rabwah\) Pakistan CG \[2007\] UKAIT 00088](#). The guidance we give is based in part on the developments in the law including the decisions of the Supreme Court in [HJ \(Iran\) \[2010\] UKSC 31](#), [RT \(Zimbabwe\) \[2012\] UKSC 38](#) and the CJEU decision in [Germany v. Y \(C-71/11\) & Z \(C-99/11\)](#). The guidance relates principally to Qadiani Ahmadis; but as the legislation which is the background to the issues raised in these appeals affects Lahori Ahmadis also, they too are included in the country guidance stated below.
2. (i) The background to the risk faced by Ahmadis is legislation that restricts the way in which they are able openly to practise their faith. The legislation not only prohibits preaching and other forms of proselytising but also in practice restricts other elements of manifesting one's religious beliefs, such as holding open discourse about religion with non-Ahmadis, although not amounting to proselytising. The prohibitions include openly referring to one's place of worship as a mosque and to one's religious leader as an Imam. In addition, Ahmadis are not permitted to refer to the call to prayer as azan nor to call themselves Muslims or refer to their faith as Islam. Sanctions include a fine and imprisonment and if blasphemy is found, there is a risk of the death penalty which to date has not been carried out although there is a risk of lengthy incarceration if the penalty is imposed. There is clear evidence that this legislation is used by non-state actors to threaten and harass Ahmadis. This includes the filing of First Information Reports (FIRs) (the first step in any criminal proceedings) which can result in detentions whilst prosecutions are

¹⁵ US State Department Human Rights Report 2011 Pakistan Section 2
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

¹⁶ US Department of State - International Parental Child Abduction: Pakistan, Undated
http://travel.state.gov/abduction/country/country_513.html

being pursued. Ahmadis are also subject to attacks by non-state actors from sectors of the majority Sunni Muslim population.

(ii) It is, and has long been, possible in general for Ahmadis to practise their faith on a restricted basis either in private or in community with other Ahmadis, without infringing domestic Pakistan law.

3. (i) If an Ahmadi is able to demonstrate that it is of particular importance to his religious identity to practise and manifest his faith openly in Pakistan in defiance of the restrictions in the Pakistan Penal Code (PPC) under sections 298B and 298C, by engaging in behaviour described in paragraph 2(i) above, he or she is likely to be in need of protection, in the light of the serious nature of the sanctions that potentially apply as well as the risk of prosecution under section 295C for blasphemy.

(ii) It is no answer to expect an Ahmadi who fits the description just given to avoid engaging in behaviour described in paragraph 2(i) above ("paragraph 2(i) behaviour") to avoid a risk of prosecution.
4. The need for protection applies equally to men and women. There is no basis for considering that Ahmadi women as a whole are at a particular or additional risk; the decision that they should not attend mosques in Pakistan was made by the Ahmadi Community following attacks on the mosques in Lahore in 2010. There is no evidence that women in particular were the target of those attacks.
5. In light of the above, the first question the decision-maker must ask is (1) whether the claimant genuinely is an Ahmadi. As with all judicial fact-finding the judge will need to reach conclusions on all the evidence as a whole giving such weight to aspects of that evidence as appropriate in accordance with Article 4 of the Qualification Directive. This is likely to include an enquiry whether the claimant was registered with an Ahmadi community in Pakistan and worshipped and engaged there on a regular basis. Post-arrival activity will also be relevant. Evidence likely to be relevant includes confirmation from the UK Ahmadi headquarters regarding the activities relied on in Pakistan and confirmation from the local community in the UK where the claimant is worshipping.
6. The next step (2) involves an enquiry into the claimant's intentions or wishes as to his or her faith, if returned to Pakistan. This is relevant because of the need to establish whether it is of particular importance to the religious identity of the Ahmadi concerned to engage in paragraph 2(i) behaviour. The burden is on the claimant to demonstrate that any intention or wish to practise and manifest aspects of the faith openly that are not permitted by the Pakistan Penal Code (PPC) is genuinely held and of particular importance to the claimant to preserve his or her religious identity. The decision maker needs to evaluate all the evidence. Behaviour since arrival in the UK may also be relevant. If the claimant discharges this burden he is likely to be in need of protection.
7. The option of internal relocation, previously considered to be available in Rabwah, is not in general reasonably open to a claimant who genuinely wishes to engage in paragraph 2(i) behaviour, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation.

8. Ahmadi who are not able to show that they practised their faith at all in Pakistan or that they did so on anything other than the restricted basis described in paragraph 2(ii) above are in general unlikely to be able to show that their genuine intentions or wishes are to practise and manifest their faith openly on return, as described in paragraph 2(i) above.
9. A sur place claim by an Ahmadi based on post-arrival conversion or revival in belief and practice will require careful evidential analysis. This will probably include consideration of evidence of the head of the claimant's local United Kingdom Ahmadi Community and from the UK headquarters, the latter particularly in cases where there has been a conversion. Any adverse findings in the claimant's account as a whole may be relevant to the assessment of likely behaviour on return.
10. Whilst an Ahmadi who has been found to be not reasonably likely to engage or wish to engage in paragraph 2(i) behaviour is, in general, not at real risk on return to Pakistan, judicial fact-finders may in certain cases need to consider whether that person would nevertheless be reasonably likely to be targeted by non-state actors on return for religious persecution by reason of his/her prominent social and/or business profile.

Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

Germany v Y & Z [2012] EUECJ C-71/11 (05 September 2012) In this case concerning two Ahmadi from Pakistan the European Court of Justice (ECJ) rejected the notion of core and peripheral aspects of religion, dismissing the argument that only an interference with a core right might constitute persecution:

63. Such a distinction is incompatible with the broad definition of 'religion' given by Article 10(1)(b) of the [Qualification] Directive, which encompasses all its constituent components, be they public or private, collective or individual. Acts which may constitute a 'severe violation' within the meaning of Article 9(1)(a) of the Directive include serious acts which interfere with the applicant's freedom not only to practice his faith in private circles but also to live that faith publicly.

The ECJ went on to find that the determining factor as to whether an interference with religious freedom will constitute persecution is 'the severity of the measures and sanctions adopted or liable to be adopted against the person concerned' (para 66). Where a person who exercises their freedom of religion runs a genuine risk of being prosecuted or being subjected to inhuman or degrading treatment or punishment then that is likely to constitute persecution (para 67). Specifically, the prohibition of participation in worship in public either alone or in community with

others may constitute persecution where there is a genuine risk of prosecution or being subjected to inhuman or degrading treatment or punishment (para 69).

The ECJ held that desire to preserve one's religious identity even where the prohibited religious practice is not a core element of the religion, is a relevant risk factor:

70. In assessing such a risk, the competent authorities must take account of a number of factors, both objective and subjective. The subjective circumstance that the observance of a certain religious practice in public, which is subject to the restrictions at issue, is of particular importance to the person concerned in order to preserve his religious identity is a relevant factor to be taken into account in determining the level of risk to which the applicant will be exposed in his country of origin on account of his religion, even if the observance of such a religious practice does not constitute a core element of faith for the religious community concerned.

The ECJ also rejected the argument that a person can be expected to be discreet in order to avoid persecution:

79. It follows that, where it is established that, upon his return to his country of origin, the person concerned will follow a religious practice which will expose him to a real risk of persecution, he should be granted refugee status, in accordance with Article 13 of the Directive. The fact that he could avoid that risk by abstaining from certain religious practices is, in principle, irrelevant.

KU (Pakistan) v Secretary of State for the Home Department [2012] EWCA Civ 107 In this determination the Court of Appeal concluded that it would be difficult for the appellant to maintain a very low profile in the part of Pakistan where there were not high densities of migrants from the FATA, and that he might be an object of official suspicion in such areas which might in turn bring him to the attention of the Taliban network, and alternatively that if he did relocate in an area where there were others from South Waziristan, then it was even more likely that sooner or later he would be identified as someone who was wanted by the Taliban.

MT (Ahmadi – HJ (Iran)) Pakistan [2011] UKUT 00277(IAC). In this reported determination, the Tribunal ruled that where it is found that an Ahmadi will be “discreet” on return the reasons for such discretion will need to be considered in the light of HJ (Iran) [2010] UKSC 31.

AW (sufficiency of protection) Pakistan [2011] UKUT 31(IAC). The Tribunal made the point that whilst there is general sufficiency of state protection in Pakistan, nonetheless a claimant may still have a well founded fear of persecution if authorities know or ought to know of circumstances particular to his/her case giving rise to the fear, but are unlikely to provide the additional protection the particular circumstances reasonably require. In considering whether an appellant's particular circumstances give rise to a need for additional protection, particular account must be taken of past persecution (if any) so as to ensure the question posed is whether there are good reasons to consider that such persecution (and past lack of sufficient protection) will not be repeated.

SA (political activist – internal relocation) Pakistan [2011] UKUT 30 (IAC). The Tribunal held that requiring a political activist to live away from his home area in

order to avoid persecution at the hands of his political opponents has never been considered a proper application of the internal relocation principle: see e.g. Nolan J in *R v Immigration Appeal Tribunal, ex p. Jonah* [1985] Imm AR 7. And (since October 2006) such a requirement cannot be considered to be consistent with para 3390 of the Immigration Rules (Article 8 of the Qualification Directive). Indeed, the pitfalls of requiring a person to act contrary to his normal behaviour in order to avoid persecution have been further emphasised by the Supreme Court in *HJ (Iran)* [2010] UKSC 31.

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

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

HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31

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.

MJ and ZM (Ahmadis – risk) Pakistan CG [2008] UKAIT 00033.

In this country guidance case the Tribunal concluded that:

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

IA and Others (Ahmadis: Rabwah) Pakistan CG [2007] UKAIT 00088. In this country guidance case the Tribunal concluded that Rabwah does not constitute a

safe haven for any Ahmadi at risk of persecution elsewhere in Pakistan and should not, without more, be treated as an appropriate place of internal relocation. However on appeal - IA (Pakistan) [2008] EWCA Civ 580 - the Court of Appeal agreed that the headnote in that case should be read that 'Rabwah does not necessarily constitute a safe haven for every Ahmadi' rather than the phrase used which read as 'a safe haven for any Ahmadi'. The Court of Appeal set out the following steps to consider:

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

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

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

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

SN & HM (Divorced women– risk on return) Pakistan CG [2004] UKIAT 00283

In this country guidance case the Tribunal held that the question of internal flight will require careful consideration in each case. The general questions which Adjudicators should ask themselves in these cases of this kind are:

- (a) has the claimant shown a real risk or reasonable likelihood of continuing hostility from her husband (or former husband) or his family members, such as to raise a real risk of serious harm in her former home

- (b) If yes, has she shown that she would have no effective protection in her home area against such a risk, including protection available from the Pakistani state, from her own family members, or from a current partner or his family?
- (c) If, yes would such a risk and lack of protection extend to any other part of Pakistan to which she could reasonably be expected to go (Robinson [1977] EWCA Civ 2089 AE and FE [2002] UKIAT 036361), having regard to the available state support, shelters, crisis centres, and family members or friends in other parts of Pakistan?

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

AJ (Risk-Christian Convert) Pakistan CG [2003] UKIAT 00040. In this case the Tribunal found that whilst there were incidents of Christians being harmed in Pakistan, the number of Christians in the country as a whole (over 4m) suggested that converts were not generally subject to treatment which would be persecutory or otherwise inhuman or degrading.

Shah and Islam HL [1999] ImmAR283 25 March 1999. The House of Lords held that women in Pakistan constituted a particular social group because they share the common immutable characteristic of gender, they were discriminated against as a group in matters of fundamental human rights and the State gave them no adequate protection because they were perceived as not being entitled to the same human rights as men.

3. Main Categories of Claims

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Pakistan. 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. 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/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- 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 '[Considering the asylum claim and assessing credibility](#)').

- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, case owners must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all Agency activities.
- 3.4** 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 does not qualify for asylum, or Humanitarian Protection, consideration must be given to any claim as to whether he/she qualifies for leave to remain on the basis of their family or private life. Case owners must also consider if the applicant qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4.1 Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR**
An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Case owners are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.
- 3.4.2 Other severe humanitarian conditions and general levels of violence meeting the Article 3 threshold.**
There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.4.3** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.
- 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 'Section 4 – Making the Decision in the Asylum Instruction' '[Considering the 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 UK Border Agency 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 matches 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 Fear of the Taliban and other Militant Groups

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

3.6.2 Treatment. Pakistan's western border areas are racked by violence as separatists and pro-Taliban militants fight government forces to try to extend their control. Hundreds of thousands of people have been displaced by the fighting, many of them out of reach of aid agencies. The main areas affected are Khyber-Pakhtunkhwa (formerly known as North West Frontier Province) and the semi-autonomous Federally Administered Tribal Areas (FATA) which have a strong Taliban presence, and Balochistan where separatists are seeking greater political autonomy and control over local mineral resources.¹⁷

3.6.3 The Tehrik-e-Taliban Pakistan (TTP) was formed in December 2007 as an umbrella group that would enable the numerous pro-Taliban groups operating in Pakistan's Federally Administered Tribal Areas (FATA) and Khyber Pakhtunkhwa (formerly the NWFP) to co-ordinate their activities and consolidate their growing influence in the region. Like the Afghan Taliban, the TTP's ultimate objective is the creation of an Islamic emirate governed according to their fundamentalist Deobandi interpretation of sharia (Islamic law). However, unlike earlier Pakistani Taliban groups which focused solely on supporting the Afghan Taliban against the US-led coalition, the TTP is explicitly revolutionary, and is committed to overthrowing the Pakistani government. Following the failure of two high-profile government peace initiatives, military operations against the group have increased, particularly with the Bajaur Agency in August 2008; Swat in April/May 2009; and South Waziristan in October 2009. The TTP suffered an additional setback in August 2009 when its founder and inspirational leader, Baitullah Mehsud, was killed. However, the TTP remains a powerful force on the ground in Pakistan's tribal areas under the new leadership of Hakimullah Mehsud, and remains capable of conducting high-yield suicide bomb attacks on hard targets throughout the country.¹⁸

3.6.4 It is difficult to delineate exactly how the Pakistani Taliban and their allied insurgent groups in FATA and north-western Pakistan are organised, who commands them, and where they get their support: the groups' allegiances have shifted several times in recent years, and groups or parts of groups have moved from place to place, both within tribal agencies and across the border into Afghanistan. While most share an extreme religiously inspired militant ideology and a Pashtun identity, they vary widely in objectives and focus. However, many of the groups now share an operational plan, and have demonstrated that they possess effective chains of command and the ability to impose discipline on their ranks when they so desire.¹⁹

¹⁷ Reuters - Background Briefings: Pakistan Violence, Last Updated 19 December 2011

<http://www.trust.org/alertnet/crisis-centre/crisis/pakistan-violence>

¹⁸ COIS Pakistan Country Report June 2012 (Para 8.62)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Jane's Information Group (Subscription Only) <http://www.janes.com/products/janes/index.aspx>

Sentinel Security Assessment: Pakistan, Updated between 10 October 2011 and 23 April 2012 .

¹⁹ "As If Hell Fell On Me": The Human Rights Crisis in Northwest Pakistan, 10 June 2010

- 3.6.5** The Pakistani army pushed Taliban forces out of the Swat Valley and South Waziristan in 2009, and out of the Bajaur and Orakzai agencies in 2010. Militants inflicted cruel and inhuman punishments, attacked civilians and destroyed civilian structures, including schools.²⁰ Suicide bombings, armed attacks, and killings by the Taliban, al Qaeda, and their affiliates targeted nearly every sector of Pakistani society, including journalists and religious minorities, resulting in hundreds of deaths. The US and others alleged that the military and Inter Services Intelligence (ISI) were complicit with these networks, claims the military and government adamantly denied.²¹
- 3.6.6** As well as terrorist related atrocities there have been allegations that security forces routinely violate basic rights in the course of counterterrorism operations. Suspects are frequently detained without charge or are convicted without a fair trial. Thousands of suspected members of al Qaeda, the Taliban, and other armed groups—who were rounded up in a country-wide crackdown that began in 2009 in Swat and the Federally Administered Tribal Areas—remain in illegal military detention; few have been prosecuted or produced before the courts. The army continues to deny lawyers, relatives, independent monitors, and humanitarian agency staff access to persons detained in the course of military operations.²²
- 3.6.7** The government and the military have encouraged the creation of lashkars (village militias) to help to counter the threat posed by TTP and TTP-linked groups in FATA and neighbouring parts of the Khyber Pakhtunkhwa. The government and the military provide intelligence and ‘logistical support’ (which may or may not include arms) to the militias; villagers provide arms of their own, ranging from guns to axes to sticks.²³
- 3.6.8** The government claims that these militias are hindering TTP operations. Although the militias might be seen as more attuned to local issues and sensibilities than the national army, how effective they will prove to be is far from clear. The government has been criticised by some who feel that, having persuaded local groups to rise up against militants, it has failed to offer them adequate protection. It has also raised fears that the government is merely abdicating its responsibility to ensure law and order.²⁴

See also: Actors of protection (section 2.3 above)
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

- 3.6.9 Conclusion.** The risk from the Pakistani Taliban or other militant groups will be highest in areas where those armed anti-government groups are operating or have control. It is important that case owners refer to the most up to date country information and take into consideration the nature of the threat and how far it

<http://www.amnesty.org/en/library/info/ASA33/004/2010/en>

²⁰ Amnesty International Annual report 2011; Pakistan <http://www.amnesty.org/en/region/pakistan/report-2011#section-107-4>

²¹ Human Rights Watch, World Report 2012: Pakistan <http://www.hrw.org/world-report-2012/world-report-2012-pakistan>

²² Human Rights Watch, World Report 2012: Pakistan <http://www.hrw.org/world-report-2012/world-report-2012-pakistan>

²³ Economist Intelligence Unit – Pakistan Country Report 7 October 2009 (Subscription Only)

<http://www.eiu.com/index.asp>

COIS Pakistan Country Report June 2012 (Para 8.27)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁴ Economist Intelligence Unit – Pakistan Country Report 7 October 2009 (Subscription Only)

<http://www.eiu.com/index.asp>

COIS Pakistan Country Report September 2011 (Para 8.20)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

would extend. Whilst there may be a sufficiency of protection generally in Pakistan, in each case the case owner must consider whether there are specific circumstances that give rise to a particular need for protection which would not be provided and, if such protection is not available, whether the claimant could relocate internally to a place where they would not face a real risk of serious harm and where they can reasonably be expected to stay. This assessment will need to be based on the facts of the individual case. For claimants who can demonstrate a well-founded fear of persecution for reason of on account of their imputed political opinion and who are unable to acquire protection or relocate internally, a grant of asylum will be appropriate.

3.7 Ahmadis

3.7.1 Some applicants will apply for asylum or make a human rights claim based on fear of persecution by the Pakistani authorities or by non state actors due to their Ahmadi religious faith.

3.7.2 Treatment. The Pakistan constitution establishes Islam as the state religion and it requires that laws be consistent with Islam. The constitution states that "subject to law, public order, and morality, every citizen shall have the right to profess, practice, and propagate his religion;" in practice however, the government limited freedom of religion. Freedom of speech was also constitutionally "subject to any reasonable restrictions imposed by law in the interest of the glory of Islam."²⁵

3.7.3 The Ahmadi community, founded in 1889, is the only Islamic organisation to believe that the long-awaited Messiah has come in the person of Mirza Ghulam Ahmad (1835-1908) who claimed to be the metaphorical second coming of Jesus of Nazareth and the divine guide, whose advent was foretold by the Prophet of Islam, Muhammad. Ahmadis believe that God sent Ahmad, like Jesus, to end religious wars, condemn bloodshed and reinstitute morality, justice and peace. His teachings unsettled conventional Muslim thinking. The Ahmadi community continues to spread Ahmad's teachings of moderation and restraint in the face of bitter opposition from parts of the Muslim world.²⁶

3.7.4 The Ahmadi community has put the number of Ahmadis living in Pakistan at nearly 600,000, although it is difficult to establish an accurate estimate because Ahmadis, who are legally prohibited from identifying themselves as Muslims, generally choose to not identify themselves as non-Muslims. The US Commission on International Religious Freedom report 2010 estimated that there are 3-4 million Ahmadis in Pakistan.²⁷ The Ahmadi population is centred in and around Rabwah.²⁸

Fear of Persecution by the Authorities

3.7.5 Ahmadis are prevented by law from engaging in the full practice of their faith and may face criminal charges for a range of religious practices, including the use of religious terminology.²⁹ A 1974 constitutional amendment declared that Ahmadis

²⁵ US State Department Religious Freedom Report 2010; Pakistan <http://www.state.gov/j/drl/rls/irf/2010/148800.htm>

²⁶ The Official Website of the Ahmadiyya Muslim Community – An Overview, Undated <http://www.alislam.org/introduction/index.html>

²⁷ US Commission on International Religious Freedom Annual Report 2012, Published March 2012 [http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

²⁸ Parliamentary Human Rights Group - Rabwah: A Place for Martyrs?, January 2007, Accessed via <http://www.thepersecution.org/archive/phrg/index.html>

²⁹ United States Commission on International Religious Freedom Annual Report 2012, Published March 2012

are non-Muslims. Sections 298(b) and 298(c) of the penal code, commonly referred to as the 'anti-Ahmadi laws,' prohibited Ahmadis from calling themselves Muslims, referring to their religious beliefs as Islam, preaching or propagating their religious beliefs, inviting others to accept Ahmadi teachings, or insulting the religious feelings of Muslims. The punishment for violation of these provisions is imprisonment for up to three years and a fine.³⁰ Ahmadis are subject to the most severe legal restrictions and officially-sanctioned discrimination, egregious acts of violence have been perpetrated against Ahmadis and anti-Ahmadi laws have helped create a permissive climate for vigilante violence against the members of this community.³¹

- 3.7.6** The government used anti-Ahmadi laws to target and harass Ahmadis and often accused converts to the Ahmadiyya community of blasphemy, violations of anti-Ahmadi laws, or other crimes. The vague wording of the provision that forbids Ahmadis from directly or indirectly identifying themselves as Muslims enabled officials to bring charges against Ahmadis for using the standard Muslim greeting and for naming their children Muhammad. According to the Rabwah-based Jamaat-e-Ahmadiyya, between July and December 31 2010, three Ahmadis registered complaints of criminal charges under Ahmadi-specific laws and the blasphemy laws with the police, and 21 Ahmadis claimed that they faced false charges under other sections of the penal code.³²
- 3.7.7** Authorities routinely used blasphemy laws to harass religious minorities and vulnerable Muslims and to settle personal scores or business rivalries. Authorities detained and convicted individuals on spurious charges. Judges and magistrates, seeking to avoid confrontation with or violence from extremists, often continued trials indefinitely.³³ In several instances, the police have been complicit in harassment and the framing of false charges against Ahmadis, or stood by in the face of anti-Ahmadi violence.³⁴

Fear of Persecution by Non State Actors

- 3.7.8** All religious minorities in Pakistan are reported to have claimed to have experienced discrimination in recruitment for government jobs, but the Ahmadis particularly suffered and contended that a 'glass ceiling' prevented their promotion to senior positions, and certain government departments refused to hire or retain qualified Ahmadis.³⁵
- 3.7.9** The Ahmadis tend to be an educated and successful community whose members have historically risen to important positions in government and civil society. Today, Ahmadis are prevented from accessing senior employment in state defence or civil institutions. Faiz ur Rehman (President of Amnesty International Pakistan) described the situation in similar terms: prior to 1974 there had been a large number of Ahmadis in senior positions in the Pakistan administration. This

[http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

³⁰ The Dissolution of Muslim Marriages Act, 1939 Section II: Legal/Policy Framework

http://www.vakilno1.com/saarclaw/pakistan/dissolution_of_muslim_marriages_act.htm

³¹ United States Commission on International Religious Freedom Annual Report 2012, Published March 2012

[http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

³² The Dissolution of Muslim Marriages Act, 1939 Section II: Section II: Restrictions on Religious Freedom

http://www.vakilno1.com/saarclaw/pakistan/dissolution_of_muslim_marriages_act.htm

³³ US State Department Religious Freedom Report 2010; Pakistan <http://www.state.gov/j/drl/rls/irf/2010/148800.htm>

³⁴ Human Rights Watch, Massacre of Minority Ahmadis, 1 June 2010 <http://www.hrw.org/news/2010/06/01/pakistan-massacre-minority-ahmadis>

³⁵ The Dissolution of Muslim Marriages Act, 1939 Section II: Section II: Restrictions on Religious Freedom

http://www.vakilno1.com/saarclaw/pakistan/dissolution_of_muslim_marriages_act.htm

is now no longer the case: there are no Ahmadi policy makers, judges, or educationalists.³⁶

- 3.7.10** The public school curriculum included derogatory remarks in textbooks against minority religious groups, particularly Ahmadis, Hindus, and Jews, and the teaching of religious intolerance was widespread. The government continued to revise the curriculum to eliminate such teachings and remove Islamic overtones from secular subjects. Officials used bureaucratic demands and bribes to delay religious groups trying to build houses of worship or obtain land. Although Ahmadis were often prevented from building houses of worship, Sunni Muslim groups built mosques and shrines without government permission, at times in violation of zoning ordinances and on government-owned lands without repercussions.³⁷
- 3.7.11** Amnesty International report that the state failed to prevent and prosecute discrimination, harassment and violence against religious minorities and, increasingly, moderate Sunni Muslims. Ahmadis, Shi'as and Christians were attacked and killed in apparent sectarian violence. Sectarian groups reportedly linked to the Taliban attacked Shi'as, Ahmadis and Sufis with impunity. Blasphemy laws continued to be misused against Ahmadis and Christians, as well as Shi'a Muslims and Sunnis. Abuse of blasphemy laws persisted. At least 67 Ahmadis, 17 Christians, eight Muslims and six Hindus were charged with blasphemy and several cases were dismissed following dubious accusations or improper investigations by the authorities, according to the National Commission for Justice and Peace.³⁸
- 3.7.12** On 13 June 2011, reports revealed that terrorists were chalking out a plan to attack prominent members of the Ahmadi community in the country, starting from Faisalabad. Sources in the local Law Enforcement Agencies also revealed that different terrorist outfits have joined together in this mission and had initiated the campaign with the distribution of pamphlets and organisation of meetings in local seminaries against the Ahmadis, claiming that the Ahmadi citizens of the country were involved in conspiracies against Islam and Pakistan.³⁹ Human Rights Watch reported that Ahmadis face increasing social discrimination, as illustrated by the October 2011 expulsion of 10 students from a school in Hafizabad, Punjab province, for being Ahmadi.⁴⁰
- 3.7.13** The Human Rights Commission of Pakistan (HRCP) described the vernacular press as having become virulently anti-Ahmadi. State television contains broadcasts of anti-Ahmadi rhetoric, including phrases such as 'Ahmadis deserve to die.' Even in the traditionally liberal English language press religious freedom is becoming harder to defend as journalists increasingly fear attack if they defend Ahmadis. The British High Commission stated that public opinion on Ahmadis, encouraged by the vernacular press, is conservative. Whilst Christian rights may be upheld in the press, Ahmadi rights are not. The effect is that most people have accepted the proposition that Ahmadis are non-Muslim and this is as far as they take the issue. However, others use the discrimination as an opportunity for

³⁶ Parliamentary Human Rights Group (PHRG)

'Rabwah: A Place for Martyrs?', January 2007, Accessed via <http://www.thepersecution.org/archive/phrg/index.html>

³⁷ US State Department Religious Freedom Report 2010; Pakistan <http://www.state.gov/j/drl/rls/irf/2010/148800.htm>

³⁸ Amnesty International Annual Report 2011; Pakistan <http://www.amnesty.org/en/region/pakistan/report-2011>

³⁹ South Asia Terrorism Portal: South Asia Intelligence Review, Volume 9, No.51, 27 June 2011

http://www.satp.org/satporgtp/sair/Archives/sair9/9_51.htm

⁴⁰ Human Rights Watch World report 2012: Pakistan <http://www.hrw.org/world-report-2012/world-report-2012-pakistan>

personal or political gain.⁴¹

- 3.7.14** The September 2010 report of a Parliamentary Human Rights Group (PHRG) fact finding mission to Pakistan to examine the human rights situation of the Ahmadi community stated that “The Mission were told about several cases of the murder of Ahmadis, reportedly for their religious beliefs. In many of these cases it appears that the police are slow to carry out a proper investigation and that even following a religiously motivated murder, the family of the deceased is not being given any protection.⁴² Representatives of the Ahmadiyya community told the Mission that the situation [of discrimination and violence] that currently exists cannot be attributed solely to extremist Mullahs who openly incite hatred and murder. It is also the state and political parties in power who are contributing to the discrimination against and persecution of Ahmadis.⁴³
- 3.7.15** The Mission met several state representatives, who without exception stated that state bodies were pressurised by religious extremists and that their own ability to reign in these parties was very limited. Representatives of the Islamabad Ahmadiyya community told the Mission that the reason for the failure of the government to take active steps against religious extremists was the fact that even the government was reliant on their support. In Lahore the Mission was told that [sic] the Human Rights Commission of Pakistan that extremist Mullahs have developed a power base and now wield much influence because they are being encouraged by the government’s failure to act against them. While there is impunity there is no reason for these groups to stop. According to the Commission the government must make examples of extremist Mullahs. At the local level, the police are often reluctant to touch the Mullahs – again this reflects the failure of the government to deal with the situation at any level.⁴⁴

See also: **Actors of protection (section 2.3 above)**
 Internal relocation (section 2.4 above)
 Caselaw (section 2.5 above)

- 3.7.16 Conclusion.** In the country guidance case of [MN and others \(Ahmadis – country conditions – risk\) Pakistan CG \[2012\] UKUT 00389\(IAC\)](#) the Upper Tribunal found that it is, and has long been, possible in general for Ahmadis to practise their faith on a restricted basis either in private or in community with other Ahmadis, without infringing domestic Pakistan law. However the legislation that restricts the way in which Ahmadis are able openly to practise their faith not only prohibits preaching and other forms of proselytising but also in practice restricts other elements of manifesting one’s religious beliefs, such as holding open discourse about religion with non-Ahmadis, although not amounting to proselytising. The prohibitions include openly referring to one’s place of worship as a mosque and to one’s religious leader as an Imam. In addition, Ahmadis are

⁴¹ Parliamentary Human Rights Group (PHRG)

‘Rabwah: A Place for Martyrs?’, January 2007, Accessed via <http://www.thepersecution.org/archive/phrg/index.html>

⁴² Report of the PHRG Fact Finding Mission to Pakistan to Examine the Human Rights Situation of the Ahmadiyya Community, 13 – 22 February 2010, Published 24 September 2010, Accessed via <http://www.unhcr.org/refworld/country,...PAK,,4cc7ea9c2,0.html>

⁴³ Report of the PHRG Fact Finding Mission to Pakistan to Examine the Human Rights Situation of the Ahmadiyya Community, 13 – 22 February 2010, Published 24 September 2010, Accessed via <http://www.unhcr.org/refworld/country,...PAK,,4cc7ea9c2,0.html>

⁴⁴ Report of the PHRG Fact Finding Mission to Pakistan to Examine the Human Rights Situation of the Ahmadiyya Community, 13 – 22 February 2010, Published 24 September 2010, Accessed via <http://www.unhcr.org/refworld/country,...PAK,,4cc7ea9c2,0.html>

not permitted to refer to the call to prayer as azan nor to call themselves Muslims or refer to their faith as Islam. Sanctions include a fine and imprisonment and if blasphemy is found, there is a risk of the death penalty which to date has not been carried out although there is a risk of lengthy incarceration if the penalty is imposed. There is clear evidence that this legislation is used by non-state actors to threaten and harass Ahmadis. This includes the filing of First Information Reports (FIRs) (the first step in any criminal proceedings) which can result in detentions whilst prosecutions are being pursued. Ahmadis are also subject to attacks by non-state actors from sectors of the majority Sunni Muslim population.

- 3.7.17** Accordingly if an Ahmadi is able to demonstrate that it is of particular importance to his religious identity to practise and manifest his faith openly in Pakistan in defiance of the restrictions in the Pakistan Penal Code, he or she is likely to be in need of protection, in the light of the serious nature of the sanctions that potentially apply as well as the risk of prosecution for blasphemy.
- 3.7.18** In assessing the risk to an individual, case owners must first establish whether the claimant genuinely is an Ahmadi. Case owners will need to reach conclusions on all the evidence as a whole giving such weight to aspects of that evidence as appropriate. This is likely to include an enquiry whether the claimant was registered with an Ahmadi community in Pakistan and worshipped and engaged there on a regular basis. Post-arrival activity will also be relevant. Evidence likely to be relevant includes confirmation from the UK Ahmadi headquarters regarding the activities relied on in Pakistan and confirmation from the local community in the UK where the claimant is worshipping.
- 3.7.19** Case owners should then go on to consider the claimant's intentions or wishes as to his or her faith, if returned to Pakistan. This is relevant because of the need to establish whether it is of particular importance to the religious identity of the Ahmadi concerned to engage in practise and manifest his or her faith openly in Pakistan in defiance of the restrictions in the Pakistan Penal Code. The burden is on the claimant to demonstrate that any intention or wish to practise and manifest aspects of the faith openly that are not permitted by the claimant to preserve his or her religious identity. Case owners need to evaluate all the evidence. Behaviour since arrival in the UK may also be relevant. If the claimant discharges this burden he is likely to be in need of protection.
- 3.7.20** The option of internal relocation, previously considered to be available in Rabwah, is not in general reasonably open to a claimant who genuinely wishes to practise and manifest his or her faith openly in Pakistan in defiance of the restrictions in the Pakistan Penal Code, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation.
- 3.7.21** Ahmadis who are not able to show that they practised their faith at all in Pakistan or that they did so on anything other than the restricted basis are in general unlikely to be able to show that their genuine intentions or wishes are to practise and manifest their faith openly on return in defiance of the restrictions in the Pakistan Penal Code.
- 3.7.22** A sur place claim by an Ahmadi based on post-arrival conversion or revival in belief and practice will require careful evidential analysis. This will probably include consideration of evidence of the head of the claimant's local UK Ahmadi Community and from the UK headquarters, the latter particularly in cases where there has been a conversion. Any adverse findings in the claimant's account as a

whole may be relevant to the assessment of likely behaviour on return.

3.8 Christians

- 3.8.1** Some Christians may apply for asylum or make a human rights claim based on fear of persecution from extremist militant groups and/or from individuals on account of their faith. They claim that the authorities are not able or willing to offer sufficient protection.
- 3.8.2** **Treatment.** The Writenet report, Pakistan: The Situation of Religious Minorities, dated May 2009 estimated there were three to four million Christians (about two to three per cent of the population) living in Pakistan, with an approximate equal split between Protestants and Catholics. Some sources estimated the number of Christians to be at least twice the official number. The report noted "Approximately 80 percent of Christians live in the Punjab, with around 14 percent in Sindh, 4 percent in the Khyber Pukhtunkhwa (formerly the NWFP), and 2 percent in Balochistan".⁴⁵
- 3.8.3** Christians and Muslims generally live in harmony, but many say they are treated as second-class citizens and feel insecure for several reasons, including the blasphemy law and sporadic militant attacks on churches. While Muslims are charged with blasphemy in more than 50 percent of cases, human rights activists say the legislation is often used to persecute minorities, or settle personal scores.⁴⁶
- 3.8.4** The government's Ministry of Minorities, along with the president and the prime minister, have made public their commitment to protect minorities and their freedom to worship. Some positive measures have been taken such as reserving quotas in the public sector and parliament for minorities and setting up complaints procedures for those encountering discrimination or abuse. However, this is countered by a growing culture of intolerance led by religious groups who have stepped into the gap left by the government's inability to deliver justice or basic services.⁴⁷
- 3.8.5** Despite the government's steps to protect religious minorities, relations between religious communities are tense; societal discrimination remains widespread and violence against religious minorities on the increase. There are also instances in which law enforcement personnel abused religious minorities in custody. Security forces and other government agencies do not adequately prevent or address societal abuse against minorities. Discriminatory legislation and the government's failure or delay in addressing religious hostility by societal actors foster religious intolerance, acts of violence, and intimidation against religious minorities.⁴⁸
- 3.8.6** Pakistan's religious minorities continued to face a series of human rights violations and targeted attacks. The country's Christian population face increasing threats to their lives from the Pakistani Taliban, as well as other Muslim extremists, who demand that they convert to Islam. At village level,

⁴⁵ Writenet - Pakistan: The Situation of Religious Minorities, May 2009

Accessed via <http://www.unhcr.org/refworld/pdfid/4b01856e2.pdf>

⁴⁶ Reuters - Governor's murder deepens fears of Pakistani Christians, 10 January 2011

<http://www.reuters.com/article/idUSTRE70921I20110110>

⁴⁷ FCO Human Rights Report 2010 <http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessibile-hrd-report-2010>

⁴⁸ US State Department International Religious Freedom Report 2010. www.state.gov/g/drl/rls/irf/2010/148800.htm

Christians are also vulnerable to arbitrary arrest and detention, as they have limited access to justice.⁴⁹

3.8.7 The FCO Human Rights Report stated that the assassination of the governor of Punjab in early January 2011 because of his outspoken position in favour of religious tolerance indicated an increasing culture of intolerance and violence perpetrated against minority groups and their supporters. The blasphemy legislation continued to be misused to target both Muslims and non-Muslims, often resulting in prison sentences. In one high-profile case, Asia Bibi became the first woman to be sentenced to death for blasphemy. Several people accused of blasphemy died in custody, or were murdered by unknown individuals when they were granted bail or acquitted. Attacks against Christians and other religious minorities, particularly Ahmadiis, continued, with suicide bombers in Lahore killing more than 100 people in May. The case of Shazia Masih, an adolescent girl employed illegally as a domestic servant who was allegedly tortured and murdered by her employers, underlined the marginalised position of the Christian community.⁵⁰

3.8.8 On 2 March 2011, Shahbaz Bhatti, a longtime Christian activist for religious freedom and the first-ever Christian in Pakistan's federal cabinet, was assassinated outside his mother's home in Islamabad by members of Tehrik-i-Taliban, commonly known as the Pakistani Taliban. Bhatti had received multiple death threats because of his advocacy against the blasphemy law, including one from Tehrik-i-Taliban threatening to kill him if he was reappointed to the cabinet.⁵¹

3.8.9 The situation is far more difficult for people in Pakistan who are known to have converted to Christianity, than it is for people who were born Christian. It would be rare for someone to convert to Christianity. It is therefore something of note for the community, with potential repercussions. It would be difficult for Christian converts to live freely and openly in Pakistan, as converts over and above being Christian. People who are known to have converted to Christianity suffer serious discrimination, for example in the workplace or by the authorities.⁵²

See also: Actors of protection (section 2.3 above)
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.8.10 Conclusion Societal attitudes towards Christians may result in ill-treatment of individuals which in individual cases may reach the level of persecution, torture or inhuman and degrading treatment. However although there are incidents of some Christians being harmed in Pakistan, the sheer number of Christians as a whole in the country does not indicate that those concerned are generally subject to treatment which would be persecutory or otherwise inhuman or degrading treatment. Where in individual cases the claimant does face a serious risk of

⁴⁹ Minority Rights Group International - State of the World's Minorities and Indigenous Peoples 2010 – Asia and Oceania, 1 July 2010 <http://www.minorityrights.org/10068/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2010.html>

⁵⁰ FCO Human Rights Report 2010 <http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessable-hrd-report-2010>

⁵¹ United States Commission on International Religious Freedom-Annual Report 2012, Published March 2012 [http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

⁵² COIS Pakistan Country Report June 2012 (Para 19.182) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

FCO letter to UK Border Agency Dated 2 March 2011, Christian Converts. Available on Request

persecution, torture or inhuman or degrading treatment, case owners will need to consider whether there is effective protection for the particular individual and whether they could relocate internally to a place where they would not face a real risk of serious harm and where they can reasonably be expected to stay. In cases where it is found that a Christian will be “discreet” on return the reasons for such discretion will need to be considered in the light of HJ (Iran).

3.9 Gay Men, Lesbians, Bisexual and Transgender Persons

3.9.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution as gay men, lesbians, bi-sexual or transgender persons in Pakistan.

3.9.2 Homosexual acts are illegal in Pakistan. The Penal Code does not explicitly refer to homosexuality but ‘carnal intercourse against the order of nature’ is punishable by a fine and/or imprisonment for a period of two years to life. In addition, under Pakistan’s Sharia law, homosexual acts are punishable by corporal punishment (whipping), imprisonment, or death.⁵³ It is reported however that in practice the authorities rarely prosecute cases⁵⁴ and gay men, transvestites and transsexuals live relatively undisturbed by the police. They would however, receive little protection from the authorities⁵⁵ and there are no laws to protect against discrimination on the basis of sexual orientation.⁵⁶ The general population and the family does not see homosexuality in a positive light at all, but is generally tolerant enough to accept the situation as long as they are not affected.⁵⁷ Assaults on gay men are said to be ‘rare’.⁵⁸

3.9.3 There is no known grassroots activism among lesbians, gays, bisexuals, transsexuals and transgender (zenana) communities in Pakistan. This lack of activism, the silences around sexualities, and deeply closeted status of most gays and lesbians in Pakistan (many of whom live double lives to avoid revealing their sexual orientation) makes it difficult to accurately assess their living conditions and human rights situation. Anecdotal information from Pakistani gay people who have left the country describes fear, secrecy, isolation, suicides, forced marriage and family and community pressure to conform to heterosexual norms.⁵⁹ Some sources stated that if an individual openly campaigned for gay rights in the country, he or she could end up being killed by religious followers. Nevertheless, several sources indicate that homosexuality may, in general, be ‘silently accepted’ in Pakistan.⁶⁰

⁵³ Immigration and Refugee Board of Canada (IRB), Research Directorate - PAK102660.E, 29 November 2007, Accessed Via <http://www.unhcr.org/refworld/country,,IRBC,,PAK,,4784def1c,0.html>

⁵⁴ US State Department Human Rights Report 2011 Pakistan Section 6
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

⁵⁵ COIS Pakistan Country Report June 2012 (Para 21.09) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>
Spartacus International Gay Guide 2009, 38th Edition (Available in Hard Copy Only)

⁵⁶ US State Department Human Rights Report 2011 Pakistan Section 6
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

⁵⁷ COIS Pakistan Country Report June 2012 (Para 21.09) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>
Spartacus International Gay Guide 2009, 38th Edition (Available in Hard Copy Only)

⁵⁸ Immigration and Refugee Board of Canada (IRB), Research Directorate - PAK102660.E, 29 November 2007, Accessed Via <http://www.unhcr.org/refworld/country,,IRBC,,PAK,,4784def1c,0.html>

⁵⁹ International Gay and Lesbian Human Rights Commission (IGLHRC) -
Human Rights and Transgender People in Pakistan – Submission to the UN Universal Periodic Review, Published February 2008
<http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/73-1.pdf>

⁶⁰ Immigration and Refugee Board of Canada (IRB), Research Directorate - PAK102660.E, 29 November 2007, Accessed Via <http://www.unhcr.org/refworld/country,,IRBC,,PAK,,4784def1c,0.html>

- 3.9.4** The atmosphere in larger cities such as Islamabad, Karachi and Lahore is 'mildly' more tolerant, in rural areas, conservatism is 'extreme' and homosexuals remain 'closeted'. Two sources indicate that cultural practices in Pakistan, which permit public displays of affection between members of the same gender, make it possible for gay men to socialise without attracting attention.⁶¹

See also: Actors of protection (section 2.3 above)
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

- 3.9.5** **Conclusion.** In general the Pakistan authorities do not provide gay men, lesbians and bisexuals or those perceived as such with effective protection. There are also likely to be difficulties in finding safety through internal relocation. The law provides for freedom of movement within the country and Government generally respects this right in practice. However, in the Supreme Court case of HJ (Iran) made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.
- 3.9.6** Gay rights activists and other individuals who openly campaign for gay rights in Pakistan would be at real risk from religious extremists and in the absence of adequate protection from the authorities this would amount to persecution. As gay men, lesbians and bisexuals in Pakistan may be considered to be members of a particular social group, they should be granted asylum.
- 3.9.7** Each case must be examined on its own merits. Case owners should consider how the applicant has been treated whilst in Pakistan. Caseowner should always establish how an applicant will behave on return to Pakistan. If the applicant will modify their behaviour to avoid persecution then, following HJ, the applicant is a refugee. Where case owners conclude that a claimant is at real risk of persecution in Pakistan on account of their sexual orientation then they should be granted asylum because gay men, lesbians and bisexuals in Pakistan are members of a particular social group.
- 3.9.8** However, 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.
- 3.9.9** 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.

⁶¹ Immigration and Refugee Board of Canada (IRB), Research Directorate - PAK102660.E, 29 November 2007, Accessed Via <http://www.unhcr.org/refworld/country,,IRBC,,PAK,,4784def1c,0.html>

3.10 Women Victims of Domestic Violence

- 3.10.1** Some female applicants will apply for asylum or make a human rights claim based on the grounds that they are the victims of domestic violence and are unable to seek protection from the authorities.
- 3.10.2** Domestic violence is reportedly a widespread and serious problem. Husbands reportedly beat and occasionally killed their wives. Other forms of domestic violence included torture, physical disfigurement, and shaving the eyebrows and hair off women's heads. In-laws abused and harassed the wives of their sons. Dowry and family-related disputes often resulted in death or disfigurement by burning or acid.⁶²
- 3.10.3** The Aurat Foundation cited that there were 610 cases of domestic violence against women in 2011.⁶³
- 3.10.4** The HRCP had reported that 80% of wives in rural Punjab feared violence from their husbands, and nearly 50% of wives in developed urban areas admitted that their husbands beat them.⁶⁴
- 3.10.5** Women who tried to report abuse faced serious challenges. Police and judges were sometimes reluctant to take action in domestic violence cases, viewing them as family problems. Instead of filing charges, police typically responded by encouraging the parties to reconcile. Abused women usually were returned to their abusive family members. Women were reluctant to pursue charges because of the stigma attached to divorce and their economic and psychological dependence on relatives. Relatives were hesitant to report abuse due to fear of dishonouring the family.⁶⁵
- 3.10.6** The government operated the Crisis Centre for Women in Distress, which referred abused women to NGOs for assistance. A total of 26 government-funded Shaheed Benazir Bhutto centres for women across the country provided women with temporary shelter, legal aid, medical treatment, and psychosocial counselling. These centres served women who were victims of exploitation and violence. Victims were later referred to "darul aman" (approximately 200 centres for women and child victims established under the Provincial Women Development Department funds). These centres provided shelter, access to medical treatment, limited legal representation, and some vocational training. Many government centres were full beyond capacity and lacked sufficient staff and resources. In some cases women were abused at the government-run shelters, found their movements severely restricted, or were pressured to return to their abusers.⁶⁶
- 3.10.7** The Human Rights Watch World report for 2012 noted that the government has failed to honour its commitment to reintroduce the Domestic Violence (Prevention and Protection) Bill, unanimously passed by the National Assembly in August

⁶² Immigration and Refugee Board of Canada (IRB), Research Directorate - PAK102656.E, 4 December 2007, Accessed via <http://www.unhcr.org/refworld/country..IRBC..PAK..4784deeec.0.html>

⁶³ The Aurat Foundation, Incidents of Violence against Women in Pakistan Reported during 2011, <http://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/PR/Press%20Release%202011%20%20English.pdf>

⁶⁴ US State Department Human Rights Report 2011 Pakistan Section 6 <http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

⁶⁵ US State Department Human Rights Report 2011 Pakistan Section 6 <http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

⁶⁶ US State Department Human Rights Report 2011 Pakistan Section 6 <http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

2009, but lapsed after the Senate failed to pass it within three months as required under Pakistan's constitution.⁶⁷

See also: Actors of protection (section 2.3 above)
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

- 3.10.8 Conclusion.** In the country guidance case of [KA and Others \(domestic violence – risk on return\) Pakistan CG \[2010\] UKUT 216 IAC](#), the Tribunal found that the Protection of Women (Criminal Laws Amendment) Act 2006, one of a number of legislative measures undertaken to improve the situation of women in Pakistan in the past decade, has had a significant effect on the operation of the Pakistan criminal law as it affects women accused of adultery. It led to the release of 2,500 imprisoned women. Most sexual offences now have to be dealt with under the Pakistan Penal Code rather than under the more punitive Offence of Zina (Enforcement of Hudood) Ordinance 1979. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery; since 1 December 2006 any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation. Offences of adultery (both zina liable to hadd and zina liable to tazir) have been made bailable. However, Pakistan remains a heavily patriarchal society and levels of domestic violence continue to be high.
- 3.10.9** Sufficiency of protection must be considered on the facts of each individual case, but there are likely to be women who are not able to access assistance and protection. In each case, case owners should identify whether attempts were made to seek protection and what the response of the authorities was. If the applicant did not seek the protection of the authorities, case owners should assess why it was not sought. In such cases, there are likely to be applicants who are able to establish a well-founded fear of seeking protection from the authorities.
- 3.10.10** Taking into account the general position of women in Pakistani society where they are subordinate to men, may not be educated or even literate and may have to depend on relatives for economic support, internal relocation may be unduly harsh for women who are genuinely fleeing a risk of serious domestic violence. Factors such as the social and professional background of the individual applicant should be considered when determining relocation as an option. Educated and professional women may however find it possible to support themselves in alternative locations
- 3.10.11** Claimants who have demonstrated:
- (i) a real risk or reasonable likelihood of continuing hostility from her husband (or former husband) or his family members, such as to raise a real risk of serious harm in her former home; and
 - (ii) that they would have no effective in her home area against such a risk, including protection available from the Pakistani state, from her own family members, or from a current partner or his family; and
 - (iii) having regard to the available state support, shelters, crisis centres, and family members or friends in other parts of the country is unable to relocate elsewhere

⁶⁷ Human Rights Watch, World report 2012: Pakistan <http://www.hrw.org/world-report-2012/world-report-2012-pakistan>

in Pakistan, will qualify for asylum as Pakistani women are to be regarded as members of a particular social group within the terms of 1951 Refugee Convention.

3.11 Women Who Have Reported Being Raped

- 3.11.1** Some female applicants will claim asylum based on fear of ill-treatment by the state authorities or societal discrimination as a result of having reported or attempted to report having been raped.
- 3.11.2** Rape, other than by one's spouse, is a criminal offence, with punishment that ranges from a minimum of 10 to 25 years in prison and a fine to the death penalty. The penalty for gang rape is either death or life imprisonment, but sentences were often less severe. Although rape was frequent, prosecutions were rare.⁶⁸ There were no reliable national statistics on rape due to the underreporting and the lack of a central law enforcement data collection system.⁶⁹ However, based on media reports, the NGO Aurat Foundation reported that 827 women were raped during 2011.⁷⁰
- 3.11.3** The Protection of Women (Criminal Laws Amendment) Act 2006 brought the crime of rape under the jurisdiction of criminal rather than Islamic courts. The NGO Aurat Foundation estimated that 88 percent of women in prison were convicted of adultery, many of them after reporting rape. Under the law in cases of rape police are not allowed to arrest or hold a woman overnight at a police station without a civil court judge's consent. The law requires a complaint to be made directly to a session court. After recording the victim's statement, the session court judge officially lodges a complaint, after which police can then make any arrests. While this procedure was meant to eliminate problems relating to social norms that make it difficult for women to go to the police, NGOs reported that it created other barriers for rape victims who did not have money to travel to the courts or access to the courts. Rape continued to be a severely underreported crime.⁷¹ A February 2009 ruling by the Federal Shariat Court invalidated a 25-year-old legal provision allowing a man accused of rape to question the credibility of the victim by offering evidence that she was "of generally immoral character."⁷²
- 3.11.4** Police were at times implicated in rape cases. Police often abused or threatened victims and demanded they drop charges, especially when the accused had bribed police. Police demanded bribes from some victims prior to registering rape charges, and investigations were often superficial. Medical personnel did not have sufficient forensics training, which further complicated prosecutions.⁷³

3.11.5 Conclusion. The Protection of Women (Criminal Laws Amendment) Act 2006

⁶⁸ US State Department Human Rights Report 2011 Pakistan Section 6
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

⁶⁹ Human Rights Commission of Pakistan (HRCP) - State of Human Rights in 2010, 14 April 2011
<http://www.hrcp-web.org/Publications/AR2010.pdf>

⁷⁰ The Aurat Foundation, Incidents of Violence against Women in Pakistan Reported during 2011,
<http://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/PR/Press%20Release%202011%20%20English.pdf>

⁷¹ US State Department Human Rights Report 2011 Pakistan Section 6
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

⁷² US State Department Human Rights Report 2010 Pakistan Section 6
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154485.htm>

⁷³ US State Department Human Rights Report 2011 Pakistan Section 6
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/186685.htm>

has introduced significant changes to the consideration of rape cases in the courts and demonstrates the will of the authorities to address the problem. The police have however reportedly been implicated in rape cases in some instances, especially with regard to the treatment of the victim.

- 3.11.6** Sufficiency of protection must be considered on the facts of each individual case, but there are likely to be women who are not able to access assistance and protection. In each case, case owners should identify whether attempts were made to seek protection and what the response of the authorities was. If the applicant did not seek the protection of the authorities, case owners should assess why it was not sought.
- 3.11.7** Taking into account the general position of women in Pakistani society where they are subordinate to men, may not be educated or even literate and may have to depend on relatives for economic support, internal relocation may be unduly harsh for some women. Factors such as the social and professional background of the individual applicant should be considered when determining relocation as an option. Educated and professional women may however find it possible to support themselves in alternative locations.
- 3.11.8** Claimants who demonstrate a real risk or reasonable likelihood of continuing ill-treatment on return to Pakistan on account of having previously been raped and who are also able to show that they are unable to secure effective protection or relocate elsewhere in Pakistan to escape that risk will qualify for asylum as Pakistani women are to be regarded as members of a particular social group within the terms of 1951 Refugee Convention.

3.12 Women Who Fear Becoming the Victim of an Honour Crime

- 3.12.1** Some applicants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of non-state agents because they have breached or are perceived to have breached family honour. Applicants in this category may be in fear of their husbands, their husband's family and in some cases their own family.
- 3.12.2** Honour killings are described as a custom in which mostly women and some men are murdered after accusations of sexual infidelity. The killers seek to avenge the shame that victims are accused of bringing to their families. However, even girls and, on a smaller scale, boys are victims of the practice. Honour killings are known by different names depending on the area in Pakistan in which they are practised. In Sindh province they are referred to as karo kari, where karo refers to the 'blackened' or dishonoured man and kari to the 'blackened' woman; they are called tor tora in the Khyber Pakhtunkhwa (formerly the NWFP), where tor refers to the accused man and tora to the accused woman; kala kari in Punjab province, where kala refers to the accused man and kari refers to the accused woman; and sinyahkari in Balochistan.⁷⁴ Honour killings are reportedly most prevalent in rural areas of Pakistan.⁷⁵
- 3.12.3** Hundreds of women reportedly were killed in the name of honour. Many cases

⁷⁴ Immigration and Refugee Board of Canada (IRB), Research Directorate PAK101175.E, 24 January 2007, Accessed via <http://www.unhcr.org/refworld/country,,IRBC,,PAK,,46fa538b1e,0.html>

⁷⁵ Immigration and Refugee Board of Canada (IRB), Research Directorate PAK101175.E, 24 January 2007, Accessed via <http://www.unhcr.org/refworld/country,,IRBC,,PAK,,46fa538b1e,0.html>

went unreported and unpunished.⁷⁶ A Telegraph report from December 2011 stated that at least 675 honour killings were carried out in Pakistan during the first nine months of 2011. The murders include at least 71 victims under the age of 18. About 450 of the women killed from January to September were accused of having "illicit relations" and 129 of marrying without permission. Some victims were raped or gang-raped before being killed, according to a preliminary report by the Human Rights Commission of Pakistan. At least 19 were killed by their sons, 49 by their fathers and 169 by their husbands. Many cases were dismissed when relatives of the victim accept "diyat" or blood money from the accused.⁷⁷

3.12.4 The Criminal Law (Amendment) Act of 2005 increased penalties for karo-kari and other forms of honour killing. However, human rights groups criticised the act because it allows the victim or the victim's heirs to negotiate physical or monetary restitution with the perpetrator in exchange for dropping charges, known as "qisas" and "diyat."⁷⁸

3.12.5 Activists have cast doubt on the authorities' willingness to enforce the 2005 law that introduced stiffer sentences and the possibility of the death penalty for honour killings. Commenting on its revised laws for honour killings, the UN Committee on the Rights of the Child report, dated 19 March 2009, that the low level implementation of laws was a problem, which was "Mostly due to lack of adequate training to appropriately deal with the situation and apply the relevant provisions of the law."⁷⁹

See also: Actors of protection (section 2.3 above)
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.12.6 Conclusion In the recent country guidance case of KA and Others (see above), the courts found that whether a woman on return faces a real risk of an honour killing will depend on the particular circumstances; however, in general such a risk is likely to be confined to tribal areas such as the Khyber Pakhtunkhwa and is unlikely to impact on married women.

3.12.7 There is evidence to show that the Government has taken steps against honour killings. Sufficiency of protection must be considered on the facts of each individual case, but there are likely to be women who are not able to access assistance and protection. In each case, case owners should identify whether attempts were made to seek protection and what the response of the authorities was. If the applicant did not seek the protection of the authorities, case owners should assess why it was not sought.

3.12.8 Taking into account the general position of women in Pakistani society where they are subordinate to men, may not be educated or even literate and may have

⁷⁶ US State Department Human Rights Report 2011 Pakistan Section 6
<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154485.htm>

⁷⁷ The Telegraph, Pakistan honour killings reach 675 this year, 20 December 2011
<http://www.telegraph.co.uk/news/worldnews/asia/pakistan/8968120/Pakistan-honour-killings-reach-675-this-year.html>

⁷⁸ US State Department Human Rights Report 2010; Pakistan <http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154485.htm>

⁷⁹ Office of the High Commissioner for Human Rights (OHCHR)
 Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention, Third and fourth periodic reports of States parties due in 2007: Pakistan, 4 January 2008, published 19 March 2009
<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.PAK.3-4.pdf>

to depend on relatives for economic support, internal relocation may be unduly harsh for some women. Factors such as the social and professional background of the individual applicant should be considered when determining relocation as an option. Educated and professional women may however find it possible to support themselves in alternative locations.

- 3.12.9** Claimants who demonstrate a real risk or reasonable likelihood of continuing risk of honour killing on return to Pakistan and who are also able to show that they are unable to secure effective protection or relocate elsewhere in Pakistan to escape that risk will qualify for asylum as Pakistani women are to be regarded as members of a particular social group within the terms of 1951 Refugee Convention.

3.13 Women Accused of Committing Adultery

- 3.13.1** Some women will apply for asylum or make a human rights claim based on ill-treatment by the authorities because they have committed or are accused of committing adultery and fear a disproportionately harsh sentence under the Hudood Ordinance. Some applicants accused of adultery may fear punishment by family members rather than the authorities. If this is the case, case owners should refer to section 3.10 above.
- 3.13.2** Under the Offence of Zina (Enforcement Of Hudood) Ordinance 1979, a man and a woman are said to commit 'Zina' if they wilfully have sexual intercourse without being married to each other. Zina is liable to 'hadd' - meaning punishment ordained by the Koran – if one of the parties is married at the time intercourse occurs. The Protection of Women (Criminal Laws Amendment) Act 2006 took all offences out of the Zina Hudood Ordinance except Zina liable to hadd punishment.⁸⁰
- 3.13.3** Although the Hudood Ordinance provides for Koranic punishments, including death by stoning for adultery, as well as jail terms and fines, it is reported that the authorities have never carried out these punishments due mainly to the strict evidentiary standards required.⁸¹
- 3.13.4** The Protection of Women (Criminal Law Amendment) 2006 Act also introduced a new offence of fornication into the penal code. Fornication is described as consensual sexual intercourse between a man and a woman where neither are married. The offence is punishable by imprisonment for up to five years and a fine not exceeding 10,000 Rupees (approx £70). The new offence is, however, safeguarded from abuse by the creation of a new offence of false accusation of fornication. The new provision provides that anyone who brings or gives false evidence of fornication shall be punished with imprisonment up to five years and a fine of up to 10,000 Rupees (approx £70). Very importantly, once a prosecution for fornication results in an acquittal, the trial judge can, in the same proceedings, try and sentence the person bringing the charge.⁸²

⁸⁰ Offence of Zina (Enforcement of Hudood) Ordinance 1979

http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html

⁸¹ Freedom in the World 2010: Pakistan

<http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7893>

⁸² University of London, Recent developments 2009, 2660028 Introduction to Islamic law, undated

http://www.londoninternational.ac.uk/current_students/programme_resources/laws/llb_diplaw/recent_dev/introduction_islamic_law.pdf

3.13.5 The 2006 Act also amended the procedure governing sexual offences under both the penal code and the Zina Ordinance. Any complaint of adultery must be lodged directly in court, not made to the police. The judge hearing the case must examine on oath the complainant and at least four adult male eye-witnesses, who the court has established to be truthful. The witnesses must testify on oath to the committing of the act of penetration, i.e. the strict evidence required by the Sharia. The procedure regarding allegations of fornication follows that of allegations of adultery, but only two actual eye-witnesses are required. The complainant and the eye-witnesses must be examined in court before the judge can issue a summons for the accused to attend the court.⁸³

See also: Actors of protection (section 2.3 above)
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.13.6 Conclusion. The Protection of Women (Criminal Laws Amendment) Act 2006 has introduced significant changes to the consideration of most cases involving sexual offences. However cases of adultery (Zina liable to hadd) continue to be dealt with under the relevant Hudood Ordinance and can attract severe punishment including death by stoning. It is however reliably reported that such sentences have never been carried out due mainly to the strict evidentiary standards required. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery and any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation.

3.13.7 As noted in the country guidance case of KA & others (see above), in general persons who on return face prosecution in the Pakistan courts will not be at real risk of a flagrant denial of their right to a fair trial, although it will always be necessary to consider the particular circumstances of the individual case.

3.14 Land Disputes

3.14.1 Some applicants may claim asylum on the grounds that they fear persecution after having become involved in a dispute over land typically with a family member.

3.14.2 Freehold land in Pakistan tends to be retained by families and passed from one generation to another by inheritance. Ownership is rarely registered. Despite formal laws mandating registration, incentives for registering land are weak or nonexistent, procedures complicated, and loopholes numerous. Land is typically titled in the name of the head of household or eldest male family member of an extended family. While community property rights are recognized in formal law, joint titling of land is uncommon. Islamic law is often inconsistent with statutory law; Islamic law permits oral, unrecorded declarations of gifts of land, while statutory law requires a writ, with the Benami Act legalising documented but unrecorded transactions. Land in FATA is not recorded. The amount of land actually registered countrywide is unreported.⁸⁴

⁸³ University of London, Recent developments 2009, 2660028 Introduction to Islamic law, undated
http://www.londoninternational.ac.uk/current_students/programme_resources/laws/llb_diplaw/recent_dev/introduction_islamic_law.pdf

⁸⁴ USAID Land Tenure and Property Rights Portal: USAID Country Profile: Pakistan
 Property Rights & Resource Governance
<http://www.usaidlandtenure.net/usaidltp/products/country-profiles/pakistan-1> Accessed on 15 October 2012

- 3.14.3** Pakistan has poorly functioning, inadequate, and duplicative systems of land administration, and an overburdened and ineffective formal court system. Parallel customary systems of transferring land and resolving land disputes prove more accessible and efficient, creating a pluralistic legal environment.⁸⁵
- 3.14.4** The Provincial Land Registrar and Provincial Board of Revenue have responsibility to maintain registries of landholdings and revenue payments, but the records are not comprehensive. Junior revenue officers known as patwaris survey land, perform boundary demarcation, resolve conflicts, and in many jurisdictions register land ownership, land transactions and mutations of records, and manage land distribution. The patwari has custody of the original land records (17 separate registers) for rural and urban land in a given area.⁸⁶
- 3.14.5** Registering a land transaction in Pakistan involves six procedures, requires an average of 50 days, and costs 5.3% of the total property value. The formal land-registration process begins with engagement of a lawyer or deed writer to draft the transaction document on required stamp paper. The parties to the transaction present the document to the Land Registrar who verifies the identity of the parties and their authority to enter into the transaction, and enters certain endorsements. The owner must take the document to the Board of Revenue, or to the patwari, to enter a record of the mutation in the Record of Rights. The patwari issues a fard, which is an extract of the Record of Rights and evidences ownership of the land.⁸⁷
- 3.14.6** Landholders report that the land administration system is complicated, the procedures are not published for the public, and the processes are not transparent, leaving opportunities for corruption and insecure land tenure.⁸⁸
- 3.14.7** Land disputes are prevalent in rural and urban areas throughout Pakistan. A revenue court system has jurisdiction over disputes regarding land documents, tenancy, land revenue, and land transactions. Disputes are heard at the tehsil level (a level of local government similar to a county) by the tehsildar, the officer responsible for the collection of land revenue and land administration. A Chief Settlement Officer and the provincial-level Board of Revenue are the appellate authorities within the revenue court system. The revenue court system, which is designed to provide a specialised, local, rapid resolution of disputes, has been criticised by landholders as time-consuming, complex, and subject to corruption. Land administration offices do not publish procedures for bringing a claim, documentation of land rights is often missing, land records maintained by the local authorities are often incomplete or of questionable validity, and land administration officials such as the patwari often do not appear to provide evidence. Cases may take years to resolve.⁸⁹

⁸⁵ USAID Land Tenure and Property Rights Portal: USAID Country Profile: Pakistan
Property Rights & Resource Governance

<http://www.usaidlandtenure.net/usaidthrproducts/country-profiles/pakistan-1> Accessed on 15 October 2012

⁸⁶ USAID Land Tenure and Property Rights Portal: USAID Country Profile: Pakistan
Property Rights & Resource Governance

<http://www.usaidlandtenure.net/usaidthrproducts/country-profiles/pakistan-1> Accessed on 15 October 2012

⁸⁷ USAID Land Tenure and Property Rights Portal: USAID Country Profile: Pakistan
Property Rights & Resource Governance

<http://www.usaidlandtenure.net/usaidthrproducts/country-profiles/pakistan-1> Accessed on 15 October 2012

⁸⁸ USAID Land Tenure and Property Rights Portal: USAID Country Profile: Pakistan
Property Rights & Resource Governance

<http://www.usaidlandtenure.net/usaidthrproducts/country-profiles/pakistan-1> Accessed on 15 October 2012

⁸⁹ United States Agency for International Development (USAID - Land tenure and property rights portal, Country profile – Pakistan, 21 September 2010
<http://usaidthrproducts/country-profiles/pakistan-1>

3.14.8 Pakistan's formal court system also has jurisdiction to hear land cases, creating a parallel structure of courts. Land disputes are the most common form of dispute filed with the formal court system, perhaps in part because filing a case may stay a pending revenue court proceeding. Pakistan's judiciary is hampered by low pay, poor training, and a large volume of cases. Between 50% and 75% of cases brought before lower-level civil courts and the high courts are land-related disputes. By one estimate, over a million land cases are pending countrywide. Major causes of land disputes are inaccurate or fraudulent land records, erroneous boundary descriptions that create overlapping claims, and multiple registrations to the same land by different parties. Credible evidence of land rights is often nearly impossible to obtain. Land cases can take between 4 and 10 years to resolve, with the party in possession of the land delaying adjudication in order to prolong the period of beneficial use.⁹⁰

See also: Actors of protection (section 2.3 above)
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.14.9 Conclusion There are established judicial processes in place in Pakistan for the resolution of land disputes. Claimants who fear ill treatment by other parties to land disputes will in general be able to seek sufficient protection from the authorities. However in each case the caseowner must consider whether there are specific circumstances that give rise to a particular need for protection which would not be provided and, if such protection is not available, whether the claimant could relocate internally to a place where they would not face a real risk of serious harm and where they can reasonably be expected to stay. This assessment will need to be based on the facts of the individual case.

3.15 Prison Conditions

3.15.1 Applicants may claim that they cannot return to Pakistan due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Pakistan 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 asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.15.3 Consideration. Prison conditions are often extremely poor and fail to meet international standards. Overcrowding is common, except for the cells of wealthy or influential prisoners.⁹¹ In 2011 the Human Rights Commission stated the prisons across the country remained overcrowded and the penal system beset with corruption, poorly trained prison staff, torture, prisoner abuse and weak

⁹⁰ United States Agency for International Development (USAID - Land tenure and property rights portal, Country profile – Pakistan, 21 September 2010
<http://usaidlandtenure.net/usaidltp/products/country-profiles/pakistan-1>

⁹¹ US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

accountability mechanisms.⁹² According to an August 2010 report in Dawn, all 32 jails in Punjab Province faced acute overcrowding. Official figures indicated that these jails operated at 40 percent over capacity during 2011. As of 2 April 2011, 53,208 prisoners were in Punjab's 32 prisons, which had an authorised capacity of 21,527 inmates. According to Punjabi prisons department officials, overcrowding not only caused security, accommodation and health problems for inmates but also adversely affected the general administration of jails.⁹³

- 3.15.4** Inadequate food and medical care in prisons has led to chronic health problems and malnutrition for those unable to supplement their diet with help from family or friends. In many facilities provisions for sanitation, ventilation, temperature, lighting and access to potable water are also inadequate.⁹⁴
- 3.15.5** Most prison facilities are of antiquated construction, without the capacity to control indoor temperatures. A system existed for basic and emergency medical care but it did not always function effectively. Prisoners sometimes also have to pay bribes, and bureaucratic procedures slowed access to medical care. Foreign prisoners often remained in prison long after completion of their sentences because they were unable to pay for deportation to their home countries. There were various reports of prison riots during 2011 which were provoked by overcrowding, deprivation of legal rights, slow disposition of cases, behaviour of the jail administration and lack of facilities.⁹⁵
- 3.15.6** Christian and Ahmadi communities claim that their members are more likely to be abused in prison. Minority prisoners generally afforded poorer facilities than Muslims and often suffered violence at the hands of fellow inmates. Police reportedly sometimes torture and mistreat those in custody and at times engage in extrajudicial killings.⁹⁶
- 3.15.7** **Conclusion** Although conditions in prisons in Pakistan remain extremely poor, in the country guidance case of KA and Others (see above) the courts found that the evidence does not demonstrate that in general such conditions are persecutory or amount to serious harm or ill-treatment contrary to Article 3 ECHR. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on [Discretionary Leave](#))

⁹² Human Rights Commission of Pakistan (HRCPP) State of Human Rights in 2011, March 2012
<http://www.hrcpp-web.org/pdf/AR2011/Complete.pdf>

⁹³ US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

⁹⁴ US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

⁹⁵ US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

⁹⁶ US State Department Human Rights Report 2011 Pakistan Section 1
<http://www.state.gov/documents/organization/186685.pdf>

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

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. Case owners should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

4.3.2 At present there is insufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Pakistan. 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 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Case owners should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).

4.4.2 The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

4.4.3 That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of

medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.

- 4.4.4** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 4.4.5** Where a case owner considers that the circumstances of the individual applicant and the situation in the country would make 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. Case owners must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

5. Returns

- 5.1** There is no policy which precludes the enforced return to Pakistan of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 5.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [Chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 5.4** Pakistani nationals may return voluntarily to any region of Pakistan 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.
- 5.5** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Pakistan. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Pakistani nationals wishing to avail themselves of this opportunity for assisted return to Pakistan should be put in contact with Refugee Action Details can be found on

Refugee Action's web site at: www.choices-avr.org.uk.

**Country Specific Litigation Team
Operational Policy & Rules Unit
Strategy & Assurance Group
UK Border Agency
January 2013**